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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. APHIS–2006–0144]

RIN 0579–AC59

Import/Export User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning user fees for import- and export-related services that we provide for animals, animal products, birds, germ plasm, organisms, and vectors. We are increasing those fees for fiscal years 2009 through 2013 in order to ensure that the fees accurately reflect the anticipated costs of providing these services each year. By publishing the annual user fee changes in advance, users can incorporate the fees into their budget planning.

DATES: *Effective Date*: April 29, 2009.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact Ms. Inez Hockaday, Director, Management Support Staff, VS, APHIS, 4700 River Road, Unit 44, Riverdale, MD 20737–1231; (301) 734–7517.

For information concerning user fee rate development, contact Mrs. Kris Caraher, User Fees Section Head, Financial Management Division, MRPBS, APHIS, 4700 River Road Unit 55, Riverdale, MD 20737–1232, (301) 734–0882.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 9 CFR part 130 (referred to below as the regulations) list user fees for import- and export-related services provided by the Animal and Plant Health Inspection Service (APHIS) for animals, animal products, birds, germ plasm, organisms, and vectors. We are amending the user fees for these import- and export-related services to reflect the increased cost of providing these services.

These user fees are authorized by section 2509(c)(1) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (21 U.S.C. 136a). APHIS is authorized to establish and collect fees that will cover the cost of providing import- and export-related services for animals, animal products, birds, germ plasm, organisms, and vectors.

Since fiscal year (FY) 1992, APHIS has received no directly appropriated funds to provide import- and export-related services for animals, animal products, birds, germ plasm, organisms, and vectors. Our ability to provide these services depends on user fees. We change our user fees through the standard rulemaking process of publishing the proposed changes for public comment in the **Federal Register**, considering the comments, publishing the final changes in the **Federal Register**, and making the new user fees effective 30 days after the final rule is published.

For our user fees to cover our costs so that we can continue to provide services and to inform our customers of user fees in time for advance planning, we proposed to set user fees for our services in advance for fiscal years 2009 to 2013. The proposed rule was published in the **Federal Register** on June 4, 2008 (73 FR 31771–31780, Docket No. APHIS–2006–0144).[1] The proposed user fees were based on our costs of providing import- and export-related services in fiscal years 2005–2007, plus anticipated annual increases in the salaries of the employees who provide the services, plus adjustments for inflation.

We solicited comments concerning our proposal for 60 days ending August 4, 2008. We received seven comments by that date. The comments were from private citizens, a council of ornithological organizations, and livestock importers and exporters. The commenters raised several issues associated with the proposed rule. These issues are discussed below.

One commenter stated generally that the proposed fee increases were too low.

We calculate our user fees to cover the full cost of providing the services for which we charge the fee. We are confident that the user fees we proposed will be sufficient to recover the cost of providing these services. Furthermore, we intend to review these fees on at least an annual basis and will publish any necessary adjustments in the **Federal Register**.

Several commenters expressed concern that increasing the fees would hurt livestock import/export businesses economically.

APHIS needs to increase the fees in order to recover the costs of providing import/export related services. In the economic analysis for the proposed rule, we examined the potential economic effects of these user fee revisions on businesses and determined, based on the information available, that the effects of the changes should be small for both small and large entities. We have reviewed those conclusions and are confident that they are still accurate.

One commenter stated that the reserve account was designed to issue credit to commercial importers who deal in large volumes of animals or animal products. The commenter stated that all permits should be paid for at the time of application.

As we explained in the proposed rule, the reserve account consists of budgetary resources set aside to provide for future needs and unforeseen circumstances. The types of costs that are considered when developing the reserve include commitments, employee benefits, contingencies, business cycle ups and downs, capital equipment replacement, and provision for future legislative or executive actions. The reserve is not designed to provide credit to importers.

We specifically requested comments about whether import compliance assistance fees would be better charged as hourly fees rather than as flat rate fees. One commenter stated that while charging hourly fees would improve flexibility and make it easier to recover costs, it would also add a burden to agency staff to monitor their time so that the hourly rate could be charged accurately. The commenter stated that correctly calculating time for a task in

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0144.*

a busy office when one might be simultaneously conducting other tasks can be very challenging, and expressed concern that this could lead to undercharging fees. Based on these concerns, the commenter recommended not charging these fees at an hourly rate.

Another commenter asked that we add a definition for import compliance assistance to the regulations to clarify what services were covered by the fees.

We agree with this commenter and have added a definition for *import compliance assistance* to the regulations in § 130.1 in this final rule. We have defined *import compliance assistance* as ''Import compliance assistance includes services provided to an importer whose shipment arrives at a port of entry without the necessary paperwork or with incomplete paperwork and who requires assistance to meet the requirements for entry into the United States. Fees for import compliance assistance are charged in addition to the flat rate user fees.''

One commenter requested that we combine the import and transport permits for untreated scientific material, and requested that we increase the duration of permits for the import and transport of untreated scientific materials from 1 to 3 years. The commenter stated that these actions would reduce agency workload and therefore reduce costs.

Import permits are issued to foreign shippers when scientific materials are brought into the United States. Transport permits are issued to domestic shippers moving these materials within the United States. The processing required for these permits is similar, which is why they are covered under the same user fee, but the requirements and restrictions for each are different. Specifically, more mitigations are required for import permits because of the greater risks involved in bringing untreated scientific materials into the United States. Combining the two permit types would result in unnecessary restrictions being placed on the domestic movement of these materials. We did not propose to change the structure or duration of any permits in the proposed rule and are making no changes in response to this comment.

One commenter stated that fees charged by the National Veterinary Services Laboratories (NVSL) for testing livestock for disease before export should be either eliminated entirely or reduced to the same amount as fees charged at State laboratories.

We did not propose to revise the NVSL user fees in the proposed rule. The current fees for NVSL services were established in a final rule published in the **Federal Register** on December 19, 2007 (72 FR 71744–71750, Docket No. APHIS–2006–0161). As with other user fees charged by APHIS, NVSL fees are calculated to recover the actual costs of providing testing services. We are making no changes to the rule in response to this comment.

We are also making a minor change to the table in § 130.11 by adding a footnote to the entry for inspection of biosecurity level three facilities to indicate where the fees for inspection of biosecurity level two facilities are listed. We are adding this footnote for the sake of clarity.

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

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The Secretary of Agriculture is authorized by the Food, Agriculture, Conservation and Trade Act of 1990, as amended, to prescribe and collect fees to recover the costs of providing import and export related services. APHIS is amending the user fees for providing veterinary services for import and export activities (9 CFR part 130). These fees are being updated to take into account the routine increases in the cost of doing business, such as inflation, replacing equipment, maintaining databases, etc., that have occurred since the last update and those that are expected to occur over the next 5 years. In addition, the fees are being adjusted to incorporate expenditures to maintain the current level of operations, improve service, and keep up with expanding demand for services. These expenditures include things from roof replacement to the modernization of facilities.

User fees recover the cost of operating a public system by charging those members of the public who use the system, rather than the public as a whole, for its operation. User fees result in movement toward a more socially optimal level of demand where users fully incorporate the cost of APHIS services into their private costs. In addition, by setting the fees for these veterinary services to fully recover the associated costs, we can assure that the program operates at a level considered sufficient to meet demand for these services. If APHIS continued to collect user fees at the current rates over the next 5 years, total collections would be approximately $113 million, nearly $54 million less than the projected cost of administering the program from FY 2009 through FY 2013. This demonstrates the magnitude of the shortfall in cost recovery that would occur absent the changes.

Effects on Small Entities

The user fee revisions included in this final rule could affect some importers and exporters of live animals, animal products, and animal byproducts. The Small Business Administration (SBA) has established guidelines for determining which businesses are to be considered small. Importers and exporters of live animals, animal products, and animal byproducts are identified within the broader wholesaling trade sector of the U.S. economy. A firm primarily engaged in wholesaling animals or animal products is considered small if it employs not more than 100 persons. These entities either sell goods on their own account (import/export merchants) or arrange for the sale of goods owned by others (import/export agents and brokers). The North American Industry Classification System (NAICS) code 424430 covers dairy products (except dried or canned) merchant wholesalers. According to the 2002 Economic Census (the most recent census available), more than 98 percent of these wholesalers would be considered small by SBA standards.[2] NAICS code 424440 covers poultry and poultry product merchant wholesalers. About 97 percent of these firms would be considered small according to the 2002 Economic Census. NAICS code 424470 covers meat and meat product merchant wholesalers. About 97 percent of these forms would be considered small according to the 2002 Economic Census. NAICS code 424520 covers livestock merchant wholesalers. More than 99 percent of the firms in this category would be considered small according to the 2002 Economic Census.

[2] 2002 Economic Census, Department of Commerce, United States Bureau of the Census.

Thus, the vast majority of entities potentially affected by the rule are likely to be considered small. However, the total impact of the changes should be small, as the fee changes represent a tiny fraction of the value of the shipments of animals and animal products. Imports and exports of livestock, meats, dairy products, poultry, and poultry products were valued at more than $23.8 billion in 2005. By contrast, the increase in annual collections from user fees included in this final rule would be about $5.3 million in FY 2009, and rising to about $14 million in 2013. We do not know the proportion of import and export services that are provided to small entities. However, the degree to which any firm, large or small, will be impacted by these changes is dependent on their level of participation in import or export trade. Based on the information that is available, the effects of the changes contained in this final rule should be small whether the entity affected is small or large.

In the proposed rule, we invited public comment on the expected economic effects of the proposed action on small entities, particularly costs estimates of compliance costs and impacts on revenue. Several commenters expressed concern that increasing the fees would hurt livestock import/export businesses economically but did not present any information which would support this contention.

Alternatives

One alternative to this rule was to leave the regulations unchanged. In this case, the fees would remain unchanged. The current fees do not take into account the routine increases in the cost of doing business, such as inflation, replacing equipment, maintaining databases, etc., that have occurred since the last update. In addition, the fees are being adjusted to incorporate expenditures to maintain the current level of operations, improve service, and keep up with increasing demand for services. If APHIS were to continue to collect user fees at the current rates in fiscal years 2009–2013, total collections would be nearly $54 million short of projected program costs over that period. Therefore, this alternative was rejected.

Another alternative to this rule was to charge hourly rate fees for all veterinary services. However, flat rate user fees are appropriate when the cost of providing a service is unchanging from user to user and the service is requested in relatively large numbers. It would be unnecessarily complex and costly to track hourly charges for services where a flat rate could be consistently used. Therefore, this alternative was rejected.

Another alternative to this rule was to change all hourly fees to flat rate fees. However, charging a flat rate is not appropriate in all situations. We charge flat rate fees in cases where a service takes a consistent amount of time to perform, but for some services there can be a disparity in the time it takes to perform a given service for one user versus another. For example, hourly rates are charged for the inspection of biosecurity level 2 (BSL–2) laboratories, including travel. The inspection covers a specific checklist and is therefore similar from facility to facility. However, the amount of travel time required of the inspector varies widely, depending on the location of the facility. It would be unfair to charge both users the same flat fee for those inspections. Therefore, this alternative was rejected.

This proposed rule contains no new information collection or recordkeeping requirements. (*See* ''Paperwork Reduction Act'' below).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

■ Accordingly, we are amending 9 CFR part 130 as follows:

PART 130—USER FEES

■ 1. The authority citation for part 130 continues to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 130.1 is amended by adding, in alphabetical order, a definition for *import compliance assistance* to read as follows:

§ 130.1 Definitions.

* * * * *

Import compliance assistance. Import compliance assistance includes services provided to an importer whose shipment arrives at a port of entry without the necessary paperwork or with incomplete paperwork and who requires assistance to meet the requirements for entry into the United States. Fees for import compliance assistance are charged in addition to the flat rate user fees.

* * * * *

■ 3. Section 130.2 is amended as follows:

■ a. By revising the section heading to read as set forth below.

■ b. In paragraph (a), by revising the table to read as set forth below.

■ c. In paragraph (b), by revising the table to read as set forth below.

■ d. By removing paragraph (d).

§ 130.2 User fees for individual animals and certain birds quarantined in the APHIS-owned or -operated quarantine facilities, including APHIS Animal Import Centers.

(a) * * *

Animal or bird	Daily user fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Oct. 1, 2011–Sept. 30, 2012	Beginning Oct. 1, 2012
Birds (excluding ratites and pet birds imported in accordance with part 93 of this subchapter):					
0–250 grams	$2.50	$2.75	$2.75	$2.75	$3.00
251–1,000 grams	8.25	8.50	8.75	9.00	9.25

Animal or bird	Daily user fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Oct. 1, 2011–Sept. 30, 2012	Beginning Oct. 1, 2012
Over 1,000 grams	18.00	19.00	19.00	20.00	21.00
Domestic or zoo animals (except equines, birds, and poultry):					
Bison, bulls, camels, cattle, or zoo animals	144.00	149.00	153.00	158.00	162.00
All others, including, but not limited to, alpacas, llamas, goats, sheep, and swine	38.00	39.00	40.00	42.00	43.00
Equines (including zoo equines, but excluding miniature horses):					
1st through 3rd day (fee per day)	382.00	393.00	405.00	417.00	429.00
4th through 7th day (fee per day)	276.00	284.00	292.00	301.00	310.00
8th and subsequent days (fee per day)	235.00	242.00	249.00	256.00	264.00
Miniature horses	86.00	89.00	91.00	94.00	97.00
Poultry (including zoo poultry):					
Doves, pigeons, quail	5.00	5.25	5.50	5.50	5.75
Chickens, ducks, grouse, guinea fowl, partridge, pea fowl, pheasants	9.00	9.25	9.50	9.75	10.00
Large poultry and large waterfowl, including, but not limited to, gamecocks, geese, swans, and turkeys	21.00	22.00	22.00	23.00	24.00
Ratites:					
Chicks (less than 3 months old)	13.00	13.00	14.00	14.00	15.00
Juveniles (3 months through 10 months old)	20.00	20.00	21.00	22.00	22.00
Adults (11 months old or older)	38.00	39.00	40.00	42.00	43.00

(b) * * *

Bird or poultry (nonstandard housing, care, or handling)	Daily user fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Oct. 1, 2011–Sept. 30, 2012	Beginning Oct. 1, 2012
Birds 0–250 grams and doves, pigeons and quail	$8.25	$8.50	$8.75	$9.00	$9.25
Birds 251–1,000 grams and poultry such as chickens, ducks, grouse, guinea fowl, partridge, pea fowl, and pheasants	18.00	19.00	19.00	20.00	21.00
Birds over 1,000 grams and large poultry and large waterfowl, including, but not limited to gamecocks, geese, swans, and turkeys	35.00	36.00	37.00	39.00	40.00

* * * * *

■ 4. In § 130.3, paragraph (a)(1), the table is revised to read as follows:

§ 130.3 User fees for exclusive use of space at APHIS Animal Import Centers.

(a)(1) * * *

Animal import center	Monthly user fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Oct. 1, 2011–Sept. 30, 2012	Beginning October 1, 2013
Newburgh, NY:					
Space A					
5,396 sq. ft.					
(503.1 sq. m.)	$83,756.00	$86,268.00	$88,856.00	$91, 513.00	$94,249.00
Space B					
8,903 sq. ft.					
(827.1 sq. m.)	138,190.00	142,335.00	146,605.00	150,989.00	155,504.00
Space C					
905 sq. ft.					
(84.1 sq. m.)	14,047.00	14,469.00	14,903.00	15,348.00	15,807.00

* * * * *

■ 5. In § 130.4, the table is revised to read as follows:

§ 130.4 User fees for processing import permit applications.

* * * * *

Service	Unit	User fee				
		Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Oct. 1, 2011–Sept. 30, 2012	Beginning Oct. 1, 2012
Import compliance assistance:						
Simple (4 hours or less)	Per shipment	$99.00	$102.00	$105.00	$108.00	$111.00
Complicated (more than 4 hours)	Per shipment	514.00	514.00	531.00	548.00	565.00
Processing an application for a permit to import live animals, animal products or by products, organisms, vectors, or germ plasm (embryos or semen) or to transport organisms or vectors[1]						
Initial permit	Per application	133.00	137.00	141.00	145.00	150.00
Amended permit	Per amended application.	66.00	68.00	70.00	73.00	75.00
Renewed permit[2]	Per application	86.00	89.00	91.00	94.00	97.00
Processing an application for a permit to import fetal bovine serum when facility inspection is required.	Per application	455.00	469.00	483.00	497.00	512.00

[1] Using Veterinary Services Form 16–3, ''Application for Permit to Import or Transport Controlled Material or Organisms or Vectors,'' or Form 17–129, ''Application for Import or In Transit Permit (Animals, Animal Semen, Animal Embryos, Birds, Poultry, or Hatching Eggs).''
[2] Permits to import germ plasm and live animals are not renewable.

■ 6. In § 130.6, paragraph (a), the table is revised to read as follows:

§ 130.6 User fees for inspection of live animals at land border ports along the United States-Mexico border.

(a) * * *

Type of live animal	Per head user fee				
	April 29, 2009–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Oct. 1, 2011–Sept. 30, 2012	Beginning Oct. 1, 2012
Any ruminants (including breeder ruminants) not covered below	$13.00	$13.00	$14.00	$14.00	$14.00
Feeder	3.75	3.75	4.00	4.00	4.00
Horses, other than slaughter	62.00	64.00	66.00	68.00	70.00
In-bond or in-transit	8.25	8.50	8.75	9.00	9.25
Slaughter	5.50	5.50	5.75	6.00	6.00

* * * * *

■ 7. In § 130.7, paragraph (a), the table is revised to read as follows:

§ 130.7 User fees for import or entry services for live animals at land border ports along the United States-Canada border.

(a) * * *

Type of live animal	Unit	User fee				
		Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Oct. 1, 2011–Sept. 30, 2012	Beginning Oct. 1, 2012
Animals being imported into the United States: Breeding animals (Grade animals, except horses):						
Sheep and goats	Per head	$0.75	$0.75	$0.75	$1.00	$1.00
Swine	Per head	1.25	1.25	1.25	1.25	1.25
All others	Per head	4.75	4.75	5.00	5.25	5.25
Feeder animals:						
Cattle (not including calves)	Per head	2.25	2.25	2.50	2.50	2.50
Sheep and calves	Per head	0.75	0.75	1.00	1.00	1.00
Swine	Per head	0.50	0.50	0.50	0.50	0.50
Horses (including registered horses) other than slaughter and in-transit.	Per head	41.00	42.00	43.00	45.00	46.00
Poultry (including eggs), imported for any purpose.	Per load	71.00	73.00	75.00	77.00	80.00
Registered animals, all types (except horses).	Per head	8.50	8.75	9.25	9.50	9.75
Slaughter animals, all types (except poultry).	Per load	35.00	36.00	37.00	39.00	40.00

Type of live animal	Unit	User fee				
		Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Oct. 1, 2011–Sept. 30, 2012	Beginning Oct. 1, 2012
Animals transiting [1] the United States:						
Cattle	Per head	2.25	2.25	2.50	2.50	2.50
Sheep and goats	Per head	0.50	0.50	0.50	0.50	0.50
Swine	Per head	0.50	0.50	0.50	0.50	0.50
Horses and all other animals	Per head	9.75	10.00	10.00	10.00	11.00

[1] The user fee in this section will be charged for in-transit authorizations at the port where the authorization services are performed. For additional services provided by APHIS, at any port, the hourly user fee in § 130.30 will apply.

* * * * *

■ 8. In § 130.8, paragraph (a), the table is revised to read as follows:

§ 130.8 User fees for other services.

(a) * * *

Service	Unit	User fee				
		Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Oct. 1, 2011–Sept. 30, 2012	Beginning Oct. 1, 2012
Germ plasm being exported: [1]						
Embryo:						
Up to 5 donor pairs	Per certificate	$117.00	$121.00	$124.00	$128.00	$132.00
Each additional group of donor pairs, up to 5 pairs per group on the same certificate.	Per group of donor pairs.	52.00	54.00	55.00	57.00	59.00
Semen	Per certificate	72.00	74.00	76.00	79.00	81.00
Release from export agricultural hold:						
Simple (2 hours or less)	Per release	99.00	102.00	105.00	108.00	111.00
Complicated (more than 2 hours)	Per release	254.00	262.00	270.00	278.00	286.00

[1] This user fee includes a single inspection and resealing of the container at the APHIS employee's regular tour of duty station or at a limited port. For each subsequent inspection and resealing required, the hourly user fee in § 130.3 will apply.

* * * * *

■ 9. Section 130.10 is amended as follows:

■ a. In paragraph (a), by revising the table to read as set forth below.

■ b. In paragraph (b), by revising the table to read as set forth below.

§ 130.10 User fees for pet birds.

(a) * * *

Service	Per lot user fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Oct. 1, 2011–Sept. 30, 2012	Beginning Oct. 1, 2012
(1) Which have been out of the United States 60 days or less	$153.00	$157.00	$162.00	$167.00	$172.00
(2) Which have been out of the United States more than 60 days	363.00	374.00	385.00	397.00	409.00

(b) * * *

Number of birds in isolette	Daily user fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Oct. 1, 2011–Sept. 30, 2012	Beginning Oct. 1, 2012
1	$13.00	$13.00	$14.00	$14.00	$15.00
2	16.00	16.00	17.00	17.00	18.00
3	18.00	19.00	19.00	20.00	21.00
4	21.00	22.00	22.00	23.00	24.00
5 or more	25.00	26.00	27.00	28.00	29.00

* * * * *

■ 10. In § 130.11, paragraph (a), the table is revised to read as follows:

§ 130.11 User fees for inspecting and approving import/export facilities and establishments.

(a) * * *

Service	Unit	User fee				
		Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Oct. 1, 2011–Sept. 30, 2012	Beginning Oct. 1, 2012
Embryo collection center inspection and approval (all inspections required during the year for facility approval).	Per year	$537.00	$553.00	$570.00	$587.00	$604.00
Inspection for approval of biosecurity level three labs (all inspections related to approving the laboratory for handling one defined set of organisms or vectors)[1].	Per inspection	1,381.00	1,422.00	1,465.00	1,509.00	1,554.00
Inspection for approval of slaughter establishment:						
Initial approval (all inspections)	Per year	527.00	543.00	559.00	576.00	593.00
Renewal (all inspections)	Per year	457.00	470.00	484.00	499.00	514.00
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:						
Approval (compliance agreement) (all inspections for first year of 3-year approval).	Per year	563.00	579.00	597.00	615.00	633.00
Renewal (all inspections for second and third years of 3-year approval).	Per year	325.00	335.00	345.00	355.00	366.00

[1] The hourly user fee rate in § 130.30(2) applies to biosecurity level two laboratories.

* * * * *

■ 11. Section 130.20 is amended as follows:

■ a. In paragraph (a), by revising the table to read as set forth below.

■ b. In paragraph (b)(1), by revising the table to read as set forth below.

§ 130.20 User fees for endorsing export certificates.

(a) * * *

Certificate categories	User fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Oct. 1, 2011–Sept. 30, 2012	Beginning Oct. 1, 2012
Animal and nonanimal products	$45.00	$47.00	$48.00	$49.00	$51.00
Hatching eggs	42.00	44.00	45.00	46.00	48.00
Poultry, including slaughter poultry	42.00	44.00	45.00	46.00	48.00
Ruminants, except slaughter ruminants moving to Canada or Mexico	47.00	48.00	49.00	51.00	52.00
Slaughter animals (except poultry but including ruminants) moving to Canada or Mexico	49.00	51.00	52.00	54.00	56.00
Other endorsements or certifications	34.00	35.00	36.00	37.00	38.00

(b)(1) * * *

Number[1] of tests or vaccinations and number of animals or birds on the certificate	User fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Oct. 1, 2011–Sept. 30, 2012	Beginning Oct. 1, 2012
1–2 tests or vaccinations					
Nonslaughter horses to Canada:					
First horse	$54.00	$55.00	$57.00	$59.00	$60.00
Each additional horse	6.25	6.25	6.50	6.75	7.00
Other animals or birds:					
First animal	107.00	111.00	114.00	117.00	121.00
Each additional animal	6.25	6.25	6.50	6.75	7.00
3–6 tests or vaccinations					
First animal	133.00	137.00	141.00	145.00	150.00
Each additional animal	10.00	11.00	11.00	11.00	12.00
7 or more tests or vaccinations					
First animal	154.00	159.00	163.00	168.00	173.00
Each additional animal	12.00	12.00	13.00	13.00	14.00

[1] Rabies vaccinations are not included in this number.

* * * * *

■ 12. Section 130.30 is amended as follows:

■ a. In paragraph (a), by revising the table to read as set forth below.

■ b. In paragraph (b), by revising the table to read as set forth below.

§ 130.30 Hourly rate and minimum user fees.

(a) * * *

	User fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Oct. 1, 2011–Sept. 30, 2012	Beginning Oct. 1, 2012
Hourly rate:					
Per hour	$120.00	$120.00	$124.00	$128.00	$132.00
Per quarter hour	30.00	30.00	31.00	32.00	33.00
Per service minimum fee	35.00	36.00	37.00	39.00	40.00

* * * * *

(b) * * *

Overtime rates (outside the employee's normal tour of duty)	Premium rate user fee				
	Apr. 29, 2009–Sept. 30, 2009	Oct. 1, 2009–Sept. 30, 2010	Oct. 1, 2010–Sept. 30, 2011	Oct. 1, 2011–Sept. 30, 2012	Beginning Oct. 1, 2012
Premium hourly rate Monday through Saturday and holidays:					
Per hour	$140.00	$144.00	$148.00	$152.00	$156.00
Per quarter hour	35.00	36.00	37.00	38.00	39.00
Premium hourly rate for Sundays:					
Per hour	160.00	164.00	168.00	172.00	$176.00
Per quarter hour	40.00	41.00	42.00	43.00	44.00

* * * * *

Done in Washington, DC, this 24th day of March 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–7022 Filed 3–27–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0137; Airspace Docket No. 08–AWP–2]

Establishment of Class E Airspace; Death Valley, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Death Valley, CA. Controlled airspace is necessary to facilitate vectoring of Instrument Flight Rules (IFR) traffic from en route airspace to Las Vegas, NV. The FAA is taking this action to enhance the safety and management of IFR aircraft operations near Las Vegas, NV. This action also makes a minor change to the geographic coordinates of the airspace.

DATES: *Effective Date:* 0901 UTC, July 2, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA, 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On September 10, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Death Valley, CA, (73 FR 52638). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. A minor change to the geographic coordinates of the airspace area was provided by the FAA's Charting Office to better depict the airspace.

Class E airspace designations are published in paragraph 6006 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Death Valley, CA. Controlled airspace is necessary to accommodate IFR aircraft vectoring from en route airspace to Las Vegas, NV. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII,

Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Death Valley, CA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008 is amended as follows:

Paragraph 6006. En Route Domestic Airspace Areas.

AWP CA E6 Death Valley, CA [New]

Clarr Intersection
(Lat. 35°40′32″ N., long. 115°40′47″ W.)

That area extending upward from 1,200 feet above the surface within an area beginning at lat. 36°51′00″ N., long. 116°33′33″ W.; thence northwest to lat. 36°56′33″ N., long. 117°11′21″ W.; thence southeast to lat. 35°34′30″ N., long. 116°23′30″ W.; thence southeast to lat. 35°17′29″ N., long. 116°10′01″ W.; thence northeast along VOR Federal Airway V–394 to the Clarr Intersection; thence northwest along VOR Federal Airway V–135 to lat. 36°29′00″ N., long. 116°26′33″ W.; thence north to lat. 36°46′00″ N., long. 116°26′33″ W.; thence to the point of origin.

Issued in Seattle, Washington, on *March 13, 2009.*

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–6999 Filed 3–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1108; Airspace Docket No. 08–AWP–11]

Modification of Class E Airspace; Reno, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will modify Class E airspace at Reno/Tahoe International Airport, Reno, NV. Additional controlled airspace is necessary to accommodate aircraft using the Localizer (LOC) Z Runway 16R approach at Reno/Tahoe International Airport, Reno, NV. This action will enhance the safety and management of aircraft operations at the airport. This action also amends the airport name and makes a minor change to the geographic coordinates of the airport and the VORTAC.

DATES: *Effective Date:* 0901 UTC, July 2, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On December 18, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish additional controlled airspace at Reno/Tahoe International Airport, Reno, NV, (73 FR 76986). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found that a minor change to the geographic coordinates of the airport and the VORTAC is needed to coincide with the FAA's National Aeronautical Charting Office. Also, the airport's name will be amended to read as Reno/Tahoe International Airport, from Reno/Cannon International Airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying the Class E airspace at Reno, NV. Additional controlled airspace is necessary to accommodate aircraft using the Localizer (LOC) Z Runway 16R approach at Reno/Tahoe International Airport, Reno, NV. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Reno/Tahoe International Airport, Reno, NV.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008 is amended as follows:

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

* * * * *

AWP NV E5 Reno, NV [Modified]

Reno/Tahoe International Airport, NV
(Lat. 39°29′57″ N., long. 119°46′05″ W.)
Mustang VORTAC
(Lat. 39°31′53″ N., long. 119°39′22″ W.)

That airspace extending upward from 700 feet above the surface beginning at lat. 40°00′20″ N., long. 120°00′04″ W.; thence clockwise via the 32.0-mile radius of the Reno/Tahoe International Airport to lat. 40°01′31″ N., long. 119°40′01″ W.; to lat. 39°49′35″ N., long. 119°34′05″ W.; thence clockwise via the 21.7-mile radius to lat. 39°25′12″ N., long. 119°18′45″ W.; to lat 39°13′00″ N., long 119°47′04″ W.; to lat. 39°08′20″ N., long. 119°47′04″ W.; to lat. 39°10′20″ N., long.120°00′04″ W., to the point of beginning. That airspace extending upward from 1,200 feet above the surface within a 39.1-mile radius of the Mustang VORTAC excluding the area east of long.119°00′04″ W., and west of long. 120°19′04″ W.; and that airspace northwest of the Reno/Tahoe International Airport extending from the 39.1-mile radius bounded on the northeast by the southwest edge of V–452 and on the west by long. 120°19′04″ W. That airspace extending upward from 13,100 feet MSL beginning at lat. 38°54′56″ N., long. 119°22′47″ W.; thence clockwise via the 39.1-mile radius to the eastern edge of V–165, thence southbound along the eastern edge of V–165 to the northern edge of V–244, thence eastbound to lat.38°04′00″ N., long. 119°15′24″ W., to the point of beginning. That airspace extending upward from 12,300 feet MSL beginning at lat. 38°52′20″ N., long. 119°35′44″ W.; to lat. 38°52′20″ N., long.119°47′54″ W.; to lat. 38°28′00″ N., long. 119°52′44″ W.; to lat. 38°01′30″ N., long.119°51′34″ W.; to lat. 38°01′00″ N., long.119°38′04″ W.; to lat. 38°27′30″ N., long.119°33′44″ W., to the point of beginning.

* * * * *

Issued in Seattle, Washington, on March 19, 2009.

H. Steve Karnes,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–6994 Filed 3–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM08–11–000; Order No. 722]

Version Two Facilities Design, Connections and Maintenance Reliability Standards

Issued March 20, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Commission approves three revised Reliability Standards developed by the North American Electric Reliability Corporation (NERC), which the Commission has certified as the Electric Reliability Organization responsible for developing and enforcing mandatory Reliability Standards. The three revised Reliability Standards, designated by NERC as FAC–010–2, FAC–011–2 and FAC–014–2, set requirements for the development and communication of system operating limits of the Bulk-Power System for use in the planning and operation horizons. In addition, the Commission approves, with modifications, the violation severity levels for the three Reliability Standards.

DATES: *Effective Date:* This rule will become effective April 29, 2009.

FOR FURTHER INFORMATION CONTACT:

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Before Commissioners: Jon Wellinghoff, Chairman; Suedeen G. Kelly, Marc Spitzer, and Philip D. Moeller.

1. Pursuant to section 215 of the Federal Power Act,[1] the Commission approves three revised Reliability Standards concerning Facilities Design, Connections and Maintenance (FAC) that were developed by the North American Electric Reliability Corporation (NERC), which the Commission has certified as the Electric Reliability Organization (ERO) responsible for developing and enforcing mandatory Reliability Standards. The three revised Reliability Standards, designated by NERC as FAC–010–2, FAC–011–2, and FAC–014–2, set requirements for the development and communication of system operating limits of the Bulk-Power System for use in the planning and operation horizons. In addition, the Commission approves, with modifications, the violation severity levels for the three Reliability Standards.

I. Background

A. Mandatory Reliability Standards

2. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[2]

B. NERC's Proposed Version Two FAC Reliability Standards

3. In Order No. 705, the Commission approved three ''version one'' FAC Reliability Standards, FAC–010–1, FAC–011–1, and FAC–014–1,[3] which require planning authorities and reliability coordinators to establish methodologies to determine system operating limits for the Bulk-Power System in the planning and operation horizons.[4] In addition, the Commission directed the ERO to develop modifications to the Reliability Standard; and remanded the ERO's proposed definition of ''Cascading Outage.''

4. On June 30, 2008, in response to the Commission's directives in Order No. 705, NERC submitted for Commission approval three revised FAC Reliability Standards:[5] System Operating Limits Methodology for the Planning Horizon—FAC–010–2, System Operating Limits Methodology for the Operations Horizon—FAC–011–2, and Establish and Communicate System Operating Limits—FAC–014–2. NERC requests that FAC–010–2 be made effective on July 1, 2008, FAC–011–2 on October 1, 2008, and FAC–014–2 on January 1, 2009, consistent with the implementation dates of version one of these Reliability Standards.

C. Notice of Proposed Rulemaking

5. On October 16, 2008, the Commission issued a notice of proposed rulemaking (NOPR) proposing to approve the revised FAC Reliability Standards.[6] In addition, the Commission expressed concern with several of NERC's proposed assignments of violation severity levels and proposed modifications. Further, the Commission proposed to apply the violation risk factors associated with the version one FAC Reliability Standards to the version two Reliability Standards approved here.

6. In the NOPR, the Commission required that comments be filed within 30 days after publication in the **Federal Register**, or November 24, 2008. Five parties filed comments in response to the FAC NOPR: NERC, the Midwest Independent System Operator, Inc. (Midwest ISO), the Bonneville Power Administration (BPA), the United States Department of the Interior, Bureau of Reclamation (Bureau of Reclamation), and the Independent Electric System Operator of Ontario (IESO). The Commission addresses these comments below.

7. On October 15, 2008, NERC filed violation risk factors for the version two FAC Reliability Standards and a regional difference for the Western Interconnection. The violation risk factors filed by NERC are identical to the violation risk factors assigned to the version one FAC Reliability Standards.

8. Notice of NERC's October 15, 2008 filing was published in the **Federal Register**, 74 FR 8082 (2009), with comments due on March 5, 2009. None was filed.

II. Discussion

9. As discussed below, the Commission finds the three FAC Reliability Standards to be just, reasonable not unduly discriminatory or preferential, and in the public interest. Further, the proposed Reliability Standards are consistent with our directives in Order No. 705. The Commission therefore approves Reliability Standards FAC–010–2, FAC–011–2, and FAC–014–2, effective 30 days after publication of this final rule in the **Federal Register**.[7]

10. In addition, as discussed below, we approve the ERO's proposed violation severity levels and violation risk factors for the three FAC Reliability Standards and direct the ERO to make certain modifications to the violation severity levels within 30 days of the effective date of this final rule.

11. In the sections below, we address each of the proposed revisions to the FAC Reliability Standards as well as comments received in response to the FAC NOPR.

[1] 16 U.S.C. 824o.

[2] 16 U.S.C. 824o(e)(3).

[3] NERC designates the version number of a Reliability Standard as the last digit of the Reliability Standard number. Therefore, version one Reliability Standards end with ''–1'' and version two Reliability Standards end with ''–2.''

[4] *Facilities Design, Connections and Maintenance Reliability Standards,* Order No. 705, 73 FR 1770 (Jan. 9, 2008), 121 FERC ¶ 61,296 (2007), *order on reh'g and clarification,* 123 FERC ¶ 61,239 (2008).

[5] The FAC Reliability Standards are not codified in the CFR and are not attached to the Final Rule. They are, however, available on the Commission's eLibrary document retrieval system in Docket No. RM08–11–000 and are available on the ERO's Web site, *http://www.nerc.com.*

[6] *Version Two Facilities Design, Connections and Maintenance Reliability Standards,* 73 FR 63105 (Oct. 23, 2008), FERC Stats. & Regs. ¶ 32,637 (2008) (NOPR).

[7] Reliability Standards cannot become effective before the effective date of a Commission order approving them. *See, e.g., Mandatory Reliability Standards for Critical Infrastructure Protection,* Order No. 706, 73 FR 7368 (Feb. 7, 2008), 122 FERC ¶ 61,040 (2008) at n.190.

A. Load Greater Than Studied

12. Sub-requirement R2.3.2 of FAC–011–1 (the ''version 1'' standard) provided that the system's response to a single contingency may include, *inter alia,* ''[i]nterruption of other network customers, only if the system has already been adjusted, or is being adjusted, following at least one prior outage, or, if the real-time operating conditions are more adverse than anticipated in the corresponding studies, e.g., load greater than studied.'' NERC asserted that a significant gap between actual and studied conditions (such as a large error in load forecast) could be treated as though it were a contingency under the version 1 of FAC–011–1 Reliability Standard.

13. In Order No. 705, the Commission disagreed with NERC's explanation of FAC–011–1, sub-Requirement R2.3.2 and use of the phrase ''load greater than studied.'' [8] However, the Commission found that the meaning of Requirement R2.3 and sub-Requirement R2.3.2 was clear without the phrase. The Commission therefore approved FAC–011–1, but directed the ERO to revise the Reliability Standard through the Reliability Standards development process. The Commission suggested that NERC could address the Commission's concern by deleting the phrase, ''e.g., load greater than studied.'' [9]

NERC Filing

14. In response to the Commission's directive, NERC revised the Reliability Standard to remove the phrase ''*e.g.* load greater than studied'' from Requirement R2.3.2. NERC described the phrase as an example and stated that its removal does not materially change the requirement.

NOPR Proposal

15. In the NOPR, the Commission proposed to approve NERC's removal of the phrase ''*e.g.*, load greater than studied'' from sub-requirement R2.3.2 of FAC–011–2. The Commission noted that NERC's revision in FAC–011–2 appeared reasonable and did not appear to change or conflict with the stated requirements set forth in the version one Reliability Standards approved in Order No. 705.

Commission Determination

16. The Commission approves the ERO's removal of the phrase ''e.g., load greater than studied'' from sub-requirement R2.3.2 of FAC–011–2. As we explained in the NOPR, while NERC described the phrase ''load greater than studied'' as simply an example and its removal does not materially change the requirement, Order No. 705 found that the operating conditions referred to in sub-Requirement R2.3.2 exacerbated circumstances that were distinct from the actual contingency to be addressed that is referred to in Requirement R2.3. Further, the Commission, in Order No. 705, did not support treating ''load greater than studied'' as a contingency.[10] Rather, correcting for load forecast error is not accomplished by treating the error as a contingency, but is addressed under other Reliability Standards.[11] The removal of the phrase ''load greater than studied'' resolves our concern and, accordingly, we approve the revision.

B. Cascading Outages

17. With the version one FAC Reliability Standards, NERC proposed to add the term ''Cascading Outages'' to its glossary. In Order No. 705, the Commission noted that, although the glossary did not include a definition of Cascading Outages, it included a previously-approved definition of ''Cascading,'' which seemed to describe the same concept. The Commission remanded NERC's proposed definition of Cascading Outages because NERC did not describe either the need for two definitions that seem to address the same matter or the variations between the two. The Commission also raised specific concerns with NERC's proposed definition of Cascading Outages. However, the Commission allowed NERC to file a revised definition that addresses the Commission's concerns.[12]

NERC Proposal

18. In response, NERC proposed to withdraw the definition of Cascading Outages. Further, NERC revised Reliability Standards FAC–010–2 and FAC–011–2 by removing the term Cascading Outages and replacing it with Cascading.

NOPR Proposal

19. In the NOPR, the Commission proposed to approve NERC's substitution of Cascading for Cascading Outage in the FAC Reliability Standards.[13] The Commission noted that NERC's proposed revisions to FAC–010–2 and FAC–011–2 appeared reasonable and did not appear to change or conflict with the stated requirements set forth in the version one Reliability Standards approved in Order No. 705.

Commission Determination

20. The Commission approves the ERO's decision to withdraw the definition of Cascading Outage, and to remove the term Cascading Outage from the FAC Reliability Standards and replace it with the term Cascading. This approach is consistent with Order No. 705 and provides further clarity to the FAC Reliability Standards.

C. Loss of Consequential Load

21. Reliability Standard FAC–010–1 (version 1) Requirement R2.3, provided that the system's response to a single contingency may include, *inter alia*, ''planned or controlled interruption of electric supply to radial customers or some local network customers connected to or supplied by the Faulted Facility or by the affected area.'' [14] In response to a question raised by the Commission, NERC clarified that the provision in FAC–010–1, Requirement R2.3 is limited to loss of load that is directly connected to the facilities removed from service as a direct result of the contingency, i.e., consequential load loss.

22. In Order No. 705, the Commission reiterated its holding that addressed similar language on loss of load in Order No. 693, regarding Reliability Standard TPL–002–0. In Order No. 693, the Commission noted that ''allowing for the 30 minute system adjustment period, the system must be capable of withstanding an N–1 contingency, with load shedding available to system operators as a measure of last resort to prevent cascading failures.'' [15] Order No. 693 directed the ERO to clarify the planning Reliability Standard TPL–002–0 accordingly. The Commission reached the same conclusion in Order No. 705. In Order No. 705, the Commission approved Reliability Standard FAC–010–1, Requirement R2.3 and directed the ERO to ensure that the clarification developed in response to Order No. 693 is made to the FAC Reliability Standards as well.[16]

[8] Order No. 705, 121 FERC ¶ 61,296 at P 70.

[9] *Id.*

[10] NOPR, FERC Stats. & Regs. ¶ 32,637 at P 10 (citing Order No. 705, 121 FERC ¶ 61,296 at P 69).

[11] *Id.* (citing Order No. 705, 121 FERC ¶ 61,296 at P 68, which states that ''transmission operators are required to modify their plans whenever they receive information or forecasts that are different from what they used in their present plans. Furthermore, variations in weather forecasts that result in load forecast errors are more properly addressed through operating reserve requirements.'').

[12] Order No. 705, 121 FERC ¶ 61,296 at P 111.

[13] NOPR, FERC Stats. & Regs. ¶ 32,637 at P 13.

[14] Identical language appears in FAC–011–1, Requirement R2.3.

[15] *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 FR 16416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242 at P 1788, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

[16] Order No. 705, 121 FERC ¶ 61,296 at P 53.

NERC Filing

23. NERC, in its June 30, 2008 filing, stated its belief that revisions to the term ''loss of consequential load'' is best addressed in its ongoing project to modify the transmission planning (TPL) group of Reliability Standards. NERC explains that the term ''loss of consequential load'' is intrinsic to the scope of the project to revise the TPL Reliability Standards and will be addressed there.

NOPR Proposal

24. In the NOPR, the Commission proposed to allow the ERO to address revisions to the term ''loss of consequential load'' in the modification being made to the TPL Reliability Standards. The Commission advised that such revisions should be consistent with the Commission's prior determinations in Order Nos. 693 and 705.[17] The Commission preliminarily found that FAC–010–2 and FAC–011–2 were clearly understood as written and clarified in Order No. 705, including its holding with respect to ''loss of consequential load,''[18] and that NERC's proposal to deal with ''loss of consequential load'' in a more related project was appropriate.

Commission Determination

25. The Commission adopts its NOPR proposal approving the ERO's proposal to address revisions to the term ''loss of consequential load'' in the modification being made to the TPL Reliability Standards.

D. Violation Severity Levels

26. In the event of a violation of a Reliability Standard, NERC will establish the initial value range for the corresponding base penalty amount. To do so, NERC will assign a violation risk factor for each requirement of a Reliability Standard that relates to the expected or potential impact of a violation of the requirement on the reliability of the Bulk-Power System. In addition, NERC will define up to four violation severity levels—Lower, Moderate, High, and Severe—as measurements for the degree to which the requirement was violated in a specific circumstance.

27. In Order No. 705, the Commission approved 63 of NERC's 72 proposed violation risk factors for the version one FAC Reliability Standards and directed NERC to file violation severity level assignments before the version one FAC Reliability Standards become effective.[19] Subsequently, NERC developed violation severity levels for each requirement of the Commission-approved FAC Reliability Standards, as measurements for the degree to which the requirement was violated in a specific circumstance.

28. On June 19, 2008, the Commission issued an order approving the violation severity level assignments filed by NERC for the 83 Reliability Standards approved in Order No. 693.[20] In that order, the Commission offered four guidelines for evaluating the validity of violation severity levels, and ordered a number of reports and further compliance filing to bring the remainder of NERC's violation severity levels into conformance with the Commission's guidelines. The four guidelines are: (1) Violation severity level assignments should not have the unintended consequence of lowering the current level of compliance; (2) violation severity level assignments should ensure uniformity and consistency among all approved Reliability Standards in the determination of penalties;[21] (3) violation severity level assignments should be consistent with the corresponding requirement; and (4) violation severity level assignments should be based on a single violation, not a cumulative number of violations.[22] The Commission found that these guidelines will provide a consistent and objective means for assessing, *inter alia*, the consistency, fairness and potential consequences of violation severity level assignments. The Commission noted that these guidelines were not intended to replace NERC's own guidance classifications, but rather, to provide an additional level of analysis to determine the validity of violation severity level assignments.

NERC Filing

29. In its initial filing, NERC identified violation severity levels for FAC–010–2, FAC–011–2, and FAC–014–2. NERC acknowledged that it developed these violation severity levels prior to the issuance of the Violation Severity Level Order. NERC asked the Commission to accept its violation severity levels, as filed, for the version two FAC Reliability Standards even though it has not yet assessed their validity using the four guidelines established in the Violation Severity Level Order. NERC committed to assessing the violation severity levels for the FAC Reliability Standards in the six-month compliance filing required by the Violation Severity Level Order.[23]

NOPR Proposal

30. The NOPR proposed to approve, with modification, NERC's proposed violation severity levels for FAC–010–2, FAC–011–2, and FAC–014–2.[24] The Commission acknowledged that NERC assigned its proposed violation severity levels before the Commission established the four guidelines for evaluating the validity of violation severity levels, and preliminarily found that certain proposed violation severity levels for the version two FAC Reliability Standards would not meet our guidelines. The Commission therefore proposed certain modifications to the violation severity levels to form a complete set of violation severity levels. The Commission acknowledged that NERC committed to assessing the violation severity levels in the compliance filing required by the Violation Severity Level Order and encouraged NERC to do so.[25] If, however, NERC did not include an assessment of its FAC violation severity levels in its six-month evaluation following the issuance of the Violation Severity Level Order, the Commission proposed to direct the ERO to submit an assessment of the FAC violation severity levels within six months of the effective date of the final rule in this docket.

31. In the sections below, the Commission addresses comments and approves, with modification, violation severity levels for FAC–010–2, FAC–011–2 and FAC–014–2.

[17] *See* NOPR, FERC Stats. & Regs. ¶ 32,637 at P 17 (citing Order No. 705, 121 FERC ¶ 61,296 at P 53); Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1788 & n.461.

[18] *See id.* P 53.

[19] Order No. 705, 121 FERC ¶ 61,296 at P 137.

[20] *North American Electric Reliability Corp.*, 123 FERC ¶ 61,284 (Violation Severity Level Order), *order on reh'g*, 125 FERC ¶ 61,212 (2008) (Violation Severity Level Order on Rehearing and Clarification).

[21] Guideline 2 contains two sub-parts: (a) The single violation severity level assignment category for binary requirements should be consistent and (b) violation severity levels assignments should not contain ambiguous language.

[22] *Id.* P 17.

[23] NERC June 30, 2008 Filing, Docket No. RM07–3–000 at 5 (citing Violation Severity Level Order, 123 FERC ¶ 61,284 at P 42 (requiring NERC, within six months from the issuance of the Violation Severity Level Order, to conduct a review of the approved violation severity levels pursuant to the Commission guidelines, and submit a compliance filing)).

[24] NOPR, FERC Stats. & Regs. ¶ 32,637 at P 22.

[25] The Violation Severity Level Order also, among other things, directed that the ERO submit a compliance filing within six months certifying that it had reviewed each of the violation severity levels for consistency with Guidelines 2b, 3, and 4, validating the assignments that meet those guidelines and proposing revisions to those that do not. The Violation Severity Level Order on Rehearing and Clarification extended the submission of ERO's compliance filing by six months to September 18, 2009.

1. General Matters

Comments

32. NERC requests clarification regarding the Commission's direction in paragraph 24 of the NOPR. In that paragraph, the Commission states that it is concerned with several of the proposed violation severity levels and then provides two examples. NERC asks the Commission to clarify whether or not this was intended as a generic statement to preface later paragraphs of the NOPR. NERC also asks if the Commission has identified additional violation severity levels that need revision beyond those identified in the body of the NOPR.

33. As a general matter, IESO supports the NERC's proposed modifications to the FAC Reliability Standards, including the associated violation risk factors and violation severity levels and asks the Commission to accept them as filed. IESO states that the violation risk factors and violation severity levels were developed in a stakeholder process with active industry participation through NERC's standards development process. IESO contends that the industry has the resources, technical capability, and the experience necessary to develop violation risk factors and violation severity levels that reflect the requirements embedded in the various reliability standards. IESO recommends that the Commission accept the industry developed and balloted violation risk factors and violation severity levels where these are established by NERC and the industry in adherence to a timely and due process.

34. By contrast, the Bureau of Reclamation advocates that because the violation severity levels require refinement, the Commission should not approve NERC's proposed Reliability Standards. The Bureau of Reclamation states that the Commission relies on NERC to develop Reliability Standards and in the event a standard is found to be inadequate, the Commission should remand the standard back to NERC. The Bureau of Reclamation asks the Commission to rely on the existing version until the proposed changes are made and resubmitted to the Commission for approval. Otherwise, the Bureau of Reclamation contends, it will be difficult for regulating entities to enforce uncertain Reliability Standards.

Commission Determination

35. In response to NERC's comment, we clarify that the Commission's statement in paragraph 24 of the NOPR that it is concerned with several of the proposed violation severity levels was intended as a generic statement to preface later paragraphs. In general, the Commission approves the violation severity levels proposed by NERC. As discussed in the NOPR, however, the Commission identified several violation severity levels that appeared either unclear or inconsistent with the Commission's guidelines for violation severity levels. In this final rule, the Commission approves certain violation severity levels as proposed by NERC and directs certain modifications, as discussed below.

36. The Commission disagrees with IESO's proposal that because the violation severity levels proposed by NERC in this proceeding were developed by industry participants through NERC's standard development process, the Commission should approve the violation severity levels as filed. The Commission has previously determined that, similar to violation risk factors, violation severity levels are not part of the Reliability Standard and, thus, are appropriately treated as an appendix to NERC's Rules of Procedure.[26] Revisions of violation severity levels do not modify the Reliability Standard. Accordingly, NERC is not required to comport with the Reliability Standards development provisions of Federal Power Act section 215 when revising a violation severity level assignment.[27] It is for this reason that the Commission also rejects the Bureau of Reclamation's request that the Commission not approve the proposed Reliability Standards because the proposed violation severity levels applicable to them require additional work.

2. Assignment of Violation Severity Levels to Sub-Requirements

NERC Filing

37. NERC did not propose any violation severity level assignments for sub-requirements.

NOPR Proposal

38. The Commission has directed NERC to develop violation severity levels for each requirement and sub-requirement of each Reliability Standard.[28] The Commission therefore proposed to direct the ERO to assign binary violation severity levels for all of the proposed sub-requirements.[29] In Order No. 705, the Commission found that the binary approach is appropriate for certain violation severity level assignments.[30] In this instance, the Commission determined that the binary approach is appropriate because the violation severity level of the base requirement is established by whether a sub-requirement is violated or not, not to the extent a sub-requirement is violated. Thus, the Commission preliminarily found that the proposed binary requirements satisfy guideline 3, which calls for consistency between the violation severity level assignments and their corresponding requirements. For example, FAC–010–2 Requirement R1.1 states that the planning authority's system operating limit methodology shall ''[b]e applicable for developing system operating limits used in the planning horizon.'' [31] Because NERC did not propose any violation severity levels for this sub-requirement, the Commission proposed a binary severe violation severity level that would be triggered when the planning authority system operating limit methodology is not applicable for developing system operating limits in the planning horizon. The Commission stated that this binary approach for sub-requirements provides clear criteria to determine the violation severity level for a violation of the sub-requirement. The Commission proposed to direct the ERO to file the revised violation severity levels within 30 days of the final rule in this proceeding.

Comments

39. NERC states that it did not intend to assign a penalty or sanction based on the violation of each sub-requirement of a Reliability Standard separate and distinct from the base requirement it supports. Where a sub-requirement is phrased like a requirement and addresses a different reliability objective from the base requirement, NERC agrees that it is appropriate to assign a violation risk factor to the primary requirement and to each sub-requirement that addresses differing reliability objectives. NERC contends, though, that the version two FAC Reliability Standards do not include any sub-requirements serving a reliability objective separate from the base requirement. NERC states that each of these sub-requirements is crafted as an integral component of the base requirement, and is not intended to be assessed for compliance independent of the base requirement. NERC states that each base requirement is assigned a

[26] Violation Severity Level Order, 123 FERC ¶ 61,284 at P 15.

[27] *See North American Electric Reliability Corporation*, 120 FERC ¶ 61,145, at P 16 (2007).

[28] *North American Electric Reliability Corp.*, 119 FERC ¶ 61,248 at P 80 (June 2007 Order), *order on clarification*, 120 FERC ¶ 61,239 (2007).

[29] Binary requirements of Reliability Standards define compliance in terms of ''pass'' or ''fail.''

[30] Order No. 705, 121 FERC ¶ 61,296 at P 24.

[31] NERC June 30, 2008 Filing, Docket No. RM07–3–000, ex. A.

violation risk factor and a set of violation severity levels that incorporates each sub-requirement, irrespective of the number of sub-requirements associated with the base requirement. Thus, NERC contends, the severity of violating the reliability objective of the base requirement and its associated sub-requirements is best assessed on the whole at the base requirement level rather than on the individual sub-requirement level.

40. NERC disagrees with the Commission's statement that NERC did not propose any violation severity level assignments for sub-requirements. NERC states that it proposed violation severity levels for each sub-requirement by reference in the associated base requirement of the related sub-requirement. NERC also disagrees with the Commission's proposal to direct the ERO to assign ''Severe'' binary violation severity levels for all of the proposed sub-requirements of the base requirement. NERC contends that the assignment of ''Severe'' binary violation severity levels for all of the proposed sub-requirements of a base requirement will create an overlap of violation severity levels between the base and sub-requirements that will have the unintended consequence of confusing the application of the NERC sanction guidelines to a particular set of circumstances that involves compliance with a particular sub-requirement as part of the base requirement. NERC further contends that its proposed application of violation severity levels relative to base and sub-requirements is consistent with the Commission's criterion for approving Reliability Standards.[32] NERC contends that the approach proposed by the Commission would create inconsistencies in the application of the violation severity levels, contrary to the Commission's guidelines in Order No. 672. NERC further contends that the Commission's proposed approach fails to acknowledge that the purpose of the sub-requirement is to support the singular reliability objective of, and is a component of, the total intent of the base requirement and, as such, is not to be assessed independently from the base requirement.

41. IESO and Midwest ISO agree with NERC that the application of violation severity levels should be consistent and that the Commission should not require the assignment of a violation severity level to every sub-requirement. Midwest ISO contends that, in the event a sub-requirement covers a different reliability objective than the base requirement and therefore does need its own violation severity level, the Commission should direct NERC to strike the sub-requirement and rewrite it as a separate base requirement. Midwest ISO also requests Commission confirmation that a penalty should be assessed through the main requirement rather than through the criteria in the sub-requirements. Further, Midwest ISO contends that, because the violation severity levels of these base requirements cover the violation of the criteria in the sub-requirements, the violation risk factors associated with the sub-requirements should be removed, eliminating the need for additional violation severity levels for sub-requirements.

Commission Determination

42. NERC's proposal to assign a penalty or sanction for a violation of a sub-requirement based on the violation severity level of the corresponding main requirement is not consistent with Commission precedent or with NERC's Sanction Guidelines. The Commission has directed NERC to develop violation severity levels for every requirement and sub-requirement.[33] In addition, the Violation Severity Level Order stated that each requirement assigned a violation risk factor also must be assigned at least one violation severity level.[34] As set forth in the NERC's Sanction Guidelines, the intersection of these two factors is the first step in the determination of a monetary penalty for a violation of a requirement of a Reliability Standard. The ERO and Regional Entities may assess penalties that relate to violations of particular sub-requirements of a requirement, where appropriate. For these reasons, the Commission disagrees with commenters who argue that the Commission should not require the assignment of violation severity levels to every sub-requirement.

43. The Commission understands that the Reliability Standards (Version 0 and Version 1) approved in Order No. 693 are, for the most part, a direct translation of the then voluntary NERC Operating Policies and Planning Standards, which employed a numbering hierarchy that does not consistently facilitate the assignment of violation risk factors and, consequently, violation severity levels. This numbering hierarchy, carried over during the translation, is at the heart of the distinction between ''main'' and ''sub'' requirements with respect to compliance with mandatory Reliability Standards.[35]

44. The Commission appreciates the ERO's initiative to develop an alternative approach to facilitate the assignment of factors necessary for its compliance and enforcement program. As NERC acknowledges, some Reliability Standards include requirements with sub-requirements that address a different reliability objective from the main requirement. The Commission understands that the varied nature of the relationship between the main requirements and sub-requirements throughout the Reliability Standards has created concern whether a violation of a sub-requirement is also a violation of the requirement itself. Due to these concerns, the Commission believes that it is premature to change its current policy in the current proceeding, which is limited to the three FAC Reliability Standards submitted by NERC.

45. Rather, the Commission encourages the ERO to develop a new and comprehensive approach that would better facilitate the assignment of violation severity levels and violation risk factors both prospectively and to existing, Commission-approved, Reliability Standards. The ERO could raise its proposal for an alternative approach in a separate filing. This would allow the Commission to better understand the implications of the proposed change in approach, as opposed to having to act on an ad hoc basis.

46. The Commission expects that the ERO's filing of its alternative approach would include a more detailed description of the proposal to assign violation severity levels for main requirements that would apply to sub-requirements, as well as the specific conditions under which its application

[32] *See Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, 71 FR 8662 (Feb. 17, 2006), FERC Stats. & Regs. ¶ 31,204 (2006); *order on reh'g*, Order No. 672–A, 71 FR 19814 (Apr. 18, 2006), FERC Stats. & Regs. ¶ 31,212 (2006). Order No. 672 states that ''[t]he possible consequences, including range of possible penalties, for violating a proposed Reliability Standard should be clear and understandable by those who must comply.'' Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 326.

[33] June 2007 Order, 119 FERC ¶ 61,248 at P 80.

[34] Violation Severity Level Order, 123 FERC ¶ 61,284 at P 3 (citing June 2007 Order, 119 FERC ¶ 61,248 at P 74).

[35] NERC November 24, 2008 Comments at 6. As NERC points out in its comments, some requirements assigned to Version 0 Reliability Standards included sub-requirements that were phrased like a separate requirement and, in fact, addressed a separate reliability objective.

would or would not be appropriate.[36] The Commission also expects that the ERO's filing would propose implementation of its approach comprehensively to all requirements of approved Reliability Standards and how that implementation would be accomplished. The ERO's filing of its alternative approach, however, must not postpone or preclude the Guideline 2b, 3, and 4 compliance filing which is due in September 2009. Therefore, until the Commission has an opportunity to review such a proposal, the Commission directs the ERO to submit violation severity levels for all requirements and sub-requirements at issue in this proceeding within 30 days from the effective date of this final rule, as discussed below and as indicated in Attachment A. In light of concerns raised in the comments, the Commission has also made minor clarifying edits to the violation severity levels for certain of the requirements and sub-requirements approved in this proceeding.[37] These clarifying edits are also reflected in Attachment A.

3. Removal of Unnecessary Violation Severity Level Assignments

NERC Filing

47. NERC submitted violation severity levels for Requirement R2 of FAC–010–2 and Requirement R2 of FAC–011–2. Requirements R2 of FAC–010–2 and FAC–011–2 require planning authorities and reliability coordinators to include in their system operating limit methodology a requirement that the system operating limits provide bulk electric system performance consistent with the terms established in the sub-requirements.

NOPR Proposal

48. In Order No. 705, the Commission found that Requirement R2 of FAC–010–1 and Requirement R2 of FAC–011–1, without their sub-requirements, include no required performance or outcome.[38] As such, no violation severity levels need to be assigned to these requirements. The Commission therefore proposed to delete the proposed violation severity levels for Requirement R2 of FAC–010–2 and FAC–011–2.

Comments

49. NERC disagrees with the Commission's proposal to remove the violation severity levels assigned to Requirement R2 of FAC–010–2 and Requirement R2 of FAC–011–2. NERC states that it did not intend to assign a penalty or sanction based on the violation of each sub-requirement of a Reliability Standard. NERC states that although it has assigned a violation risk factor to every base requirement and sub-requirement to comply with a Commission directive, it continues to expect that the compliance enforcement authority will assess each base requirement in total, irrespective of the number of sub-requirements associated with the base requirement.

Commission Determination

50. As discussed above, each requirement that is assigned a violation risk factor also must be assigned at least one violation severity level. If the ERO does not assign a violation risk factor to a requirement, it should not assign violation severity levels. The NOPR identified requirements belonging to the proposed Reliability Standards that do not establish a required outcome or performance. In the Violation Risk Factor Order, the Commission described these types of requirements as explanatory statements, phrases and/or text, and determined that violation risk factors need not be assigned to such requirements.[39] The Commission finds that Requirements R2 and R2.6 of FAC–010–2 and Requirement R2 of FAC–011–2 are such explanatory statements as they include no required performance or outcome. Accordingly, the Commission adopts the NOPR proposal and directs the ERO to remove violation severity level assignments for Requirements R2 and R2.6 of FAC–010–2 and Requirement R2 of FAC–011–2. The ERO shall submit its revisions to the Commission within 30 days from the issuance of this final rule, as discussed above and as indicated in Attachment A.

4. Compliance With the Commission's Violation Severity Level Guidelines

51. The Commission offers the following clarifications regarding its proposals for compliance with the guidelines established in the Violation Severity Level Order. As an initial matter, it has come to the Commission's attention that, in the NOPR, certain discussions were based on a draft version rather than the filed version of the ERO's proposed violation severity levels. As a result, some of the Commission's proposed revisions would not be appropriate to adopt here. Upon further examination of the ERO's filed violation severity levels, the Commission revises its earlier statements where appropriate, as discussed below.

52. Since the Commission's concerns in these instances were not discussed in the NOPR for comment, the Commission approves the violation severity levels for those requirements as filed by the ERO. However, to ensure that the violation severity levels approved for those requirements are consistent with the guidelines established in the Violation Severity Level Order in a timely manner, the Commission directs the ERO to review those requirements for consistency with Violation Severity Level Order Guidelines 2b, 3, and 4 and submit the results of its review the earlier of six months of the effective date of the final rule or in its Violation Severity Level Order Guideline 2b, 3, and 4 compliance filing due in September 2009, whichever is earlier.

53. Not all of the Commission's proposed modifications of the violation severity levels were based on an unfiled draft of the violation severity levels. Where appropriate, the Commission clarifies its proposed modifications and adopts the NOPR proposal, as discussed below.

a. Requirement R1 of FAC–010–2 and FAC–011–2

NERC Filing

54. Requirement R1 of FAC–010–2 and FAC–011–2 require planning authorities and reliability coordinators to establish a documented system operating limit methodology that satisfies the elements detailed in the sub-requirements. NERC proposed violation severity levels for both of these requirements based on whether the applicable entity has a documented system operating limit methodology and, if it does, the number of elements, from the sub-requirements, the planning authority or reliability coordinator was missing from its system operating limit methodology.

NOPR Proposal

55. In the NOPR, the Commission commented on a lack of uniformity between FAC–010–2 Requirement R1

[36] The Commission understands that this approach would also be applied in the assignment of violation risk factors to requirements of Reliability Standards.

[37] In particular, the Commission directs clarifying revisions to the violation severity levels that the Commission proposed to assign to sub-requirements R2.1, R2.2 and R2.5 of FAC–010–2 and R2.1 and R2.2 of FAC–011–2. In addition, the Commission has made several typographical revisions to the violation severity levels the Commission proposed to assign to other sub-requirements. As noted above, these revisions are set forth in full in Attachment A to this order.

[38] Order No. 705, 121 FERC ¶ 61,296 at P 159.

[39] North American Electric Reliability Corporation, 119 FERC ¶ 61,145 at P 45 (Violation Risk Factor Order), *order on reh'g*, 120 FERC ¶ 61,145 (2007) (Violation Risk Factor Order on Rehearing and Clarification); Order No. 705, 121 FERC ¶ 61,296 at P 159.

and FAC–011–2 Requirement R1. Accordingly, the Commission proposed to direct the ERO to modify the violation severity levels assigned to FAC–011–2 Requirement R1 to make them consistent with the violation severity levels proposed for FAC–010–2 Requirement R1. The Commission reasoned that this uniformity would assist in the compliance and enforcement of these Reliability Standards because it is logical that nearly identical requirements should have nearly identical violation severity level structures.

Comments

56. NERC states that the violation severity levels it filed with the Commission for FAC–010–2 Requirement R1 matched the set of violation severity levels balloted for FAC–011–2 Requirement R1. NERC therefore contends that the Commission's proposed modification to FAC–011–2 is unnecessary. Midwest ISO agrees that Requirement R1 of FAC–010–2 and Requirement R1 of FAC–011–2 were consistent as filed.

57. Midwest ISO also asks the Commission to direct the ERO to remove the violation risk factors associated with the sub-requirements of Requirement R1 of FAC–010–2 and Requirement R1 of FAC–011–2. Midwest ISO states that these sub-requirements represent criteria that the system operating limit methodology must contain that are already considered and encompassed in the violation severity levels associated with the main requirement. Removing the violation risk factors associated with the sub-requirements, Midwest ISO contends, would eliminate the need for additional violation severity levels that would be duplicative of the violation severity level associated with the main requirement. Further, Midwest ISO requests that the Commission confirm that a penalty should be assessed through the main requirement rather than through the criteria in the sub-requirements.

Commission Determination

58. FAC–010–2 Requirement R1 and FAC–011–2 Requirement R1 establish the same requirements for the planning authority and reliability coordinator, respectively. Accordingly, the Commission believes that the ERO should assign similar violation severity levels for these requirements, which it did. The Commission therefore approves the violation severity levels assigned to FAC–010–2 Requirement R1 and FAC–011–2 Requirement R1 as filed by the ERO.

59. Midwest ISO's request to eliminate violation severity levels for sub-requirements and assess a penalty through the violation severity level and violation risk factor assigned to the main requirements is similar to NERC's proposed alternative approach for assigning violation severity levels, which the Commission addresses above. For the same reasons discussed above, the Commission rejects Midwest ISO's request to remove violation risk factors for sub-requirements. Also, for the reasons discussed above, the Commission finds that Midwest ISO's request is a Reliability Standards compliance issue best addressed in the context of a Reliability Standards compliance proceeding.

b. FAC–010–2 Requirement R4

NERC Filing

60. FAC–010–2 Requirement R4 requires the planning authority to issue its system operating limit methodology, and any change to that methodology, to several identified entities prior to the effectiveness of the change. Sub-requirements R4.1 through R4.3 list the required entities to which the planning authority should provide the system operating limit methodology. NERC's proposed violation severity level assignments for FAC–010–2 Requirement R4 measure compliance based, in part, on the number of days the applicable entity failed to provide it system operating limit methodology to the required entities.

NOPR Proposal

61. The Commission stated that it is difficult to discern which conditions trigger specific violation severity levels assigned to FAC–010–2 Requirement R4. The Commission therefore proposed to direct the ERO to make modifications to clarify those conditions without changing the substance of the violation severity levels.

Comments

62. NERC does not oppose the Commission's proposed change to the violation severity levels for FAC–010–2 Requirement R4, because, NERC states, the proposed modifications do not change the intent of the categories of the violation severity levels. NERC contends, however, that the Commission's proposed revisions are inconsistent with other violation severity levels already approved by the Commission. NERC also questions why the Commission would identify the violation severity levels for FAC–010–2 in paragraph 23 of the NOPR among other proposed assignments that are consistent with the Commission's violation severity level guidelines, and then propose modification in the following paragraph.

63. IESO states that there is a time factor in question with respect to Requirement R4 of FAC–010–2 that requires a planning authority to issue to appropriate entities its system operating limit methodology, and any change to that methodology, prior to the effectiveness of the change. IESO contends that NERC's proposed violation severity level for Requirement R4 of FAC–010–2 accurately captures this requirement.

Commission Determination

64. The Commission approves the violation severity levels for Requirement R4, as filed by NERC because the NOPR was silent as to NERC's proposal. However, to ensure that the violation severity levels approved for Requirement R4 are consistent with the guidelines established in the Violation Severity Level Order in a timely manner, the Commission directs the ERO to review the violation severity levels assigned to Requirement R4 for consistency with Violation Severity Level Order Guidelines 2b, 3, and 4 within six months of the effective date of the final rule or in its Violation Severity Level Order Guideline 2b, 3, and 4 compliance filing, whichever is earlier.[40]

65. Although the Commission approves the violation severity levels assigned to Requirement R4 as filed by NERC, the Commission also adopts the NOPR proposal to direct the ERO to assign binary violation severity levels to each sub-requirement. Sub-requirements R4.1 through R4.3 are binary

[40] Based on the record to date, the Commission believes that NERC's proposed violation severity level assignment may not be consistent with Guideline 3, which requires that violation severity levels be consistent with the text of the corresponding requirement. The text of Requirement R4 states that, ''[t]he planning authority shall issue its system operating limit methodology, to all of the following prior to the effectiveness of the change.'' To whom the methodology must be issued is described in each of the sub-requirements R4.1 through R4.3. The violation severity levels NERC proposes, however, would base compliance, in part, on the number of days the planning authority failed to deliver its system operating limit methodology to the required entities. The Commission believes that, consistent with Guideline 3, violation severity levels for Requirement R4 should be assigned based on the number of R4 sub-requirements that are not met. For example, since there are three sub-requirements, a ''Moderate'' violation severity level would be triggered if the applicable entity did not comply with one of the three required sub-requirements; a ''High'' violation severity level if the applicable entity did not comply with two of the three sub-requirements; and, a ''Severe'' violation severity level if the applicable entity did not comply with any of the sub-requirements.

requirements and should be assigned a single violation severity level. The ERO shall submit its revisions to sub-requirements R4.1 though R4.3 to the Commission within 30 days from the issuance of this final rule, as discussed above and as indicated in Attachment A.

c. FAC–011–2, Requirement R3

NERC Filing

66. Requirement R3 of FAC–011–2 requires a reliability coordinator to include in its methodology for determining system operating limits a description of the elements listed in the sub-requirements, ranging from R3.1 through R3.7, along with any reliability margins applied for each. NERC proposed to assign a ''Severe'' violation severity level if the reliability coordinator's methodology for determining system operating limits is missing a description of *three or more* of the sub-requirements. At the same time, NERC proposed to assign a ''High'' violation severity level if the reliability coordinator's methodology for determining system operating limits includes a description for all but *three* sub-requirements within the same range.

NOPR Proposal

67. In the NOPR, the Commission pointed out that, under NERC's proposed violation severity level assignments, if a reliability coordinator's methodology for determining system operating limits is missing a description of three sub-requirements, the resulting violation could be assigned both a ''High'' and a ''Severe'' violation severity level. To eliminate this overlap, the Commission proposed to direct the ERO to assign a ''Severe'' violation severity level to Requirement R3 of FAC–011–2 where the reliability coordinator is missing a description of *four* or more sub-requirements, within the range of R3.1 through R3.7, from its methodology for determining system operating limits.

Comments

68. NERC states that it agrees with the Commission's proposed modification to the violation severity level for Requirement R3 of FAC–011–2.

69. Although Midwest ISO states that the Commission's proposal is reasonable, Midwest ISO requests that the Commission direct the ERO to assign violation severity levels for Requirement R3 based on the quartile approach.[41] Midwest ISO argues that NERC's internal violation severity level development guidelines encourage a multi-component or quartile methodology for assigning violation severity levels where the requirement has multiple sub-components or sub-requirements that direct the responsible entity to comply with a multiple number of sub-requirements or sub-sub-requirements. Accordingly, Midwest ISO requests that the Commission direct the ERO to modify the violation severity levels for Requirement R3 of FAC–011–2 as detailed in the table below.

Requirement	Lower	Moderate	High	Severe
FAC–011–2 R3.	The Reliability Coordinator has a methodology for determining [system operating limits] that includes a description for all but one or two of the following: 3.1 through R3.7.	The Reliability Coordinator has a methodology for determining [system operating limits] that includes a description for all but three of the following: 3.1 through R3.7.	The Reliability Coordinator has a methodology for determining [system operating limits] that includes a description for all but four or five of the following: 3.1 through R3.7.	The Reliability Coordinator has a methodology for determining [system operating limits] that includes a description for all but six or seven of the following: 3.1 through R3.7.

Commission Determination

70. The Commission directs the ERO to modify Requirement R3 of FAC–011–2 to assign a ''Severe'' violation severity level to Requirement R3 of FAC–011–2 where the reliability coordinator is missing a description of *four* or more sub-requirements, within the range of R3.1 through R3.7, from its methodology for determining system operating limits.

71. The Commission finds that Midwest ISO proposed violation severity levels are not appropriate for this requirement. In the Violation Severity Level Order, the Commission expressed concern that, in some instances, although consistent with NERC's guidelines, the quartile approach could result in the arbitrary assignment of violation severity levels and a reduction of the current levels of compliance.[42] The assignment of violation severity levels is arbitrary when based on nothing other than ensuring an even distribution of the full range of missed sub-requirements to each of the four violation severity level categories under the premise of applying NERC's quartile approach. The Commission therefore adopts the NOPR proposal agreed to by NERC and directs the ERO to file revised violation severity levels for FAC–011–2, Requirement R3 within 30 days of the issuance of this final rule, as discussed above and as indicated in Attachment A.

d. FAC–011–2, Requirement R4

NERC Filing

72. Requirement R4 requires the reliability coordinator to issue its system operating limit methodology and any changes to that methodology, prior to the effectiveness or change of the methodology to all of the required entities identified in sub-requirements R4.1 through 4.3. NERC's proposed violation severity levels for the subject requirement incorporate as a measure of compliance the number of days the applicable entity failed to issue its system operating limits methodology and any changes to that methodology, prior to the effectiveness or change of the methodology to the required entities.

NOPR Proposal

73. The Commission did not discuss this requirement in the NOPR.

Commission Determination

74. The Commission approves the violation severity levels for Requirement R4, as filed by the ERO because the NOPR was silent as to NERC's proposal. However, to ensure that the violation severity levels approved for Requirement R4 are consistent with the guidelines established in the Violation Severity Level Order in a timely manner, the Commission directs the ERO to review the violation severity levels assigned to Requirement R4 for consistency with Violation Severity Level Order Guidelines 2b, 3, and 4 and

[41] In general, a quartile approach measures compliance in 25 percent intervals by either using straight percentages around a determined value or 100 percent or by defining a minimum value and applying quartiles between the minimum value and 100 percent. NERC, *Violation Severity Level Guidelines Criteria*, Project 2007–23 at 18 (2008), *available at: http://www.nerc.com/docs/standards/sar/VSLDT_Guidelines_Final_Draft_08Jan08.pdf.*

[42] Violation Severity Level Order on Rehearing and Clarification, 125 FERC ¶ 61,212 at P 25.

submit the results of the review either within six months of the effective date of the final rule or in its Violation Severity Level Order Guideline 2b, 3, and 4 compliance filing, whichever is earlier.[43]

75. Although the Commission approves the violation severity levels assigned to Requirement R4 as filed by NERC, the Commission also adopts the NOPR proposal to direct the ERO to assign binary violation severity levels to each sub-requirement. Sub-requirements R4.1 through R4.3 are binary requirements and should be assigned a single violation severity level. The ERO shall submit its revisions to sub-requirements R4.1 through R4.3 to the Commission within 30 days from the issuance of this final rule, as discussed above and as indicated in Attachment A.

e. FAC–014–2, Requirements R1 Through R4

NERC Filing

76. Requirements R1 through R4 of FAC–014–2 address the development of system operating limits and interconnection reliability operating limits consistent with the methodologies outlined in FAC–010–2 and FAC–011–2. NERC proposed to assign violation severity levels to these requirements based on a quartile division of the total number of inconsistencies between the assigned system operating limits and the system operating limits that would be produced using the methodologies outlined in FAC–010–2 and FAC–011–2. For example, NERC proposed to assign a ''Lower'' violation severity level where 1 to 25 percent of a registered entity's system operating limits are inconsistent with the applicable entity's system operating limit methodology.

NOPR Proposal

77. In the NOPR, the Commission expressed its belief that each time a system operating limit is inconsistent with the applicable entity's system operating limit methodology, the applicable entity violates the pertinent requirement of FAC–014–2. The Commission stated that its fourth guideline for evaluating violation severity levels makes clear that violation severity level assignments should be based on a single violation, not on a cumulative number of violations. To remedy this deficiency, the Commission proposed to direct the ERO to modify its violation severity levels for FAC–014–02 Requirement R1 through R4 based on the percentage of deviation from the system operating limit methodology for each violation.

Comments

78. NERC contends that the Commission's application of Guideline 4 is confusing and inconsistent. NERC points to the approved violation severity levels for Reliability Standard VAR–001–1, where the Commission allowed NERC to use percentage ranges relating to the number of violations of system operating limits to define the violation severity levels. By contrast, NERC states, the Commission proposed in the NOPR to require every single violation of system operating limit to have a single penalty.

79. Midwest ISO agrees with NERC that referencing percentage ranges relating to the number of violations of system operating limits is consistent with Guideline 4. Midwest ISO also contends that the use of percentage ranges facilitates enforcement. Because an entity may have tens of thousands of system operating limits, Midwest ISO contends that it is not practical to set a single penalty for every single violation of a system operating limit. Midwest ISO contends that a requirement with multiple sub-components or requirements should have a quartile approach applied to the violation severity levels, considering the full range of missed sub-components or requirements possibilities.

80. In addition, NERC states that the Commission's proposed modifications to the violation severity levels for Requirements R1 through R4 of FAC–014–02 are inconsistent with the modifications indicated in Attachment A to the NOPR. NERC states that the Commission's proposed modifications to the violation severity levels, set forth in Attachment A to the NOPR, includes some typographical errors. For example, NERC states that there appears to be an errant ''75%'' in the text of the ''Severe'' category for Requirement R1. NERC also points out that the ''Severe'' category for Requirement R4 includes both the NERC-proposed text and the Commission-inserted text. NERC requests that the Commission clarify its direction on these points. If the Commission decides to direct the ERO to modify its violation severity levels for FAC–014–2 Requirements R1 through R4 based on the percentage of deviation from system operating limit methodology for each violation, NERC requests additional clarification on the specific methodology to be used to determine the percentage of deviation from the system operating limit.

Commission Determination

81. The Commission approves the violation severity levels for Requirement R1 through R4, as filed by the ERO because the NOPR was silent as to NERC's proposal. However, to ensure that the violation severity levels approved for Requirement R1 through R4 are consistent with the guidelines established in the Violation Severity Level Order in a timely manner, the Commission directs the ERO to review the violation severity levels assigned to the subject requirements for consistency with Violation Severity Level Order Guidelines 2b, 3, and 4 and submit the results of its review either within six months of the effective date of the final rule or in its Violation Severity Level Order Guideline 2b, 3, and 4 compliance filing, whichever is earlier.[44]

[43] Based on the record to date, the Commission believes that NERC's proposed violation severity level assignment for FAC–011–2 Requirement R4 may not be consistent with Guideline 3, which requires that violation severity levels be consistent with the text of the corresponding requirement. The text of Requirement R4 states that, ''[t]he planning authority shall issue its system operating limit methodology, to all of the following prior to the effectiveness of the change.'' To whom the methodology must be issued is described in each of the sub-requirements R4.1 through R4.3. The violation severity levels NERC proposes, however, would base compliance, in part, on the number of days the reliability coordinator failed to deliver its system operating limit methodology to the required entities. The Commission believes that, consistent with Guideline 3, violation severity levels for Requirement R4 should be assigned based on the number of R4 sub-requirements that are not met. For example, since there are three sub-requirements, a ''Moderate'' violation severity level would be triggered if the applicable entity did not comply with one of the three required sub-requirements; a ''High'' violation severity level if the applicable entity did not comply with two of the three sub-requirements; and, a ''Severe'' violation severity level if the applicable entity did not comply with any of the sub-requirements.

[44] Based on the record to date, the Commission believes that the violation severity levels assigned by NERC to Requirement R1 through R4 of FAC–014–2 may not be consistent with Guideline 4 because they evaluate compliance based on a cumulative number of violations instead of on a single violation. Since the Commission believes compliance with this requirement hinges on whether or not the applicable entity established its system operating limits and interconnection reliability operating limits consistent with its methodology (''pass'') or did not do so (''fail''), a binary approach is most appropriate for this requirement. By contrast, Requirement R10 of Reliability Standard VAR–001–1 requires each transmission operator to correct violations of interconnection reliability operating limits or system operating limits resulting from reactive resources deficiencies (interconnection reliability operating limit violations must be corrected within 30 minutes) and complete the required interconnection reliability operating limit or system operating limit violation reporting.

In the Violation Severity Level Order, the Commission directed revisions to VAR–001–1 Requirement R10 that assigned violation severity levels based on the percentage of interconnection reliability operating limit and system operating

Continued

f. FAC–014–2, Requirement R5

NERC Filing

82. Requirement R5 requires that the reliability coordinator, planning authority, and transmission planner shall each provide its system operating limits and interconnection reliability operating limits to those entities that have a reliability related need for those limits and provide a written request that includes a schedule for delivery of those limits as described in sub-Requirements 5.1 through 5.4. NERC's proposed violation severity levels for the subject requirements factor in, as measure of compliance, the number of days the applicable entity failed to issue its system operating limits methodology and any changes to that methodology, prior to the effectiveness or change of the methodology to the required entities.

NOPR Proposal

83. The Commission did not comment on this requirement in the NOPR.

Commission Determination

84. The Commission finds that the consideration of the time period for which an entity failed to issue its system operating limits methodology, as it relates to Requirement R5 of FAC–014–2, is not consistent with the text of the requirement and, thus, not consistent with Guideline 3. The Commission believes that the violation severity levels for Requirements R5 should be assigned based on the number of required elements, as identified in the relevant sub-requirements, with which the applicable entity did not comply. Sub-requirements R4.1 through R4.3 and sub-requirements R5.1 through R5.4 are binary requirements and should be assigned a single violation severity level. Since the Commission's proposals for this requirement were not discussed in the NOPR for comment, the Commission approves the violation severity levels for Requirement R4, as filed by the ERO. To ensure that the violation severity levels approved for Requirement R4 are consistent with the guidelines established in the Violation Severity Level Order in a timely manner, the Commission directs the ERO to review the violation severity levels assigned to Requirement R4 for consistency with Violation Severity Level Order Guidelines 2b, 3, and 4 and submit the results of its review either within six months of the effective date of the final rule or in its Violation Severity Level Order Guideline 2b, 3, and 4 compliance filing, whichever is earlier.

g. FAC–014–2, Requirement R6

NERC Filing

85. Requirement R6 of FAC–014–2 requires a planning authority to identify the subset of multiple contingencies (if any) from Reliability Standard TPL–003, which results in stability limits. Sub-requirements R6.1 and R6.2 require that the planning authority provide the list to the reliability coordinator, or if no multiple contingencies exist, to notify the reliability coordinator, respectively. NERC assigned violation severity levels based on a combination of compliance scenarios relevant to sub-requirements R6.1 and R6.2.

NOPR Proposal

86. In the NOPR, the Commission expressed concern that the violation severity levels assigned to FAC–014–2 Requirement R6 do not address a scenario where the planning authority fails to provide a complete subset of contingencies to the reliability coordinator and proposed a revision of the violation severity level assignments. The Commission expressed concern that this omission could prevent the reliability coordinator from having the information it needs for its situational awareness that system operating limits and interconnection reliability operating limits that impact the reliable operation of the Bulk-Power System are being exceeded. The Commission therefore proposed to direct the ERO to add the following ''Lower'' violation severity level: ''The Planning Authority failed to provide a complete subset of contingencies to the reliability coordinator in accordance with R6.'' The Commission also proposed to direct the ERO to reassign NERC's current ''Lower'' violation severity level as the new ''Moderate'' violation severity level to emphasize the need to notify the reliability coordinator.[45] The Commission stated that the proposed revisions would make the violation severity level assignments for Requirement R6 consistent with NERC's own guidelines for the development of violation severity levels related to communication or coordination requirements.[46]

Comments

87. NERC disagrees with the Commission's assertion that the proposed violation severity levels for Requirement R6 of FAC–014–2 do not identify a situation where a planning authority fails to provide a complete subset of contingencies to the reliability coordinator. NERC contends that the ''High'' and ''Severe'' violation severity levels for Requirement R6 of FAC–014–2 satisfy the Commission's concerns by stating that the planning authority identified the subset of multiple contingencies which result in stability limits but did not provide the list of multiple contingencies and associated limits to one or more reliability coordinators that monitor the facilities associated with these limits. NERC contends that a planning authority will fail to comply with sub-requirement R6.1 of FAC–014–2 if they do not provide the complete set of contingencies to the reliability coordinator.

88. The Bureau of Reclamation and IESO separately take issue with the Commission's proposed revisions to violation severity levels applicable to Requirement R6 of FAC–014–2. The Bureau of Reclamation contends that the Commission's proposal would require auditors to perform studies independent from the planning authority in order to determine whether all contingencies were considered. IESO contends that both the ''High'' and ''Severe'' violation severity levels address the planning authority's failure to communicate multiple contingency scenarios to the reliability coordinator. IESO, however, agrees with the Commission that there

limit violations that the applicable entity did not correct and/or report. Since a reactive resource deficiency may result in more than one violation of an interconnection reliability operating limit and system operating limit, the Commission believes the aggregate treatment, in this instance, of interconnection reliability operating limit and system operating limit violations attributable to a single deficiency in reactive resources for the purpose of assigning violation severity levels is appropriate. This treatment is consistent with the provisions of NERC's Sanction Guidelines, which states at section 3.21, ''[s]ome Reliability Standards may not support the assessment of penalties on a 'per day, per violation' basis, but instead should have penalties calculated based on an alternative penalty frequency or duration.'' With regard to Reliability Standard FAC–014–2 Requirements R1 through R4, the Commission believes that each instance that the applicable entity did not establish a system operating limit or interconnection reliability operating limit consistent with the applicable entity's methodology would be a violation. Thus, the Commission's adherence to Guideline 4 has been consistent as applied to the Commission's revisions of violation severity levels assigned to VAR–001–1 Requirement R10 and its concerns with the violation severity levels NERC assigned to FAC–014–2 Requirement R1 through R4.

[45] NERC did not propose a ''Moderate'' violation severity level for requirement R6.

[46] NERC, *Violation Severity Level Guidelines Criteria*, Project 2007–23 at 19 (2008), *available at: http://www.nerc.com/docs/standards/sar/VSLDT_Guidelines_Final_Draft_08Jan08.pdf.* The NERC Guidelines indicate that a Moderate violation severity level should be selected when the responsible entity's coordination/communication is non-compliant with respect to at least one significant element within the requirement. In this case, the significant element is the failure to notify the Reliability Coordinator.

should not be a gap in the violation severity levels and states that the ''Lower'' violation severity level for FAC–014–2 Requirement R6 should be assigned a ''Moderate'' violation severity level.

Commission Determination

89. The Commission agrees with NERC that a planning authority's requirement to provide the reliability coordinator with a complete set of contingencies is addressed in the ''High'' and ''Severe'' violation severity levels assigned to Requirement R6 of FAC–014–2. However, the Commission also believes that it is appropriate to apply a binary, pass/fail approach to the violation severity levels because a planning authority either will or will not satisfy this requirement. As proposed by NERC, violations of the sub-requirements are addressed only in the violation severity levels assigned to the main requirement. In keeping with the Commission's decision that the ERO must assign a violation severity level to every sub-requirement, the Commission adopts the NOPR proposal and directs the ERO to assign binary violation severity levels to Requirement R6 and sub-requirements R6.1 and R6.2. Although the enforcement of Requirement R6, and its sub-requirements, may require the use of auditors, this is a compliance issue best addressed on a case-by-case basis in the context of a compliance proceeding. The Commission directs the ERO to file revised violation severity levels for Reliability Standard FAC–014–2 Requirement R6 within 30 days of the effective date of this final rule, as discussed above and indicated in Attachment A.

E. Violation Risk Factors

90. NERC did not submit violation risk factors for the version two FAC Reliability Standards in its original filing. On October 15, 2008, NERC filed violation risk factors for the version two FAC Reliability Standards.

NOPR Proposal

91. In the NOPR, the Commission noted that the Commission approved the majority of NERC's proposed violation risk factors for the version one FAC Reliability Standards in Order No. 705.[47] On April 1, 2008, NERC filed revised violation risk factors for the version one FAC Reliability Standards. These were accepted by delegated authority on May 29, 2008. The Commission proposed to direct the ERO to apply those same violation risk factors to the version two FAC Reliability Standards approved in the final rule in this proceeding. With respect to the Western Interconnection regional difference, the Commission proposed to direct Western Electricity Coordinating Council (WECC) to apply the NERC violation risk factors to the Western Interconnection regional difference until after WECC develops its own violation risk factors and they are approved by the ERO and the Commission.

NERC's Violation Risk Factor Filing

92. On October 15, 2008, NERC filed violation risk factors for the proposed version two FAC Reliability Standards. These violation risk factors were identical to the version one violation risk factors. NERC asked the Commission to apply the violation risk factors and violation severity levels filed for FAC–010–2, Requirements R2.4 and R2.5, and FAC–011–2, Requirement R3.3, to the Western Interconnection regional differences for these same requirements.

Commission Determination

93. The Commission approves the violation risk factors filed by NERC for the version two FAC Reliability Standards. Because these violation risk factors are identical to the violation risk factors approved for the version one FAC Reliability Standards, this approval is consistent with our direction in the NOPR.

F. WECC Regional Differences

NERC Filing

94. Although NERC submitted requirements for FAC–010–2 and FAC–011–2 that address the Western Interconnection regional difference, NERC did not submit violation severity levels or violation risk factors for these requirements in its initial filing. On October 15, 2008, NERC filed violation risk factors for the version two FAC Reliability Standards and asked the Commission to accept the violation risk factors and violation severity levels filed for FAC–010–2, Requirements R2.4 and R2.5, and FAC–011–2, sub-requirement R3.3, to apply to the WECC regional difference.

NOPR Proposal

95. The Commission proposed to adopt the proposed regional differences for FAC–010–2 and FAC–011–2. The Commission also proposed to direct NERC to modify the violation severity levels assigned to the national versions of FAC–010–2 and FAC–011–2 to accommodate the regional differences. The Commission noted that, in Order No. 705, the Commission approved version one of the FAC Reliability Standards and directed WECC to develop and submit violation risk factors and violation severity levels that apply to the Western Interconnection regional difference.[48] In the interim, the Commission approved WECC's proposal to assign the same violation risk factors to the WECC regional difference as are assigned to NERC sub-requirement R2.4 and R2.5 in FAC–010–1 and sub-requirement R3.3 in FAC–011–1. The Commission directed WECC to file its violation risk factors and violation severity levels no later than the effective date of the applicable version one Reliability Standard. FAC–010–1 became effective on July 1, 2008 and FAC–011–1 became effective on October 1, 2008 without violation severity levels or violation risk factors.

96. To remedy this deficiency, the Commission proposed modifications to the violation severity level assignments assigned to FAC–010–2 and FAC–011–2 that address the Western Interconnection regional differences. Consistent with our decision in Order No. 705, the Commission also proposed to direct WECC to apply the NERC violation risk factors to the Western Interconnection regional difference until after WECC develops its own violation risk factors for the difference and they are approved by the ERO and the Commission.[49] The Commission noted that WECC is still obligated to comply with the Commission's directives in Order No. 705 to file violation risk factors and violation severity levels addressing the Western Interconnection regional difference.

Comments

97. BPA requests that the Commission direct the ERO to designate the regional differences section of FAC–011–2 as section ''E.'' BPA points out that the requirement makes multiple references to the regional differences section for the Western Interconnection as section ''E,'' but there is no corresponding designation of the regional differences section as section ''E.''

Commission Determination

98. The Commission agrees with BPA's comment relevant to designating the Regional Differences section of FAC–011–2 as section ''E'' and directs the ERO to file this revision within 30 days of the effective date of this final rule.

[47] NOPR, FERC Stats. & Regs. ¶ 32,637 at P 31 (citing Order No. 705, 121 FERC ¶ 61,296 at P 137).

[48] NOPR, FERC Stats. & Regs. ¶ 32,637 at P 32 (citing Order No. 705, 121 FERC ¶ 61,296 at P 146).

[49] *Id.*

99. As discussed above, the Commission approves the violation risk factors filed by NERC for the version two FAC Reliability Standards. These violation risk factors are identical to those approved for the version one FAC Reliability Standards. The Commission also adopts the NOPR proposal with respect to the Western Interconnection regional difference and directs WECC to apply the violation risk factors approved for FAC–010–1 Requirements R2.4 and R2.5 and FAC–011–1 Requirement R3.3 to the WECC regional difference version of FAC–010–2 Requirements 1.1 through 1.3 and FAC–011–2 Requirement 1.1 through 1.3.[50] With regard to the WECC regional differences FAC–010–2 Requirement 1 and Requirement 1.4 and FAC–011–2 Requirement 1 and 1.4, the Commission believes that these requirements are explanatory statements and that a violation risk factor need not be assigned.

100. The Commission finds that each of the WECC regional difference requirements is a binary requirement and, therefore, a single violation severity level is appropriate. Accordingly, until such time as WECC develops and submits violation severity levels for the version two FAC Reliability Standards, the Commission adopts the NOPR proposal and directs WECC to assign a ''Severe'' violation severity level to the WECC regional difference FAC–010–2 Requirement 1.1 and FAC–011–2 Requirement 1.1. In addition, the Commission directs WECC to apply a ''Severe'' violation severity level to the WECC regional difference FAC–010–2 Requirement 1.2 through 1.3 and FAC–011–2 Requirements 1.2 through 1.3. These revisions will create a complete and consistent penalty setting mechanism for the WECC regional difference requirements. The Commission directs the ERO to file revised violation risk factors and violation severity levels for the regional difference within 30 days of the effective date of this final rule, as discussed above and indicated in Attachment A.

G. Effective Date

101. NERC requested that the Commission make the version two FAC Reliability Standards effective according to a staggered schedule, consistent with the implementation dates of the version one FAC Reliability Standards. NERC's proposed effective dates have all since passed. Accordingly, the version two FAC Reliability Standards shall become effective April 29, 2009.

III. Information Collection Statement

102. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[51] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[52] As stated above, the Commission previously approved, in Order No. 705, each of the Reliability Standards that are the subject of the current rulemaking. The modifications to the Reliability Standards are minor and, therefore, they do not add to or increase entities' reporting burden. Thus, the modified Reliability Standards do not materially affect the burden estimates relating to the earlier version of the Reliability Standards presented in Order No. 705.

Title: Version Two Facilities Design, Connections and Maintenance Reliability Standards.

Action: Proposed Collection.

OMB Control No.: 1902–0247.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This final rule approves three modified Reliability Standards that pertain to facilities design, connections and maintenance. The Reliability Standards will require planning authorities and reliability coordinators to establish methodologies to determine system operating limits for the Bulk-Power System in the planning and operation horizons. This final rule finds the Reliability Standards and interpretations just, reasonable, not unduly discriminatory or preferential, and in the public interest.

103. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426, Tel: (202) 502–8415, Fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov,* or by contacting: Office of Information and Regulatory Affairs, Attn: Desk Officer for the Federal Energy Regulatory Commission (Re: OMB Control No. 1902–0247), Washington, DC 20503, Tel: (202) 395–4650, Fax: (202) 395–7285, e-mail: *oira_submission@omb.eop.gov.*

IV. Environmental Analysis

104. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[53] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. The actions directed here fall within the categorical exclusion in the Commission's regulations for rules that are clarifying, corrective or procedural, for information gathering, analysis, and dissemination.[54] Accordingly, neither an environmental impact statement nor environmental assessment is required.

V. Regulatory Flexibility Act

105. The Regulatory Flexibility Act of 1980[55] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Most of the entities, *i.e.*, planning authorities, reliability coordinators, transmission planners and transmission operators, to which the requirements of this final rule apply do not fall within the definition of small entities.[56]

106. As indicated above, based on available information regarding NERC's compliance registry, approximately 250 entities will be responsible for compliance with the three revised Reliability Standards. It is estimated that one-third of the responsible entities, about 80 entities, would be municipal and cooperative organizations. The approved Reliability Standards apply to planning authorities, transmission planners, transmission operators and reliability coordinators, which tend to be larger entities. Thus, the Commission believes that only a portion, approximately 30 to 40 of the municipal and cooperative organizations to which the approved Reliability Standards apply, qualify as small entities.[57] The Commission does

[50] This direction is consistent with NERC's October 15, 2008 proposal.

[51] 5 CFR 1320.11.

[52] 44 U.S.C. 3507(d).

[53] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[54] 18 CFR 380.4(a)(5).

[55] 5 U.S.C. 601–612.

[56] The definition of ''small entity'' under the Regulatory Flexibility Act refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. *See* 15 U.S.C. 632.

[57] According to the Department of Energy's (DOE) Energy Information Administration (EIA), there

not consider this a substantial number. Moreover, as discussed above, the approved Reliability Standards will not be a burden on the industry since most if not all of the applicable entities currently perform system operating limit calculations and the approved Reliability Standards will simply provide a common methodology for those calculations. Accordingly, the Commission certifies that the approved Reliability Standards will not have a significant adverse impact on a substantial number of small entities.

107. Based on this understanding, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VI. Document Availability

108. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

109. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

110. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

111. These regulations are effective April 29, 2009. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Attachment A

BILLING CODE 6717–01–P

Text of Requirement	Lower	Moderate	High	Severe
FAC-010-2 R1. The Planning Authority shall have a documented SOL Methodology for use in developing SOLs within its Planning Authority Area. This SOL Methodology shall:	Not applicable.	The Planning Authority has a documented SOL Methodology for use in developing SOLs within its Planning Authority Area, but it does not address R1.2	The Planning Authority has a documented SOL Methodology for use in developing SOLs within its Planning Authority Area, but it does not address R1.3.	The Planning Authority has a documented SOL Methodology for use in developing SOLs within its Planning Authority Area, but it does not address R1.1. OR The Planning Authority has no documented SOL Methodology for use in developing SOLs within its Planning Authority Area.
FAC-010-2 R1.1. Be applicable for developing SOLs used in the planning horizon.	Not applicable.	Not applicable.	Not applicable.	Planning Authority SOL methodology is not applicable for developing SOL in the planning horizon.
FAC-010-2 R1.2. State that SOLs shall not exceed associated Facility Ratings.	Not applicable.	Not applicable.	Not applicable.	Planning Authority SOL Methodology did not state that SOLs shall not exceed associated Facility Ratings
FAC-010-2 R1.3. Include a description of how to identify the subset of SOLs that qualify as IROLs.	Not applicable.	Not applicable.	Not applicable.	Planning Authority SOL Methodology did not include a description of how to identify the subset of SOLs that qualify as IROLs.
FAC-010-2 R2. The Planning Authority's SOL Methodology shall include a requirement that SOLs provide BES performance consistent with the following:	~~The Planning Authority's SOL Methodology requires that SOLs are set to meet BES performance following single and multiple contingencies, but does not address the pre-contingency state (R2.1)~~	~~The Planning Authority's SOL Methodology requires that SOLs are set to meet BES performance in the precontingency state and following single contingencies, but does not address multiple contingencies. (R2.5-R2.6)~~	~~The Planning Authority's SOL Methodology requires that SOLs are set to meet BES performance in the precontingency state and following multiple contingencies, but does not meet the performance for response to single contingencies. (R2.2 –R2.4)~~	~~The Planning Authority's SOL Methodology requires that SOLs are set to meet BES performance in the precontingency state but does not require that SOLs be set to meet the BES performance specified for response to single contingencies (R2.2-R2.4) and does not require that SOLs be set to meet the BES performance specified for response to multiple contingencies. (R2.5-R2.6)~~

were 3,284 electric utility companies in the United States in 2005, and 3,029 of these electric utilities qualify as small entities under the SBA definition. Among these 3,284 electric utility companies are: (1) 883 cooperatives of which 852 are small entity cooperatives; (2) 1,862 municipal utilities, of which 1842 are small entity municipal utilities; (3) 127 political subdivisions, of which 114 are small entity political subdivisions; and (4) 219 privately owned utilities, of which 104 could be considered small entity private utilities. *See* Energy Information Administration Database, Form EIA–861, DOE (2005), *available at http://www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

Text of Requirement	Lower	Moderate	High	Severe
FAC-010-2 R2.1. In the pre-contingency state and with all Facilities in service, the BES shall demonstrate transient, dynamic and voltage stability; all Facilities shall be within their Facility Ratings and within their thermal, voltage and stability limits. In the determination of SOLs, the BES condition used shall reflect expected system conditions and shall reflect changes to system topology such as Facility outages.	Not applicable.	Not applicable.	Not applicable.	The Planning Authority's methodology does not include a requirement that SOLs provide BES performance consistent with sub-requirement R2.1.
FAC-010-2 R2.2. Following the single Contingencies identified in Requirement 2.2.1 through Requirement 2.2.3, the system shall demonstrate transient, dynamic and voltage stability; all Facilities shall be operating within their Facility Ratings and within their thermal, voltage and stability limits; and Cascading or uncontrolled separation shall not occur.	Not applicable.	Not applicable.	Not applicable.	The Planning Authority's methodology does not include a requirement that SOLs provide BES performance consistent with sub-requirement R2.2.
FAC-010-2 R2.2.1. Single line to ground or three-phase Fault (whichever is more severe), with Normal Clearing, on any Faulted generator, line, transformer, or shunt device.	Not applicable.	Not applicable.	Not applicable.	The methodology does not address single line to ground or 3-phase Fault (whichever is more severe), with Normal Clearing, on any Faulted generator, line, transformer, or shunt device.
FAC-010-2 R2.2.2. Loss of any generator, line, transformer, or shunt device without a Fault.	Not applicable.	Not applicable.	Not applicable.	The methodology does not address the loss of any generator, line, transformer, or shunt device without a Fault.
FAC-010-2 R2.2.3. Single pole block, with Normal Clearing, in a monopolar or bipolar high voltage direct current system.	Not applicable.	Not applicable.	Not applicable.	The methodology does not address single pole block, with Normal Clearing, in a monopolar or bipolar high voltage direct current system.
FAC-010-2 R2.3. Starting with all Facilities in service, the system's response to a single Contingency, may include any of the following:	Not applicable.	Not applicable.	Not applicable.	The methodology does not include one or more of the following: 2.3.1. through 2.3.3.

Text of Requirement	Lower	Moderate	High	Severe
FAC-010-2 R2.3.1. Planned or controlled interruption of electric supply to radial customers or some local network customers connected to or supplied by the Faulted Facility or by the affected area.	Not applicable.	Not applicable.	Not applicable.	The SOL Methodology does not provide that starting with all Facilities in service, the system's response to a single Contingency may include planned or controlled interruption of electric supply to radial customers or some local network customers connected to or supplied by the Faulted Facility or by the affected area.
FAC-010-2 R2.3.2. System reconfiguration through manual or automatic control or protection actions.	Not applicable.	Not applicable.	Not applicable.	The SOL Methodology does not provide that starting with all Facilities in service, the system's response to a single Contingency may include System reconfiguration through manual or automatic control or protection actions.
FAC-010-2 R2.4. To prepare for the next Contingency, system adjustments may be made, including changes to generation, uses of the transmission system, and the transmission system topology.	Not applicable.	Not applicable.	Not applicable.	The SOL Methodology does not provide that in order to prepare for the next Contingency, system adjustments may be made, including changes to generation, uses of the transmission system, and the transmission system topology.
FAC-010-2 R2.5. Starting with all Facilities in service and following any of the multiple Contingencies identified in Reliability Standard TPL-003 the system shall demonstrate transient, dynamic and voltage stability; all Facilities shall be operating within their Facility Ratings and within their thermal, voltage and stability limits; and Cascading or uncontrolled separation shall not occur.	Not applicable.	Not applicable.	Not applicable.	The SOL methodology does not include a requirement that SOLs provide BES performance consistent with sub-requirement R2.5.
FAC-010-2 R2.6. In determining the system's response to any of the multiple Contingencies, identified in Reliability Standard TPL-003, in addition to the actions identified in R2.3.1 and R2.3.2, the following shall be acceptable:	Not applicable.	Not applicable.	Not applicable.	Not applicable.

Text of Requirement	Lower	Moderate	High	Severe
FAC-010-2 R2.6.1. Planned or controlled interruption of electric supply to customers (load shedding), the planned removal from service of certain generators, and/or the curtailment of contracted Firm (non-recallable reserved) electric power Transfers.	Not applicable.	Not applicable.	Not applicable.	The SOL Methodology does not provide that in determining the system's response to any of the multiple Contingencies, identified in Reliability Standard TPL-003, in addition to the actions identified in R2.3.1 and R2.3.2, Planned or controlled interruption of electric supply to customers (load shedding), the planned removal from service of certain generators, and/or the curtailment of contracted Firm (non-recallable reserved) electric power Transfers shall be acceptable.
FAC-010-2 R3. The Planning Authority's methodology for determining SOLs, shall include, as a minimum, a description of the following, along with any reliability margins applied for each:	The Planning Authority has a methodology for determining SOLs that includes a description for all but one of the following: R3.1 through R3.6.	The Planning Authority has a methodology for determining SOLs that includes a description for all but two of the following: R3.1 through R3.6.	The Planning Authority has a methodology for determining SOLs that includes a description for all but three of the following: R3.1 through R3.6.	The Planning Authority has a methodology for determining SOLs that is missing a description of four or more of the following: R3.1 through R3.6.
FAC-010-2 R3.1. Study model (must include at least the entire Planning Authority Area as well as the critical modeling details from other Planning Authority Areas that would impact the Facility or Facilities under study).	Not applicable.	Not applicable.	Not applicable.	The methodology does not include a study model that includes the entire Planning Authority Area, and the critical modeling details of other Planning Authority Areas that would impact the facility or facilities under study.
FAC-010-2 R3.2. Selection of applicable Contingencies.	Not applicable.	Not applicable.	Not applicable.	The methodology does not include the selection of applicable Contingencies.
FAC-010-2 R3.3. Level of detail of system models used to determine SOLs.	Not applicable.	Not applicable.	Not applicable.	The methodology does not describe the level of detail of system models used to determine SOLs.
FAC-010-2 R3.4. Allowed uses of Special Protection Systems or Remedial Action Plans.	Not applicable.	Not applicable.	Not applicable.	The methodology does not describe the allowed uses of Special Protection Systems or Remedial Action Plans.
FAC-010-2 R3.5. Anticipated transmission system configuration, generation dispatch and Load level.	Not applicable.	Not applicable.	Not applicable.	The methodology does not include the description of anticipated transmission system configuration, generation dispatch and Load level.

Text of Requirement	Lower	Moderate	High	Severe
FAC-010-2 R3.6. Criteria for determining when violating a SOL qualifies as an Interconnection Reliability Operating Limit (IROL) and criteria for developing any associated IROL T_v.	Not applicable.	Not applicable.	Not applicable.	The methodology does not include a description of the criteria for determining when violating a SOL qualifies as an Interconnection Reliability Operating Limit (IROL) and criteria for developing any associated IROL T_v.
FAC-010-2 R4. The Planning Authority shall issue its SOL Methodology, and any change to that methodology, to all of the following prior to the effectiveness of the change:	One or both of the following: The Planning Authority issued its SOL Methodology and changes to that methodology to all but one of the required entities. For a change in methodology, the changed methodology was provided up to 30 calendar days after the effectiveness of the change.	One of the following: The Planning Authority issued its SOL Methodology and changes to that methodology to all but one of the required entities AND for a change in methodology, the changed methodology was provided 30 calendar days or more, but less than 60 calendar days after the effectiveness of the change. OR The Planning Authority issued its SOL Methodology and changes to that methodology to all but two of the required entities AND for a change in methodology, the changed methodology was provided up to 30 calendar days after	One of the following: The Planning Authority issued its SOL Methodology and changes to that methodology to all but one of the required entities AND for a change in methodology, the changed methodology was provided 60 calendar days or more, but less than 90 calendar days after the effectiveness of the change. OR The Planning Authority issued its SOL Methodology and changes to that methodology to all but two of the required entities AND for a change in methodology, the changed methodology was provided 30 calendar days or more, but less than 60 calendar days after the effectiveness of the	One of the following: The Planning Authority failed to issue its SOL Methodology and changes to that methodology to more than three of the required entities. The Planning Authority issued its SOL Methodology and changes to that methodology to all but one of the required entities AND for a change in methodology, the changed methodology was provided 90 calendar days or more after the effectiveness of the change. OR The Planning Authority issued its SOL Methodology and changes to that methodology to all but two of the required entities AND for a change in methodology, the changed methodology was provided 60 calendar days or more, but less than 90 calendar days after the effectiveness of the change. OR The Planning Authority issued its SOL Methodology and changes to that methodology to all but three of the required entities AND for a change in methodology, the changed methodology was provided 30 calendar days or more, but less than 60 calendar days after the effectiveness of the change. The Planning Authority issued its SOL Methodology and changes to that methodology to all but four of the required entities AND for a change in methodology, the changed methodology was provided up to 30 calendar days after the effectiveness of the change.

Text of Requirement	Lower	Moderate	High	Severe
		the effectiveness of the change.	change. OR The Planning Authority issued its SOL Methodology and changes to that methodology to all but three of the required entities AND for a change in methodology, the changed methodology was provided up to 30 calendar days after the effectiveness of the change.	
FAC-010-2 R4.1. Each adjacent Planning Authority and each Planning Authority that indicated it has a reliability-related need for the methodology.	Not applicable.	Not applicable.	Not applicable.	The Planning Authority did not issue its SOL Methodology and any change to that methodology, prior to the effectiveness of the change, to each adjacent Planning Authority and each Planning Authority that indicated it has a reliability-related need for the methodology.
FAC-010-2 R4.2. Each Reliability Coordinator and Transmission Operator that operates any portion of the Planning Authority's Planning Authority Area.	Not applicable.	Not applicable.	Not applicable.	The Planning Authority did not issue its SOL Methodology and any change to that methodology, prior to the effectiveness of the change, to each Reliability Coordinator and Transmission Operator that operates any portion of the Planning Authority's Planning Authority Area.
FAC-010-2 R4.3. Each Transmission Planner that works in the Planning Authority's Planning Authority Area.	Not applicable.	Not applicable.	Not applicable.	The Planning Authority did not issue its SOL Methodology and any change to that methodology, prior to the effectiveness of the change, to each Transmission Planner that works in the Planning Authority's Planning Authority Area prior to the effectiveness of the change.

Text of Requirement	Lower	Moderate	High	Severe
FAC-010-2 R5. If a recipient of the SOL Methodology provides documented technical comments on the methodology, the Planning Authority shall provide a documented response to that recipient within 45 calendar days of receipt of those comments. The response shall indicate whether a change will be made to the SOL Methodology and, if no change will be made to that SOL Methodology, the reason why.	The Planning Authority received documented technical comments on its SOL Methodology and provided a complete response in a time period that was longer than 45 calendar days but less than 60 calendar days.	The Planning Authority received documented technical comments on its SOL Methodology and provided a complete response in a time period that was 60 calendar days or longer but less than 75 calendar days.	The Planning Authority received documented technical comments on its SOL Methodology and provided a complete response in a time period that was 75 calendar days or longer but less than 90 calendar days. OR The Planning Authority's response to documented technical comments on its SOL Methodology indicated that a change will not be made, but did not include an explanation of why the change will not be made.	The Planning Authority received documented technical comments on its SOL Methodology and provided a complete response in a time period that was 90 calendar days or longer. OR The Planning Authority's response to documented technical comments on its SOL Methodology did not indicate whether a change will be made to the SOL Methodology.

Text of Requirement	Lower	Moderate	High	Severe
WECC -- FAC-010-2 R1. The following Interconnection-wide Regional Difference shall be applicable in the Western Interconnection:	Not applicable.	Not applicable.	Not applicable.	Not applicable.
WECC -- FAC-010-2 R1.1. As governed by the requirements of R2.4 and R2.5, starting with all Facilities in service, shall require the evaluation of the following multiple Facility Contingencies when establishing SOLs:	Not applicable.	Not applicable.	Not applicable.	The methodology fails to address any of the evaluations listed in 1.1.1 through 1.1.7
WECC -- FAC-010-2 R1.1.1. Simultaneous permanent phase to ground Faults on different phases of each of two adjacent transmission circuits on a multiple circuit tower, with Normal Clearing. If multiple circuit towers are used only for station entrance and exit purposes, and if they do not exceed five towers at each station, then this condition is an acceptable risk and therefore can be excluded.	Not applicable.	Not applicable.	Not applicable.	The following were excluded when establishing SOLs; simultaneous permanent phase to ground Faults on different phases of each of two adjacent transmission circuits on a multiple circuit tower, with Normal Clearing.
WECC -- FAC-010-2 R1.1.2. A permanent phase to ground Fault on any generator, transmission circuit, transformer, or bus section with Delayed Fault Clearing except for bus sectionalizing breakers or bus-tie breakers addressed in E1.1.7	Not applicable.	Not applicable.	Not applicable.	The following were excluded when establishing SOLs; a permanent phase to ground Fault on any generator, transmission circuit, transformer, or bus section with Delayed Fault Clearing except for bus sectionalizing breakers or bus-tie breakers addressed in E1.1.7
WECC -- FAC-010-2 R1.1.3. Simultaneous permanent loss of both poles of a direct current bipolar Facility without an alternating current Fault.	Not applicable.	Not applicable.	Not applicable.	The following was excluded when establishing SOLs; simultaneous permanent loss of both poles of a direct current bipolar Facility without an alternating current Fault.

Text of Requirement	Lower	Moderate	High	Severe
WECC -- FAC-010-2 R1.1.4. The failure of a circuit breaker associated with a Special Protection System to operate when required following: the loss of any element without a Fault; or a permanent phase to ground Fault, with Normal Clearing, on any transmission circuit, transformer or bus section.	Not applicable.	Not applicable.	Not applicable.	The following was excluded when establishing SOLs; the failure of a circuit breaker associated with a Special Protection System to operate when required following: the loss of any element without a Fault; or a permanent phase to ground Fault, with Normal Clearing, on any transmission circuit, transformer or bus section.
WECC -- FAC-010-2 R1.1.5. A non-three phase Fault with Normal Clearing on common mode Contingency of two adjacent circuits on separate towers unless the event frequency is determined to be less than one in thirty years.	Not applicable.	Not applicable.	Not applicable.	The following was excluded when establishing SOLs; a non-three phase Fault with Normal Clearing on common mode Contingency of two adjacent circuits on separate towers unless the event frequency is determined to be less than one in thirty years.
WECC -- FAC-010-2 R1.1.6. A common mode outage of two generating units connected to the same switchyard, not otherwise addressed by FAC-010.	Not applicable.	Not applicable.	Not applicable.	The following was excluded when establishing SOLs; a common mode outage of two generating units connected to the same switchyard, not otherwise addressed by FAC-010.
WECC -- FAC-010-2 R1.1.7. The loss of multiple bus sections as a result of failure or delayed clearing of a bus tie or bus sectionalizing breaker to clear a permanent Phase to Ground Fault.	Not applicable.	Not applicable.	Not applicable.	The following was excluded when establishing SOLs; the loss of multiple bus sections as a result of failure or delayed clearing of a bus tie or bus sectionalizing breaker to clear a permanent Phase to Ground Fault.
WECC -- FAC-010-2 R1.2. SOLs shall be established such that for multiple Facility Contingencies in E1.1.1 through E1.1.5 operation within the SOL shall provide system performance consistent with the following:	Not applicable.	Not applicable.	Not applicable.	The methodology fails to address any of the evaluations listed in 1.2.1 through 1.2.7
WECC -- FAC-010-2 R1.2.1. All Facilities are operating within their applicable Post-Contingency thermal, frequency and voltage limits.	Not applicable.	Not applicable.	Not applicable.	SOLs do not provide system performance consistent with: All Facilities are operating within their applicable Post-Contingency thermal, frequency and voltage limits.
WECC -- FAC-010-2 R1.2.2. Cascading does not occur.	Not applicable.	Not applicable.	Not applicable.	SOLs do not provide system performance consistent with: cascading does not occur.

Text of Requirement	Lower	Moderate	High	Severe
WECC -- FAC-010-2 R1.2.3. Uncontrolled separation of the system does not occur.	Not applicable.	Not applicable.	Not applicable.	SOLs do not provide system performance consistent with: uncontrolled separation of the system does not occur.
WECC -- FAC-010-2 R1.2.4. The system demonstrates transient, dynamic and voltage stability.	Not applicable.	Not applicable.	Not applicable.	SOLs do not provide system performance consistent with: the system demonstrates transient, dynamic and voltage stability.
WECC -- FAC-010-2 R1.2.5. Depending on system design and expected system impacts, the controlled interruption of electric supply to customers (load shedding), the planned removal from service of certain generators, and/or the curtailment of contracted firm (non-recallable reserved) electric power transfers may be necessary to maintain the overall security of the interconnected transmission systems.	Not applicable.	Not applicable.	Not applicable.	SOLs do not provide system performance consistent with: depending on system design and expected system impacts, the controlled interruption of electric supply to customers (load shedding), the planned removal from service of certain generators, and/or the curtailment of contracted firm (non-recallable reserved) electric power transfers may be necessary to maintain the overall security of the interconnected transmission systems.
WECC -- FAC-010-2 R1.2.6. Interruption of firm transfer, Load or system reconfiguration is permitted through manual or automatic control or protection actions.	Not applicable.	Not applicable.	Not applicable.	SOLs do not provide system performance consistent with: interruption of firm transfer, Load or system reconfiguration is permitted through manual or automatic control or protection actions.
WECC -- FAC-010-2 R1.2.7. To prepare for the next Contingency, system adjustments are permitted, including changes to generation, Load and the transmission system topology when determining limits.	Not applicable.	Not applicable.	Not applicable.	SOLs do not provide system performance consistent with: to prepare for the next Contingency, system adjustments are permitted, including changes to generation, Load and the transmission system topology when determining limits.
WECC -- FAC-010-2 R1.3. SOLs shall be established such that for multiple Facility Contingencies in E1.1.6 through E1.1.7 operation within the SOL shall provide system performance consistent with the following with respect to impacts on other systems:	Not applicable.	Not applicable.	Not applicable.	The methodology fails to address any of the evaluations listed in 1.3.1
WECC -- FAC-010-2 R1.3.1. Cascading does not occur.	Not applicable.	Not applicable.	Not applicable.	The SOL methodology fails to address: cascading does not occur.
WECC -- FAC-010-2 R1.4. The	Not applicable.	Not applicable.	Not applicable.	Not applicable.

Text of Requirement	Lower	Moderate	High	Severe
Western Interconnection may make changes (performance category adjustments) to the Contingencies required to be studied and/or the required responses to Contingencies for specific facilities based on actual system performance and robust design. Such changes will apply in determining SOLs.				

Text of Requirement	Lower	Moderate	High	Severe
FAC-011-2 R1. The Reliability Coordinator shall have a documented methodology for use in developing SOLs (SOL Methodology) within its Reliability Coordinator Area. This SOL Methodology shall:	Not applicable.	The Reliability Coordinator has a documented SOL Methodology for use in developing SOLs within its Reliability Coordinator Area, but it does not address R1.2	The Reliability Coordinator has a documented SOL Methodology for use in developing SOLs within its Reliability Coordinator Area, but it does not address R1.3.	The Reliability Coordinator has a documented SOL Methodology for use in developing SOLs within its Reliability Coordinator Area, but it does not address R1.1. OR The Reliability Coordinator has no documented SOL Methodology for use in developing SOLs within its Reliability Coordinator Area.
FAC-011-2 R1.1. Be applicable for developing SOLs used in the operations horizon.	Not applicable.	Not applicable.	Not applicable.	The Reliability Coordinator's SOL methodology is not applicable for developing SOL in the operations horizon.
FAC-011-2 R1.2. State that SOLs shall not exceed associated Facility Ratings.	Not applicable.	Not applicable.	Not applicable.	The Reliability Coordinator's SOL Methodology did not state that SOLs shall not exceed associated Facility Ratings
FAC-011-2 R1.3. Include a description of how to identify the subset of SOLs that qualify as IROLs	Not applicable.	Not applicable.	Not applicable.	The Reliability Coordinator's SOL Methodology did not include a description of how to identify the subset of SOLs that qualify as IROLs.
FAC-011-2 R2. The Reliability Coordinator's SOL Methodology shall include a requirement that SOLs provide BES performance consistent with the following:	~~The Reliability Coordinator's SOL Methodology requires that SOLs are set to meet BES performance following single contingencies, but does not require that SOLs are set to meet BES performance in the pre-contingency state. (R2.1)~~	~~Not applicable.~~	~~The Reliability Coordinator's SOL Methodology requires that SOLs are set to meet BES performance in the precontingency state and following multiple contingencies, but does not meet the performance for response to single contingencies. (R2.2 –R2.4)~~	~~The Reliability Coordinator's SOL Methodology does not require that SOLs are set to meet BES performance in either the pre-contingency state and does not require that SOLs are set to meet BES performance following single contingencies. (R2.1 through R2.4)~~

Text of Requirement	Lower	Moderate	High	Severe
FAC-011-2 R2.1. In the pre-contingency state, the BES shall demonstrate transient, dynamic and voltage stability; all Facilities shall be within their Facility Ratings and within their thermal, voltage and stability limits. In the determination of SOLs, the BES condition used shall reflect current or expected system conditions and shall reflect changes to system topology such as Facility outages.	Not applicable.	Not applicable.	Not applicable.	The SOL methodology does not include a requirement that SOLs provide BES performance consistent with sub-requirement R2.1.
FAC-011-2 R2.2. Following the single Contingencies1 identified in Requirement 2.2.1 through Requirement 2.2.3, the system shall demonstrate transient, dynamic and voltage stability; all Facilities shall be operating within their Facility Ratings and within their thermal, voltage and stability limits; and Cascading or uncontrolled separation shall not occur.	Not applicable.	Not applicable.	Not applicable.	The SOL methodology does not include a requirement that SOLs provide BES performance consistent with sub-requirement R2.2.
FAC-011-2 R2.2.1. Single line to ground or 3-phase Fault (whichever is more severe), with Normal Clearing, on any Faulted generator, line, transformer, or shunt device.	Not applicable.	Not applicable.	Not applicable.	The methodology does not require that SOLs provide BES performance consistent with: single line to ground or 3-phase Fault (whichever is more severe), with Normal Clearing, on any Faulted generator, line, transformer, or shunt device.
FAC-011-2 R2.2.2. Loss of any generator, line, transformer, or shunt device without a Fault.	Not applicable.	Not applicable.	Not applicable.	The methodology does not address the loss of any generator, line, transformer, or shunt device without a Fault.
FAC-011-2 R2.2.3. Single pole block, with Normal Clearing, in a monopolar or bipolar high voltage direct current system.	Not applicable.	Not applicable.	Not applicable.	The methodology does not address single pole block, with Normal Clearing, in a monopolar or bipolar high voltage direct current system.

Text of Requirement	Lower	Moderate	High	Severe
FAC-011-2 R2.3. In determining the system's response to a single Contingency, the following shall be acceptable:	Not applicable.	Not applicable.	Not applicable.	The methodology does not include one or more of the following 2.3.1. through 2.3.3.
FAC-011-2 R2.3.1. Planned or controlled interruption of electric supply to radial customers or some local network customers connected to or supplied by the Faulted Facility or by the affected area.	Not applicable.	Not applicable.	Not applicable.	The methodology does not address that, in determining the systems response to a single contingency, Planned or controlled interruption of electric supply to radial customers or some local network customers connected to or supplied by the Faulted Facility or by the affected area is acceptable.
FAC-011-2 R2.3.2. Interruption of other network customers, (a) only if the system has already been adjusted, or is being adjusted, following at least one prior outage, or (b) if the real-time operating conditions are more adverse than anticipated in the corresponding studies	Not applicable.	Not applicable.	Not applicable.	The methodology does not address that, in determining the systems response to a single contingency, Interruption of other network customers is acceptable, (a) only if the system has already been adjusted, or is being adjusted, following at least one prior outage, or (b) if the real-time operating conditions are more adverse than anticipated in the corresponding studies.
FAC-011-2 R2.3.3. System reconfiguration through manual or automatic control or protection actions.	Not applicable.	Not applicable.	Not applicable.	The methodology does not address that, in determining the systems response to a single contingency, system reconfiguration through manual or automatic control or protection actions is acceptable.
FAC-011-2 R2.4. To prepare for the next Contingency, system adjustments may be made, including changes to generation, uses of the transmission system, and the transmission system topology.	Not applicable.	Not applicable.	Not applicable.	The methodology does not provide that to prepare for the next Contingency, system adjustments may be made, including changes to generation, uses of the transmission system, and the transmission system topology.
FAC-011-2 R3. The Reliability Coordinator's methodology for determining SOLs, shall include, as a minimum, a description of the following, along with any reliability margins applied for each:	The Reliability Coordinator has a methodology for determining SOLs that includes a description for all but one of the	The Reliability Coordinator has a methodology for determining SOLs that includes a description for all but two of the	The Reliability Coordinator has a methodology for determining SOLs that includes a description for all but three of the following:	The Reliability Coordinator has a methodology for determining SOLs that is missing a description of ~~three~~ four or more of the following: R3.1 through R3.7.

Text of Requirement	Lower	Moderate	High	Severe
	following: R3.1 through R3.7.	following: R3.1 through R3.7.	R3.1 through R3.7.	
FAC-011-2 R3.1. Study model (must include at least the entire Reliability Coordinator Area as well as the critical modeling details from other Reliability Coordinator Areas that would impact the Facility or Facilities under study.)	Not applicable.	Not applicable.	Not applicable.	The methodology does not include a description of the study model to be used which must include the entire Reliability Coordinator area, and the critical details of other Reliability Coordinator areas that would impact the facility or facilities under study
FAC-011-2 R3.2. Selection of applicable Contingencies	Not applicable.	Not applicable.	Not applicable.	The methodology does not include the selection of applicable Contingencies.
FAC-011-2 R3.3. A process for determining which of the stability limits associated with the list of multiple contingencies (provided by the Planning Authority in accordance with FAC-014 Requirement 6) are applicable for use in the operating horizon given the actual or expected system conditions.	Not applicable.	Not applicable.	Not applicable.	The methodology does not include a description of a process for determining which of the stability limits associated with the list of multiple contingencies (provided by the Planning Authority in accordance with FAC-014 Requirement 6) are applicable for use in the operating horizon given the actual or expected system conditions.
FAC-011-2 R3.3.1. This process shall address the need to modify these limits, to modify the list of limits, and to modify the list of associated multiple contingencies.	Not applicable.	Not applicable.	Not applicable.	The methodology for determining SOL's does not address the need to modify the limits described in R3.3, the list of limits, or the list of associated multiple contingencies.
FAC-011-2 R3.4. Level of detail of system models used to determine SOLs.	Not applicable.	Not applicable.	Not applicable.	Methodology does not describe the level of detail of system models used to determine SOLs.
FAC-011-2 R3.5. Allowed uses of Special Protection Systems or Remedial Action Plans.	Not applicable.	Not applicable.	Not applicable.	The methodology does not describe the allowed uses of Special Protection Systems or Remedial Action Plans.
FAC-011-2 R3.6. Anticipated transmission system configuration, generation dispatch and Load level	Not applicable.	Not applicable.	Not applicable.	The methodology does not describe the anticipated transmission system configuration, generation dispatch and Load level.
FAC-011-2 R3.7. Criteria for determining when violating a SOL qualifies as an Interconnection Reliability Operating Limit (IROL)	Not applicable.	Not applicable.	Not applicable.	The methodology does not describe criteria for determining when violating a SOL qualifies as an Interconnection Reliability Operating Limit and criteria for developing any associated IROL T_v.

Text of Requirement	Lower	Moderate	High	Severe
and criteria for developing any associated IROL T_V.				
FAC-011-2 R4. The Reliability Coordinator shall issue its SOL Methodology and any changes to that methodology, prior to the effectiveness of the Methodology or of a change to the Methodology, to all of the following:	One or both of the following : The Reliability Coordinator issued its SOL Methodology and changes to that methodology to all but one of the required entities. For a change in methodology, the changed methodology was provided up to 30 calendar days after the effectiveness of the change.	One of the two following : The Reliability Coordinator issued its SOL Methodology and changes to that methodology to all but one of the required entities AND for a change in methodology, the changed methodology was provided 30 calendar days or more, but less than 60 calendar days after the effectiveness of the change. OR The Reliability Coordinator issued its SOL Methodology and changes to that methodology to all but two of the required entities AND for a change in methodology, the changed methodology was provided up to 30 calendar days after the effectiveness of the change.	One of the following : The Reliability Coordinator issued its SOL Methodology and changes to that methodology to all but one of the required entities AND for a change in methodology, the changed methodology was provided 60 calendar days or more, but less than 90 calendar days after the effectiveness of the change. OR The Reliability Coordinator issued its SOL Methodology and changes to that methodology to all but two of the required entities AND for a change in methodology, the changed methodology was provided 30 calendar days or more, but less than 60 calendar days after the effectiveness of the change. OR The Reliability Coordinator issued	One of the following: The Reliability Coordinator failed to issue its SOL Methodology and changes to that methodology to more than three of the required entities. The Planning Authority issued its SOL Methodology and changes to that methodology to all but one of the required entities AND for a change in methodology, the changed methodology was provided 90 calendar days or more after the effectiveness of the change. OR The Reliability Coordinator issued its SOL Methodology and changes to that methodology to all but two of the required entities AND for a change in methodology, the changed methodology was provided 60 calendar days or more, but less than 90 calendar days after the effectiveness of the change. OR The Reliability Coordinator issued its SOL Methodology and changes to that methodology to all but three of the required entities AND for a change in methodology, the changed methodology was provided 30 calendar days or more, but less than 60 calendar days after the effectiveness of the change. OR The Reliability Coordinator issued its SOL Methodology and changes to that methodology to all but four of the required entities AND for a change in methodology, the changed methodology was provided up to 30 calendar days after the effectiveness of the change

Text of Requirement	Lower	Moderate	High	Severe
			its SOL Methodology and changes to that methodology to all but three of the required entities AND for a change in methodology, the changed methodology was provided up to 30 calendar days after the effectiveness of the change.	
FAC-011-2 R4.1. Each adjacent Reliability Coordinator and each Reliability Coordinator that indicated it has a reliability-related need for the methodology.	Not applicable.	Not applicable.	Not applicable.	The Reliability Coordinator did not issue its SOL Methodology or any changes to that methodology to each adjacent Reliability Coordinator and each Reliability Coordinator that indicated it has a reliability-related need for the methodology.
FAC-011-2 R4.2. Each Planning Authority and Transmission Planner that models any portion of the Reliability Coordinator's Reliability Coordinator Area.	Not applicable.	Not applicable.	Not applicable.	The Reliability Coordinator did not issue its SOL Methodology or any changes to that methodology to each Planning Authority or Transmission Planner that models any portion of the Reliability Coordinator's Reliability Coordinator Area.
FAC-011-2 R4.3. Each Transmission Operator that operates in the Reliability Coordinator Area.	Not applicable.	Not applicable.	Not applicable.	The Reliability Coordinator did not issue its SOL Methodology or any changes to that methodology to each Transmission Operator that operates in the Reliability Coordinator Area.
FAC-011-2 R5. If a recipient of the SOL Methodology provides documented technical comments on the methodology, the Reliability Coordinator shall provide a documented response to that recipient within 45 calendar days of receipt of those comments. The response shall indicate whether a change will be made to the SOL Methodology and, if no change will be made to that SOL Methodology, the reason why.	The Reliability Coordinator received documented technical comments on its SOL Methodology and provided a complete response in a time period that was longer than 45 calendar days but less than 60 calendar days.	The Reliability Coordinator received documented technical comments on its SOL Methodology and provided a complete response in a time period that was 60 calendar days or longer but less than 75 calendar days.	The Reliability Coordinator received documented technical comments on its SOL Methodology and provided a complete response in a time period that was 75 calendar days or longer but less than 90 calendar days. OR The Reliability Coordinator's response to documented technical comments on its SOL Methodology indicated that a change will not be made, but did not include an explanation of why the change will not be made.	The Reliability Coordinator received documented technical comments on its SOL Methodology and provided a complete response in a time period that was 90 calendar days or longer. OR The Reliability Coordinator's response to documented technical comments on its SOL Methodology did not indicate whether a change will be made to the SOL Methodology.

Text of Requirement	Lower	Moderate	High	Severe
WECC -- FAC-011-2 R1. The following Interconnection-wide Regional Difference shall be applicable in the Western Interconnection:	Not applicable.	Not applicable.	Not applicable.	Not applicable.
WECC -- FAC-011-2 R1.1. As governed by the requirements of R2.4 and R2.5, starting with all Facilities in service, shall require the evaluation of the following multiple Facility Contingencies when establishing SOLs:	Not applicable.	Not applicable.	Not applicable.	The methodology fails to address any of the evaluations listed in 1.1.1 through 1.1.7
WECC -- FAC-011-2 R1.1.1. Simultaneous permanent phase to ground Faults on different phases of each of two adjacent transmission circuits on a multiple circuit tower, with Normal Clearing. If multiple circuit towers are used only for station entrance and exit purposes, and if they do not exceed five towers at each station, then this condition is an acceptable risk and therefore can be excluded.	Not applicable.	Not applicable.	Not applicable.	The following were excluded when establishing SOLs: simultaneous permanent phase to ground Faults on different phases of each of two adjacent transmission circuits on a multiple circuit tower, with Normal Clearing.
WECC -- FAC-011-2 R1.1.2. A permanent phase to ground Fault on any generator, transmission circuit, transformer, or bus section with Delayed Fault Clearing except for bus sectionalizing breakers or bus-tie breakers addressed in E1.1.7	Not applicable.	Not applicable.	Not applicable.	The following were excluded when establishing SOLs: a permanent phase to ground Fault on any generator, transmission circuit, transformer, or bus section with Delayed Fault Clearing except for bus sectionalizing breakers or bus-tie breakers addressed in E1.1.7
WECC -- FAC-011-2 R1.1.3. Simultaneous permanent loss of both poles of a direct current bipolar Facility without an alternating current Fault.	Not applicable.	Not applicable.	Not applicable.	The following was excluded when establishing SOLs: simultaneous permanent loss of both poles of a direct current bipolar Facility without an alternating current Fault.

Text of Requirement	Lower	Moderate	High	Severe
WECC -- FAC-011-2 R1.1.4. The failure of a circuit breaker associated with a Special Protection System to operate when required following: the loss of any element without a Fault; or a permanent phase to ground Fault, with Normal Clearing, on any transmission circuit, transformer or bus section.	Not applicable.	Not applicable.	Not applicable.	The following was excluded when establishing SOLs: the failure of a circuit breaker associated with a Special Protection System to operate when required following: the loss of any element without a Fault; or a permanent phase to ground Fault, with Normal Clearing, on any transmission circuit, transformer or bus section.
WECC -- FAC-011-2 R1.1.5. A non-three phase Fault with Normal Clearing on common mode Contingency of two adjacent circuits on separate towers unless the event frequency is determined to be less than one in thirty years.	Not applicable.	Not applicable.	Not applicable.	The following was excluded when establishing SOLs: a non-three phase Fault with Normal Clearing on common mode Contingency of two adjacent circuits on separate towers unless the event frequency is determined to be less than one in thirty years.
WECC -- FAC-011-2 R1.1.6. A common mode outage of two generating units connected to the same switchyard, not otherwise addressed by FAC-010.	Not applicable.	Not applicable.	Not applicable.	The following was excluded when establishing SOLs: a common mode outage of two generating units connected to the same switchyard, not otherwise addressed by FAC-010.
WECC -- FAC-011-2 R1.1.7. The loss of multiple bus sections as a result of failure or delayed clearing of a bus tie or bus sectionalizing breaker to clear a permanent Phase to Ground Fault.	Not applicable.	Not applicable.	Not applicable.	The following was excluded when establishing SOLs: the loss of multiple bus sections as a result of failure or delayed clearing of a bus tie or bus sectionalizing breaker to clear a permanent Phase to Ground Fault.
WECC -- FAC-011-2 R1.2. SOLs shall be established such that for multiple Facility Contingencies in E1.1.1 through E1.1.5 operation within the SOL shall provide system performance consistent with the following:	Not applicable.	Not applicable.	Not applicable.	The methodology fails to address any of the evaluations listed in 1.2.1 through 1.2.7
WECC -- FAC-011-2 R1.2.1. All Facilities are operating within their applicable Post-Contingency thermal, frequency and voltage limits.	Not applicable.	Not applicable.	Not applicable.	SOLs do not provide system performance consistent with: All Facilities are operating within their applicable Post-Contingency thermal, frequency and voltage limits.

Text of Requirement	Lower	Moderate	High	Severe
WECC -- FAC-011-2 R1.2.2. Cascading does not occur.	Not applicable.	Not applicable.	Not applicable.	SOLs do not provide system performance consistent with: cascading does not occur.
WECC -- FAC-011-2 R1.2.3. Uncontrolled separation of the system does not occur.	Not applicable.	Not applicable.	Not applicable.	SOLs do not provide system performance consistent with: uncontrolled separation of the system does not occur.
WECC -- FAC-011-2 R1.2.4. The system demonstrates transient, dynamic and voltage stability.	Not applicable.	Not applicable.	Not applicable.	SOLs do not provide system performance consistent with: the system demonstrates transient, dynamic and voltage stability.
WECC -- FAC-011-2 R1.2.5. Depending on system design and expected system impacts, the controlled interruption of electric supply to customers (load shedding), the planned removal from service of certain generators, and/or the curtailment of contracted firm (non-recallable reserved) electric power transfers may be necessary to maintain the overall security of the interconnected transmission systems.	Not applicable.	Not applicable.	Not applicable.	SOLs do not provide system performance consistent with: depending on system design and expected system impacts, the controlled interruption of electric supply to customers (load shedding), the planned removal from service of certain generators, and/or the curtailment of contracted firm (non-recallable reserved) electric power transfers may be necessary to maintain the overall security of the interconnected transmission systems.
WECC -- FAC-011-2 R1.2.6. Interruption of firm transfer, Load or system reconfiguration is permitted through manual or automatic control or protection actions.	Not applicable.	Not applicable.	Not applicable.	SOLs do not provide system performance consistent with: interruption of firm transfer, Load or system reconfiguration is permitted through manual or automatic control or protection actions.
WECC -- FAC-011-2 R1.2.7. To prepare for the next Contingency, system adjustments are permitted, including changes to generation, Load and the transmission system topology when determining limits.	Not applicable.	Not applicable.	Not applicable.	SOLs do not provide system performance consistent with: to prepare for the next Contingency, system adjustments are permitted, including changes to generation, Load and the transmission system topology when determining limits.
WECC -- FAC-011-2 R1.3. SOLs shall be established such that for multiple Facility Contingencies in E1.1.6 through E1.1.7 operation within the SOL shall provide system performance consistent with the following with respect to impacts on	Not applicable.	Not applicable.	Not applicable.	The methodology fails to address any of the evaluations listed in 1.3.1

Text of Requirement	Lower	Moderate	High	Severe
other systems:				
WECC -- FAC-011-2 R1.3.1. Cascading does not occur.	Not applicable.	Not applicable.	Not applicable.	The SOL methodology fails to address: cascading does not occur.
WECC -- FAC-011-2 R1.4. The Western Interconnection may make changes (performance category adjustments) to the Contingencies required to be studied and/or the required responses to Contingencies for specific facilities based on actual system performance and robust design. Such changes will apply in determining SOLs.	Not applicable.	Not applicable.	Not applicable.	Not applicable.

Text of Requirement	Lower	Moderate	High	Severe
FAC-014-2 R1. The Reliability Coordinator shall ensure that SOLs, including Interconnection Reliability Operating Limits (IROLs), for its Reliability Coordinator Area are established and that the SOLs (including Interconnection Reliability Operating Limits) are consistent with its SOL Methodology.	There are SOLs, for the Reliability Coordinator Area, but from 1% up to but less than 25% of these SOLs are inconsistent with the Reliability Coordinator's SOL Methodology. (R1)	There are SOLs, for the Reliability Coordinator Area, but 25% or more, but less than 50% of these SOLs are inconsistent with the Reliability Coordinator's SOL Methodology. (R1)	There are SOLs, for the Reliability Coordinator Area, but 50% or more, but less than 75% of these SOLs are inconsistent with the Reliability Coordinator's SOL Methodology. (R1)	There are SOLs for the Reliability Coordinator Area, but one or more of these the SOLs are inconsistent with the Reliability Coordinator's SOL Methodology. (R1)
FAC-014-2 R2. The Transmission Operator shall establish SOLs (as directed by its Reliability Coordinator) for its portion of the Reliability Coordinator Area that are consistent with its Reliability Coordinator's SOL Methodology.	The Transmission Operator has established SOLs for its portion of the Reliability Coordinator Area, but from 1% up to but less than 25% of these SOLs are inconsistent with the Reliability Coordinator's SOL Methodology. (R2)	The Transmission Operator has established SOLs for its portion of the Reliability Coordinator Area, but 25% or more, but less than 50% of these SOLs are inconsistent with the Reliability Coordinator's SOL Methodology. (R2)	The Transmission Operator has established SOLs for its portion of the Reliability Coordinator Area, but 50% or more, but less than 75% of these SOLs are inconsistent with the Reliability Coordinator's SOL Methodology. (R2)	The Transmission Operator has established SOLs for its portion of the Reliability Coordinator Area, but 75% or more of these SOLs are inconsistent with the Reliability Coordinator's SOL Methodology. (R2)
FAC-014-2 R3. The Planning Authority shall establish SOLs, including IROLs, for its Planning Authority Area that are consistent with its SOL Methodology	There are SOLs, for the Planning Coordinator Area, but from 1% up to, but less than, 25% of these SOLs are inconsistent with the Planning Coordinator's SOL Methodology. (R3)	There are SOLs, for the Planning Coordinator Area, but 25% or more, but less than 50% of these SOLs are inconsistent with the Planning Coordinator's SOL Methodology. (R3)	There are Sols for the Planning Coordinator Area, but 10% or more, but less than 75% of these SOLs are inconsistent with the Planning Coordinator's SOL Methodology. (R3)	There are SOLs, for the Planning Coordinator Area, but 75% or more of these SOLs are inconsistent with the Planning Coordinator's SOL Methodology. (R3)

Text of Requirement	Lower	Moderate	High	Severe
FAC-014-2 R4. The Transmission Planner shall establish SOLs, including IROLs, for its Transmission Planning Area that are consistent with its Planning Authority's SOL Methodology.	The Transmission Planner has established SOLs for its portion of the Planning Coordinator Area, but up to 25% of these SOLs are inconsistent with the Planning Coordinator's SOL Methodology. (R4)	The Transmission Planner has established SOLs for its portion of the Planning Coordinator Area, but 25% or more, but less than 50% of these SOLs are inconsistent with the Planning Coordinator's SOL Methodology. (R4)	The Transmission Planner has established SOLs for its portion of the Reliability Coordinator Area, but 50% or more, but less than 75% of these SOLs are inconsistent with the Planning Coordinator's SOL Methodology. (R4)	The Transmission Planner has established SOLs for its portion of the Planning Coordinator Area, but one or more of these SOLs are inconsistent with the Planning Coordinator's SOL Methodology. (R4)
FAC-014-2 R5. The Reliability Coordinator, Planning Authority and Transmission Planner shall each provide its SOLs and IROLs to those entities that have a reliability-related need for those limits and provide a written request that includes a schedule for delivery of those limits as follows:	The responsible entity provided its SOLs to all the requesting entities but missed meeting one or more of the schedules by less than 15 calendar days. (R5)	One of the following: The responsible entity provided its SOLs to all but one of the requesting entities within the schedules provided. (R5) Or The responsible entity provided its SOLs to all the requesting entities but missed meeting one or more of the schedules for 15 or more but less than 30 calendar days. (R5) OR The supporting information provided with the IROLs does not address 5.1.4	One of the following: The responsible entity provided its SOLs to all but two of the requesting entities within the schedules provided. (R5) Or The responsible entity provided its SOLs to all the requesting entities but missed meeting one or more of the schedules for 30 or more but less than 45 calendar days. (R5) OR The supporting information provided with the IROLs does not address 5.1.3	One of the following: The responsible entity failed to provide its SOLs to more than two of the requesting entities within 45 calendar days of the associated schedules. (R5) OR The supporting information provided with the IROLs does not address 5.1.1 and 5.1.2.

Text of Requirement	Lower	Moderate	High	Severe
FAC-014-2 R5.1. The Reliability Coordinator shall provide its SOLs (including the subset of SOLs that are IROLs) to adjacent Reliability Coordinators and Reliability Coordinators who indicate a reliability-related need for those limits, and to the Transmission Operators, Transmission Planners, Transmission Service Providers and Planning Authorities within its Reliability Coordinator Area. For each IROL, the Reliability Coordinator shall provide the following supporting information:	Not applicable.	Not applicable.	Not applicable.	The Reliability Coordinator did not provide its SOLs (including the subset of SOLs that are IROLs) to adjacent Reliability Coordinators and Reliability Coordinators who indicate a reliability-related need for those limits, and to the Transmission Operators, Transmission Planners, Transmission Service Providers and Planning Authorities within its Reliability Coordinator Area.
FAC-014-2 R5.1.1. Identification and status of the associated Facility (or group of Facilities) that is (are) critical to the derivation of the IROL.	Not applicable.	Not applicable.	Not applicable.	For any IROL, the Reliability Coordinator did not provide the Identification and status of the associated Facility (or group of Facilities) that is (are) critical to the derivation of the IROL.
FAC-014-2 R5.1.2. The value of the IROL and its associated Tv.	Not applicable.	Not applicable.	Not applicable.	For any IROL, the Reliability Coordinator did not provide the value of the IROL and its associated Tv.
FAC-014-2 R5.1.3. The associated Contingency(ies).	Not applicable.	Not applicable.	Not applicable.	For any IROL, the Reliability Coordinator did not provide the associated Contingency(ies).
FAC-014-2 R5.1.4. The type of limitation represented by the IROL (e.g., voltage collapse, angular stability).	Not applicable.	Not applicable.	Not applicable.	For any IROL, the Reliability Coordinator did not provide the type of limitation represented by the IROL (e.g., voltage collapse, angular stability).
FAC-014-2 R5.2. The Transmission Operator shall provide any SOLs it developed to its Reliability Coordinator and to the Transmission Service Providers that share its portion of the Reliability Coordinator Area.	Not applicable.	Not applicable.	Not applicable.	The Transmission Operator did not provide the complete set of SOLs it developed to its Reliability Coordinator and to the Transmission Service Providers that share its portion of the Reliability Coordinator Area.

Text of Requirement	Lower	Moderate	High	Severe
FAC-014-2 R5.3. The Planning Authority shall provide its SOLs (including the subset of SOLs that are IROLs) to adjacent Planning Authorities, and to Transmission Planners, Transmission Service Providers, Transmission Operators and Reliability Coordinators that work within its Planning Authority Area.	Not applicable.	Not applicable.	Not applicable.	The Planning Authority did not provide its complete set of SOLs (including the subset of SOLs that are IROLs) to adjacent Planning Authorities, and to Transmission Planners, Transmission Service Providers, Transmission Operators and Reliability Coordinators that work within its Planning Authority Area.
FAC-014-2 R5.4. The Transmission Planner shall provide its SOLs (including the subset of SOLs that are IROLs) to its Planning Authority, Reliability Coordinators, Transmission Operators, and Transmission Service Providers that work within its Transmission Planning Area and to adjacent Transmission Planners.	Not applicable.	Not applicable.	Not applicable.	The Transmission Planner did not provide its complete set of SOLs (including the subset of SOLs that are IROLs) to its Planning Authority, Reliability Coordinators, Transmission Operators, and Transmission Service Providers that work within its Transmission Planning Area and to adjacent Transmission Planners.
FAC-014-2 R6. The Planning Authority shall identify the subset of multiple contingencies (if any), from Reliability Standard TPL-003 which result in stability limits.	~~The Planning Authority failed to notify the Reliability Coordinator in accordance with R6.2~~ Not applicable.	Not applicable.	~~The Planning Authority identified the subset of multiple contingencies which result in stability limits **but** did not provide the list of multiple contingencies and associated limits to one Reliability Coordinator that monitors the Facilities associated with these limits. (R6.1)~~ Not applicable.	The Planning Authority did not identify the subset of multiple contingencies which result in stability limits. (R6) ~~OR~~ ~~The Planning Authority identified the subset of multiple contingencies which result in stability limits but did not provide the list of multiple contingencies and associated limits to more than one Reliability Coordinator that monitors the Facilities associated with these limits. (R6.1)~~

Text of Requirement	Lower	Moderate	High	Severe
FAC-014-2 R6.1. The Planning Authority shall provide this list of multiple contingencies and the associated stability limits to the Reliability Coordinators that monitor the facilities associated with these contingencies and limits.	Not applicable.	Not applicable.	Not applicable.	The Planning Authority did not identify the subset of multiple contingencies, from TPL-003 that resulted in stability limits and provide the complete list of multiple contingencies and the associated stability limits to the Reliability Coordinators that monitor the facilities associated with these contingencies and limits.
FAC-014-2 R6.2. If the Planning Authority does not identify any stability-related multiple contingencies, the Planning Authority shall so notify the Reliability Coordinator.	Not applicable.	Not applicable.	Not applicable.	The Planning Authority did not notify the Reliability Coordinator that it did not identify any stability-related multiple contingencies,

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2008–0001; T.D. TTB–74; Re: Notice No. 81]

RIN 1513–AB45

Establishment of the Haw River Valley Viticultural Area (2007R–179P)

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

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the 868-square mile ''Haw River Valley'' viticultural area in Alamance, Caswell, Chatham, Guilford, Orange, and Rockingham Counties, North Carolina. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Dates:* April 29, 2009.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No.

158, Petaluma, CA 94952; phone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Haw River Valley Petition

Patricia McRitchie of McRitchie Associates, LLC, submitted a petition to establish the 868-square mile Haw River Valley viticultural area in North Carolina on behalf of all the local grape growers and winemakers.

The proposed Haw River Valley viticultural area is located in the Piedmont in north-central North Carolina. According to the USGS maps and the written boundary description submitted with the petition, the Haw River Valley region lies between the cities of Greensboro and Chapel Hill, and includes the southeastern-flowing Haw River and its accompanying watershed. The proposed Haw River Valley viticultural area lies to the east of the established Yadkin Valley viticultural area (27 CFR 9.174) and the established Swan Creek viticultural area (27 CFR 9.211). According to the petitioner, the proposed viticultural area encompasses approximately 868 square miles and includes 60 acres of vineyards and 6 wineries. The petitioner submitted a map indicating that the 14 vineyards within the proposed viticultural area are geographically disbursed throughout the area.

The petitioner explains that the distinguishing features of the proposed Haw River Valley viticultural area include its geology, soils, elevation, and climate. Its inland location, between the Atlantic Ocean and the Appalachian Mountains, and its complex geological history combine to create a unique viticultural region. The Haw River watershed, which comprises 98 percent of the proposed viticultural area, was used to determine the proposed boundary line.

Name Evidence

According to the petitioner, the ''Haw'' name originated with the Sissipahaw Indians, Native Americans living in small villages along the Haw River. After the arrival of the first Europeans in the 16th century, the Sissipahaw Indians eventually abandoned their villages along the Haw River and joined other Native Americans in other parts of the North Carolina Piedmont.

The petitioner states that the ''Haw River'' and ''Haw River Valley'' names both have been used in reference to the region that the viticultural area petition describes. In the early 1700's John Lawson, an English naturalist and surveyor, wrote an account of his party crossing the ''famous Hau-River'' to get a safe distance from the Sissipahaw Indians. Also, in the ''Shuttle & Plow: A History of Alamance County, North Carolina'' (Alamance County Historical Association, 1999), Carole Troxler and William Vincent explain that the names ''Hawfields'' and ''Haw River Settlement'' reference the earliest colonial settlements in the Haw River Valley. Further, in ''Orange County, 1752–1952'' (The Journal of Southern History, May 1954), authors Hugh Lefler and Paul Wager reference the Haw River Valley.

According to evidence presented in the petition, the Haw River Valley name continues to be used to describe the region. The Burlington/Alamance County Convention Center and Visitors Bureau Web site (*http://www.burlington-area-nc.org/events.asp*) describes a September 9, 2006, Paddle[boat] dinner cruise that experiences the ''richness of the Haw River Valley.'' A flyer for the Haw River Festival for the Community describes a display of arrowheads and artifacts found in the Haw River Valley. The Haw River Valley Web site (*http://www.hawrivervalley.com/*) describes the area as a large, fertile region encompassing parts of Rockingham, Caswell, Guilford, Alamance, and Chatham Counties in North Carolina.

On November 23, 2006, the Greensboro News Record ran an article describing a strong storm depositing ''prodigious rain into the Haw River valley and effectively shutting down parts of the region.''

Boundary Evidence

According to the petitioner, the boundary of the proposed Haw River Valley viticultural area is based on nearly the entirety of the Haw River watershed's distinctive underlying geology and soils. The Haw River is approximately 110 miles long, and the proposed viticultural area includes that portion of the Haw River between Williamsburg and Griffins Crossroad, a town located approximately 2.5 miles northwest of Everett Jordan Lake. The Haw River headwaters start northwest of

Greensboro, and the river travels east and south-southeast, gaining momentum in the Piedmont region. The river eventually flows into the Everett Jordan Lake in Chatham County, joins the Deep River south of the Everett Jordan Lake dam, and then flows into the Cape Fear River.

The urban, nonagricultural Greensboro region lies close to, but outside of, the proposed northwestern portion of the boundary. Also, differing geology, soils, and elevations distinguish the Haw River watershed from the Dan River watershed to the north, the Inner Coastal Province to the east, the Sandhills to the south, and the western Piedmont Province to the west.

Distinguishing Features

According to the petitioner, the distinguishing features of the proposed Haw River Valley viticultural area include its geology, soils, elevation, and climate. The combination of the underlying geology of the Haw River Valley and its inland, nonmountainous geography influences the soils and the climate and creates a unique grape-growing region.

Geology

The petitioner states that Matthew Mayberry, of the Mayberry Land Company in Elkin, North Carolina, provided the geological data and documentation for the Haw River Valley viticultural area petition. Citing ''North Carolina: The Years Before Man,'' by Fred Beyer (Carolina Academic Press, Durham, North Carolina, 1991), Mr. Mayberry provided an interpretation of the geology in the Haw River Valley, as follows.

The Piedmont and Blue Ridge Provinces share a geologic history dating back to the formation of the continental landmasses. The mountain building of the region is attributed to plate tectonics, the spectrum of uplifting, and erosion. Long-term erosion has reduced the mountains to lower, more level terrains that gently slope toward the ocean. The Piedmont and Coastal Plain landforms are part of the erosional leveling process of the third global tectonic cycle.

The rock units in the Haw River Valley region date back approximately 700 million years. In contrast, the age of the rock units of the Yadkin Valley region, in the western part of the Piedmont Province, date back approximately 1.5 billion years.

The Haw River Valley region, including its rock units, is the geological result of volcanic metamorphism and igneous activity stemming from island arcs. Island arcs form when a continental plate overrides an oceanic plate, resulting in subduction zones that create volcanoes. In the northeastern part of the proposed viticultural area a caldera formed in an area of formerly intense volcanic activity. The caldera collapsed into a 36- by 9-mile ellipse-shaped area that igneous rock eventually filled.

The proposed Haw River Valley viticultural area lies in the Carolina Slate Belt, a result of tectonic movements of the North American and African continental plates. The slate belt trends to the northwest and disappears under the Carolina Coastal Plain, which extends southeast and eventually dips under the Atlantic Ocean.

Finally, according to Mr. Mayberry, the major rock types in the Haw River Valley include the following: Porpyritic Granite/Felsic Intrusive Complex, Felsic Gneiss, Mafic Volcanics, Felsic Volcanics, Intermediate Intrusive Rocks, Mica Gneiss, and Mica Schist (Muscovite and/or Biotite). The Haw River Valley igneous and metamorphic rocks, composed of magma, differ from those rocks formed from magma in the western Piedmont and Appalachian Mountains.

Soils

The petitioner states that James Lewis, soil scientist, Natural Resources Conservation Service, United States Department of Agriculture, provided the soils information for the Haw River Valley viticultural area petition. In his research, Mr. Lewis consulted the published soil surveys of Alamance, Caswell, Chatham, Guilford, Orange, and Rockingham Counties, North Carolina, and available updates to existing soil surveys.

According to Mr. Lewis, the soils of the proposed Haw River Valley viticultural area, compared to those of the surrounding regions, have unique and distinguishable characteristics. Most of the soils in the Haw River Valley are acidic and low in natural fertility.

The proposed Haw River Valley viticultural area is entirely in the udic soil moisture regime. (The udic moisture regime is common to soils of humid climates with well-distributed rainfall or with enough rain in summer that the amount of stored moisture plus rainfall is approximately equal to, or exceeds, the amount of evapotranspiration. In most years, at some time during the year water moves down through the soil.) Further, the proposed viticultural area lies dominantly in the thermic soil temperature regime, averaging 59 to 72 degrees F at a soil depth of 20 inches.

The soils in the proposed viticultural area formed primarily in residuum, or saprolite, weathered from igneous, intermediate, and mafic intrusive rocks and in felsic and intermediate volcanic rocks of the Carolina Slate Belt.

In the central portion of the proposed Haw River Valley viticultural area, the soils formed in residuum from mafic intrusive rocks. In these areas the soils have a clayey subsoil of mixed mineralogy and slightly better natural fertility than that of the soils to the east and south. The Mecklenburg soils are on nearly level and moderately steep uplands. These soils have moderately slow permeability. The Enon and Iredell soils are on uplands and some side slopes. These soils have a clayey subsoil, and they have a high or very high shrink-swell potential, respectively; because of these properties, they have poor internal drainage and perch water during wet periods.

In the western and northeastern portions of the proposed viticultural area, the soils formed mainly in igneous and intermediate intrusive rocks. In these areas the Cecil, Appling, Vance, Helena, and Sedgefield soils are dominant. Typically, these soils are deep and have a clayey subsoil. Also scattered throughout these areas are the Enon and Iredell soils formed in mafic, intrusive rocks.

In the northwesternmost portion of the proposed viticultural area, the soils formed in residuum derived from metamorphic rocks. In this area the Fairview, Clifford, Toast, and Rasalo soils on nearly level to steep uplands are dominant. Further, except for the Rasalo soils, these soils are very deep and well drained, and have a clayey subsoil, moderate permeability, and good internal structure. In the Rasalo soils, because of high shrinking and swelling in the clayey subsoil and slow permeability, the soils tend to perch water during wet periods.

In the eastern and southern portions of the Haw River Valley and in parts of the southwestern and northwestern portions, the soils formed primarily in residuum derived from felsic and intermediate volcanic rocks. In these areas the Georgeville and Herndon soils are very deep and well drained, and have a loamy surface layer, a clayey subsoil, moderate permeability, and good internal structure. These soils are on gently sloping to moderately steep uplands. Also in these areas are the Callison, Secrest, and Kirksey soils. These soils are moderately well drained and have a loamy surface layer and subsoil. These soils are on level flats and gently sloping upland ridges, in

depressions, and around heads of drains. They vary in depth depending on the underlying soft and hard bedrock; consequently, they have poor internal drainage and perch water during wet periods.

The soils weathered from rocks within the proposed Haw River Valley viticultural area have significant differences compared to the soils in the surrounding areas to the east, west, and south. However, they are similar to the soils in the surrounding north portion and in the northwesternmost portion of the proposed viticultural area.

East of the proposed Haw River Valley viticultural area, on the Inner Coastal Plain, the soils, predominantly Udults, have a thermic temperature regime, a udic moisture regime, a loamy or sandy surface layer, and a loamy or clayey subsoil. The soils are generally deep and well drained to poorly drained, and maintain adequate moisture during the viticultural growing season.

West of the proposed Haw River Valley viticultural area, most soils formed in saprolite weathered from igneous intrusive rocks and some gneisses and schists of the Charlotte Belt. However, some soils formed in residuum derived from intrusions of mafic rocks and have a clay subsoil of mixed mineralogy. The Gaston and Mecklenburg soils have moderate or moderately slow permeability and are moderately suitable for viticulture. The Enon and Iredell soils are also west of the proposed viticultural area.

According to ''Scientists Study Why More Storms Form in the Sandhills in the Summer,'' a news release dated July 5, 2001, from North Carolina State University, the soils are deep and sandy in the Sandhills region south of the proposed Haw River Valley viticultural area. Unlike the clay soils in the Piedmont, these soils, like the sandy loam of the Inner Coastal Plain, do not have much clay.

Elevation

The elevations in the proposed Haw River Valley viticultural area range from 350 feet at the southeastern boundary corner to over 800 feet at the northwestern boundary corner, according to elevation maps by John Boyer (Virginia Polytechnic Institute and State University, 2001) that the North Carolina Grape Council provided. The four physiographic regions of North Carolina are the eastern Outer Coastal Plain, the Inner Coastal Plain, the central Piedmont Province, and the western Blue Ridge Province, as shown on the Physiography of North Carolina map by M.A. Medina *et al.* (North Carolina Geological Survey, Division of Land Resources, 2004).

The Haw River Valley region lies in the Piedmont Province near the demarcation of the fall line with the Inner Coastal Plain, according to ''History and Environment of North Carolina's Piedmont Evolution of a Value-Added Society,'' by John Rogers (University of North Carolina, Department of Geology, 1999). Areas near the fall zone vary from 300 to 600 feet in elevation, in contrast with the approximately 1,500-foot elevation at the foot of the Blue Ridge Mountains, as shown on the Boyer maps.

The Piedmont Province consists of generally rolling, well rounded hills and ridges with a difference in elevation of a few hundred feet between the hills and valleys, according to the Boyer maps. The Inner Coastal Plain, which has stair-step planar terraces that dip gently toward the ocean, ranges from 25 to 600 feet in elevation, the petitioner explains.

Climate

The climatic features that distinguish the proposed Haw River Valley viticultural area are precipitation, air temperature, and growing season, according to the petitioner. The Haw River Valley has more moderate temperatures and greater precipitation than those in the surrounding areas outside the proposed boundary line. The climate within the Haw River Valley, which is generally similar throughout, varies from the surrounding regions outside the proposed viticultural area, according to data obtained from the Southeast Regional Climate Center (SRCC) and from horticultural information leaflets by Katharine Perry (North Carolina State University, revised December 1998).

The data from SRCC includes those from stations within and outside the boundary line of the proposed Haw River Valley viticultural area, according to the petitioner. The table below lists the SRCC weather stations consulted and the direction and distance of the location of each weather station in relation to the Haw River Valley.

Weather station	Compass direction from Haw River Valley	Approximate distance from Haw River Valley
Brookneal, Virginia	North	84 miles.
Louisburg, North Carolina	East	52 miles.
Pinehurst, North Carolina	South	70 miles.
Mocksville, North Carolina	West	50 miles.

The air temperatures in the Haw River Valley region are generally warmer than those in the area to the north, cooler than those in the areas to the south and east, and similar to those in the area to the west on the Piedmont Province, the petitioner explains using SRCC data. The petitioner also provides, in the table below, the SRCC average annual high and low air temperatures, snow accumulation, and rainfall for the Haw River Valley and the areas outside the proposed boundary line.

Relation to the proposed Haw River Valley viticultural area	Average annual			
	High air temperature	Low air temperature	Snow accumulation (in.)	Rainfall (in.)
Inside the boundary line	69.8 °F	46.6 °F	5.9	45.27
To the north	67 °F	42 °F	11.3	41.65
To the east	71.4 °F	46 °F	4.1	45.98
To the south	72.7 °F	49.2 °F	4.1	49.11

Relation to the proposed Haw River Valley viticultural area	Average annual			
	High air temperature	Low air temperature	Snow accumulation (in.)	Rainfall (in.)
To the west	70 °F	45.1 °F	9.9	44.57

According to the petitioner, the annual frost-free growing season of the proposed Haw River Valley viticultural area runs from April 1 to November 1 and totals 214 days. The growing season is 2 to 4 weeks longer than that for the region to the west, and is similar to those for the regions to the immediate south and to the east of the proposed boundary line. The growing season length and frost-free dates fall within the parameters for successful viticulture of vinifera, hybrid, and Muscadine grapes, according to the ''Analysis for Viticultural Suitability in North Carolina,'' a map prepared by John Boyer (Virginia Polytechnic Institute and State University, 2001).

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 81 regarding the proposed Haw River Valley viticultural area in the **Federal Register** (73 FR 16800) on March 31, 2008. In that notice, TTB invited comments by May 30, 2008, from all interested persons. We expressed particular interest in receiving comments on whether the proposed area name, Haw River Valley, as well as the Haw River name, would result in a conflict with currently used brand names. We also solicited comments on the sufficiency and accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. We received four comments from individuals in response to that notice. All four comments supported the establishment of the Haw River Valley viticultural area as proposed.

TTB Finding

After careful review of the petition and the comments received, TTB finds that the evidence submitted supports the establishment of the proposed viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the ''Haw River Valley'' viticultural area in Alamance, Caswell, Chatham, Guilford, Orange, and Rockingham Counties, North Carolina, effective 30 days from the publication date of this document.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this document.

Maps

The maps for determining the boundary of the viticultural area are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, ''Haw River Valley,'' is recognized under 27 CFR 4.39(i)(3) as a name of viticultural significance. The text of the new regulation clarifies this point. In addition, with the establishment of the Haw River Valley viticultural area, the name ''Haw River'' standing alone will be considered a term of viticultural significance. Consumers and vintners could reasonably attribute the quality, reputation, or other characteristic of wine made from grapes grown in the proposed Haw River Valley viticultural area to the name Haw River itself. A name also has viticultural significance when so determined by a TTB officer (see 27 CFR 4.39(i)(3)). Therefore, the proposed part 9 regulatory text set forth in this document specifies both ''Haw River Valley'' and ''Haw River'' as terms of viticultural significance for purposes of part 4 of the TTB regulations.

Once this final rule becomes effective, wine bottlers using ''Haw River Valley'' or ''Haw River'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's full name, ''Haw River Valley,'' as an appellation of origin.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a previously approved label uses the name ''Haw River Valley'' or ''Haw River'' for a wine that does not meet the 85 percent standard, the previously approved label will be subject to revocation upon the effective date of the establishment of the Haw River Valley viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. *See* 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend 27 CFR, chapter 1, part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Amend subpart C by adding § 9.214 to read as follows:

§ 9.214 Haw River Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Haw River Valley''. For purposes of part 4 of this chapter, ''Haw River Valley'' and ''Haw River'' are terms of viticultural significance.

(b) *Approved maps.* The two United States Geological Survey 1:100,000-scale metric topographic maps used to determine the boundary of the Haw River Valley viticultural area are titled:

(1) Greensboro, North Carolina, 1984; and

(2) Chapel Hill, North Carolina, 1984.

(c) *Boundary.* The Haw River Valley viticultural area is located in all of Alamance County and portions of Caswell, Chatham, Guilford, Orange, and Rockingham Counties. The boundary of the Haw River Valley viticultural area is as described below:

(1) Begin at a point on the Greensboro map at the intersection of the Caswell and Orange Counties boundary line with Lynch Creek, southeast of Corbett and the Corbett Ridge, and then proceed in a straight line southeast 2 miles to the intersection of North Carolina State Highway 49 and an unnamed, light-duty road, known locally as McCulloch Road, located approximately 1 mile northeast of Carr, in west Orange County; then

(2) Proceed in a straight line south-southwest 11.9 miles, crossing over U.S. Interstate 85, to Buckhorn at Turkey Hill Creek in west Orange County; then

(3) Proceed in a straight line southeast 5.2 miles, crossing onto the Chapel Hill map, to its intersection with Dodsons Crossroad and an unnamed, light-duty road that runs generally north-northeast-south-southwest in west Orange County; then

(4) Proceed south-southwest on the unnamed, light-duty road 3.4 miles to its intersection with North Carolina State Highway 54, also known as Star Route 54, east of White Cross in west Orange County; then

(5) Proceed southeast in a straight line 14.1 miles, crossing over Terrells Mountain, Wilkinson Creek and several of its eastern tributaries, and U.S. Route 15–501, until the line intersects with an unnamed road, known locally as Gilead Church Road, and U.S. Route 64 at Griffins Crossroads in Chatham County; then

(6) Proceed generally west along U.S. Route 64 approximately 20.7 miles to its intersection with U.S. Route 421 in Siler City, Chatham County; then

(7) Proceed generally northwest on U.S. Route 421 approximately 5.6 miles to its intersection with the Randolph County line, southeast of Staley; then

(8) Proceed straight north along the Randolph County line 7.4 miles to its intersection with the Guilford County line; then

(9) Proceed straight west along the Randolph County line 5.8 miles to its intersection with U.S. Route 421; then

(10) Proceed in a straight line north-northwest 20.5 miles, crossing onto the Greensboro map, to its intersection with U.S. Route 29 and North Carolina State Highway 150, between Browns Summit and Monticello in Guilford County; then

(11) Proceed generally east and north on North Carolina State Highway 150 approximately 4.3 miles to its intersection with North Carolina State Highway 87, east-northeast of Williamsburg in southeast Rockingham County; then

(12) Proceed in a straight line east-northeast 8.3 miles, crossing over the Caswell County line to a point at the intersection of the 236-meter elevation line, as marked on the map, and an unnamed road, known locally as Cherry Grove Road; then

(13) Proceed east and southeast along the unnamed road, known locally as Cherry Grove Road, 5 miles to its intersection with North Carolina State Highway 62 at Jericho in Caswell County; then

(14) Proceed generally southeast on North Carolina State Highway 62 approximately 1.8 miles to its intersection with an unnamed road, known locally as Bayne's Road at Anderson in Caswell County; then

(15) Proceed generally east on the unnamed road known locally as Baynes Road 2 miles to its intersection with North Carolina State Highway 119 at Baynes in Caswell County; then

(16) Proceed generally south-southeast along North Carolina State Highway 119 approximately 1.7 miles to its intersection with the Caswell County line; then

(17) Proceed straight east along the Caswell County line 4.3 miles to the beginning point.

Signed: January 23, 2009.

John J. Manfreda,

Administrator.

Approved: February 17, 2009.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).

[FR Doc. E9–7035 Filed 3–27–09; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 470

RIN 1215–AB71

Obligation of Federal Contractors and Subcontractors; Notice of Employee Rights Concerning Payment of Union Dues or Fees

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Labor.

ACTION: Final rule; rescission of regulations.

SUMMARY: This final rule rescinds the regulations found at 29 CFR part 470, which implemented Executive Order 13201. Executive Order 13496, signed by President Obama on January 30, 2009 and published in the **Federal Register** on February 4, 2009, revoked Executive Order 13201, thus removing the authority under which such regulations were promulgated. Accordingly, the Secretary of Labor (the ''Secretary'') is issuing this final rule to rescind the regulations that implement and enforce the now-revoked Executive Order 13201.

DATES: *Effective Date*: March 30, 2009.

FOR FURTHER INFORMATION CONTACT: Denise M. Boucher, Director, Office of Policy Reports and Disclosure, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N–5609, Washington, DC 20210, (202) 693–1185. This number is not toll-free.

SUPPLEMENTARY INFORMATION: On January 30, 2009, President Obama signed Executive Order 13496, which revokes Executive Order 13201 and instructs executive departments and agencies to revoke any orders, rules, regulations, or policies implementing or enforcing Executive Order 13201. Executive Order 13496, Section 13, 74 FR 6107 (February 4, 2009). Pursuant to the now-revoked Executive Order 13201, the Secretary promulgated

regulations implementing and enforcing its terms, 29 CFR Part 470, which required government contractors and subcontractors to post notices informing their employees of certain rights under federal law. These regulations also required federal contracting agencies and covered government contractors and subcontractors to include certain provisions of the Order in their contracts, subcontracts, and purchase orders.

Because Executive Order 13496 expressly revokes Executive Order 13201, the authority for the Secretary's implementing regulations at 29 CFR Part 470 no longer exists. As a result, the implementing regulations are now without force and effect, and the Secretary no longer enforces them. Consequently, this final rule rescinds these regulations.

The Secretary has determined that it need not publish the rescission of these regulations as a proposed rule, as generally required by the Administrative Procedure Act (''APA''), 5 U.S.C. 553(b). Notice to the public and provision of a public comment period for this rule are unnecessary because Executive Order 13201, which authorized 29 CFR Part 470, has been revoked, and, therefore, no legal basis exists for these regulations. Furthermore, Section 13 of Executive Order 13496 provides that regulations implementing Executive Order 13201 shall be promptly revoked. Therefore, good cause exists for dispensing with the notice and comment requirements of the APA. 5 U.S.C. 553(b)(B). For the same reasons, good cause exists to make this rule effective immediately upon publication of this rule. 5 U.S.C. 553(d)(3).

Regulatory Procedures

Executive Order 12866

This final rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department has also determined that this rule is not ''economically significant'' as defined in section 3(f)(1) of Executive Order 12866. Therefore, the information enumerated in section 6(a)(3)(C) of the order is not required.

Regulatory Flexibility Act

This rescission is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601(2) and 604(a)) because a general notice of proposed rulemaking was not published nor an opportunity for notice and public comment provided in connection therewith. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Secretary has certified this conclusion to the Chief Counsel for Advocacy of the Small Business Administration.

Unfunded Mandates Reform

Unfunded Mandates Reform Act of 1995—This rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

Paperwork Reduction Act

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 29 CFR Part 470

Administrative practice and procedure, Government contracts, Union dues, Labor unions.

■ Accordingly, pursuant to Executive Order 13496 and for the reasons stated herein, the Secretary hereby amends Title 29 of the Code of Federal Regulations, Subchapter C, by removing Part 470 and reserving it for future use.

Authority: Executive Order 13496.

Signed in Washington, DC, this 24th day of March, 2009.

Shelby Hallmark,

Acting Assistant Secretary for Employment Standards.

Andrew D. Auerbach,

Deputy Director, Office of Labor-Management Standards.

[FR Doc. E9–6926 Filed 3–27–09; 8:45 am]

BILLING CODE 4510–CP–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0070]

RIN 1625–AA87

Security Zone; Port of Mayaguez, Puerto Rico

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request comments.

SUMMARY: The Coast Guard is establishing 50 yard moving and fixed security zones around cruise ships entering, departing, mooring or anchoring at the Port of Mayaguez, Puerto Rico. This proposed regulation is necessary to protect cruise ships operating in this port. This interim rule excludes entry into the security zones by all vessels, with the exception of servicing pilot boats and assisting tug boats, without the express permission of the Captain of the Port San Juan or a designated representative.

DATES: This interim rule is effective April 29, 2009. Comments and related material must reach the Docket Management Facility on or before April 29, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2008–0070 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this interim rule, call Lieutenant Junior Grade Rachael Love of Sector San Juan, Prevention Operations Department at (787)–289–2071. If you have questions on viewing or submitting material to the docket, call

Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0070), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2008–0070'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert USCG–2008–0070 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the USCG Sector San Juan, Prevention Operations Department, 5 Calle La Puntilla, San Juan, PR 00901, between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before April 29, 2009 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

On September 23, 2008, we published a notice of proposed rulemaking (NPRM) entitled Security Zone; Port of Mayaguez, Puerto Rico in the **Federal Register** (73 FR 54757). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing operations in the Middle East have made it prudent for U.S. ports to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to these concerns, security zones around passenger vessels are necessary to ensure the safety and protection of the passengers aboard. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. Moreover, the Coast Guard has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) (the ''Magnuson Act''), and implementing the regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

The Coast Guard has established similar rules in the ports of San Juan, St. Thomas, and Frederiksted, St. Croix. This regulation was not necessary in the past because cruise ships only recently began to hail at the Port of Mayaguez.

For the aforementioned reasons, the Coast Guard is establishing moving and fixed security zones to prevent vessels or persons from accessing the navigable waters around and under passenger vessels in the Port of Mayaguez, Puerto Rico. Due to the continued heightened security concerns, this rule is necessary to provide for the safety of the port, the vessels, and the passengers and crew on the vessels.

Discussion of Comments and Changes

Although no comments were received on the NPRM, the COTP would like to receive comments on a proposed change to the regulated text before issuing a final rule. The purpose of this change would be to clarify which vessels are considered cruise ship vessels.

The pertinent sentence from the regulatory text in the NPRM reads as follows:

> *Cruise ship* means a passenger vessel greater than 100 feet in length that is authorized to carry more than 150 passengers for hire, except for a ferry.

The replacement language proposed for the final rule would read as follows:

> *Cruise ship* means any vessel over 100 gross register tons, carrying more than 12 passengers for hire.

The difference between the two versions is that in the final rule, instead of being defined by its length, a cruise ship would be defined by its gross tonnage and can carry more than 12

passengers instead of more than 150 passengers.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This rule may have impact on the public, but these potential impacts will be minimized for the following reason: there is ample room for vessels to navigate around this proposed security zone. Also, the Captain of the Port San Juan may, on a case-by-case basis, allow persons or vessels to enter the proposed security zone.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit, anchor, or moor within 50 yards of a cruise ship in the Port of Mayaguez. This rule will not have a significant impact on a substantial number of small entities because cruise ships infrequently visit the Port of Mayaguez and small vessel traffic would be able to safely transit around the security zones.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. Paragraph (34)(g) covers regulations establishing, disestablishing, or changing security zones. This rule involves establishing a security zone in the Port of Mayaguez. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add: § 165.778 to read as follows:

§ 165.778 Security Zone; Port of Mayaguez, Puerto Rico.

(a) *Security zone*. A moving and fixed security zone is established around all cruise ships entering, departing, mooring, or anchoring in the Port of Mayaguez, Puerto Rico. The regulated area includes all waters from surface to bottom within a 50-yard radius of the vessel. The zone is activated when a cruise ship on approach to the Port of Mayaguez enters within 1 nautical mile of the Bahia de Mayaguez Range Front Light located in position 18°13′12″ N 067°10′46″ W. The zone is deactivated when a cruise ship departs the Port of Mayaguez and is no longer within 1 nautical mile of the Bahia de Mayaguez Range Front Light.

(b) *Definitions*. As used in this section:

Cruise ship means any vessel over 100 gross registered tons, carrying more than 12 passengers for hire.

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels and Federal, State, and local officers designated by or assisting the Captain of the Port San Juan in the enforcement of the security zone.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, except U.S. Coast Guard or U.S. Naval vessels and servicing pilot and tug boats.

(c) *Regulations*. (1) No person or vessel may enter into the security zone under this section unless authorized by the Captain of the Port San Juan.

(2) Vessels seeking to enter a security zone established in this section, may contact the COTP on VHF channel 16 or by telephone at (787) 289–2041 to request permission.

(3) All persons and vessels granted permission to enter the security zone must comply with the orders of the Captain of the Port San Juan and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(d) *Effective period*. This section is effective on April 29, 2009.

Dated: February 20, 2009.

E. Pino,

Captain, U.S. Coast Guard, Captain of the Port San Juan.

[FR Doc. E9–6976 Filed 3–27–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 223 and 261

RIN 0596–AB81

Sale and Disposal of National Forest System Timber; Special Forest Products and Forest Botanical Products

AGENCY: Forest Service, USDA.

ACTION: Notice of Delay of Effective Date.

SUMMARY: The Department is delaying the effective date of this rule for an additional 60 days. The Department previously delayed the effective date and sought comment for 30 days ending on March 2, 2009 (74 FR 5107). More time is needed for the Forest Service to properly respond to the comments and to consider any potential changes to the rule. The rule regulates the sustainable free use, commercial harvest, and sale of special forest products and forest botanical products from National Forest System lands.

DATES: The effective date for the rule published at 73 FR 79367, December 29, 2008, is delayed until May 29, 2009.

FOR FURTHER INFORMATION CONTACT: Richard Fitzgerald, Forest Service, Forest Management Staff, (202) 205–1753. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

Dated: March 25, 2009.

Ann Bartuska,

Acting Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. E9–7075 Filed 3–26–09; 11:15 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[FWS–R7–EA–2007–0025; 70101–1335–0064L6]

RIN 1018-AV72

Subsistence Management Regulations for Public Lands in Alaska—2009-10 and 2010-11 Subsistence Taking of Fish Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes regulations for seasons, harvest limits, methods, and means related to taking of fish for subsistence uses during the 2009-10 and 2010-11 regulatory years. The Federal Subsistence Board completes the biennial process of

revising subsistence fishing and shellfishing regulations in odd-numbered years and subsistence hunting and trapping regulations in even-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable biennial cycle. This rulemaking replaces the fish taking regulations that expire on March 31, 2009.

DATES: Section ___.24(a)(2) is effective April 1, 2009. Sections ___.27 and ___.28 are effective April 1, 2009, through March 31, 2011.

ADDRESSES: The Board meeting transcripts are available for review at the Office of Subsistence Management, 1011 East Tudor Road, MS 121, Anchorage, AK 99503, or on the Office of Subsistence Management website (*http://alaska.fws.gov/asm/home.html*).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov*. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743–9461.

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program grants a preference for subsistence uses of fish and wildlife resources on Federal public lands and waters in Alaska. The Secretaries first published regulations to carry out this program in the **Federal Register** on May 29, 1992 (57 FR 22940). The Program has subsequently amended these regulations several times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, ''Parks, Forests, and Public Property,'' and Title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Federal Subsistence Board

Consistent with subpart B of these regulations, the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board is made up of:

- Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- Alaska Regional Director, U.S. Fish and Wildlife Service;
- Alaska Regional Director, U.S. National Park Service;
- Alaska State Director, U.S. Bureau of Land Management;
- Alaska Regional Director, U.S. Bureau of Indian Affairs; and
- Alaska Regional Forester, U.S. Forest Service.

Through the Board, these agencies participate in the development of regulations for subparts A, B, and C, which set forth the basic program, and they continue to work together on regularly revising the subpart D regulations, which, among other things, set forth specific harvest seasons and limits.

Federal Subsistence Regional Advisory Councils

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Board addresses customary and traditional use determinations during the applicable biennial cycle. Section ___.24 (customary and traditional use determinations) was originally published in the **Federal Register** on May 29, 1992 (57 FR 22940). The regulations at 36 CFR 242.4 and 50 CFR 100.4 define ''customary and traditional use'' as ''a long-established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation. . . .'' Since that time, the Board has made a number of customary and traditional use determinations at the request of impacted subsistence users. Those modifications, along with some administrative corrections, were published in the **Federal Register** as follows:

TABLE 1: MODIFICATIONS TO §___.24.

Federal Register citation	Date of publication:	Rule made changes to the following provisions of ___.24:
59 FR 27462	May 27, 1994	Wildlife and Fish/Shellfish.
59 FR 51855	October 13, 1994	Wildlife and Fish/Shellfish.
60 FR 10317	February 24, 1995	Wildlife and Fish/Shellfish.
61 FR 39698	July 30, 1996	Wildlife and Fish/Shellfish.
62 FR 29016	May 29, 1997	Wildlife and Fish/Shellfish.
63 FR 35332	June 29, 1998	Wildlife and Fish/Shellfish.
63 FR 46148	August 28, 1998	Wildlife and Fish/Shellfish.
64 FR 1276	January 8, 1999	Fish/Shellfish.
64 FR 35776	July 1, 1999	Wildlife.
65 FR 40730	June 30, 2000	Wildlife.

TABLE 1: MODIFICATIONS TO §___.24.—Continued

Federal Register citation	Date of publication:	Rule made changes to the following provisions of ___.24:
66 FR 10142	February 13, 2001	Fish/Shellfish.
66 FR 33744	June 25, 2001	Wildlife.
67 FR 5890	February 7, 2002	Fish/Shellfish.
67 FR 43710	June 28, 2002	Wildlife.
68 FR 7276	February 12, 2003	Fish/Shellfish.
Note: The Board met May 20–22, 2003, but did not make any additional customary and traditional use determinations.		
69 FR 5018	February 3, 2004	Fish/Shellfish.
69 FR 40174	July 1, 2004	Wildlife.
70 FR 13377	March 21, 2005	Fish/Shellfish.
70 FR 36268	June 22, 2005	Wildlife.
71 FR 15569	March 29, 2006	Fish/Shellfish.
71 FR 37642	June 30, 2006	Wildlife.
72 FR 12676	March 16, 2007	Fish/Shellfish.
Note: The Board met December 11-13, 2007, but did not make any additional customary and traditional use determinations.		
72 FR 73426	December 27, 2007	Wildlife/Fish.
73 FR 35726	June 26, 2008	Wildlife.

Current Rule

The Departments published a proposed rule on April 17, 2008 (73 FR 20887), to amend subparts C and D of 36 CFR 242 and 50 CFR 100. The proposed rule opened a comment period, which closed on June 30, 2008. The Departments advertised the proposed rule by mail, radio, and newspaper. During that period, the Regional Councils met and, in addition to other Regional Council business, received suggestions for proposals from the public. The Board received a total of 15 proposals for changes to subparts C and D. After the proposal period closed, the Board prepared a booklet describing the proposals and distributed them to the public; this was also available online. The public then had an additional 30 days in which to comment on the proposals for changes to the regulations.

The 10 Regional Councils met again, received public comments, and formulated their recommendations to the Board on proposals for their respective regions. The Regional Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, a Council Chair, or a designated representative, presented each Council's recommendations at the Board meeting of January 13-15, 2009. These final regulations reflect Board review and consideration of Regional Council recommendations and public comments. The public has had extensive opportunity to review and comment on all changes. In section ___.24(a)(2) corrections to the spelling of certain village names and an updated format have been made, resulting in a more readable document.

Of the 15 proposals, the Board adopted five, rejected five, deferred four, and one was withdrawn by the proponent. Of the five adopted proposals, three were adopted with modifications. The Board deferred four proposals to allow collection of additional information.

Summary of Proposals Rejected by the Board

The Board rejected or deferred nine proposals. The rejected proposals were recommended for rejection by at least one of the Regional Councils, except for the one noted in this summary. Detailed information relating to justification for the action on each proposal may be found in the Board meeting materials and transcripts, available for review at the Office of Subsistence Management, 1011 East Tudor Road, MS 121, Anchorage, Alaska 99503, or on the Office of Subsistence Management website (*http://alaska.fws.gov/asm/home.html*).

- The Board rejected one proposal to alter various management components of the Prince of Wales/Kosciusko Islands and the Southeast Alaska Federal subsistence steelhead fisheries as unnecessarily restrictive for subsistence users and not supported by substantial evidence.
- The Board rejected one proposal to stop the issuance of Federal subsistence fishing permits for streams crossed by or adjacent to the Juneau road system as unnecessarily restrictive for subsistence users.
- The Board rejected one proposal to recognize a customary and traditional use determination for residents of Ninilchik for resident fish in the Kenai Peninsula District waters north of and including the Kenai River drainage, contrary to the modified proposal recommendation of the Southcentral Council, based on a lack of substantial evidence.
- The Board rejected one proposal to revise Federal regulatory language to be more consistent with State regulations in the Cook Inlet area concerning the harvest of rainbow/steelhead, Arctic grayling, and burbot as being

unnecessarily restrictive for subsistence users.

• The Board rejected one proposal to allow dipnetting from the banks of the Kenai River at the Moose Range Meadows site, based on conservation concerns.

• The Board deferred one proposal to have ''no Federal subsistence priority'' for customary and traditional use determination for the Juneau road system area to allow more time to develop a complete analysis of customary and traditional use of fish in Districts 11 and 15.

• The Board deferred one proposal to close Federal public waters in the Makhnati Island area to the harvest of herring and herring spawn except for Federally qualified subsistence users to allow completion and analysis of studies being conducted, for a period not to exceed two years.

• The Board deferred two proposals, one that would restrict gillnet mesh size and one to restrict gillnet depth on the Yukon River not to extend beyond April 2010. The Board based its decisions on the need for additional evidence to support the proposals and a concern for unnecessary restrictions on subsistence users.

Summary of Proposals Adopted by the Board

The Board adopted five proposals. Two of these proposals were adopted as submitted, and three were adopted with modifications suggested by the respective Regional Council, modifications developed during the analysis process, or modifications developed during the Board's public deliberations.

All of the adopted proposals were recommended for adoption by at least one of the Regional Councils, although further modifications were made to some during Board deliberations, and were based on harvest practices or on protecting fish populations. Detailed information relating to justification for the action on each proposal may be found in the Board meeting materials and transcripts, available for review at the Office of Subsistence Management, 1011 East Tudor Road, MS 121, Anchorage, Alaska 99503, or on the Office of Subsistence Management website (*http://alaska.fws.gov/asm/home.html*).

The Board adopted regulations pertaining to specific management areas as follows:

Chignik Fishery Management Area

• More closely aligned Federal regulations with State subsistence regulations in the Chignik Management Area to allow subsistence salmon fishing in the Clark River and Home Creek tributaries of Chignik Lake.

Southeast Alaska Fishery Management Area

• Revised language to clarify restrictions and exceptions to the accumulation of harvest limits of fish between Federal subsistence and State fisheries. The Board adopted this recommendation, which was different than the Southeast Alaska Regional Advisory Council recommendation, for conservation purposes.

Norton Sound- Port Clarence Fishery Management Area

• Closed the Federal public waters of the Unalakleet River, upstream from the mouth of the Chirosky River to the taking of Chinook salmon from July 1-31.

Cook Inlet Fishery Management Area

• Revised and clarified the requirements for the marking of fish and information recorded on permits and better defined the lower boundary of the Kasilof River fishing area.

• Aligned slot size limit for early-run Chinook salmon in the Kenai River with State regulation, and revised daily harvest and possession limits for lake trout in Hidden Lake to be consistent with the current harvest limit scheme resulting from changes to State regulations.

These final regulations reflect Board review and consideration of Regional Council recommendations and public comments. All Board members have reviewed this rule and agree with its substance. Because this rule concerns public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Conformance with Statutory and Regulatory Authorities

Administrative Procedure Act Compliance

The Board has provided extensive opportunity for public input and involvement in compliance with Administrative Procedure Act requirements, including participation in multiple Regional Council meetings, additional public review and comment on all proposals for regulatory change, and opportunity for additional public comment during the Board meeting prior to deliberation. Additionally, an administrative mechanism exists (and has been used by the public) to request reconsideration of the Board's decision on any particular proposal for regulatory change. Therefore, we believe that sufficient public notice has been given to affected persons about the Board decisions.

In the more than 19 years the Program has been operating, no benefit to the public has been demonstrated by delaying the effective date of the subsistence regulations. A lapse in regulatory control could affect the continued viability of fish or wildlife populations and future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(d)(3) to make this rule effective upon the date set forth in **DATES** to ensure continued operation of the subsistence program.

National Environmental Policy Act

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations. The following **Federal Register** documents pertain to this rulemaking:

TABLE 2: SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A, B, AND C: FEDERAL REGISTER DOCUMENTS PERTAINING TO THE FINAL RULE

Federal Register citation:	Date of publication:	Category:	Details:
57 FR 22940	May 29, 1992	Final Rule	''Subsistence Management Regulations for Public Lands in Alaska; Final Rule'' was published in the Federal Register.

TABLE 2: SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A, B, AND C: FEDERAL REGISTER DOCUMENTS PERTAINING TO THE FINAL RULE—Continued

Federal Register citation:	Date of publication:	Category:	Details:
64 FR 1276	January 8, 1999	Final Rule	Amended the regulations to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. Extended the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act and the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or to an Alaska Native Corporation. Specified and clarified the Secretaries' authority to determine when hunting, fishing, or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority.
66 FR 31533	June 12, 2001	Interim Rule	Expanded the authority that the Board may delegate to agency field officials and clarified the procedures for enacting emergency or temporary restrictions, closures, or openings.
67 FR 30559	May 7, 2002	Final Rule	Amended the operating regulations in response to comments on the June 12, 2001, interim rule. Also corrected some inadvertent errors and oversights of previous rules.
68 FR 7703	February 18, 2003	Direct Final Rule	Clarified how old a person must be to receive certain subsistence use permits and removed the requirement that Regional Councils must have an odd number of members.
68 FR 23035	April 30, 2003	Affirmation of Direct Final Rule.	Because we received no adverse comments on the direct final rule (67 FR 30559), we adopted the direct final rule.
69 FR 60957	October 14, 2004	Final Rule	Clarified the membership qualifications for Regional Advisory Council membership and relocated the definition of "regulatory year" from subpart A to subpart D of the regulations.
70 FR 76400	December 27, 2005	Final Rule	Revised jurisdiction in marine waters and clarified jurisdiction relative to military lands.
71 FR 49997	August 24, 2006	Final Rule	Revised the jurisdiction of the subsistence program by adding submerged lands and waters in the area of Makhnati Island, near Sitka, AK. This allowed subsistence users to harvest marine resources in this area under seasons, harvest limits, and methods specified in the regulations.
72 FR 25688	May 7, 2007	Final Rule	Revised nonrural determinations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

This rule does not contain any new information collection requirements that need Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule applies to the use of public lands in Alaska. The information collection requirements described in this rule are already approved by OMB and have been assigned control number 1018–0075, which expires October 31, 2009. We may not conduct or sponsor and you are not required to respond to a collection of information request unless it displays a currently valid OMB control number.

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a)Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b)Whether the rule will create inconsistencies with other agencies' actions.

(c)Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d)Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 2 million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value

of $3.00 per pound, this amount would equate to about $6 million in food value statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no substantial direct effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service;
- Drs. Warren Eastland and Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jerry Berg and Carl Jack, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Steve Kessler, Alaska Regional Office, U.S. Forest Service.

List of subjects in 36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

List of subjects in 50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

■ For the reasons set out in the preamble, the Federal Subsistence Board amends title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART ___—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101-3126; 18 U.S.C. 3551-3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

■ 2. In Subpart C of 36 CFR part 242 and 50 CFR part 100, §___.24(a)(2) is revised to read as follows:

§ ___.24 Customary and traditional use determinations.

(a) * * *

(2) *Fish determinations.* The following communities and areas have been found to have a positive customary and traditional use determination in the listed area for the indicated species:

Fish Determinations

Area	Species	Determination
KOTZEBUE AREA		
	All fish.	Residents of the Kotzebue Area.
NORTON SOUND-PORT CLARENCE AREA		
Norton Sound–Port Clarence Area, waters draining into Norton Sound between Point Romanof and Canal Point.	All fish.	Residents of Stebbins, St. Michael, and Kotlik.
Norton Sound-Port Clarence Area, remainder.	All fish.	Residents of the Norton Sound–Port Clarence Area.
YUKON-NORTHERN AREA		
Yukon River drainage.	Salmon, other than fall chum salmon.	Residents of the Yukon River drainage and the community of Stebbins.

Fish Determinations—Continued

Area	Species	Determination
Yukon River drainage.	Fall chum salmon.	Residents of the Yukon River drainage and the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
Yukon River drainage.	Freshwater fish (other than salmon).	Residents of the Yukon–Northern Area.
Remainder of the Yukon–Northern Area.	All fish.	Residents of the Yukon–Northern Area, excluding the residents of the Yukon River drainage and excluding those domiciled in Unit 26B.
Tanana River drainage contained within the Tetlin NWR and the Wrangell–St. Elias NPP.	Freshwater fish (other than salmon).	Residents of the Yukon–Northern Area and residents of Mentasta Lake, Chistochina, Slana, and all residents living between Mentasta Lake and Chistochina.
KUSKOKWIM AREA		
	Salmon.	Residents of the Kuskokwim Area, except those persons residing on the United States military installations located on Cape Newenham, Sparrevohn USAFB, and Tatalina USAFB.
	Rainbow trout.	Residents of the communities of Akiachak, Akiak, Aniak, Atmautluak, Bethel, Chuathbaluk, Crooked Creek, Eek, Goodnews Bay, Kasigluk, Kwethluk, Lower Kalskag, Napakiak, Napaskiak, Nunapitchuk, Oscarville, Platinum, Quinhagak, Tuluksak, Tuntutuliak, and Upper Kalskag.
	Pacific cod.	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.
	All other fish other than herring.	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparrevohn USAFB, and Tatalina USAFB.
Waters around Nunivak Island.	Herring and herring roe.	Residents within 20 miles of the coast between the westernmost tip of the Naskonat Peninsula and the terminus of the Ishowik River and on Nunivak Island.
BRISTOL BAY AREA		
Nushagak District, including drainages flowing into the district.	Salmon and freshwater fish.	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek–Kvichak District—Naknek River drainage.	Salmon and freshwater fish.	Residents of the Naknek and Kvichak River drainages.
Naknek–Kvichak District—Kvichak/Iliamna–Lake Clark drainage.	Salmon and freshwater fish.	Residents of the Kvichak/Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and freshwater fish.	Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.
Egegik District, including drainages flowing into the district.	Salmon and freshwater fish.	Residents of South Naknek, the Egegik District and freshwater drainages flowing into the district.
Ugashik District, including drainages flowing into the district.	Salmon and freshwater fish.	Residents of the Ugashik District and freshwater drainages flowing into the district.
Togiak District.	Herring spawn on kelp.	Residents of the Togiak District and freshwater drainages flowing into the district.
Remainder of the Bristol Bay Area.	All fish.	Residents of the Bristol Bay Area.
ALEUTIAN ISLANDS AREA		
	All fish.	Residents of the Aleutian Islands Area and the Pribilof Islands.
ALASKA PENINSULA AREA		
	All other fish in the Alaska Peninsula Area.	Residents of the Alaska Peninsula Area.
CHIGNIK AREA		
	Salmon and fish other than rainbow/steelhead trout.	Residents of the Chignik Area.
KODIAK AREA		

Fish Determinations—Continued

Area	Species	Determination
Except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°51.10' North latitude) mid-stream Shelikof Strait, north and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°10.34' North latitude, 156°20.22' West longitude).	Salmon.	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
Kodiak Area.	Fish other than rainbow/steelhead trout and salmon.	Residents of the Kodiak Area.
COOK INLET AREA		
Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.	All fish.	Residents of the communities of Hope and Cooper Landing.
Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.	Salmon.	Residents of the community of Ninilchik.
Waters within the Kasilof River drainage within the Kenai NWR.	All fish.	Residents of the community of Ninilchik.
Waters within Lake Clark National Park draining into and including that portion of Tuxedni Bay within the park.	Salmon.	Residents of the Tuxedni Bay area.
Cook Inlet Area	Fish other than salmon, Dolly Varden, trout, char, grayling, and burbot.	Residents of the Cook Inlet Area.
PRINCE WILLIAM SOUND AREA		
Southwestern District and Green Island.	Salmon.	Residents of the Southwestern District, which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon.	Residents of the villages of Tatitlek and Ellamar.
Copper River drainage upstream from Haley Creek.	Freshwater fish.	Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Gulkana National Wild and Scenic River.	Freshwater fish.	Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Paxson-Sourdough, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Waters of the Prince William Sound Area, except for the Copper River drainage upstream of Haley Creek.	Freshwater fish (trout, char, whitefish, suckers, grayling, and burbot).	Residents of the Prince William Sound Area, except those living in the Copper River drainage upstream of Haley Creek.

Fish Determinations—Continued

Area	Species	Determination
Chitina Subdistrict of the Upper Copper River District.	Salmon.	Residents of Cantwell, Chickaloon, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Paxson-Sourdough, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Glennallen Subdistrict of the Upper Copper River District.	Salmon.	Residents of the Prince William Sound Area and residents of Cantwell, Chickaloon, Chisana, Dot Lake, Healy Lake, Northway, Tanacross, Tetlin, Tok, and those individuals living along the Alaska Highway from the Alaskan/Canadian border to Dot Lake, along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek, and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek.	Salmon.	Residents of Mentasta Lake and Dot Lake.
Remainder of the Prince William Sound Area.	Salmon.	Residents of the Prince William Sound Area.
Waters of the Bering River area from Point Martin to Cape Suckling.	Eulachon.	Residents of Cordova.
Waters of the Copper River Delta from the Eyak River to Point Martin.	Eulachon.	Residents of Cordova, Chenega Bay, and Tatitlek.
YAKUTAT AREA		
Fresh water upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Fresh water upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden, steelhead trout, and smelt.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Remainder of the Yakutat Area.	Dolly Varden, trout, smelt, and eulachon.	Residents of Southeastern Alaska and Yakutat Areas.
SOUTHEASTERN ALASKA AREA		
District 1—Section 1E in waters of the Naha River and Roosevelt Lagoon.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Saxman.
District 1—Section 1F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Saxman.
Districts 2, 3, and 5 and waters draining into those Districts.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents living south of Sumner Strait and west of Clarence Strait and Kashevaroff Passage.
District 5—North of a line from Point Barrie to Boulder Point.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 6 and waters draining into that District.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the living south of Sumner Strait and west of Clarence Strait and Kashevaroff Passage; residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island); residents of drainages flowing into Districts 7 & 8, including the communities of Petersburg & Wrangell; and residents of the communities of Meyers Chuck and Kake.

Fish Determinations—Continued

Area	Species	Determination
District 7 and waters draining into that District.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island); residents of drainages flowing into Districts 7 & 8, including the communities of Petersburg & Wrangell; and residents of the communities of Meyers Chuck and Kake.
District 8 and waters draining into that District.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of drainages flowing into Districts 7 & 8, residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island), and residents of Meyers Chuck.
District 9—Section 9A.	Salmon, Dolly	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9B north of the latitude of Swain Point.	Varden, trout, smelt, and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134o30' West longitude, including Killisnoo Island.
District 13—Section 13A south of the latitude of Cape Edward.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City and Borough of Sitka in drainages that empty into Section 13B north of the latitude of Dorothy Narrows.
District 13—Section 13B north of the latitude of Redfish Cape.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City and Borough of Sitka in drainages that empty into Section 13B north of the latitude of Dorothy Narrows.
District 13—Section 13C.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City and Borough of Sitka in drainages that empty into Section 13B north of the latitude of Dorothy Narrows.
District 13—Section 13C east of the longitude of Point Elizabeth.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134o30' West longitude, including Killisnoo Island.
District 14.	All fish.	Residents of drainages flowing into Sections 12A, 13A, and District 14.
Remainder of the Southeastern Alaska Area	Dolly Varden, trout, smelt, and eulachon.	Residents of Southeastern Alaska and Yakutat Areas.

* * * * *

Subpart D—Subsistence Taking of Fish and Wildlife

■ 3. In subpart D of 36 CFR part 242 and 50 CFR part 100, §___.27 is added to read as follows:

§ ___.27 Subsistence taking of fish.

(a) *Applicability.*

(1) Regulations in this section apply to the taking of fish or their parts for subsistence uses.

(2) You may take fish for subsistence uses at any time by any method unless you are restricted by the subsistence fishing regulations found in this section. The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative, except as modified by regulations in §___.27(i). This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional fish of that species under any other harvest limit specified for a State season.

(b) [Reserved].

(c) *Methods, means, and general restrictions.*

(1) Unless otherwise specified in this section or under terms of a required subsistence fishing permit (as may be modified by this section), you may use the following legal types of gear for subsistence fishing:

(i) A set gillnet;
(ii) A drift gillnet;
(iii) A purse seine;
(iv) A hand purse seine;
(v) A beach seine;
(vi) Troll gear;
(vii) A fish wheel;
(viii) A trawl;
(ix) A pot;
(x) A longline;
(xi) A fyke net;
(xii) A lead;
(xiii) A herring pound;
(xiv) A dip net;
(xv) Jigging gear;
(xvi) A mechanical jigging machine;
(xvii) A handline;
(xviii) A cast net;
(xix) A rod and reel; and
(xx) A spear.

(2) You must include an escape mechanism on all pots used to take fish

or shellfish. The escape mechanisms are as follows:

(i) A sidewall, which may include the tunnel, of all shellfish and bottomfish pots must contain an opening equal to or exceeding 18 inches in length, except that in shrimp pots the opening must be a minimum of 6 inches in length. The opening must be laced, sewn, or secured together by a single length of untreated, 100 percent cotton twine, no larger than 30 thread. The cotton twine may be knotted at each end only. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The cotton twine may not be tied or looped around the web bars. Dungeness crab pots may have the pot lid tie-down straps secured to the pot at one end by a single loop of untreated, 100 percent cotton twine no larger than 60 thread, or the pot lid must be secured so that, when the twine degrades, the lid will no longer be securely closed;

(ii) All king crab, Tanner crab, shrimp, miscellaneous shellfish and bottomfish pots may, instead of complying with paragraph (c)(2)(i) of this section, satisfy the following: a sidewall, which may include the tunnel, must contain an opening at least 18 inches in length, except that shrimp pots must contain an opening at least 6 inches in length. The opening must be laced, sewn, or secured together by a single length of treated or untreated twine, no larger than 36 thread. A galvanic timed-release device, designed to release in no more than 30 days in saltwater, must be integral to the length of twine so that, when the device releases, the twine will no longer secure or obstruct the opening of the pot. The twine may be knotted only at each end and at the attachment points on the galvanic timed-release device. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The twine may not be tied or looped around the web bars.

(3) For subsistence fishing for salmon, you may not use a gillnet exceeding 50 fathoms in length, unless otherwise specified in this section. The gillnet web must contain at least 30 filaments of equal diameter or at least 6 filaments, each of which must be at least 0.20 millimeter in diameter.

(4) Except as otherwise provided for in this section, you may not obstruct more than one-half the width of any stream with any gear used to take fish for subsistence uses.

(5) You may not use live nonindigenous fish as bait.

(6) You must have your first initial, last name, and address plainly and legibly inscribed on the side of your fish wheel facing midstream of the river.

(7) You may use kegs or buoys of any color but red on any permitted gear, except in the following areas where kegs or buoys of any color, including red, may be used:

(i) Yukon–Northern Area; and

(ii) Kuskokwim Area.

(8) You must have your first initial, last name, and address plainly and legibly inscribed on each keg, buoy, stakes attached to gillnets, stakes identifying gear fished under the ice, and any other unattended fishing gear which you use to take fish for subsistence uses.

(9) You may not use explosives or chemicals to take fish for subsistence uses.

(10) You may not take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction, unless otherwise indicated.

(11) Transactions between rural residents. Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from other rural residents. The Board may recognize regional differences and regulates customary trade differently for separate regions of the State.

(i) Bristol Bay Fishery Management Area—The total cash value per household of salmon taken within Federal jurisdiction in the Bristol Bay Fishery Management Area and exchanged in customary trade to rural residents may not exceed $500.00 annually.

(ii) Upper Copper River District—The total number of salmon per household taken within the Upper Copper River District and exchanged in customary trade to rural residents may not exceed 50% of the annual harvest of salmon by the household. No more than 50% of the annual household limit may be sold under paragraphs ___.27(c)(11) and (12) when taken together. These customary trade sales must be immediately recorded on a customary trade recordkeeping form. The recording requirement and the responsibility to ensure the household limit is not exceeded rests with the seller.

(12) Transactions between a rural resident and others. In customary trade, a rural resident may trade fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from individuals other than rural residents if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under the regulations in this part. The Board may recognize regional differences and regulates customary trade differently for separate regions of the State.

(i) Bristol Bay Fishery Management Area—The total cash value per household of salmon taken within Federal jurisdiction in the Bristol Bay Fishery Management Area and exchanged in customary trade between rural residents and individuals other than rural residents may not exceed $400.00 annually. These customary trade sales must be immediately recorded on a customary trade recordkeeping form. The recording requirement and the responsibility to ensure the household limit is not exceeded rest with the seller.

(ii) Upper Copper River District—The total cash value of salmon per household taken within the Upper Copper River District and exchanged in customary trade between rural residents and individuals other than rural residents may not exceed $500.00 annually. No more than 50% of the annual household limit may be sold under paragraphs ___.27(c)(11) and (12) when taken together. These customary trade sales must be immediately recorded on a customary trade recordkeeping form. The recording requirement and the responsibility to ensure the household limit is not exceeded rest with the seller.

(13) No sale to, nor purchase by, fisheries businesses.

(i) You may not sell fish, their parts, or their eggs taken under the regulations in this part to any individual, business, or organization required to be licensed as a fisheries business under Alaska Statute AS 43.75.011 (commercial limited-entry permit or crew license holders excluded) or to any other business as defined under Alaska Statute 43.70.110(1) as part of its business transactions.

(ii) If you are required to be licensed as a fisheries business under Alaska Statute AS 43.75.011 (commercial limited-entry permit or crew license holders excluded) or are a business as defined under Alaska Statute 43.70.110(1), you may not purchase, receive, or sell fish, their parts, or their eggs taken under the regulations in this part as part of your business transactions.

(14) Except as provided elsewhere in this section, you may not take rainbow/steelhead trout.

(15) You may not use fish taken for subsistence use or under subsistence regulations in this part as bait for commercial or sport fishing purposes.

(16) Unless specified otherwise in this section, you may use a rod and reel to

take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) If you are required to obtain a subsistence fishing permit for an area, that permit is required to take fish for subsistence uses with rod and reel in that area. The harvest and possession limits for taking fish with a rod and reel in those areas are the same as indicated on the permit issued for subsistence fishing with other gear types;

(ii) Except as otherwise provided for in this section, if you are not required to obtain a subsistence fishing permit for an area, the harvest and possession limits for taking fish for subsistence uses with a rod and reel are the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season and/or harvest limit for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

(17) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish for subsistence uses at any time.

(18) Provisions on ADF&G subsistence fishing permits that are more restrictive or in conflict with the provisions contained in this section do not apply to Federal subsistence users.

(19) You may not intentionally waste or destroy any subsistence-caught fish or shellfish; however, you may use for bait or other purposes, whitefish, herring, and species for which harvest limits, seasons, or other regulatory methods and means are not provided in this section, as well as the head, tail, fins, and viscera of legally taken subsistence fish.

(20) The taking of fish from waters within Federal jurisdiction is authorized outside of published open seasons or harvest limits if the harvested fish will be used for food in traditional or religious ceremonies that are part of funerary or mortuary cycles, including memorial potlatches, provided that:

(i) Prior to attempting to take fish, the person (or designee) or Tribal Government organizing the ceremony contacts the appropriate Federal fisheries manager to provide the nature of the ceremony, the parties and/or clans involved, the species and the number of fish to be taken, and the Federal waters from which the harvest will occur;

(ii) The taking does not violate recognized principles of fisheries conservation, and uses the methods and means allowable for the particular species published in the applicable Federal regulations (the Federal fisheries manager will establish the number, species, or place of taking if necessary for conservation purposes);

(iii) Each person who takes fish under this section must, as soon as practical, and not more than 15 days after the harvest, submit a written report to the appropriate Federal fisheries manager, specifying the harvester's name and address, the number and species of fish taken, and the date and locations of the taking; and

(iv) No permit is required for taking under this section; however, the harvester must be eligible to harvest the resource under Federal regulations.

(d) [Reserved].

(e) *Fishing permits and reports.*

(1) You may take salmon only under the authority of a subsistence fishing permit, unless a permit is specifically not required in a particular area by the subsistence regulations in this part, or unless you are retaining salmon from your commercial catch consistent with paragraph (f) of this section.

(2) The U.S. Fish and Wildlife Service Office of Subsistence Management may issue a permit to harvest fish for a qualifying cultural/educational program to an organization that has been granted a Federal subsistence permit for a similar event within the previous 5 years. A qualifying program must have instructors, enrolled students, minimum attendance requirements, and standards for successful completion of the course. Applications must be submitted to the Office of Subsistence Management 60 days prior to the earliest desired date of harvest. Permits will be issued for no more than 25 fish per culture/education camp. Appeal of a rejected request can be made to the Federal Subsistence Board. Application for an initial permit for a qualifying cultural/educational program, for a permit when the circumstances have changed significantly, when no permit has been issued within the previous 5 years, or when there is a request for harvest in excess of that provided in this paragraph (e)(2), will be considered by the Federal Subsistence Board.

(3) If a subsistence fishing permit is required by this section, the following permit conditions apply unless otherwise specified in this section:

(i) You may not take more fish for subsistence use than the limits set out in the permit;

(ii) You must obtain the permit prior to fishing;

(iii) You must have the permit in your possession and readily available for inspection while fishing or transporting subsistence-taken fish;

(iv) If specified on the permit, you must record, prior to leaving the harvest site, daily records of the catch, showing the number of fish taken by species, location and date of catch, and other such information as may be required for management or conservation purposes; and

(v) If the return of catch information necessary for management and conservation purposes is required by a fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances. You must also return any tags or transmitters that have been attached to fish for management and conservation purposes.

(f) *Relation to commercial fishing activities.*

(1) If you are a Federally qualified subsistence user who also commercial fishes, you may retain fish for subsistence purposes from your lawfully-taken commercial catch.

(2) When participating in a commercial and subsistence fishery at the same time, you may not use an amount of combined fishing gear in excess of that allowed under the appropriate commercial fishing regulations.

(g) You may not possess, transport, give, receive, or barter subsistence-taken fish or their parts which have been taken contrary to Federal law or regulation or State law or regulation (unless superseded by regulations in this part).

(h) [Reserved].

(i) *Fishery management area restrictions.*

(1) *Kotzebue Area.* The Kotzebue Area includes all waters of Alaska between the latitude of the westernmost tip of Point Hope and the latitude of the westernmost tip of Cape Prince of Wales, including those waters draining into the Chukchi Sea.

(i) You may take fish for subsistence purposes without a permit.

(ii) You may take salmon only by gillnets, beach seines, or a rod and reel.

(iii) In the Kotzebue District, you may take sheefish with gillnets that are not more than 50 fathoms in length, nor more than 12 meshes in depth, nor have a stretched-mesh size larger than 7 inches.

(iv) You may not obstruct more than one-half the width of a stream, creek, or slough with any gear used to take fish for subsistence uses, except from May 15 to July 15 and August 15 to October

31 when taking whitefish or pike in streams, creeks, or sloughs within the Kobuk River drainage and from May 15 to October 31 in the Selawik River drainage. Only one gillnet 100 feet or less in length with a stretched-mesh size from 2½ to 4½ inches may be used per site. You must check your net at least once in every 24-hour period.

(2) *Norton Sound–Port Clarence Area.* The Norton Sound–Port Clarence Area includes all waters of Alaska between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of Point Romanof, including those waters of Alaska surrounding St. Lawrence Island and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish at any time in the Port Clarence District.

(ii) In the Norton Sound District, you may take fish at any time except as follows:

(A) In Subdistricts 2 through 6, if you are a commercial fishermen, you may not fish for subsistence purposes during the weekly closures of the State commercial salmon fishing season, except that from July 15 through August 1, you may take salmon for subsistence purposes 7 days per week in the Unalakleet and Shaktoolik River drainages with gillnets which have a stretched-mesh size that does not exceed 4½ inches, and with beach seines;

(B) In the Unalakleet River from June 1 through July 15, you may take salmon only from 8:00 a.m. Monday until 8:00 p.m. Saturday.

(C) Federal public waters of the Unalakleet River, upstream from the mouth of the Chirosky River, are closed to the taking of Chinook salmon from July 1 to July 31, by all users. The BLM field manager is authorized to open the closed area to Federally qualified subsistence users or to all users when run strength warrants.

(iii) You may take salmon only by gillnets, beach seines, fish wheel, or a rod and reel.

(iv) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, jigging gear, spear, lead, or a rod and reel.

(v) In the Unalakleet River from June 1 through July 15, you may not operate more than 25 fathoms of gillnet in the aggregate nor may you operate an unanchored gillnet.

(vi) Only one subsistence fishing permit will be issued to each household per year.

(3) *Yukon–Northern Area.* The Yukon–Northern Area includes all waters of Alaska between the latitude of Point Romanof and the latitude of the westernmost point of the Naskonat Peninsula, including those waters draining into the Bering Sea, and all waters of Alaska north of the latitude of the westernmost tip of Point Hope and west of 141° West longitude, including those waters draining into the Arctic Ocean and the Chukchi Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Yukon–Northern Area at any time. You may subsistence fish for salmon with rod and reel in the Yukon River drainage 24 hours per day, 7 days per week, unless rod and reel are specifically otherwise restricted in §___.27(i)(3).

(ii) For the Yukon River drainage, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action.

(iii) In the following locations, you may take salmon during the open weekly fishing periods of the State commercial salmon fishing season and may not take them for 24 hours before the opening of the State commercial salmon fishing season:

(A) In District 4, excluding the Koyukuk River drainage;

(B) In Subdistricts 4B and 4C from June 15 through September 30, salmon may be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday;

(C) In District 6, excluding the Kantishna River drainage, salmon may be taken from 6:00 p.m. Friday until 6:00 p.m. Wednesday.

(iv) During any State commercial salmon fishing season closure of greater than five days in duration, you may not take salmon during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk River drainage, salmon may not be taken from 6:00 p.m. Friday until 6:00 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5D, salmon may not be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday.

(v) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

(vi) In Districts 1, 2, 3, and Subdistrict 4A, excluding the Koyukuk and Innoko River drainages, you may not take salmon for subsistence purposes during the 24 hours immediately before the opening of the State commercial salmon fishing season.

(vii) In Districts 1, 2, and 3:

(A) After the opening of the State commercial salmon fishing season through July 15, you may not take salmon for subsistence for 18 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period;

(B) After July 15, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period.

(viii) In Subdistrict 4A after the opening of the State commercial salmon fishing season, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period; however, you may take Chinook salmon during the State commercial fishing season, with drift gillnet gear only, from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday.

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

(A) Kanuti River upstream from a point 5 miles downstream of the State highway crossing;

(B) Bonanza Creek;

(C) Jim River including Prospect and Douglas Creeks.

(x) You may not subsistence fish in the Delta River.

(xi) In Beaver Creek downstream from the confluence of Moose Creek, a gillnet with mesh size not to exceed 3-inches stretch-measure may be used from June 15 through September 15. You may subsistence fish for all non-salmon species but may not target salmon during this time period (retention of salmon taken incidentally to non-salmon directed fisheries is allowed). From the mouth of Nome Creek downstream to the confluence of Moose Creek, only rod and reel may be used. From the mouth of Nome Creek downstream to the confluence of O'Brien Creek, the daily harvest and possession limit is 5 grayling; from the mouth of O'Brien Creek downstream to the confluence of Moose Creek, the daily harvest and possession limit is 10 grayling. The Nome Creek drainage of Beaver Creek is closed to subsistence fishing for grayling.

(xii) You may not subsistence fish in the Toklat River drainage from August 15 through May 15.

(xiii) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(xiv) In District 4, if you are a commercial fisherman, you may not take salmon for subsistence purposes

during the State commercial salmon fishing season using gillnets with stretched-mesh larger than 6-inches after a date specified by ADF&G emergency order issued between July 10 and July 31.

(xv) In Districts 4, 5, and 6, you may not take salmon for subsistence purposes by drift gillnets, except as follows:

(A) In Subdistrict 4A upstream from the mouth of Stink Creek, you may take Chinook salmon by drift gillnets less than 150 feet in length from June 10 through July 14, and chum salmon by drift gillnets after August 2;

(B) In Subdistrict 4A downstream from the mouth of Stink Creek, you may take Chinook salmon by drift gillnets less than 150 feet in length from June 10 through July 14;

(C) In the Yukon River mainstem, Subdistricts 4B and 4C with a Federal subsistence fishing permit, you may take Chinook salmon during the weekly subsistence fishing opening(s) by drift gillnets no more than 150 feet long and no more than 35 meshes deep, from June 10 through July 14.

(xvi) Unless otherwise specified in this section, you may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the State commercial salmon fishing season, if you are a commercial fisherman, you may not operate more than one type of gear at a time, for commercial, personal use, and subsistence purposes;

(B) You may not use an aggregate length of set gillnet in excess of150fathoms and each drift gillnet may not exceed 50 fathoms in length;

(C) In Districts 4, 5, and 6, you may not set subsistence fishing gear within 200 feet of other operating commercial use, personal use, or subsistence fishing gear except that, at the site approximately 1 mile upstream from Ruby on the south bank of the Yukon River between ADF&G regulatory markers containing the area known locally as the ''Slide,'' you may set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear, and in District 4, from Old Paradise Village upstream to a point 4 miles upstream from Anvik, there is no minimum distance requirement between fish wheels;

(D) During the State commercial salmon fishing season, within the Yukon River and the Tanana River below the confluence of the Wood River, you may use drift gillnets and fish wheels only during open subsistence salmon fishing periods;

(E) In Birch Creek, gillnet mesh size may not exceed 3-inches stretch-measure from June 15 through September 15.

(xvii) In District 4, from September 21 through May 15, you may use jigging gear from shore ice.

(xviii) You must possess a subsistence fishing permit for the following locations:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from the upstream mouth of 22 Mile Slough to the U.S.-Canada border;

(C) Only for salmon in the Tanana River drainage above the mouth of the Wood River.

(xix) Only one subsistence fishing permit will be issued to each household per year.

(xx) In Districts 1, 2, and 3, you may not possess Chinook salmon taken for subsistence purposes unless the dorsal fin has been removed immediately after landing.

(xxi) In the Yukon River drainage, Chinook salmon must be used primarily for human consumption and may not be targeted for dog food. Dried Chinook salmon may not be used for dog food anywhere in the Yukon River drainage. Whole fish unfit for human consumption (due to disease, deterioration, deformities), scraps, and small fish (16 inches or less) may be fed to dogs. Also, whole Chinook salmon caught incidentally during a subsistence chum salmon fishery in the following time periods and locations may be fed to dogs:

(A) After July 10 in the Koyukuk River drainage;

(B) After August 10, in Subdistrict 5D, upstream of Circle City.

(4) *Kuskokwim Area.* The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Kuskokwim Area at any time without a subsistence fishing permit.

(ii) For the Kuskokwim area, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action.

(iii) In District 1, Kuskokuak Slough, from June 1 through July 31 only, you may not take salmon for 16 hours before and during each State open commercial salmon fishing period in the district.

(iv) In Districts 4 and 5, from June 1 through September 8, you may not take salmon for 16 hours before or during, and for 6 hours after each State open commercial salmon fishing period in each district.

(v) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, from June 1 through September 8 you may not take salmon by net gear or fish wheel for 16 hours before or during, and for 6 hours after each open commercial salmon fishing period in the district. You may subsistence fish for salmon with rod and reel 24 hours per day, 7 days per week, unless rod and reel are specifically restricted byparagraph (i)(4) of this section.

(vi) You may not take subsistence fish by nets in the Goodnews River east of a line between ADF&G regulatory markers placed near the mouth of the Ufigag River and an ADF&G regulatory marker placed near the mouth of the Tunulik River 16 hours before or during, and for 6 hours after each State open commercial salmon fishing period.

(vii) You may not take subsistence fish by nets in the Kanektok River upstream of ADF&G regulatory markers placed near the mouth 16 hours before or during, and for 6 hours after each State open commercial salmon fishing period.

(viii) You may not take subsistence fish by nets in the Arolik River upstream of ADF&G regulatory markers placed near the mouth 16 hours before or during, and for 6 hours after each State open commercial salmon fishing period.

(ix) You may only take salmon by gillnet, beach seine, fish wheel, or rod and reel subject to the restrictions set out in this section, except that you may also take salmon by spear in the Kanektok, and Arolik River drainages, and in the drainage of Goodnews Bay.

(x) You may not use an aggregate length of set gillnets or drift gillnets in excess of 50 fathoms for taking salmon.

(xi) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, dip net, jigging gear, spear, lead, handline, or rod and reel.

(xii) You must attach to the bank each subsistence gillnet operated in tributaries of the Kuskokwim River and fish it substantially perpendicular to the bank and in a substantially straight line.

(xiii) Within a tributary to the Kuskokwim River in that portion of the

Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, you may not set or operate any part of a set gillnet within 150 feet of any part of another set gillnet.

(xiv) The maximum depth of gillnets is as follows:

(A) Gillnets with 6-inch or smaller stretched-mesh may not be more than 45 meshes in depth;

(B) Gillnets with greater than 6-inch stretched-mesh may not be more than 35 meshes in depth.

(xv) You may not use subsistence set and drift gillnets exceeding 15 fathoms in length in Whitefish Lake in the Ophir Creek drainage. You may not operate more than one subsistence set or drift gillnet at a time in Whitefish Lake in the Ophir Creek drainage. You must check the net at least once every 24 hours.

(xvi) You may take rainbow trout only in accordance with the following restrictions:

(A) You may take rainbow trout only by the use of gillnets, dip nets, fyke nets, handline, spear, rod and reel, or jigging through the ice;

(B) You may not use gillnets, dip nets, or fyke nets for targeting rainbow trout from March 15 through June 15;

(C) If you take rainbow trout incidentally in other subsistence net fisheries and through the ice, you may retain them for subsistence purposes;

(D) There are no harvest limits with handline, spear, rod and reel, or jigging.

(5) *Bristol Bay Area.* The Bristol Bay Area includes all waters of Bristol Bay, including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(i) Unless restricted in this section, or unless under the terms of a subsistence fishing permit, you may take fish at any time in the Bristol Bay area.

(ii) In all State commercial salmon districts, from May 1 through May 31 and October 1 through October 31, you may subsistence fish for salmon only from 9:00 a.m. Monday until 9:00 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, you may take salmon only during State open commercial salmon fishing periods.

(iii) In the Egegik River from 9:00 a.m. June 23 through 9:00 a.m. July 17, you may take salmon only during the following times: from 9:00 a.m. Tuesday to 9:00 a.m. Wednesday and from 9:00 a.m. Saturday to 9:00 a.m. Sunday.

(iv) You may not take fish from waterswithin 300 feet of a stream mouth used by salmon.

(v) You may not subsistence fish with nets in the Tazimina River and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14.

(vi) Within any district, you may take salmon, herring, and capelin by set gillnets only.

(vii) Outside the boundaries of any district, unless otherwise specified, you may take salmon by set gillnet only.

(A)You may also take salmon by spear in the Togiak River, excluding its tributaries.

(B) You may also use drift gillnets not greater than 10 fathoms in length to take salmon in the Togiak River in the first two river miles upstream from the mouth of the Togiak River to the ADF&G regulatory markers.

(C) You may also take salmon without a permit in Lake Clark and its tributaries by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by bare hand.

(D) You may also take salmon by beach seines not exceeding 25 fathoms in length in Lake Clark, excluding its tributaries.

(E) You may also take fish (except rainbow trout) with a fyke net and lead in tributaries of Lake Clark and the tributaries of Sixmile Lake within and adjacent to the exterior boundaries of Lake Clark National Park and Preserve unless otherwise prohibited.

(1) You may use a fyke net and lead only with a permit issued by the Federal in-season manager.

(2) All fyke nets and leads must be attended at all times while in use.

(3) All materials used to construct the fyke net and lead must be made of wood and be removed from the water when the fyke net and lead is no longer in use.

(viii) The maximum lengths for set gillnets used to take salmon are as follows:

(A) You may not use set gillnets exceeding 10 fathoms in length in the Egegik River;

(B) In the remaining waters of the area, you may not use set gillnets exceeding 25 fathoms in length.

(ix) You may not operate any part of a set gillnet within 300 feet of any part of another set gillnet.

(x) You must stake and buoy each set gillnet. Instead of having the identifying information on a keg or buoy attached to the gillnet, you may plainly and legibly inscribe your first initial, last name, and subsistence permit number on a sign at or near the set gillnet.

(xi) You may not operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xii) During State closed commercial herring fishing periods, you may not use gillnets exceeding 25 fathoms in length for the subsistence taking of herring or capelin.

(xiii) You may take fish other than salmon, herring and capelin by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(xiv) You may take salmon only under authority of a State subsistence salmon permit (permits are issued by ADF&G) except when using a Federal permit for fyke net and lead.

(xv) Only one State subsistence fishing permit for salmon and one Federal permit for use of a fyke net and lead for all fish (except rainbow trout) may be issued to each household per year.

(xvi) In the Togiak River section and the Togiak River drainage:

(A) You may not possess coho salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

(B) You may not possess salmon taken with a drift gillnet under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

(xvii) You may take rainbow trout only by rod and reel or jigging gear. Rainbow trout daily harvest and possession limits are 2 per day/2 in possession with no size limit from April 10 through October 31 and 5 per day/5 in possession with no size limit from November 1 through April 9.

(xviii) If you take rainbow trout incidentally in other subsistence net fisheries, or through the ice, you may retain them for subsistence purposes.

(6) *Aleutian Islands Area.* The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° East longitude, and south of 54°36' North latitude.

(i) You may take fish other than salmon, rainbow/steelhead trout, or char at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) In the Unalaska District, you may take salmon for subsistence purposes from 6:00 a.m. until 9:00 p.m. from January 1 through December 31, except as may be specified on a subsistence fishing permit.

(iii) In the Adak, Akutan, Atka-Amlia, and Umnak Districts, you may take salmon at any time.

(iv) You may not subsistence fish for salmon in the following waters:

(A) The waters of Unalaska Lake, its tributaries and outlet stream;

(B) The waters of Summers and Morris Lakes and their tributaries and outlet streams;

(C) All streams supporting anadromous fish runs that flow into Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point;

(D) Waters of McLees Lake and its tributaries and outlet stream;

(E) All fresh water on Adak Island and Kagalaska Island in the Adak District.

(v) You may take salmon by seine andgillnet, or with gear specified on a subsistence fishing permit.

(vi) In the Unalaska District, if you fish with a net, you must be physically present at the net at all times when the net is being used.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon, trout, and char only under the terms of a subsistence fishing permit, except that you do not need a permit in the Akutan, Umnak, and Atka-Amlia Islands Districts.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit, except that in the Unalaska and Adak Districts, you may take no more than 25 salmon plus an additional 25 salmon for each member of your household listed on the permit. You may obtain an additional permit.

(x) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(7) *Alaska Peninsula Area.* The Alaska Peninsula Area includes all waters of Alaska on the north side of the Alaska peninsula southwest of a line from Cape Menshikof (57° 28.34' North latitude, 157° 55.84' West longitude) to Cape Newenham (58° 39.00' North latitude, 162° West longitude) and east of the longitude of Cape Sarichef Light (164° 55.70' West longitude) and on the south side of the Alaska Peninsula from a line extending from Scotch Cape through the easternmost tip of Ugamak Island to a line extending 135° southeast from Kupreanof Point (55° 33.98' North latitude, 159° 35.88' West longitude).

(i) You may take fish, other than salmon, rainbow/steelhead trout, or char, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iii) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(iv) You may take salmon at any time, except in those districts and sections open to commercial salmon fishing where salmon may not be taken during the 24 hours before and 12 hours following each State open weekly commercial salmon fishing period, or as may be specified on a subsistence fishing permit.

(v) You may not subsistence fish for salmon in the following waters:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth.

(vi) You may take salmon by seine, gillnet, rod and reel, or with gear specified on a subsistence fishing permit. You may also take salmon without a permit by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by bare hand.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may not use a set gillnet exceeding 100 fathoms in length.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on your subsistence fishing permit.

(8) *Chignik Area.* The Chignik Area includes all waters of Alaska on the south side of the Alaska Peninsula bounded by a line extending 135° southeast for 3 miles from a point near Kilokak Rocks at 57° 10.34' North latitude, 156°20.22' West longitude (the longitude of the southern entrance to Imuya Bay) then due south, and a line extending 135°southeast from Kupreanof Point at 55° 33.98' North latitude, 159° 35.88' West longitude.

(i) You may take fishother than salmon, rainbow/steelhead trout, or char at any time, except as may be specified by a subsistence fishing permit. For salmon, Federal subsistence fishing openings, closings and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may not take salmon in the Chignik River, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31. You may not take salmon in Black Lake or any tributary to Black or Chignik Lakes, except those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream 1 mile.

(A) In the open waters of Clark River and Home Creek you may take salmon by gillnet under the authority of a State permit.

(B) In the open waters of Clark River and Home Creek you may take salmon by snagging (handline or rod and reel), spear, bow and arrow, or capture by hand without a permit. The daily harvest and possession limits using these methods are 5 per day and 5 in possession.

(iii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iv) You must keep a record on your permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(v) If you hold a commercial fishing license, you may only subsistence fish for salmon as specified on a State subsistence salmon fishing permit.

(vi) You may take salmon by seines, gillnets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake, you may not use purse seines. You may also take salmon without a permit by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by bare hand.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(9) *Kodiak Area.* The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58°51.10' North latitude), west of 150° West longitude, north of 55°30.00' North latitude, and north and east of a line extending 135° southeast for three miles from a point near Kilokak Rocks at 57°10.34' North latitude, 156°20.22' West longitude (the longitude of the southern entrance of Imuya Bay), then due south.

(i) You may take fish other than salmon, rainbow/steelhead trout, char, bottomfish, or herring at any time unless restricted by the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other

subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may take salmon for subsistence purposes 24 hours a day from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, you may not use salmon seine vessels to take subsistence salmon for 24 hours before or during, and for 24 hours after any State open commercial salmon fishing period. The use of skiffs from any type of vessel is allowed;

(B) From June 1 through September 15, you may use purse seine vessels to take salmon only with gillnets, and you may have no other type of salmon gear on board the vessel.

(iii) You may not subsistence fish for salmon in the following locations:

(A) Womens Bay closed waters—All waters inside a line from the tip of the Nyman Peninsula (57°43.23' North latitude, 152°31.51' West longitude), to the northeastern tip of Mary's Island (57°42.40' North latitude, 152°32.00' West longitude), to the southeastern shore of Womens Bay at 57°41.95' Northlatitude, 152°31.50' West longitude;

(B) Buskin River closed waters—All waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80' North latitude, 152°28.38' West longitude, to a point offshore at 57°45.35' North latitude, 152°28.15' West longitude, to a marker located onshore south of the river mouth at approximately 57°45.15' North latitude, 152°28.65' West longitude;

(C) All waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek;

(D) In Afognak Bay north and west of a line from the tip of Last Point to the tip of River Mouth Point;

(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(F) All fresh water systems of Afognak Island.

(iv) You must have a subsistence fishing permit for taking salmon, trout, and char for subsistence purposes. You must have a subsistence fishing permit for taking herring and bottomfish for subsistence purposes during the State commercial herring sac roe season from April 15 through June 30.

(v) With a subsistence salmon fishing permit you may take 25 salmon plus an additional 25 salmon for each member of your household whose names are listed on the permit. You may obtain an additional permit if you can show that more fish are needed.

(vi) You must record on your subsistence permit the number of subsistence fish taken. You must complete the record immediately upon landing subsistence-caught fish, and must return it by February 1 of the year following the year the permit was issued.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon only by gillnet, rod and reel, or seine.

(ix) You must be physically present at the net when the net is being fished.

(10) *Cook Inlet Area.* The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58°51.10' N.Lat.) and a line extending south from Cape Fairfield (148°50.25' W. Long.).

(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Cook Inlet Area. If you take rainbow/steelhead trout incidentally in subsistence net fisheries, you may retain them for subsistence purposes, unless otherwise prohibited or provided for in this section. With jigging gear through the ice or rod and reel gear in open waters there is an annual limit of 2 rainbow/steelhead trout 20 inches or longer, taken from Kenai Peninsula fresh waters.

(ii) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit (as may be modified by this section). For all fish that must be marked and recorded on a permit in this section, they must be marked and recorded prior to leaving the fishing site. The fishing site includes the particular Federal public waters and/or adjacent shoreline from which the fish were harvested.

(iii) You may not take grayling or burbot for subsistence purposes.

(iv) You may take only salmon, trout, Dolly Varden, and other char under authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally for Federally managed waters of the Kasilof and Kenai River drainages:

(A) Residents of Ninilchik may take sockeye, Chinook, coho, and pink salmon through a dip net and a rod and reel fishery on the upper mainstem of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream to a marker on the river approximately 2.8 miles below the Tustumena Lake boat ramp. Residents using rod and reel gear may fish with up to two baited single or treble hooks. Other species incidentally caught during the dip net and rod and reel fishery may be retained for subsistence uses, including up to 200 rainbow/steelhead trout taken through August 15. After 200 rainbow/steelhead trout have been taken in this fishery or after August 15, all rainbow/steelhead trout must be released unless otherwise provided for in this section. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing location.

(1) Fishing for sockeye and Chinook salmon will be allowed from June 16–August 15.

(2) Fishing for coho and pink salmon will be allowed from June 16–October 31.

(3) Fishing for sockeye, Chinook, coho, or pink salmon will end prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.

(4) Each household may harvest their annual sockeye, Chinook, coho, or pink salmon limits in one or more days, and each household member may fish with a dip net or a rod and reel during this time. Salmon taken in the Kenai River system dip net and rod and reel fishery will be included as part of each household's annual limit for the Kasilof River.

(i) For sockeye salmon—annual total harvest limit of 4,000; annual household limits of 25 for each permit holder and 5 additional for each household member;

(ii) For Chinook salmon—annual harvest limit of 500; annual household limit of 10 for each permit holder and 2 additional for each household member;

(iii) For coho salmon—annual total harvest limit of 500; annual household limits of 10 for each permit holder and 2 additional for each household member; and

(iv) For pink salmon—annual total harvest limit of 500; annual household limits of 10 for each permit holder and 2 additional for each household member.

(B) In addition to the dip net and rod and reel fishery on the upper mainstem of the Kasilof River described under paragraph (i)(10)(iv)(A) of this section, residents of Ninilchik may also take coho and pink salmon through a rod

and reel fishery in Tustumena Lake. Before leaving the fishing site, all retained salmon must be recorded on the permit and marked by removing the dorsal fin. Seasons, areas, harvest and possession limits, and methods and means for take are the same as for the taking of these species under Alaska sport fishing regulations (5 AAC 56), except for the following methods and means, and harvest and possession limits:

(1) Fishing will be allowed with up to 2 baited single or treble hooks.

(2) For coho salmon 16 inches and longer, the daily harvest and possession limits are 4 per day and 4 in possession.

(3) For pink salmon 16 inches and longer, daily harvest and possession limits are 6 per day and 6 in possession.

(C) Resident fish species including lake trout, rainbow/steelhead trout, and Dolly Varden/Arctic char may be harvested in Federally managed waters of the Kasilof River drainage. Resident fish species harvested in the Kasilof River drainage under the conditions of a Federal subsistence permit must be marked by removing the dorsal fin immediately after harvest and recorded on the permit prior to leaving the fishing site.

(1) Lake trout may be harvested with rod and reel gear the entire year. For fish 20 inches or longer, daily harvest and possession limits are 4 per day and 4 in possession. For fish less than 20 inches, daily harvest and possession limits are 15 per day and 15 in possession.

(2) Dolly Varden/Arctic char may be harvested with rod and reel gear the entire year. In flowing waters, daily harvest and possession limits are 4 per day and 4 in possession. In lakes and ponds, daily harvest and possession limits are 10 fish per day and 10 in possession

(3) Rainbow trout may be harvested with rod and reel gear the entire year for fish less than 20 inches in length. In flowing waters, daily harvest and possession limits are 2 per day and 2 in possession. In lakes and ponds, daily harvest and possession limits are 5 per day and 5 in possession.

(4) You may fish in Tustumena Lake with a gillnet, no longer than 10 fathoms, fished under the ice or jigging gear used through the ice under authority of a Federal subsistence fishing permit. The total annual harvest quota for this fishery is 200 lake trout, 200 rainbow trout, and 500 Dolly Varden/Arctic char. The use of a gillnet will be prohibited by special action after the harvest quota of any species has been met. For the jig fishery, annual household limits are 30 fish in any combination of lake trout, rainbow trout or Dolly Varden/Arctic char.

(i) You may harvest fish under the ice only in Tustumena Lake. Gillnets are not allowed within a ¼ mile radius of the mouth of any tributary to Tustumena Lake, or the outlet of Tustumena Lake.

(ii) Permits will be issued by the Federal fisheries manager or designated representative, and will be valid for the winter season, unless the season is closed by special action.

(iii) All harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing location. Reported information must include number of each species caught; number of each species retained; length, depth (number of meshes deep) and mesh size of gillnet fished; location fished; and total hours fished. Harvest data on the permit must be filled out before transporting fish from the fishing site.

(iv) The gillnet must be checked at least once in every 48–hour period.

(v) For unattended gear, the permittee's name and address must be plainly and legibly inscribed on a stake at one end of the gillnet.

(vi) Incidentally caught fish may be retained and must be recorded on the permit before transporting fish from the fishing site.

(vii) Failure to return the completed harvest permit by May 31 may result in issuance of a violation notice and/or denial of a future subsistence permit.

(D) Residents of Hope, Cooper Landing, and Ninilchik may take only sockeye salmon through a dip net and a rod and reel fishery at one specified site on the Russian River, and sockeye, late-run Chinook, coho, and pink salmon through a dip net/rod and reel fishery at two specified sites on the Kenai River below Skilak Lake and as provided in this section. For Ninilchik residents, salmon taken in the Kasilof River Federal subsistence fish wheel, and dip net/rod and reel fishery will be included as part of each household's annual limit for the Kenai and Russian Rivers' dip net and rod and reel fishery. For both Kenai River fishing sites below Skilak Lake, incidentally caught fish may be retained for subsistence uses, except for early-run Chinook salmon (unless otherwise provided for), rainbow trout 18 inches or longer, and Dolly Varden 18 inches or longer, which must be released. For the Russian River fishing site, incidentally caught fish may be retained for subsistence uses, except for early- and late-run Chinook salmon, coho salmon, rainbow trout, and Dolly Varden, which must be released. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing site, and permits must be returned to the manager by the due date listed on the permit. Chum salmon that are retained are to be included within the annual limit for sockeye salmon. Only residents of Hope and Cooper Landing may retain incidentally caught resident species.

(1) The household dip net and rod and reel gear fishery is limited to three sites:

(i) At the Kenai River Moose Range Meadows site, dip netting is allowed only from a boat from a Federal regulatory marker on the Kenai River at about river mile 29 downstream approximately 2.5 miles to another marker on the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to 2 baited single or treble hooks from June 15 - August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56 and 5 AAC 57 and 5 AAC 77.540).

(ii) At the Kenai River Mile 48 site, dip netting is allowed while either standing in the river or from a boat, from Federal regulatory markers on both sides of the Kenai River at about river mile 48 (approximately 2 miles below the outlet of Skilak Lake) downstream approximately 2.5 miles to a marker on the Kenai River at about river mile 45.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to 2 baited single or treble hooks from June 15 - August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56, 5 AAC 57, and 5 AAC 77.540).

(iii) At the Russian River Falls site, dip netting is allowed from a Federal regulatory marker near the upstream end of the fish ladder at Russian River Falls downstream to a Federal regulatory marker approximately 600 yards below Russian River Falls. Residents using rod and reel gear at this fishery site may not fish with bait at any time.

(2) Fishing seasons are as follows:

(i) For sockeye salmon at all fishery sites: June 15–August 15;

(ii) For late-run Chinook, pink, and coho salmon at both Kenai River fishery sites only : July 16–September 30; and

(iii) Fishing for sockeye, late-run Chinook, coho, or pink salmon will close by special action prior to regulatory end dates if the annual total

harvest limit for that species is reached or superseded by Federal special action.

(3) Each household may harvest their annual sockeye, late-run Chinook, coho, or pink salmon limits in one or more days, and each household member may fish with a dip net or rod and reel during this time. Salmon taken in the Kenai River system dip net and rod and reel fishery by Ninilchik households will be included as part of those household's annual limits for the Kasilof River.

(i) For sockeye salmon—annual total harvest limit of 4,000 (including any retained chum salmon); annual household limits of 25 for each permit holder and 5 additional for each household member;

(ii) For late-run Chinook salmon—annual total harvest limit of 1,000; annual household limits of 10 for each permit holder and 2 additional for each household member;

(iii) For coho salmon—annual total harvest limit of 3,000; annual household limits of 20 for each permit holder and 5 additional for each household member; and

(iv) For pink salmon—annual total harvest limit of 2,000; annual household limits of 15 for each permit holder and 5 additional for each household member.

(E) For Federally managed waters of the Kenai River and its tributaries, in addition to the dip net and rod and reel fisheries on the Kenai and Russian rivers described under paragraph (i)(10)(iv)(D) of this section, residents of Hope, Cooper Landing, and Ninilchik may take sockeye, Chinook, coho, pink, and chum salmon through a separate rod and reel fishery in the Kenai River drainage. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Permits must be returned to the Federal fisheries manager by the due date listed on the permit. Incidentally caught fish, other than salmon, are subject to regulations found in paragraphs (i)(10) (iv)(F) and (G) of this section. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motor boat restrictions) for take are the same as for the taking of these salmon species under State of Alaska fishing regulations (5 AAC 56, 5 AAC 57 and 5 AAC 77.54), except for the following harvest and possession limits:

(1) In the Kenai River below Skilak Lake, fishing is allowed with up to 2 baited single or treble hooks from June 15–August 31.

(2) For early-run Chinook salmon less than 46 inches or 55 inches or longer, daily harvest and possession limits are 2 per day and 2 in possession.

(3) For late-run Chinook salmon 20 inches and longer, daily harvest and possession limits are 2 per day and 2 in possession.

(4) Annual harvest limits for any combination of early- and late-run Chinook salmon are 4 for each permit holder.

(5) For other salmon 16 inches and longer, the combined daily harvest and possession limits are 6 per day and 6 in possession, of which no more than 4 per day and 4 in possession may be coho salmon, except for the Sanctuary Area and Russian River, for which no more than 2 per day and 2 in possession may be coho salmon.

(F) For Federally managed waters of the Kenai River and its tributaries below Skilak Lake outlet at river mile 50, residents of Hope and Cooper Landing may take resident fish species including lake trout, rainbow trout, and Dolly Varden/Arctic char with jigging gear through the ice or rod and reel gear in open waters. Resident fish species harvested in the Kenai River drainage under the conditions of a Federal subsistence permit must be marked by removal of the dorsal fin immediately after harvest and recorded on the permit prior to leaving the fishing site. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motor boat restrictions) for take are the same as for the taking of these resident species under State of Alaska fishing regulations (5 AAC 56, 5 AAC 57, and 5 AAC 77.54), except for the following harvest and possession limits:

(1) For lake trout 20 inches or longer, daily harvest and possession limits are 4 per day and 4 in possession. For fish less than 20 inches, daily harvest and possession limits are 15 per day and 15 in possession.

(2) In flowing waters, daily harvest and possession limits for Dolly Varden/Arctic char less than 18 inches in length are 1 per day and 1 in possession. In lakes and ponds, daily harvest and possession limits are 2 per day and 2 in possession. Only 1 of these fish can be 20 inches or longer.

(3) In flowing waters, daily harvest and possession limits for rainbow/steelhead trout are 1 per day and 1 in possession and must be less than 18 inches in length. In lakes and ponds, daily harvest and possession limits are 2 per day and 2 in possession of which only 1 fish 20 inches or longer may be harvested daily.

(G) For Federally managed waters of the upper Kenai River and its tributaries above Skilak Lake outlet at river mile 50, residents of Hope and Cooper Landing may take resident fish species including lake trout, rainbow trout, and Dolly Varden/Arctic char with jigging gear through the ice or rod and reel gear in open waters. Resident fish species harvested in the Kenai River drainage under the conditions of a Federal subsistence permit must be marked by removal of the dorsal fin immediately after harvest and recorded on the permit prior to leaving the fishing site. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motor boat restrictions) for take are the same as for the taking of these resident species under Alaska fishing regulations (5 AAC 56, 5 AAC 57, 5 AAC 77.54), except for the following harvest and possession limits:

(1) For lake trout 20 inches or longer, daily harvest and possession limits are 4 per day and 4 in possession. For fish less than 20 inches, daily harvest and possession limits are 15 fish per day and 15 in possession. For Hidden Lake, daily harvest and possession limits are 2 per day and 2 in possession regardless of size.

(2) In flowing waters, daily harvest and possession limits for Dolly Varden/Arctic char less than 16 inches are 1 per day and 1 in possession. In lakes and ponds, daily harvest and possession limits are 2 per day and 2 in possession of which only 1 fish 20 inches or longer may be harvested daily.

(3) In flowing waters, daily harvest and possession limits for rainbow/steelhead trout are 1 per day and 1 in possession and it must be less than 16 inches in length. In lakes and ponds, daily harvest and possession limits are 2 per day and 2 in possession of which only 1 fish 20 inches or longer may be harvested daily.

(H) Residents of Ninilchik may harvest sockeye, Chinook, coho, and pink salmon through a fish wheel fishery in the Federal public waters of the upper mainstem of the Kasilof River. Residents of Ninilchik may retain other species incidentally caught in the Kasilof River except for rainbow/steelhead trout, which must be released and returned unharmed to the water.

(1) Only one fish wheel can be operated on the Kasilof River. The fish wheel must have a live box, must be monitored when fishing, must be stopped from fishing when it is not being monitored or used, and must be installed and operated in compliance with any regulations and restrictions for its use within the Kenai National Wildlife Refuge.

(2) One registration permit will be available and will be awarded by the

Federal in-season fishery manager, in consultation with the Kenai National Wildlife Refuge manager, based on the merits of the operation plan. The registration permit will be issued to an organization that, as the fish wheel owner, will be responsible for its construction, installation, operation, use, and removal in consultation with the Federal fishery manager. The owner may not rent or lease the fish wheel for personal gain. As part of the permit, the organization must:

(i) Prior to the season, provide a written operation plan to the Federal fishery manager including a description of how fishing time and fish will be offered and distributed among households and residents of Ninilchik;

(ii) During the season, mark the fish wheel with a wood, metal, or plastic plate at least 12 inches high by 12 inches wide that is permanently affixed and plainly visible, and that contains the following information in letters and numerals at least 1 inch high: registration permit number; organization's name and address; and primary contact person name and telephone number;

(iii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, person or households operating the gear, hours of operation, and number of each species caught and retained or released.

(3) People operating the fish wheel must:

(i) Have a valid Federal subsistence fishing permit in their possession;

(ii) If they are not the fishwheel owner, attach an additional wood, metal, or plastic plate at least 12 inches high by 12 inches wide to the fish wheel that is plainly visible, and that contains their fishing permit number, name, and address in letters and numerals at least 1 inch high;

(iii) Remain on site to monitor the fish wheel and remove all fish at least every hour;

(iv) Before leaving the site, mark all retained fish by removing their dorsal fin and record all retained fish on their fishing permit; and

(v) Within 72 hours of leaving the site, report their harvest to the Federal fisheries manager.

(4) The fish wheel owner (organization) may operate the fish wheel for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:

(i) Identifies a person who will be responsible for operating the fish wheel;

(ii) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.

(5) Fishing will be allowed from June 16 through October 31 on the Kasilof River unless closed or otherwise restricted by Federal special action.

(6) Salmon taken in the fish wheel fishery will be included as part of dip net/rod and reel fishery annual total harvest limits for the Kasilof River and as part of dip net/rod and reel household annual limits of participating households.

(7) Fishing for each salmon species will end and the fishery will be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.

(8) This regulation expires December 31, 2011, or 3 years after the first installation of the fish wheel, which ever comes first, or unless renewed by the Federal Subsistence Board.

(9) You may take smelt with dip nets in fresh water only from April 1–June 15. There are no harvest or possession limits for smelt.

(10) Gillnets may not be used in fresh water, except for the taking of whitefish in the Tyone River drainage and as otherwise provided for in this Cook Inlet section.

(11) *Prince William Sound Area.* The Prince William Sound Area includes all waters and drainages of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(i) You may take fish, other than rainbow/steelhead trout, in the Prince William Sound Area only under authority of a subsistence fishing permit, except that a permit is not required to take eulachon. You make not take rainbow/steelhead trout, except as otherwise provided for in this §___.27(i)(11).

(A) In the Prince William Sound Area within Chugach National Forest and in the Copper River drainage downstream of Haley Creek you may accumulate Federal subsistence fishing harvest limits with harvest limits under State of Alaska sport fishing regulations provided that accumulation of fishing harvest limits does not occur during the same day.

(B) You may accumulate harvest limits of salmon authorized for the Copper River drainage upstream from Haley Creek with harvest limits for salmon authorized under State of Alaska sport fishing regulations.

(ii) You may take fish by gear listed in paragraph (c)(1) of this part unless restricted in this section or under the terms of a subsistence fishing permit.

(iii) If you catch rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes, unless restricted in this section.

(iv) In the Copper River drainage, you may take salmon only in the waters of the Upper Copper River District, or in the vicinity of the Native Village of Batzulnetas.

(v) In the Upper Copper River District, you may take salmon only by fish wheels, rod and reel, or dip nets.

(vi) Rainbow/steelhead trout and other freshwater fish caught incidentally to salmon by fish wheel in the Upper Copper River District may be retained.

(vii) Freshwater fish other than rainbow/steelhead trout caught incidentally to salmon by dip net in the Upper Copper River District may be retained. Rainbow/steelhead trout caught incidentally to salmon by dip net in the Upper Copper River District must be released unharmed to the water.

(viii) You may not possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit, or rainbow/steelhead trout caught incidentally to salmon by fish wheel, unless the anal (ventral) fin has been immediately removed from the fish. You must immediately record all retained fish on the subsistence permit. Immediately means prior to concealing the fish from plain view or transporting the fish more than 50 feet from where the fish was removed from the water.

(ix) You may take salmon in the Upper Copper River District from May 15 through September 30 only.

(x) The total annual harvest limit for subsistence salmon fishing permits in combination for the Glennallen Subdistrict and the Chitina Subdistrict is as follows:

(A) For a household with 1 person, 30 salmon, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel;

(B) For a household with 2 persons, 60 salmon, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel, plus 10 salmon for each additional person in a household over 2 persons, except that the household's limit for Chinook salmon taken by dip net or rod and reel does not increase;

(C) Upon request, permits for additional salmon will be issued for no more than a total of 200 salmon for a permit issued to a household with 1 person, of which no more than 5 may be Chinook salmon taken by dip net and no more than 5 Chinook taken by rod and reel, or no more than a total of 500 salmon for a permit issued to a

household with 2 or more persons, of which no more than 5 may be Chinook salmon taken by dipnet and no more than 5 Chinook taken by rod and reel.

(xi) The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one subsistence fishing permit per subdistrict will be issued to each household per year. If a household has been issued permits for both subdistricts in the same year, both permits must be in your possession and readily available for inspection while fishing or transporting subsistence-taken fish in either subdistrict. A qualified household may also be issued a Batzulnetas salmon fishery permit in the same year;

(B) Multiple types of gear may be specified on a permit, although only one unit of gear may be operated at any one time;

(C) You must return your permit no later than October 31 of the year in which the permit is issued, or you may be denied a permit for the following year;

(D) A fish wheel may be operated only by one permit holder at one time; that permit holder must have the fish wheel marked as required by Section ___.27(i)(11) and during fishing operations;

(E) Only the permit holder and the authorized member(s) of the household listed on the subsistence permit may take salmon;

(F) You must personally operate your fish wheel or dip net;

(G) You may not loan or transfer a subsistence fish wheel or dip net permit except as permitted.

(xii) If you are a fish wheel owner:

(A) You must register your fish wheel with ADF&G or the Federal Subsistence Board;

(B) Your registration number and a wood, metal, or plastic plate at least 12 inches high by 12 inches wide bearing either your name and address, or your Alaska driver's license number, or your Alaska State identification card number in letters and numerals at least 1 inch high, must be permanently affixed and plainly visible on the fish wheel when the fish wheel is in the water;

(C) Only the current year's registration number may be affixed to the fish wheel; you must remove any other registration number from the fish wheel;

(D) You must check your fish wheel at least once every 10 hours and remove all fish;

(E) You are responsible for the fish wheel; you must remove the fish wheel from the water at the end of the permit period;

(F) You may not rent, lease, or otherwise use your fish wheel used for subsistence fishing for personal gain.

(xiii) If you are operating a fish wheel:

(A) You may operate only one fish wheel at any one time;

(B) You may not set or operate a fish wheel within 75 feet of another fish wheel;

(C) No fish wheel may have more than two baskets;

(D) If you are a permittee other than the owner, you must attach an additional wood, metal, or plastic plate at least 12 inches high by 12 inches wide, bearing your name and address in letters and numerals at least 1 inch high, to the fish wheel so that the name and address are plainly visible.

(xiv) A subsistence fishing permit may be issued to a village council, or other similarly qualified organization whose members operate fish wheels for subsistence purposes in the Upper Copper River District, to operate fish wheels on behalf of members of its village or organization. The following additional provisions apply to subsistence fishing permits issued under this paragraph (i)(11)(xiv):

(A) The permit will list all households and household members for whom the fish wheel is being operated. The permit will identify a person who will be responsible for each fish wheel in a similar manner to a fish wheel owner as described in paragraph (i)(11)(xii) of this section;

(B) The allowable harvest may not exceed the combined seasonal limits for the households listed on the permit; the permittee will notify the ADF&G or Federal Subsistence Board when households are added to the list, and the seasonal limit may be adjusted accordingly;

(C) Members of households listed on a permit issued to a village council or other similarly qualified organization are not eligiblefor a separate household subsistence fishing permit for the Upper Copper River District;

(D) The permit will include provisions for recording daily catches for each fish wheel; location and number of fish wheels; full legal name of the individual responsible for the lawful operation of each fish wheel as described in paragraph (i)(11)(xii) of this section; and other information determined to be necessary for effective resource management.

(xv) You may take salmon in the vicinity of the former Native village of Batzulnetas only under the authority of a Batzulnetas subsistence salmon fishing permit available from the National Park Service under the following conditions:

(A) You may take salmon only in those waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek;

(B) You may use only fish wheels, dip nets, and rod and reel on the Copper River and only dip nets, spears, fyke nets, and rod and reel in Tanada Creek. One fyke net and associated lead may be used in Tanada Creek upstream of the National Park Service weir;

(C) You may take salmon only from May 15 through September 30 or until the season is closed by special action;

(D) You may retain Chinook salmon taken in a fish wheel in the Copper River. You must return to the water unharmed any Chinook salmon caught in Tanada Creek;

(E) You must return the permit to the National Park Service no later than October 15 of the year the permit was issued;

(F) You may only use a fyke net after consultation with the in-season manager. You must be present when the fyke net is actively fishing. You may take no more than 1,000 sockeye salmon in Tanada Creek with a fyke net;

(xvi) You may take pink salmon for subsistence purposes from fresh water with a dip net from May 15 through September 30, 7 days per week, with no harvest or possession limits in the following areas:

(A) Green Island, Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island, and adjacent islands, and the mainland waters from the outer point of Granite Bay located in Knight Island Passage to Cape Fairfield;

(B) Waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.

(12) *Yakutat Area.* The Yakutat Area includes all waters and drainages of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Yakutat Area.

(ii) You may take salmon, trout (other than steelhead), and char only under authority of a subsistence fishing permit. You may take steelhead trout only in the Situk and Ahrnklin Rivers and only under authority of a Federal subsistence fishing permit.

(iii) If you take salmon, trout, or char incidentally by gear operated under the terms of a subsistence permit for salmon, you may retain them for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(iv) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit. In areas where use of rod and reel is allowed, you may use artificial fly, lure, or bait when fishing with rod and reel, unless restricted by Federal permit. If you use bait, you must retain all Federally regulated fish species caught, and they apply to your applicable daily and annual harvest limits for that species. For streams with steelhead, once your daily or annual limit of steelhead is harvested, you may no longer fish with bait for any species.

(v) In the Situk River, each subsistence salmon fishing permit holder shall attend his or hergillnet at all times when it is being used to take salmon.

(vi) You may block up to two-thirds of a stream with a gillnet or seine used for subsistence fishing.

(vii) You must immediately remove both lobes of the caudal (tail) fin from subsistence-caught salmon when taken.

(viii) You may not possess subsistence-taken and sport-taken salmon on the same day.

(ix) You must possess a subsistence fishing permit to take Dolly Varden. The daily harvest and possession limit is 10 Dolly Varden of any size.

(13) *Southeastern Alaska Area.* The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, you may take fish other than salmon, trout, grayling, and char in the Southeastern Alaska Area at any time.

(ii) You must possess a subsistence fishing permit to take salmon, trout, grayling, or char. You must possess a subsistence fishing permit to take eulachon from any freshwater stream flowing into fishing Sections 1C or 1D.

(iii) In the Southeastern Alaska Area, a rainbow trout is defined as a fish of the species *Oncorhyncus mykiss* less than 22 inches in overall length. A steelhead is defined as a rainbow trout with an overall length of 22 inches or larger.

(iv) In areas where use of rod and reel is allowed, you may use artificial fly, lure, or bait when fishing with rod and reel, unless restricted by Federal permit. If you use bait, you must retain all Federally regulated fish species caught, and they apply to your applicable daily, seasonal, and annual harvest limits for that species.

(A) For streams with steelhead, once your daily, seasonal, or annual limit of steelhead is harvested, you may no longer fish with bait for any species.

(B) Unless otherwise specified in this §___.27(i)(13), allowable gear for salmon or steelhead is restricted to gaffs, spears, gillnets, seines, dip nets, cast nets, handlines, or rod and reel.

(v) Unless otherwise specified in this §___.27(i)(13), you may use a handline for snagging salmon or steelhead.

(vi) You may fish with a rod and reel within 300 feet of a fish ladder unless the site is otherwise posted by the USDA Forest Service. You may not fish from, on, or in a fish ladder.

(vii) You may not accumulate Federal subsistence harvest limits authorized for the Southeastern Alaska Area with any harvest limits authorized under any State of Alaska fishery with the following exception: Annual or seasonal Federal subsistence harvest limits may be accumulated with State sport fishing harvest limits provided that accumulation of harvest limits does not occur during the same day.

(viii) If you take salmon, trout, or char incidentally with gear operated under terms of a subsistence permit for other salmon, they may be kept for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your subsistence fishing permit.

(ix) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems within the city limits of Petersburg, Wrangell, and Sitka.

(x) You must immediately remove both lobes of the caudal (tail) fin of subsistence-caught salmon when taken.

(xi) You may not possess subsistence-taken and sport-taken fish of a given species on the same day.

(xii) If a harvest limit is not otherwise listed for sockeye in this §___.27(i)(13), the harvest limit for sockeye salmon is the same as provided for in adjacent State subsistence or personal use fisheries. If a harvest limit is not established for the State subsistence or personal use fisheries, the possession limit is 10 sockeye and the annual harvest limit is 20 sockeye per household for that stream.

(xiii) The Sarkar River system above the bridge isclosed to the use of all nets by both Federally qualified and non-Federally qualified users.

(xiv) From July 7 through July 31, you may take sockeye salmon in the waters of the Klawock River and Klawock Lake only from 8 a.m. Monday until 5 p.m. Friday.

(xv) You may take Chinook, sockeye, and coho salmon in the mainstem of the Stikine River only under the authority of a Federal subsistence fishing permit. Each Stikine River permit will be issued to a household. Only dip nets, spears, gaffs, rod and reel, beach seine, or gillnets not exceeding 15 fathoms in length may be used. The maximum gillnet mesh size is 5½-inches, except during the Chinook season when the maximum gillnet mesh size is 8 inches.

(A) You may take Chinook salmon from May 15 through June 20. The annual limit is 5 Chinook salmon per household.

(B) You may take sockeye salmon from June 21 through July 31. The annual limit is 40 sockeye salmon per household.

(C) You may take coho salmon from August 1 through October 1. The annual limit is 20 coho salmon per household.

(D) You may retain other salmon taken incidentally by gear operated under terms of this permit. The incidentally taken salmon must be reported on your permit calendar.

(E) The total annual guideline harvest level for the Stikine River fishery is 125 Chinook, 600 sockeye, and 400 coho salmon. All salmon harvested, including incidentally taken salmon, will count against the guideline for that species.

(xvi) You may take coho salmon with a Federal salmon fishing permit. There is no closed season. The daily harvest limit is 20 coho salmon per household. Only dip nets, spears, gaffs, handlines, and rod and reel may be used. There are specific rules to harvest any salmon on the Stikine River, and you must have a separate Stikine River subsistence salmon fishing permit to take salmon on the Stikine River.

(xvii) Unless noted on a Federal subsistence harvest permit, there are no harvest limits for pink or chum salmon.

(xviii) Unless otherwise specified in this §___.27(i)(13), you may take steelhead under the terms of a subsistence fishing permit. The open season is January 1 through May 31. The daily household harvest and possession limit is one with an annual household limit of two. You may only use a dip net, gaff, handline, spear, or rod and reel. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xix) You may take steelhead trout on Prince of Wales and Kosciusko Islands under the terms of Federal subsistence fishing permits. You must obtain a

separate permit for the winter and spring seasons.

(A) The winter season is December 1 through the last day of February, with a harvest limit of 2 fish per household. You may use only a dip net, handline, spear, or rod and reel. The winter season may be closed when the harvest level cap of 100 steelhead for Prince of Wales/Kosciusko Islands has been reached. You must return your winter season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(B) The spring season is March 1 through May 31, with a harvest limit of 5 fish per household. You may use only a dip net, handline, spear, or rod and reel. The spring season may be closed prior to May 31 if the harvest quota of 600 fish minus the number of steelhead harvested in the winter subsistence steelhead fishery is reached. You must return your spring season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xx) In addition to the requirement for a Federal subsistence fishing permit, the following restrictions for the harvest of Dolly Varden, brook trout, grayling, cutthroat, and rainbow trout apply:

(A) The daily household harvest and possession limit is 20 Dolly Varden; there is no closed season or size limit;

(B) The daily household harvest and possession limit is 20 brook trout; there is no closed season or size limit;

(C) The daily household harvest and possession limit is 20 grayling; there is no closed season or size limit;

(D) The daily household harvest limit is 6 and the household possession limit is 12 cutthroat or rainbow trout in combination; there is no closed season or size limit;

(E)You may only use a rod and reel;

(F) The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xxi) There is no subsistence fishery for any salmon on the Taku River.

■ 4. In subpart D of 36 CFR part 242 and 50 CFR part 100, §___.28 is added to read as follows:

§ ___.28 Subsistence taking of shellfish.

(a) Regulations in this section apply to subsistence taking of Dungeness crab, king crab, Tanner crab, shrimp, clams, abalone, and other shellfish or their parts.

(b) [Reserved]

(c) You may take shellfish for subsistence uses at any time in any area of the public lands by any method unless restricted by this section.

(d) *Methods, means, and general restrictions.*

(1) The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional shellfish of that species under any other harvest limit specified for a State season.

(2) Unless otherwise provided in this section or under terms of a required subsistence fishing permit (as may be modified by this section), you may use the following legal types of gear to take shellfish:

(i) Abalone iron;
(ii) Diving gear;
(iii) A grappling hook;
(iv) A handline;
(v) A hydraulic clam digger;
(vi) A mechanical clam digger;
(vii) A pot;
(viii) A ring net;
(ix) A scallop dredge;
(x) A sea urchin rake;
(xi) A shovel; and
(xii) A trawl.

(3) You are prohibited from buying or selling subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified.

(4) You may not use explosives and chemicals, except that you may use chemical baits or lures to attract shellfish.

(5) Marking requirements for subsistence shellfish gear are as follows:

(i) You must plainly and legibly inscribe your first initial, last name, and address on a keg or buoy attached to unattended subsistence fishing gear, except when fishing through the ice, when you may substitute for the keg or buoy a stake inscribed with your first initial, last name, and address inserted in the ice near the hole; subsistence fishing gear may not display a permanent ADF&G vessel license number;

(ii) Kegs or buoys attached to subsistence crab pots also must be inscribed with the name or United States Coast Guard number of the vessel used to operate the pots.

(6) Pots used for subsistence fishing must comply with the escape mechanism requirements found in §100.27(c)(2).

(7) You may not mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(e) *Taking shellfish by designated harvest permit.*

(1) Any species of shellfish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user (beneficiary), you may designate another Federally-qualified subsistence user to take shellfish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest shellfish and must return a completed harvest report. The designated fisherman may harvest for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated harvest permit when taking, attempting to take, or transporting shellfish taken under this section, on behalf of a beneficiary.

(4) You may not fish with more than one legal limit of gear as established by this section.

(5) You may not designate more than one person to take or attempt to take shellfish on your behalf at one time. You may not personally take or attempt to take shellfish at the same time that a designated fisherman is taking or attempting to take shellfish on your behalf.

(f) If a subsistence shellfishing permit is required by this section, the following conditions apply unless otherwise specified by the subsistence regulations in this section:

(1) You may not take shellfish for subsistence in excess of the limits set out in the permit unless a different limit is specified in this section;

(2) You must obtain a permit prior to subsistence fishing;

(3) You must have the permit in your possession and readily available for inspection while taking or transporting the species for which the permit is issued;

(4) The permit may designate the species and numbers of shellfish to be harvested, time and area of fishing, the type and amount of fishing gear and other conditions necessary for management or conservation purposes;

(5) If specified on the permit, you must keep accurate daily records of the catch involved, showing the number of shellfish taken by species, location and date of the catch, and such other information as may be required for management or conservation purposes;

(6) You must complete and submit subsistence fishing reports at the time specified for each particular area and fishery;

(7) If the return of catch information necessary for management and conservation purposes is required by a subsistence fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(g) *Subsistence take by commercial vessels.* No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, Tanner crab, or Dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening and ending 14 days after the closure of a respective open season in the area or areas for which the vessel is registered. However, if you are a commercial fisherman, you may retain shellfish for your own use from your lawfully taken commercial catch.

(h) You may not take or possess shellfish smaller than the minimum legal size limits.

(i) Unlawful possession of subsistence shellfish. You may not possess, transport, give, receive, or barter shellfish or their parts taken in violation of Federal or State regulations.

(j)(1) An owner, operator, or employee of a lodge, charter vessel, or other enterprise that furnishes food, lodging, or guide services may not furnish to a client or guest of that enterprise, shellfish that has been taken under this section, unless:

(i) The shellfish has been taken with gear deployed and retrieved by the client or guest who is a Federally-qualified subsistence user;

(ii) The gear has been marked with the client's or guest's name and address; and

(iii) The shellfish is to be consumed by the client or guest or is consumed in the presence of the client or guest.

(2) The captain and crewmembers of a charter vessel may not deploy, set, or retrieve their own gear in a subsistence shellfish fishery when that vessel is being chartered.

(k) *Subsistence shellfish areas and pertinent restrictions.*

(1) *Southeastern Alaska–Yakutat Area.* No marine waters are currently identified under Federal subsistence management jurisdiction.

(2) *Prince William Sound Area.* No marine waters are currently identified under Federal subsistence management jurisdiction.

(3) *Cook Inlet Area.*

(i) You may take shellfish for subsistence purposes only as allowed in this section (k)(3).

(ii) You may not take king crab, Dungeness crab, or shrimp for subsistence purposes.

(iii) In the subsistence taking of Tanner crab:

(A) Male Tanner crab may be taken only from July 15 through March 15;

(B) The daily harvest and possession limit is 5 male Tanner crabs;

(C) Only male Tanner crabs 51/2inches or greater in width of shell may be taken or possessed;

(D) No more than 2 pots per person, regardless of type, with a maximum of 2 pots per vessel, regardless of type, may be used to take Tanner crab.

(iv) In the subsistence taking of clams:

(A) The daily harvest and possession limit for littleneck clams is 1,000 and the minimum size is 1.5 inches in length;

(B) The daily harvest and possession limit for butter clams is 700 and the minimum size is 2.5 inches in length.

(v) Other than as specified in this section, there are no harvest, possession, or size limits for other shellfish, and the season is open all year.

(4) *Kodiak Area.*

(i) You may take crab for subsistence purposes only under the authority of a subsistence crab fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G before subsistence shrimp fishing during a State closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection. The permit must specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male Dungeness crabs per person; only male Dungeness crabs with a shell width of 61/2inches or greater may be taken or possessed. Taking of Dungeness crab is prohibited in water 25 fathoms or more in depth during the 14 days immediately before the State opening of a commercial king or Tanner crab fishing season in the location.

(iv) In the subsistence taking of king crab:

(A) The annual limit is six crabs per household; only male king crab with shell width of 7 inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2–week period must have all bait and bait containers removed and all doors secured fully open;

(C) You may only use one crab pot, which may be of any size, to take king crab;

(D) You may take king crab only from June 1 through January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after State open commercial fishing seasons for red king crab, blue king crab, or Tanner crab in the location;

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove, and an area defined by a line1/2mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of king crab except by Federally-qualified subsistence users.

(v) In the subsistence taking of Tanner crab:

(A) You may not use more than five crab pots to take Tanner crab;

(B) You may not take Tanner crab in waters 25 fathoms or greater in depth during the 14 days immediately before the opening of a State commercial king or Tanner crab fishing season in the location;

(C) The daily harvest and possession limit per person is 12 male crabs with a shell width 51/2inches or greater.

(5) *Alaska Peninsula—Aleutian Islands Area.*

(i) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed State commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit must specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(ii) The daily harvest and possession limit is 12 male Dungeness crabs per person; only crabs with a shell width of 51/2inches or greater may be taken or possessed.

(iii) In the subsistence taking of king crab:

(A) The daily harvest and possession limit is six male crabs per person; only

crabs with a shell width of 61/2inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2–week period must have all bait and bait containers removed and all doors secured fully open;

(C) You may take crabs only from June 1 through January 31.

(iv) The daily harvest and possession limit is 12 male Tanner crabs per person; only crabs with a shell width of 51/2inches or greater may be taken or possessed.

(6) *Bering Sea Area.*

(i) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots, and ring net.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit must specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) In waters south of 60° North latitude, the daily harvest and possession limit is 12 male Dungeness crabs per person.

(iv) In the subsistence taking of king crab:

(A) In waters south of 60° North latitude, the daily harvest and possession limit is six male crabs per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2–week period must have all bait and bait containers removed and all doors secured fully open;

(C) In waters south of 60° North latitude, you may take crab only from June 1 through January 31;

(D) In the Norton Sound Section of the Northern District, you must have a subsistence permit.

(v) In waters south of 60° North latitude, the daily harvest and possession limit is 12 male Tanner crabs.

Dated: March 3, 2009.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

Dated: March 5, 2009.

Calvin Casipit,

Subsistence Program Leader, USDA-Forest Service.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 08–282]

Public Information, the Inspection of Records, and Implementation of Freedom of Information Act Amendments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its rules implementing the Freedom of Information Act (FOIA) to reflect changes in that law made by the OPEN Government Act of 2007. In addition, the rules are updated to reflect the current structure of the agency; to reflect the increased availability of records on the agency's Web site and the Commission's decisions over the years with respect to whether certain records are routinely available for public inspection; to ensure that the rules reflect the agency's experience with processing FOIA requests; and to clarify the fees applicable to FOIA requests.

DATES: Effective April 29, 2009.

FOR FURTHER INFORMATION CONTACT: Laurence H. Schecker, Special Counsel, Administrative Law Division, Office of General Counsel, 202–418–1720 or *Laurence.Schecker@fcc.gov*.

SUPPLEMENTARY INFORMATION: In this Order, we amend part 0 of the Commission's rules to update sections implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552.

On December 14, 2005, the President issued an Executive Order concerning implementation of the FOIA. Executive Order No. 13392, *Improving Agency Disclosure of Information*, 70 FR 75373 (December 14, 2005) (FOIA Executive Order). Among other things, the Executive Order required each agency to review its FOIA operations, *see id.* sec. 3(a), 70 FR at 75375 (December 14, 2005), to develop a plan to improve its FOIA operations, *id.* sec. 3(b)(iii), 70 FR at 75375 (December 14, 2005), and to report to the Attorney General about its review and plan for improving FOIA operations. *Id.* sec. 3(c), 70 FR at 75375 (December 14, 2005). Consistent with the Executive Order, the Commission reviewed its FOIA operations, developed a plan for improvement, and issued its report. *Improving Agency Disclosure of Information: Executive Order 13392* (June 14, 2006) (*FCC FOIA Report*), *available at http://www.fcc.gov/foia/2006improv_disclosure_ report.pdf. See also* Letter from Samuel Feder, General Counsel and Chief FOIA Officer, to Clay Johnson, III, Chairman, President's Management Council (July 30, 2007) (Updated Status Report—FOIA Implementation Plan), *available at http://www.fcc.gov/foia/2006improv-update.pdf*; Letter from Matthew Berry, General Counsel and Chief FOIA Officer, to Chairman Johnson (February 27, 2008) (Updated Status Report).

The Commission committed, *inter alia*, to review its FOIA implementing rules ''[t]o ensure that the FCC's information access regulations reflect the current structure of the agency, the availability of records to the public and whether more records should be posted pursuant to [FOIA] subsection (a)(2), [5 U.S.C. 552(a)(2)], the proper procedures for processing FOIA requests and appeals, and current fee information.'' *FCC FOIA Report* at 9.

In late 2007, Congress passed and the President signed the Openness Promotes Effectiveness in our National Government Act, known as the OPEN Government Act. Public Law No. 110–175, 121 Stat. 2524 (2007), *codified at scattered sections of* 5 U.S.C. 552. The FOIA amendments adopted in this statute require additional changes to our FOIA implementing regulations.

In our FY 2007 FOIA Annual Report, we modified the target date for reviewing and amending our FOIA regulations so that a single revision of the rules could address the OPEN Government Act as well as the commitment made in the FCC's FOIA Report. *See* FCC FY 2007 FOIA Annual Report, at 8–9 (Section XII.C) (*http://www.fcc.gov/foia/2007foiareport.pdf*); *see also* letter from Matthew Berry to Chairman Johnson (Feb. 27, 2008) (noting the change in the target date for revising our FOIA regulations). We have now completed an extensive review of our FOIA regulations and in this Order adopt various amendments to the rules. By this Order, we fulfill the commitment made in the *FCC FOIA Report*, as modified in our FY2007 FOIA Annual Report.

Our FOIA implementing rules are presently found at 47 CFR 0.441 through 0.470. The rules amended in this Order may generally be grouped into three sections: (1) rules describing records that are routinely available for public inspection (47 CFR 0.441, 0.445, 0.451, 0.453, 0.455, 0.460 and 0.465); (2) rules describing records that are not routinely available for public inspection and governing requests for confidential treatment (47 CFR 0.442, 0.457, 0.458, 0.459, 0.461, and 0.463); and (3) the FOIA fee rules (47 CFR 0.451(d), 0.465 through 0.470). We have reviewed these rules and, as set forth in Appendix,

adopt a variety of changes to (i) reflect the current structure of the agency; (ii) reflect the increased availability of records on the FCC's Web site and the Commission's decisions over the years with respect to whether certain records are routinely available for public inspection; (iii) implement the changes to the FOIA enacted in the OPEN Government Act; (iv) ensure that the rules reflect our experience with processing FOIA requests; and (v) clarify the fees applicable to FOIA requests. The following paragraphs describe the changes we adopt in the rules.

Records Routinely Available for Public Inspection. The FOIA requires that a variety of records be made ''available for public inspection and copying.'' 5 U.S.C. 552(a)(2)(A)–(D) (requiring each agency to make available for public inspection and copying ''final opinions * * * [and] orders made in the adjudication of cases;'' policy statements that ''are not published in the **Federal Register**;'' ''administrative staff manuals and instructions to staff that affect a member of the public;'' and records released pursuant to a FOIA request that ''the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records''); FOIA Executive Order, sec. 1(b). The Electronic Freedom of Information Act Amendments of 1996 (EFOIA), Public Law No. 104–231, 110 Stat. 3048 (1996), *codified at scattered sections of* 5 U.S.C. 552. *See Amendment of Part 0 of the Commission's Rules to Implement the Electronic Freedom of Information Act Amendments of 1996*, 13 FCC Rcd 3419 (1997), requires, and the FOIA Executive Order provides for, the use of electronic information technology to make records available to the public. *See* 5 U.S.C. 552(a)(2); FOIA Executive Order, sec. 3(a)(iv), 70 FR at 75375 (December 14, 2005). We have developed an extensive Web site, *http://www.fcc.gov*, providing the public with broad access to our records. Our Web site also affirmatively discloses much information about the Commission, consistent with the FOIA Executive Order's direction that agencies make ''proactive'' and ''spontaneous disclosure of information to the public'' to reduce the need for the public to make FOIA requests to obtain information from agencies. *Id.*, sec. 3(a)(iv). For example, our Web site makes available Commission and Bureau/Office level decisions, Commission rules, comments filed in rulemaking proceedings, public notices, applications for licenses or other authorizations, and policy statements and staff guidance concerning our rules and operations, just to mention a few categories of records. We also maintain paper reading rooms for public access to our records. Our rules governing access to routinely available records require updating in light of changes in the structure of the Commission, changes in the types of proceedings we conduct, Internet availability of many of our records, and electronic filing and referencing capabilities for many of our proceedings. We therefore update sections 0.441, 0.445, 0.451, 0.453, 0.455, 0.460 and 0.465 of our rules as discussed below and as set forth in the rule changes.

Section 0.441 is amended to indicate that in addition to the sources for obtaining Commission information previously listed in the rule, information may be obtained from the Commission's copy contractor. It also contains updated Internet citations and FCC headquarters locations for obtaining information. We have also amended section 0.441 to note the availability of our FOIA Public Liaison to assist persons requesting information from the Commission in resolving any concerns relating to a FOIA request. OPEN Government Act, sec. 6(b)(1)(B); *see http://www.fcc.gov/foia/#contact* (FOIA Public Liaison contact).

Section 0.445 contains our regulation concerning the availability of our opinions, orders, policy statements, interpretations, administrative manuals and staff instructions. 47 CFR 0.445. This rule implements various statutory requirements concerning the public availability of these documents. *See* 5 U.S.C. 552(a)(2)(A)–(C). We are making minor modifications to this rule. We are changing the reference to Pike and Fisher Radio Regulation in section 0.445(b) to Pike and Fisher Communications Regulation, the current title of that publication. *See commreg.pf.com*. We are also removing paragraph (g), which currently refers to the FCC Administrative Manual, a document that no longer exists. We are modifying current paragraph (h), which will become paragraph (g), to reflect that general instructions to staff may be contained in orders published in the **Federal Register**. Finally, current paragraph (i), which will become paragraph (h), indicates we may redact information from published documents to protect personal privacy. *See* 5 U.S.C. 552(a) (allowing deletion of information to protect personal privacy). We are amending this section to indicate we may also redact information required or authorized to be withheld pursuant to other Federal statutes. This amendment reflects our practice of issuing decisions redacting confidential commercial information, consistent with the Trade Secrets Act, 18 U.S.C. 1905. *See Examination of Current Policy Concerning Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, 24854 (1998) (*Confidentiality R&O*) (orders containing confidential commercial information may be released in part under seal), *recon. den.*, 14 FCC Rcd 20128 (1999).

We are making a minor clarifying amendment to section 0.451(d), which currently refers only to search fees, to cross-reference copying and review fees that are provided for elsewhere in our FOIA regulations. We also amend section 0.451(b)(5) to cross-reference part 19 of our rules.

Two of our FOIA rules, sections 0.453 and 0.455, set out the public availability of records in our public reference rooms. 47 CFR 0.453 and 0.455. These rules are being updated to reflect the current nature of our proceedings and the structure of the agency. Section 0.453(a) is being amended to reflect the availability of the Commission's Electronic Comment Filing System (ECFS), which makes case histories available on the Internet to the public. *Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322 (1998) (*ECFS Decision*). Section 0.453(a)(2)(i) provides a current list of Broadcast Services proceedings which have records that are routinely available, and section 0.453(a)(2)(ii) updates common carrier proceedings presently in the Wireline Competition Bureau. Section 0.453(a)(2)(iii)(E) is amended to delete the last sentence to reflect that the Uniform Licensing System (ULS) is now fully functional. Section 0.453(a)(2)(iv) is amended to reflect the availability of certain contracts and to eliminate references to INTELSAT and INMARSAT in light of the privatization of those entities. Finally, section 0.453(a)(2)(v) updates the list of publicly available cable service proceedings. Minor changes are made to section 0.455. We update paragraph (a) to reflect the Media Bureau materials currently available in its reference room. We also amend former paragraph (c), now (b), to indicate that Commission minutes and records for votes are available in the Office of the Secretary, not the Agenda Group. References to separate Bureau reference rooms, now consolidated in the Reference Information Center, are also removed from section 0.455.

Section 0.460 governs requests for inspection of records that are routinely available for public inspection under

sections 0.453 and 0.455. Our rules have provided that records routinely available to the public can be requested either through the Commission directly or through our copy contractor. 47 CFR 0.460(f). *See also* 47 CFR 0.465(f). While a large portion of the records routinely available for public inspection are available on our Web site, there are still some routinely available records that are only available in paper copy at the Commission. Processing written requests for these records has placed a great burden on our staff. We are therefore amending paragraph (f) to require that written requests to obtain copies of records routinely available for public inspection must be processed through the Commission's copy contractor under section 0.465. We are also amending section 0.465(f) to indicate that the Commission's copy contractor will fulfill requests for records that are routinely available under section 0.453 or 0.455. These changes do not affect those personally inspecting records at the Commission. *See* 47 CFR 0.460(b).

Records Not Routinely Available for Public Inspection. Section 0.442 of our rules addresses situations in which we receive requests from other Federal agencies for records that were submitted to us with a request for confidential treatment or that we consider presumptively confidential. 47 CFR 0.442. This rule, based on sections of the Paperwork Reduction Act (PRA), 44 U.S.C. 3512 and 3510(b), indicates that such records will receive confidential treatment when we share them with other agencies, and sets forth the procedures we employ when we receive such requests. We are amending paragraphs (a) and (d)(3) to provide that the rule covers records that have been deemed confidential under other statutes, FCC orders, or regulations in addition to those deemed confidential under section 0.457 or 0.459. We are amending section 0.442(b) to indicate that the Commission may initiate the sharing of records with another Federal agency under this section. Paragraph (d)(1) provides for notice to the submitter of confidential information that we have received a request from another Federal agency for the records. We are amending this paragraph to make clear that we may provide this notice either individually or by public notice in instances where there are many submitters of confidential information. We are amending paragraph (d)(2) to provide that Federal agencies may request that we not provide notice to the submitter of confidential information if such notice would interfere with national security or homeland defense activities as well as law enforcement activities. 47 CFR 0.442(d)(2)–(3). We are amending paragraph (d)(2) to indicate that Federal agencies should submit such requests in writing to us. We note that such a request may be made by e-mail.

In setting forth nine FOIA disclosure exemptions, the FOIA recognizes that not all agency records may be available to the public. 5 U.S.C. 552(b)(1)–(9). Section 0.457 of our rules sets forth these exemptions and lists circumstances in which we have already determined that certain types of records are not routinely available for public inspection. Section 0.457(a) is amended to clarify that documents for which the Commission has requested national security classification from another agency will not be disclosed pending a classification determination. We have also amended section 0.457(c)(3) to reflect our previous repeal of section 43.53. *See Amendment of Sections 43.51, 43.52, 43.53, 43.54 and 43.74 of the Commission's Rules To Eliminate Certain Reporting Requirements*, 1 FCC Rcd 933 (1986). In addition, the Commission determined in a 2004 rulemaking to accord confidential treatment to outage reports filed under part 4 of our rules, but did not update section 0.457(d) at that time. *See New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, 19 FCC Rcd 16830 (2004), *adopting* 47 CFR 4.2. We are therefore adding a new section 0.457(d)(1)(vii) to reflect that action. A new section 0.457(d)(1)(viii) has also been added to reflect the commercially sensitive nature of coordination of satellite systems pursuant to procedures codified in the International Telecommunication Union (ITU) Radio Regulations. *See Robert J. Butler*, 6 FCC Rcd 5414 (1991) (documents that were generated during the course of certain international negotiations withheld pursuant to FOIA Exemption 4). We have deleted the reference to radio operator examinations that are no longer administered, *see Amendment of Part 13 of the Commission's Rules To Privatize the Administration of Examinations for Commercial Operator Licenses and To Clarify Certain Rules*, 8 FCC Rcd 1046 (1992), as well as a dated reference to equipment authorization procedures prior to 1974. 47 CFR 0.457(b)(3). In section 0.457(f) regarding personal privacy under FOIA Exemption 6, 5 U.S.C. 552(b)(6), we are expanding the reference to ''employees'' so as to include Commission contractors. *See U.S. Dep't of Justice* v. *Reporters' Committee for Freedom of the Press*, 489 U.S. 749, 774 (1989) (an individual doing business with the federal government may have some protectible privacy interest). We are amending section 0.457(g), regarding law enforcement information, to more closely track the language of the FOIA.

Section 0.459 of our rules addresses requests for confidential treatment. *See generally Confidentiality R&O*, 13 FCC Rcd at 34826–27 (prescribing showing to be made for requests for confidential treatment). Where confidential treatment is sought for only a part of a document, we will require the filing of a redacted public version. We are adding a new paragraph indicating that this section does not apply to comments or materials filed by means of our Electronic Filing System (ECFS), consistent with the rulemaking decision adopting the ECFS system. *ECFS Decision*, 13 FCC Rcd at 11330–31 (confidential materials cannot be filed electronically through ECFS). We have added a new paragraph (a)(3) reflecting the practice of using a ''checkbox'' mechanism for indicating confidentiality on some forms. We are amending paragraph (c) concerning casual requests for confidential treatment to indicate that the existing required showing before confidential treatment will be granted means that simply stamping a record ''confidential'' will not be considered a request for confidential treatment. We are also amending paragraph (g) to provide that when a request for confidential treatment is denied, the person who submitted the records will have 10 days to seek review, instead of the 5 days currently provided for in the rule. This change harmonizes the time period in this rule with the time period in section 0.461(i)(1). *Compare* 47 CFR 0.459(g) (currently providing 5 days for filing an application for review or seeking a judicial stay when a request for confidentiality is denied in whole or in part) *with* 47 CFR 0.461(i)(1) (currently providing 10 days for filing an application for review or a judicial stay when in the context of a FOIA request a request for confidentiality is denied in whole or in part).

Finally, section 0.458 of our rules addresses situations when persons regulated by or practicing before the Commission come into possession of written non-public information. We amend this section to provide that such information should be returned to the Commission's Office of Inspector General promptly and without further distribution or use. This amendment tracks the current language of 47 CFR 19.735–203.

Obtaining Records Not Routinely Available for Public Inspection. Section 0.461 of our rules describes how the public may seek records not routinely available for public inspection. We herein make several amendments to section 0.461 to reflect our experience in processing FOIA requests and to implement the OPEN Government Act. We have amended section 0.461(a) to include the definition of ''records'' adopted in the OPEN Government Act. OPEN Government Act, sec. 9, *codified at* 5 U.S.C. 552(f)(2). This definition specifies that records include electronic records and records maintained for the Commission by another entity for purposes of records management. Section 0.461(a) is also amended to provide more detail for FOIA requesters concerning what information should be submitted with a request for inspection of records. We make this change to assist staff in processing FOIA requests. By providing a more detailed FOIA request, we hope staff processing the request will be able to locate the records quickly, thus reducing search time charges to FOIA requesters. We hope that this will minimize the need to contact FOIA requesters for clarification. *See* OPEN Government Act, sec. 6(a), *codified at* 5 U.S.C. 552a)(6)(A)(ii) (limiting the tolling of time for processing FOIA requests when requesters must be contacted for clarification). *See also OIP Guidance: New Limitations on Tolling the FOIA's Response Time* (DOJ/OIP November 11, 2008), *available at http://www.usdoj.gov/oip/foiapost/2008foiapost29.htm.* Section 0.461(a)(2) is amended to clarify that, pursuant to FOIA section 552(a)(3)(B), while requesters may specify the form or format of records to be produced, the records must be readily reproducible in the requested form or format for the Commission to comply with the request. *See* 5 U.S.C. 552(a)(3)(B). This is consistent with our practice. *See Rick Linsk*, 18 FCC Rcd 25601, 25602 (2003), *citing TPS, Inc.* v. *U.S. Dep't of Defense*, 330 F.3d 1191, 1193 (9th Cir. 2003). Section 0.461(b) concerns information provided with FOIA requests, and is amended to provide that mailing addresses be included with a FOIA request so that we can mail paper copies of records produced to FOIA requesters. It is also amended to remind requesters that if they are seeking a FOIA fee waiver, such a request must be included with their original FOIA request. *See* 47 CFR 0.470(c).

Section 0.461(d)(3) provides for notification of persons who have submitted records to the Commission that are confidential under sections 0.457 or 0.459 if a request for inspection of those records is filed under section 0.461. We have amended this section to clarify procedures for this notice and how all parties should serve each other with any pleadings. We are also adding a note to this section reminding parties that FOIA proceedings are permit-but-disclose proceedings under our ex parte rules. *See* 47 CFR 1.1206(a)(7).

Section 0.461(e) is amended to indicate that a FOIA request is deemed properly received when it is received and date stamped by our FOIA Control Office and assigned to the Bureau or Office that is the custodian of the records sought.*See* OPEN Government Act, sec. 6(a), *codified at* 5 U.S.C. 552(a)(6)(A). *See also OIP Guidance: Assigning Tracking Numbers and Providing Status Information for Requests* (DOJ/OIP November 18, 2008), *available at http://www.usdoj.gov/oip/foiapost/2008foiapost30.htm*; *OIP Guidance: New Requirement to Route Misdirected FOIA Requests* (DOJ/OIP November 18, 2008), *available at http://www.usdoj.gov/oip/foiapost/2008foiapost31.htm.* A new paragraph is being added to paragraph (e), and language is added to sections 0.461(g)(1), 0.467(e)(2), and 0.469(c) concerning the tolling of the FOIA time limits for processing requests, to implement the OPEN Government Act's provisions. This paragraph provides that the time for responding to a FOIA request is tolled while the custodian of records seeks reasonable clarification from the requester. Such a request must be made within 10 days after a request is properly received by the custodian of records, and only one such request may be made. The paragraph also provides for a tolling of the time limits when fee issues (including fee waivers) are unresolved. The OPEN Government Act allows us to make only one request for clarification of the scope of a FOIA request, but does not contain a similar restriction for fee matters. *Compare* 5 U.S.C. 552(a)(6)(A)(ii)(I) *with* 5 U.S.C. 552(a)(6)(A)(ii)(II). We will, however, endeavor to resolve fee matters with only one inquiry to requesters. Paragraph (e)(4) is also amended to reflect our practice of assigning control numbers to FOIA requests, and to indicate that we provide notice to a FOIA requester of the control number and of a telephone number that may be called to obtain the status of the FOIA request. These amendments reflect modifications to the FOIA made in the OPEN Government Act. OPEN Government Act, sec. 7(a), *codified at* 5 U.S.C. 552(a)(7). *See also OIP Guidance: Assigning Tracking Numbers and Providing Status Information for Requests* (DOJ/OIP November 18, 2008), *available at http://www.usdoj.gov/oip/foiapost/2008foiapost30.htm.*

We sometimes receive FOIA requests that seek records that are the property of another federal agency or department. We have clarified in section 0.461(f) that such requesters will be directed to the correct department or agency. We have also amended section 0.461(f)(5), which addresses withholding part of a record pursuant to a FOIA exemption. The OPEN Government Act amended the FOIA to require that when a redaction is made to a record being released, we must indicate the FOIA exemption relied upon at the site of the redaction. *See* sec. 12, codified at 5 U.S.C. 552(b) (after paragraph 9). *See also OIP Guidance: Segregating and Marking Documents for Release in Accordance with the Open Government Act* (DOJ/OIP October 23, 2008), available at *http://www.usdoj.gov/oip/foiapost/2008foiapost26.htm.* Conforming or clarifying edits are also made to section 0.461(g).

We have amended section 0.461(i) to add persons with a personal privacy interest in a record to the categories of persons who may seek review of a decision to grant access to the records. We have also added a note to paragraphs 0.461(i) and (j) indicating that the General Counsel will review applications for review of initial FOIA decisions and may attempt informally to resolve issues with the applicant. This has been our practice and we have found it to be a consumer-friendly practice, consistent with the FOIA Executive Order. FOIA Executive Order, sec. 1(b)–(d), 70 FR at 75373 (December 14, 2005). We have also amended section 0.461(j) to make clear that applications for review of fee determinations and fee waiver decisions may be sought under this paragraph. *See* amended section 0.451(d) and new section 0.470(g). We have provided in section 0.461(k)(2) that the Commission may consolidate applications for review. Finally, we have clarified in section 0.461(l)(2) that, as appropriate, we may continue to process initial FOIA requests or applications for review if an action for judicial review has been filed.

The Touhy Rule. Section 0.463 is the Commission's *Touhy* rule. *See United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951); 5 U.S.C. 301 (authorizing agencies to issue regulations regarding whether government employees or documents may be subpoenaed). We amend this rule to elaborate on the procedures used when determining whether Commission employees will be

permitted to testify or provide records relating to their official duties when they are directly subpoenaed or otherwise served with a request. This amendment also specifies and clarifies the criteria that the General Counsel will use when deciding whether to allow an employee to testify or provide records. We make these amendments based on the following: (1) Our experience in reviewing *Touhy* requests and the information that we typically need to obtain from the requester in order to properly evaluate the request; (2) our review of other agencies' *Touhy* rules; and (3) the factors that courts have considered when evaluating Administrative Procedure Act (APA) challenges to other agencies' *Touhy* decisions. *See, e.g., Houston Business Journal, Inc.* v. *Office of the Comptroller of the Currency, United States Dep't of the Treasury*, 86 F.3d 1208 (D.C. Cir. 1996) (agency decisions under *Touhy* regulation are reviewed under arbitrary or capricious standard under the APA; *Brobreski* v. *U.S. EPA*, 284 F.Supp.2d 67, 79–80 (D.D.C. 2003) (reviewing and upholding EPA's reasons for denying request for testimony by an agency inspector).

FOIA Fee Related Rules. We also make a variety of changes to our FOIA fee-related rules. 47 CFR 0.451(d), 0.465 through 0.470. In section 0.465, we amend paragraph (b) to reflect the availability of audio and video recordings or transcripts of Commission proceedings and note that in certain cases, not all formats may exist. In paragraph (c)(2), we reduce the per page copying fees we are required to charge under the FOIA, 5 U.S.C. 552(a)(4)(A), from $0.17 to $0.10. This reduction is a result of our re-evaluation of reproduction costs. We are also adding to paragraph (c)(2) a charge of $5.00 per computer disk for instance when we provide copies in an electronic format, and add a reference to computer disks in this paragraph. Finally, we are amending paragraph (e) to reflect the availability of many of our documents on the Internet. Paragraphs (e) and (f) are also amended, consistent with our amendment of section 0.460 discussed *supra*, to indicate that the public must seek copies of records routinely available for public inspection in person or from our copy contractor.

Section 0.466 of our rules contains the definitions related to FOIA fees. In paragraph (a)(1) we are changing the definition of ''direct costs'' to reflect that we add 20 percent to our labor costs to cover benefits, to make it consistent with our current practice as reflected in paragraph 0.467(a)(2). When sections 0.466 and 0.467 were first amended to reflect the changes in the FOIA regarding fees, the Commission indicated that it would add 16 percent to the basic rate of pay to cover employee benefits. *The Freedom of Information Reform Act of 1986; Fee Schedule and Administrative Procedures*, 3 FCC Rcd 5107 (1988). This was the percentage adopted in the *OMB FOIA Fee Guidelines* for Federal personnel benefits to be added to the Federal pay levels for search purposes. *The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines*, 52 FR 10012 (March 27, 1987) (*OMB FOIA Fee Guidelines*). The FOIA charged OMB with promulgating ''guidelines * * * which shall provide for a uniform schedule of fees.'' 5 U.S.C. 552(a)(4)(A)(i). Over the years, we have updated the benefits section in paragraph 0.467(a)(1) to reflect actual costs of personnel benefits. In 1994 it was changed to 19 percent (*see Amendment To The Fee Schedule For The Processing Of Requests For Agency Records Pursuant To The Freedom Of Information Act*, 9 FCC Rcd 1810 (1994)) and in 1996 to 20 percent (*see Amendment To The Fee Schedule For The Processing Of Requests For Agency Records Pursuant To The Freedom Of Information Act*, 11 FCC Rcd 3606 (1996)). Because the search and review fees are to charge for our ''direct costs,'' 5 U.S.C. 552(a)(4)(A)(iv), which includes benefits, it was reasonable to increase the percentage we added for benefits as those costs rose over the years, even though OMB never changed the *OMB FOIA Fee Guidelines* in this regard.

We amend paragraph (a)(7) to reflect the new definition of ''representative of the news media'' adopted in the OPEN Government Act, OPEN Government Act, sec. 3, *codified at* 5 U.S.C. 552(a)(4)(A)(ii). We also amend paragraph (a)(3) to indicate that dissemination of records by a representative of the news media shall not be considered to be for a commercial use. *See OMB FOIA Fee Guidelines*, 52 FR 10012, 10019 (March 27, 1987) (a request for records from a representative of the news media ''shall not be considered to be a request that is for a commercial use.''); *National Security Archive* v. *Dep't of Defense*, 880 F.2d 1381, 1387–88 (DC Cir. 1989).

In section 0.467, which addresses search and review fees, we delete the chart listing the hourly fee for FCC employees responding to FOIA requests because the rates change when federal salaries change. Instead, we provide that changes in the hourly fee will be announced by Public Notice and will be posted on our FOIA Web site, *http://www.fcc.gov/foia*. We also specify in paragraph 0.461(a)(1) that labor rates for non-FCC employees will be assessed at their actual hourly cost to the agency. This includes Universal Service Administrative Company (USAC) personnel, who search for USAC records in response to FOIA requests. *See Inter-Tel Technologies, Inc.,* 19 FCC Rcd 5204 n.3 (2004).

In section 0.470, we implement the OPEN Government Act section that waives search fees for commercial and ''all others'' requesters and waives duplication fees for educational requesters or representatives of the news media when we fail to comply with FOIA's time limits in processing a FOIA request. OPEN Government Act, sec. 6(b), *codified at* 5 U.S.C. 552(a)(4)(A)(viii). *See also OIP Guidance: New Limitations on Assessing Fees* (DOJ.OIP November 11, 2008), available at *http://www.usdoj.gov/oip/foiapost/2008foiapost28.htm*. We are also codifying the considerations we take into account when addressing requests for FOIA fee waivers. These standards are well-established in judicial and Commission case law, *see, e.g., McClellan Ecological Seepage Situation* v. *Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987); *Robert J. Robbins, Call Communications Group., Inc.,* 21 FCC Rcd 6685 (2006), and are being set forth in this rule to provide guidance to any FOIA requesters who seek a fee waiver. We note that simply repeating the language of the FOIA fee waiver statute is an insufficient basis for requesting or our granting a fee waiver. We are also adding a new paragraph 0.470(e)(5) indicating that we generally will not rule on a request for fee waiver if no fees or de minimis fees (fifteen dollars or less) are involved. We give a requester ten working days, rather than the previous five, to provide additional information in certain circumstances. Finally, we have amended sections 0.451(d) and 0.461(j), and adopted a new section 0.470(g), to make clear that review may be sought for fee determinations and initial fee waiver decisions.

No Notice and Comment Required. We have determined that the changes we adopt here are general statements of policy, interpretive rules, or rules of agency organization, procedure or practice, and are therefore exempt from the notice and comment requirements of the APA, 5 U.S.C. 553(b)(A) (notice requirements inapplicable to ''interpretive rules, general statements of policy, or rules of agency organization, procedure or practice'').

See Confidentiality R&O, 14 FCC Rcd at 20131 (amending 47 CFR 0.459 and 0.461 without notice and comment), *citing Aluminum Co. of America* v. *FTC,* 589 F. Supp. 169, 178 (S.D.N.Y. 1984) (holding FOIA rules are procedural rules); *United States ex rel. O'Keefe* v. *McDonnell Douglas Corp.,* 132 F.3d 1252, 1255 (8th Cir. 1998) (*Touhy* regulations deal exclusively with internal administrative procedure). The substantive standards for obtaining agency records are set forth in the FOIA. *See generally* 5 U.S.C. 552.

Regulatory Flexibility Act, Paperwork Reduction Act, and Congressional Review Act. Section 603 of the Regulatory Flexibility Act, as amended (RFA), requires an initial regulatory flexibility analysis in notice and comment rulemaking proceedings. 5 U.S.C. 603(a). As we are adopting these rules without notice and comment, no regulatory flexibility analysis is required. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). 44 U.S.C. 3501–3520. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002. 44 U.S.C. 3506(c)(4). Our FOIA rule amendments are being adopted without notice and comment, and therefore are not required to be submitted to Congress under the Congressional Review Act. 5 U.S.C. 804(3)(C) (rules subject to the Congressional Review Act do not include ''any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties'').

Segregability. It is our intention in adopting these rule changes that, if any provision of the rules is held invalid by any court of competent jurisdiction, the remaining provisions shall remain in effect to the fullest extent permitted by law.

List of Subjects in 47 CFR Part 0

Freedom of information, Government publications, Organization and functions (Government agencies), Privacy.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 0 as follows:

PART 0—COMMISSION ORGANIZATION

Subpart C—General Information

Public Information and Inspection of Records

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

Authority: Sec. 5, 48 Stat. 1068, as amended: 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Sections 0.441 through 0.470 are revised to read as follows:

Sec.

0.441 General.
0.442 Disclosure to other Federal government agencies of information submitted to the Commission in confidence.
0.445 Publication availability and use of opinions, orders, policy statements, interpretations, administrative manuals and staff instructions.
0.451 Inspection of records: Generally.
0.453 Public reference rooms.
0.455 Other locations at which records may be inspected.
0.457 Records not routinely available for public inspection.
0.458 Nonpublic information.
0.459 Requests that materials or information submitted to the Commission be withheld from public inspection.
0.460 Requests for inspection of records which are routinely available for public inspection.
0.461 Requests for inspection of materials not routinely available for public inspection.
0.463 Demand by competent authority for the production of documents or testimony concerning information contained therein.
0.465 Request for copies of materials which are available, or made available, for public inspection.
0.466 Definitions.
0.467 Search and review fees.
0.468 Interest.
0.469 Advance payments.
0.470 Assessment of fees.

§ 0.441 General.

(a) Any person desiring to obtain information from the Commission may do so by contacting the Consumer and Governmental Affairs Bureau (CGB). Requests for information and general inquiries may be submitted by:

(1) Internet at *http://www.fcc.gov/cgb/fccinfo* or *http://www.fcc.gov/foia.*

(2) Telephone at 1–888–CALL–FCC (1–888–225–5322).

(3) TDD/TDY at 1–888–TELL–FCC (1–888–835–5322).

(4) Correspondence to: Consumer and Governmental Affairs Bureau, 445 12th Street, SW., Washington, DC 20554.

(5) Visiting the Reference Information Center of the Consumer and Governmental Affairs Bureau at Room CY–A257 of the Commission's main office at 445 12th Street, SW., Washington, DC 20554.

(6) Facsimile at 1–866–418–0232.

(7) Contacting the Commission's Copy Contractor, see § 0.465(a).

(b) The Commission's FOIA Public Liaison is available to assist any person requesting information from the Commission in resolving any concerns related to a Freedom of Information Act request. See *http://www.fcc.gov/foia/.*

§ 0.442 Disclosure to other Federal government agencies of information submitted to the Commission in confidence.

(a) The disclosure of records to other Federal government agencies is generally governed by the Paperwork Reduction Act, 44 U.S.C. 3510, rather than the Freedom of Information Act. The acceptance of materials in confidence under § 0.457 or § 0.459, or any other statute, rule or Commission order, does not preclude their disclosure to other federal agencies.

(b) Information submitted to the Commission in confidence pursuant to § 0.457(c)(2) and (3), (d) and (g) or § 0.459, or any other statute, rule or order, may be disclosed to other agencies of the Federal government upon request or upon the Commission's own motion, provided:

(1) Specific Commission assurances against such disclosure have not been given;

(2) The other agency has established a legitimate need for the information;

(3) Disclosure is made subject to the provisions of 44 U.S.C. 3510(b); and

(4) Disclosure is not prohibited by the Privacy Act or other provisions of law.

(c) The Commission's staff may give assurances against disclosure of information to other Federal agencies only with the prior written approval of the General Counsel. In no event will assurance against disclosure to other agencies be given in advance of submission of the information to the Commission if submission is required by statute or by the provisions of this chapter; but the notice provisions of paragraph (d) of this section will apply to such required submissions.

(d)(1) Except as provided in paragraphs (d)(2) and (d)(3) of this section, a party who furnished records to the Commission with a request for confidential treatment, see § 0.459, will be notified at the time that the request for disclosure is submitted and will be afforded ten calendar days in which to submit an opposition to disclosure. This notification may be made either individually or by public notice.

(2) If the agency requesting the records provides in writing to the satisfaction of the Commission that notice to the party who furnished the records to the Commission will interfere unduly with its law enforcement, national security or homeland defense activities and further states that it will notify that party of the Commission's disclosure once the potential for such interference is eliminated, the Commission will not give notice of disclosure.

(3) A party who furnished records to the Commission in confidence will not be afforded prior notice when the disclosure is made to the Comptroller General of the United States, in the Government Accountability Office. Such a party will instead be notified of disclosure of the records to the Comptroller General either individually or by public notice.

(4) If disclosure is opposed and the Commission decides to make the records available to the other agency, the party who furnished the records to the Commission will be afforded ten calendar days from the date of the ruling to move for a judicial stay of the Commission's action. If the party does not move for stay within this period, the records will be disclosed.

(e) Except as provided in paragraph (d)(3) of this section, nothing in this section is intended to govern disclosure of information to Congress or the Comptroller General.

§ 0.445 Publication, availability and use of opinions, orders, policy statements, interpretations, administrative manuals, and staff instructions.

(a) Adjudicatory opinions and orders of the Commission, or its staff acting on delegated authority, are sent to the parties by mail, delivery service, or e-mail, unless the Commission determines that individual delivery would be unduly burdensome and instead issues a public notice of its decision. As part of the record, these documents are generally available for inspection in accordance with § 0.453 and § 0.455. In addition, many adjudicatory orders and opinions are available on the Commission's Web site, *http://www.fcc.gov*. In appropriate circumstances, the Commission may redact the copy made available to the public in order to protect information not routinely available to the public under § 0.457, which is treated confidentially pursuant to a request under § 0.459, or which is confidential pursuant to other statutes, regulations or orders.

(b) Texts adopted by the Commission or a member of its staff on delegated authority and released through the Office of Media Relations are published in the FCC Record. Older materials of this nature are available in the FCC Reports. In the event that such older materials are not published in the FCC Reports, reference should be made to the **Federal Register** or Pike and Fischer Communications Regulation.

(c) All rulemaking documents or summaries thereof are published in the **Federal Register** and are available on the Commission's Web site. The complete text of the Commission decision also is released by the Commission and is available for inspection and copying during normal business hours in the Office of Media Relations, the Reference Information Center, via the Electronic Comment Filing System (ECFS), or as otherwise specified in the rulemaking document published in the **Federal Register**. The complete texts of rulemaking decisions may also be purchased from the Commission's copy contractor.

(d) Formal policy statements and interpretations designed to have general applicability are published in the **Federal Register**, the FCC Record, FCC Reports, or Pike and Fischer Communications Regulation. Commission decisions and other Commission documents not entitled formal policy statements or interpretations may contain substantive interpretations and statements regarding policy, and these are published as part of the document in the FCC Record, FCC Reports or Pike and Fischer Communications Regulation. General statements regarding policy and interpretations furnished to individuals, in correspondence or otherwise, are not ordinarily published.

(e) If the documents described in paragraphs (a) through (d) of this section are published in the **Federal Register**, the FCC Record, FCC Reports, or Pike and Fischer Communications Regulation, they are indexed, and they may be relied upon, used or cited as precedent by the Commission or private parties in any manner. If they are not so published, they may not be relied upon, used or cited as precedent, except against persons who have actual notice of the document in question or by such persons against the Commission. No person is expected to comply with any requirement or policy of the Commission unless he or she has actual notice of that requirement or policy or a document stating it has been published as provided in this paragraph. Nothing in this paragraph, however, shall be construed as precluding a reference to a recent document that is pending publication.

(f) Subparts A and B of this part describe the functions of the staff and list the matters on which authority has been delegated to the staff. All general instructions to the staff and limitations upon its authority are set forth in those subparts or in decisions of the Commission published in the **Federal Register**. Instructions to the staff in particular matters or cases are privileged and/or protected and are not published or made available for public inspection.

(g) To the extent required to prevent a clearly unwarranted invasion of personal privacy, or to prevent disclosure of information required or authorized to be withheld by another statute, the Commission may delete identifying details or confidential information when it makes available or publishes any document described in this section. The justification for any such deletion will be fully explained in a preamble to the document.

§ 0.451 Inspection of records: Generally.

(a) *Records which are routinely available for public inspection.* Sections 0.453 and 0.455 list those Commission records which are routinely available for public inspection and the places at which those records may be inspected. Procedures governing requests for inspection of such records are set out in § 0.460.

(b) *Records which are not routinely available for public inspection.* Records which are not listed in § 0.453 or § 0.455 are not routinely available for public inspection. Such records fall into two categories.

(1) The first category consists of those records or kinds of records listed in § 0.457 and of particular records withheld from public inspection under § 0.459. The Commission has determined that there is a statutory basis for withholding these records from public inspection. In some cases, the Commission is prohibited from permitting the inspection of records. In other cases, the records are the property of another agency, and the Commission has no authority to permit their inspection. In still other cases, the Commission is authorized, for reason of policy, to withhold records from inspection, but is not required to do so.

(2) The second category consists of records that are not listed in § 0.453, § 0.455, or § 0.457 and have not been withheld from inspection under § 0.459. In some cases, these records have not been identified for listing. In other cases (*e.g.*, the general correspondence files), the Commission is unable to determine either that all records in a class should be routinely available for inspection or that all records in that class should not

be routinely available for inspection, and individualized determination is required.

(3) Procedures governing requests for inspection of these records are set forth in § 0.461.

(4) Procedures governing demands by competent authority for inspection of these records are set forth in § 0.463.

(5) Except as provided in § 0.461 and § 0.463, or pursuant to § 19.735–203 of this chapter, no officer or employee of the Commission shall permit the inspection of records which are not routinely available for public inspection under § 0.453 or § 0.455, or disclose information contained therein.

(c) *Copies.* Section 0.465 applies to requests for copies of Commission records which are routinely available for public inspection under § 0.453 and § 0.455 and those which are made available for inspection under § 0.461. Sections 0.467 and 0.465(c)(3) apply to requests for certified copies of Commission records.

(d) *Search and copying fees.* Section 0.465(c)(2) prescribes the per page fee for copying records made available for inspection under § 0.460 or § 0.461. Section 0.466 prescribes fees to cover the expense of searching for and reviewing records made available for inspection under § 0.460 or § 0.461. Review of initial fee determinations under § 0.467 through § 0.470 and initial fee reduction or waiver determinations under § 0.470(e) may be sought under § 0.461(j).

Note to paragraph (d): The Commission may require advance payment pursuant to § 0.469 before releasing documents.

§ 0.453 Public reference rooms.

The Commission maintains the FCC Reference Information Center as its public reference room at its offices in Washington, DC. Much of the information available from the public reference room may also be retrieved from the Commission's main Web site at *http://www.fcc.gov* and its electronic reading room at *http://www.fcc.gov/foia/e-room.html*:

(a) *The Reference Information Center.* Maintains files containing the record of all docketed cases, petitions for rule making and related papers. A file is maintained for each docketed hearing case and for each docketed rule making proceeding. Cards summarizing the history of such cases for the years before 1984 are available for inspection. Information summarizing the history of such cases for the years from 1984 through present is available online on the Electronic Comment Filing System (ECFS).

(b) *Broadcast Services.* The following files and documents are available, including:

(1) Applications for radio and television broadcast station construction permits, licenses, modifications of facilities, license renewal, assignments and transfer of control, including any Commission correspondence or rulings pertaining to those applications;

(2) Petitions to deny, informal objections, and complaints directed against the stations and/or station applications;

(3) Ownership reports filed by licensees pursuant to § 73.3615 of this chapter;

(4) Television network application contracts, radio and television time brokerage agreements, and other documents required to be filed under § 73.3613 of this chapter;

(5) Children's television programming reports filed by commercial television licensees pursuant to § 73.3526 of this chapter;

(6) Annual DTV ancillary/supplementary services reports filed by commercial and non-commercial educational digital television licensees pursuant to § 73.624 of this chapter;

(7) Station requests for declaratory rulings, special temporary authorizations, and other waivers;

(8) Annual employment reports filed by licensees and permittees of broadcast stations pursuant to § 73.3612 of this chapter; and.

(9) Responses from licensees to random audits of their Equal Employment Opportunity programs conducted pursuant to § 73.2080 of this chapter.

(c) *Common Carrier Services*, including:

(1) Annual reports filed by carriers under § 43.21 of this chapter;

(2) Reports of proposed changes in depreciation rates filed by carriers under § 43.43 of this chapter;

(3) Rate-of-return reports filed by price-cap and rate-of-return incumbent local exchange carriers under § 65.600 of this chapter;

(4) All applications for common carrier authorizations acted upon by the Enforcement Bureau, and related files;

(5) All formal and informal complaints against common carriers filed under § 1.711 through § 1.735 of this chapter, all documents filed in connection therewith, and all communications related thereto;

(6) Annual employment reports filed by common carrier licensees or permittees pursuant to § 1.815 of this chapter;

(7) Enforcement proceedings and public inquiries and related materials;

(8) Cost Allocation Manuals and related materials;

(9) Currently effective tariffs filed by Communications Common Carriers pursuant to various FCC Rules and Regulations; and

(10) Recent revisions to tariff filings and the Reference Information Center Log, which is prepared daily and lists the tariff filings received the previous day.

(d) *Wireless Telecommunications Services and Auction* related data including:

(1) Pending files containing applications for additional facilities or modifications of existing facilities;

(2) Cellular and Paging Granted Station files and related materials;

(3) Pending cellular and paging applications and related files;

(4) Electronically stored application and licensing data for commercial radio operators and for all authorizations in the Wireless Radio services are available for public inspection via the Commission's Web site, *http://wireless.fcc.gov/uls*. Wireless Radio services include Commercial and Private Mobile Radio, Common Carrier and Private Operational Field point-to-point Microwave, Local Television Transmission Service (LTTS), Digital Electronic Message Service (DEMS), Aviation Ground and Marine Coast applications; and

(5) Petitions and related materials.

(e) *International Services* as follows, except to the extent they are excluded from routine public inspection under another section of this chapter:

(1) Satellite and earth station applications files and related materials under part 25 of this chapter;

(2) Section 214 applications and related files under part 63 of this chapter, to the extent that they concern international communications facilities and services;

(3) International Fixed Public Radio applications and related files under part 23 of this chapter;

(4) Files relating to submarine cable landing licenses and applications for such licenses since June 30, 1934, except for maps showing the exact location of submarine cables, which are withheld from inspection under sec. 4(j) of the Communications Act, 47 U.S.C. 154(j) (see § 0.457(c)(1)(i));

(5) International broadcast applications, applications for permission to deliver programming to foreign stations, and related files under part 73 of this chapter; and

(6) Contracts and other arrangements filed under § 43.51 of this chapter, except for those that are filed with a request for confidential treatment (see

§ 0.459) or are deemed confidential pursuant to sec. 412 of the Communications Act (see also § 0.457(c)(3)).

(f) *Cable and other Multichannel Video Program Distribution Services.* The following files and records are available, including:

(1) Complaints regarding multichannel video programming, all documents filed in connection therewith, and all communications related thereto, unless the cable operator has submitted a request pursuant to § 0.459 that such information not be made routinely available for public inspection;

(2) Special relief petitions and files pertaining to cable television operations;

(3) Special relief petitions and files pertaining to DBS television operations;

(4) Petitions and related documents concerning the enforcement of regulations governing the installation of over-the-air reception devices (OTARD) pursuant to § 1.4000 of this chapter;

(5) Filings by cable television operators, including Cable Signal Leakage Reports (Form 320 and § 76.1804 of this chapter), Cable System Registration Statements (§ 76.1801 of this chapter), Cable System Operator Changes (§ 76.1610 of this chapter), Cable Aeronautical Frequency Notifications (§ 76.1804 of this chapter), Cable Annual Report (Form 325 and § 76.403 of this chapter), and filings related to CARS licenses (Part 78 of this chapter).

Note to paragraph (f)(5): This data also is available at *http://www.fcc.gov/coals.* Electronic submissions for cable filings (excluding CARS) are mandatory. Original forms are not available for information filed electronically, but the Reference Information Center or the Commission's Copy Contractor may assist in producing paper copies of information found in the COALS database;

(6) Annual employment reports filed by multichannel video programming distributors pursuant to § 76.1802 of this chapter; and

(7) Responses from multichannel video programming distributors to random audits of their Equal Employment Opportunity programs conducted pursuant to § 76.77 of this chapter.

§ 0.455 Other locations at which records may be inspected.

Except as provided in § 0.453, § 0.457, and § 0.459, records are routinely available for inspection in the Reference Information Center or the offices of the Bureau or Office which exercises responsibility over the matters to which those records pertain (see § 0.5), or will be made available for inspection at those offices upon request. Upon inquiry to the appropriate Bureau or Office, persons desiring to inspect such records will be directed to the specific location at which the particular records may be inspected. Examples of the records available from Bureaus and Offices are set forth in paragraphs (a) through (c).

(a) *Media Bureau.* (1) Rulings under secs. 312(a)(7), 315, and 317 of the Communications Act of 1934, as amended;

(2) All materials associated with a rate proceeding for basic cable service and associated equipment over which the Commission has assumed jurisdiction pursuant to § 76.913 of this chapter;

(3) All materials associated with Commission review of franchise authority decisions concerning the rate charged for the basic cable service tier and associated equipment pursuant to § 76.944 of this chapter;

(4) All materials associated with local government requests for authorization to regulate basic cable rates pursuant to § 76.910 of this chapter (Form 328);

(5) All materials associated with the certification of Open Video System (OVS) operators pursuant to § 76.1502 of this chapter;

(6) A list of all registered cable communities is maintained electronically at *http://www.fcc.gov/mb*; and

(7) Public notices issued related to CARS licenses, Cable Special Relief Petitions, and other filings are available electronically at *http://www.fcc.gov/Document_Indexes/Media/.*

(b) *Office of Managing Director.* (1) All minutes of Commission actions, containing a record of all final votes, minutes of actions and internal management matters as provided in § 0.457(b)(1) and (c)(1)(i). These records and files are available for inspection in the Office of the Secretary.

(2) Files containing information concerning the history of the Commission's rules. These files are available for inspection in the Office of the Secretary.

(3) Reports filed by employees pursuant to 5 CFR Parts 2634 and 3902 and applications for inspection of such reports. See § 0.460(k).

(c) *International Bureau.* (1) The treaties and other international and bilateral agreements listed in § 73.1650 of this chapter are available for inspection in the office of the Chief, Strategic Analysis and Negotiations Division, International Bureau.

(2) Contracts and other arrangement filed under § 43.51 of this chapter and reports of negotiations regarding foreign communication matters filed under § 43.52 of this chapter, except those kept confidential pursuant to sec. 412 of the Communications Act. See § 0.457(c)(3).

(3) Files relating to international settlements under part 64 of this chapter.

§ 0.457 Records not routinely available for public inspection.

The records listed in this section are not routinely available for public inspection pursuant to 5 U.S.C. 552(b). The records are listed in this section by category, according to the statutory basis for withholding those records from inspection; under each category, if appropriate, the underlying policy considerations affecting the withholding and disclosure of records in that category are briefly outlined. Except where the records are not the property of the Commission or where the disclosure of those records is prohibited by law, the Commission will entertain requests from members of the public under § 0.461 for permission to inspect particular records withheld from inspection under the provisions of this section, and will weigh the policy considerations favoring non-disclosure against the reasons cited for permitting inspection in the light of the facts of the particular case. In making such requests, there may be more than one basis for withholding particular records from inspection. The listing of records by category is not intended to imply the contrary but is solely for the information and assistance of persons making such requests. Requests to inspect or copy the transcripts, recordings or minutes of closed agency meetings will be considered under § 0.607 rather than under the provisions of this section.

(a) *Materials that are specifically authorized under criteria established by Executive Order (E.O.) to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order, 5 U.S.C. 552(b)(1).*

(1) Classified materials and information will not be made available for public inspection, including materials classified under E.O. 10450, ''Security Requirements for Government Employees''; E.O. 10501, as amended, ''Safeguarding Official Information in the Interests of the Defense of the United States''; and E.O. 12958, ''Classified National Security Information,'' or any other executive order concerning the classification of records. See also 47 U.S.C. 154(j).

(2) Materials referred to another Federal agency for classification will not be disclosed while such a determination is pending.

(b) *Materials that are related solely to the internal personnel rules and practices of the Commission, 5 U.S.C. 552(b)(2).*

(1) Materials related solely to internal management matters, including minutes of Commission actions on such matters (see paragraph (f) of this section).

(2) Materials relating to the negotiation of contracts.

(c) *Materials that are specifically exempted from disclosure by statute (other than the Government in the Sunshine Act, 5 U.S.C. 552b, provided that such statute either requires that the materials be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of materials to be withheld).* The Commission is authorized under the following statutory provisions to withhold materials from public inspection.

(1) Section 4(j) of the Communications Act, 47 U.S.C. 154(j), provides, in part, that, ''The Commission is authorized to withhold publication of records or proceedings containing secret information affecting the national defense.'' Pursuant to that provision, it has been determined that the following materials should be withheld from public inspection (see also paragraph (a) of this section):

(i) Maps showing the exact location of submarine cables.

(ii) Minutes of Commission actions on classified matters.

(iii) Maps of nation-wide point-to-point microwave networks.

(2) Under section 213 of the Communications Act, 47 U.S.C. 213(f), the Commission is authorized to order, with the reasons therefor, that records and data pertaining to the valuation of the property of common carriers and furnished to the Commission by the carriers pursuant to the provisions of that section, shall not be available for public inspection. If such an order has been issued, the data and records will be withheld from public inspection, except under the provisions of § 0.461. Normally, however, such data and information is available for inspection.

(3) Under sec. 412 of the Communications Act, 47 U.S.C. 412, the Commission may withhold from public inspection certain contracts, agreements and arrangements between common carriers relating to foreign wire or radio communication. Any person may file a petition requesting that such materials be withheld from public inspection. To support such action, the petition must show that the contract, agreement or arrangement relates to foreign wire or radio communications; that its publication would place American communication companies at a disadvantage in meeting the competition of foreign communication companies; and that the public interest would be served by keeping its terms confidential. If the Commission orders that such materials be kept confidential, they will be made available for inspection only under the provisions of § 0.461.

(4) Section 605 of the Communications Act, 47 U.S.C. 605(a), provides, in part, that, ''no person not being authorized by the sender shall intercept any communication [by wire or radio] and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communications to any person.'' In executing its responsibilities, the Commission regularly monitors radio transmissions. Except as required for the enforcement of the communications laws, treaties and the provisions of this chapter, or as authorized in sec. 605, the Commission is prohibited from divulging information obtained in the course of these monitoring activities; and such information, and materials relating thereto, will not be made available for public inspection.

(5) Section 1905 of the federal criminal code, the Trade Secrets Act, 18 U.S.C. 1905, prohibits the unauthorized disclosure of certain confidential information. See paragraph (d) of this section and § 19.735–203 of this chapter.

(d) *Trade secrets and commercial or financial information obtained from any person and privileged or confidential—categories of materials not routinely available for public inspection, 5 U.S.C. 552(b)(4) and 18 U.S.C. 1905.*

(1) The materials listed in this paragraph have been accepted, or are being accepted, by the Commission on a confidential basis pursuant to 5 U.S.C. 552(b)(4). To the extent indicated in each case, the materials are not routinely available for public inspection. If the protection afforded is sufficient, it is unnecessary for persons submitting such materials to submit therewith a request for non-disclosure pursuant to § 0.459. A persuasive showing as to the reasons for inspection will be required in requests submitted under § 0.461 for inspection of such materials.

(i) Financial reports submitted by radio or television licensees.

(ii) Applications for equipment authorizations (type acceptance, type approval, certification, or advance approval of subscription television systems), and materials relating to such applications, are not routinely available for public inspection prior to the effective date of the authorization. The effective date of the authorization will, upon request, be deferred to a date no earlier than that specified by the applicant. Following the effective date of the authorization, the application and related materials (including technical specifications and test measurements) will be made available for inspection upon request (see § 0.460). Portions of applications for equipment certification of scanning receivers and related materials will not be made available for inspection.

(iii) Information submitted in connection with audits, investigations and examination of records pursuant to 47 U.S.C. 220.

(iv) Programming contracts between programmers and multichannel video programming distributors.

(v) The rates, terms and conditions in any agreement between a U.S. carrier and a foreign carrier that govern the settlement of U.S. international traffic, including the method for allocating return traffic, if the U.S. international route is exempt from the international settlements policy under § 43.51(e)(3) of this chapter.

(vi) Outage reports filed under Part 4 of this chapter.

(vii) The following records, relating to coordination of satellite systems pursuant to procedures codified in the International Telecommunication Union (ITU) Radio Regulations:

(A) Records of communications between the Commission and the ITU related to the international coordination process, and

(B) Documents prepared in connection with coordination, notification, and recording of frequency assignments and Plan modifications, including but not limited to minutes of meetings, supporting exhibits, supporting correspondence, and documents and correspondence prepared in connection with operator-to-operator arrangements.

Note to paragraph (d): The content of the communications described in paragraph (d)(1)(vii)(A) of this section is in some circumstances separately available through the ITU's publication process, or through records available in connection with the Commission's licensing procedures.

(2) Unless the materials to be submitted are listed in paragraph (d)(1) of this section and the protection thereby afforded is adequate, any person who submits materials which he or she wishes withheld from public inspection under 5 U.S.C. 552(b)(4) must submit a request for non-disclosure pursuant to § 0.459. If it is shown in the request that the materials contain trade secrets or

privileged or confidential commercial, financial or technical data, the materials will not be made routinely available for inspection; and a persuasive showing as to the reasons for inspection will be required in requests for inspection submitted under § 0.461. In the absence of a request for non-disclosure, the Commission may, in the unusual instance, determine on its own motion that the materials should not be routinely available for public inspection.

(e) *Interagency and intra-agency memoranda or letters, 5 U.S.C. 552(b)(5).* Interagency and intra-agency memoranda or letters and the work papers of members of the Commission or its staff will not be made available for public inspection, except in accordance with the procedures set forth in § 0.461. Normally such papers are privileged and not available to private parties through the discovery process, since their disclosure would tend to restrain the commitment of ideas to writing, would tend to inhibit communication among Government personnel, and would, in some cases, involve premature disclosure of their contents.

(f) *Personnel, medical and other files whose disclosure would constitute a clearly unwarranted invasion of personal privacy, 5 U.S.C. 552(b)(6).* Under E.O. 10561, the Commission maintains an Official Personnel Folder for each of its employees. Such folders are under the jurisdiction and control, and are a part of the records, of the U.S. Office of Personnel Management. Except as provided in the rules of the Office of Personnel Management (5 CFR 293.311), such folders will not be made available for public inspection by the Commission. In addition, other records of the Commission containing private, personal or financial information concerning particular employees and Commission contractors will be withheld from public inspection.

(g) *Under 5 U.S.C. 552(b)(7), records compiled for law enforcement purposes, to the extent that production of such records:*

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source;

(5) Would disclose investigative techniques or procedures or would disclose investigative guidelines if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

§ 0.458 Nonpublic information.

Any person regulated by or practicing before the Commission coming into possession of written nonpublic information (including written material transmitted in electronic form) as described in § 19.735–203(a) of this chapter under circumstances where it appears that its release was inadvertent or otherwise unauthorized shall be obligated to and shall promptly return the information to the Commission's Office of Inspector General without further distribution or use. See 47 CFR 19.735–203.

§ 0.459 Requests that materials or information submitted to the Commission be withheld from public inspection.

(a)(1) Any person submitting information or materials to the Commission may submit therewith a request that such information not be made routinely available for public inspection. (If the materials are specifically listed in § 0.457, such a request is unnecessary.) A copy of the request shall be attached to and shall cover all of the materials to which it applies and all copies of those materials. If feasible, the materials to which the request applies shall be physically separated from any materials to which the request does not apply; if this is not feasible, the portion of the materials to which the request applies shall be identified. In the latter circumstance, where confidential treatment is sought only for a portion of a document, the person submitting the document shall submit a redacted version for the public file.

(2) Comments and other materials may not be submitted by means of the Commission's Electronic Comment Filing System (ECFS) with a request for confidential treatment under this section.

(3) The Commission may use abbreviated means for indicating that the submitter of a record seeks confidential treatment, such as a checkbox enabling the submitter to indicate that the record is confidential. However, upon receipt of a request for inspection of such records pursuant to § 0.461, the submitter will be notified of such request pursuant to § 0.461(d)(3) and will be requested to justify the confidential treatment of the record, as set forth in paragraph (b) of this section.

(b) Except as provided in § 0.459(a)(3), each such request shall contain a statement of the reasons for withholding the materials from inspection (see § 0.457) and of the facts upon which those records are based, including:

(1) Identification of the specific information for which confidential treatment is sought;

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission;

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged;

(4) Explanation of the degree to which the information concerns a service that is subject to competition;

(5) Explanation of how disclosure of the information could result in substantial competitive harm;

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure;

(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties;

(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure; and

(9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

(c) Casual requests (including simply stamping pages ''confidential'') which do not comply with the requirements of paragraphs (a) and (b) of this section will not be considered.

(d)(1) If a response in opposition to a confidentiality request is filed, the party requesting confidentiality may file a reply within ten business days. All responses or replies filed under this paragraph must be served on all parties.

(2) Requests which comply with the requirements of paragraphs (a) and (b) of this section will be acted upon by the appropriate custodian of records (see § 0.461(d)(1)), who is directed to grant the request if it demonstrates by a preponderance of the evidence that non-disclosure is consistent with the provisions of the Freedom of Information Act, 5 U.S.C. 552. If the request for confidentiality is granted, the ruling will be placed in the public file in lieu of the materials withheld from public inspection.

(3) The Commission may defer acting on requests that materials or information submitted to the Commission be withheld from public inspection until a request for inspection has been made pursuant to § 0.460 or § 0.461. The information will be

accorded confidential treatment, as provided for in § 0.459(g) and § 0.461, until the Commission acts on the confidentiality request and all subsequent appeal and stay proceedings have been exhausted.

(e) If the materials are submitted voluntarily (*i.e.*, absent any requirement by statute, regulation, or the Commission), the person submitting them may request the Commission to return the materials without consideration if the request for confidentiality should be denied. In that event, the materials will ordinarily be returned (*e.g.*, an application will be returned if it cannot be considered on a confidential basis). Only in the unusual instance where the public interest so requires will the materials be made available for public inspection. However, no materials submitted with a request for confidentiality will be returned if a request for inspection has been filed under § 0.461. If submission of the materials is required by the Commission and the request for confidentiality is denied, the materials will be made available for public inspection once the period for review of the denial has passed.

(f) If no request for confidentiality is submitted, the Commission assumes no obligation to consider the need for non-disclosure but, in the unusual instance, may determine on its own motion that the materials should be withheld from public inspection. See § 0.457(g).

(g) If a request for confidentiality is denied, the person who submitted the request may, within ten business days, file an application for review by the Commission. If the application for review is denied, the person who submitted the request will be afforded ten business days in which to seek a judicial stay of the ruling. If these periods expire without action by the person who submitted the request, the materials will be returned to the person who submitted them or will be placed in a public file. Notice of denial and of the time for seeking review or a judicial stay will be given by telephone, with follow-up notice in writing. The first day to be counted in computing the time periods established in this paragraph is the day after the date of oral notice. Materials will be accorded confidential treatment, as provided in § 0.459(g) and § 0.461, until the Commission acts on any timely applications for review of an order denying a request for confidentiality, and until a court acts on any timely motion for stay of such an order denying confidential treatment.

(h) If the request for confidentiality is granted, the status of the materials is the same as that of materials listed in § 0.457. Any person wishing to inspect them may submit a request for inspection under § 0.461.

(i) Third party owners of materials submitted to the Commission by another party may participate in the proceeding resolving the confidentiality of the materials.

§ 0.460 Requests for inspection of records which are routinely available for public inspection.

(a) Sections 0.453 and 0.455 list those Commission records which are routinely available for public inspection and the places at which those records may be inspected. Subject to the limitations set out in this section, a person who wants to inspect such records need only appear at the specified location and ask to see the records. Many such records also are available through the Commission's Web site, located at *http://www.fcc.gov* and the Commission's electronic reading room, located on its Web site at *http://www.fcc.gov/foia/e-room.html*. Commission documents listed in § 0.416 and § 0.445 are published in the FCC Record, and many such documents or summaries thereof are also published in the **Federal Register**.

(b) A person who wishes to inspect the records must appear at the specified location during the office hours of the Commission and must inspect the records at that location. (Procedures governing requests for copies are set out in § 0.465.) However, arrangements may be made in advance, by telephone or by correspondence, to make the records available for inspection on a particular date, and there are many circumstances in which such advance arrangements will save inconvenience. If the request is for a large number of documents, for example, a delay in collecting them is predictable. Current records may be in use by the staff when the request is made. Older records may have been forwarded to another location for storage.

(c) The records in question must be reasonably described by the person requesting them so as to permit their location by staff personnel. The information needed to locate the records will vary, depending on the records requested. Advice concerning the kind of information needed to locate particular records will be furnished in advance upon request. Members of the public will not be given access to the area in which records are kept and will not be permitted to search the files.

(d) If it appears that there will be an appreciable delay in locating or producing the records (as where a large number of documents is the subject of a single request or where an extended search for a document appears to be necessary), the requester may be directed to submit or confirm the request in writing in appropriate circumstances.

(e)(1) Written requests shall be directed to the Commission's copy contractor pursuant to the procedures set forth in § 0.465. Requests shall be captioned ''Request For Inspection Of Records,'' shall be dated, shall list the mailing address, telephone number (if any) of the person making the request, and the e-mail address (if any) and for each document requested, shall set out all information known to the person making the request which would be helpful in identifying and locating the document. Written requests shall, in addition, specify the maximum search fee the person making the request is prepared to pay (see § 0.467).

(2) Written requests shall be delivered or mailed directly to the Commission's copy contractor (see § 0.465(a)).

(f) When a written request is received by the copy contractor, it will be date-stamped.

(g) All requests limited to records listed in § 0.453 and § 0.455 will be granted, subject to paragraph (k) of this section. Requests for records listed in those sections shall not be combined with requests for other records.

(h) The records will be produced for inspection at the earliest possible time.

(i) Records shall be inspected within 7 days after notice is given that they have been located and are available for inspection. After that period, they will be returned to storage and additional charges may be imposed for again producing them.

(j) In addition to the other requirements of this section, the following provisions apply to the reports filed with the Commission pursuant to 5 CFR Parts 2634 and 3902.

(1) Such reports shall not be obtained or used:

(i) For any unlawful purpose;

(ii) For any commercial purpose, other than by news and communications media for dissemination to the general public;

(iii) For determining or establishing the credit rating of any individual; or

(iv) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) Such reports may not be made available to any person nor may any copy thereof be provided to any person except upon a written application by such person stating:

(i) That person's name, occupation and address;

(ii) The name and address of any other person or organization on whose behalf the inspection or copying is requested; and

(iii) That such person is aware of the prohibitions on the obtaining or use of the report. Further, any such application for inspection shall be made available to the public throughout the period during which the report itself is made available to the public. (Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 397; 18 U.S.C. 207(j))

§ 0.461 Requests for inspection of materials not routinely available for public inspection.

Any person desiring to inspect Commission records that are not listed in § 0.453 or § 0.455 shall file a request for inspection meeting the requirements of this section. The FOIA Public Liaison is available to assist persons seeking records under this section. See § 0.441(a).

(a)(1) Records include:

(i) Any information that would be an agency record subject to the requirements of the Freedom of Information Act when maintained by the Commission in any format, including an electronic format; and

(ii) Any information maintained for the Commission by an entity under Government contract, for purposes of records management.

(2) The records in question must be reasonably described by the person requesting them, so as to permit their location by staff personnel with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the title or name, author, recipient, and subject matter of the record. Requests should also specify the date or time period for the records sought. The custodian of records sought may contact the requester to obtain further information about the records sought to assist in locating them.

(3) The person requesting records under this section may specify the form or format of the records to be produced provided that the records may be made readily reproducible in the requested form or format.

(b)(1) Requests shall be captioned ''Freedom of Information Act Request,'' shall be dated, shall list the telephone number (if any), street address, and e-mail address (if any) of the person making the request, and should reasonably describe, for each document requested (see § 0.461(a)(1)), all information known to the person making the request that would be helpful in identifying and locating the document.

(2) The request shall, in addition, specify the maximum search fee the person making the request is prepared to pay or a request for waiver or reduction of fees if the requester is eligible (see § 0.470(e)). By filing a FOIA request, the requester agrees to pay all applicable fees charged under § 0.467, unless the person making the request seeks a waiver of fees (see § 0.470(e)), in which case the Commission will rule on the waiver request before proceeding with the search.

(c) If the records are of the kinds listed in § 0.457 or if they have been withheld from inspection under § 0.459, the request shall, in addition, contain a statement of the reasons for inspection and the facts in support thereof. In the case of other materials, no such statement need accompany the request, but the custodian of the records may require the submission of such a statement if he or she determines that the materials in question may lawfully be withheld from inspection.

(d)(1) Requests shall be

(i) Delivered or mailed to the Managing Director, FCC, 445—12th Street, SW., Room 1–A836, Washington, DC 20554;

(ii) Sent by e-mail to *foia@fcc.gov*;

(iii) Filed electronically though the Internet at *http://www.fcc.gov/foia/#reqform*; or

(iv) Sent by facsimile to (202) 418–2826 or (202) 418–0521.

If the request is filed by mail or facsimile, an original and two copies of the request shall be submitted. If the request is enclosed in an envelope, the envelope shall be marked, ''Freedom of Information Act Request.''

(2) For purposes of this section, the custodian of the records is the Chief of the Bureau or Office where the records are located. The Chief of the Bureau or Office may designate an appropriate person to act on a FOIA request.

(3) If the request is for materials submitted to the Commission by third parties and not open to routine public inspection under § 0.457(d), § 0.459, or another Commission rule or order, or if a request for confidentiality is pending pursuant to § 0.459, or if the custodian of records has reason to believe that the information may contain confidential commercial information, one copy of the request will be provided by the custodian of the records (see § 0.461(e)) to the person who originally submitted the materials to the Commission. If there are many persons who originally submitted the records and are entitled to notice under this paragraph, the custodian of records may use a public notice to notify the submitters of the request for inspection. The submitter or submitters will be given ten calendar days to respond to the FOIA request. See § 0.459(d)(1). If a submitter has any objection to disclosure, he or she is required to submit a detailed written statement specifying all grounds for withholding any portion of the information (see § 0.459). This response shall be served on the party seeking to inspect the records. The requester may submit a reply within ten business days unless a different period is specified by the custodian of records. The reply shall be served on all parties that filed a response. In the event that a submitter fails to respond within the time specified, the submitter will be considered to have no objection to disclosure of the information.

Note to paragraph (d)(3): Under the ex parte rules, § 1.1206(a)(7) of this chapter, a proceeding involving a FOIA request is a permit-but-disclose proceeding, but is subject to the special service rules in this paragraph. We also note that while the FOIA request itself is a permit-but-disclose proceeding, a pleading in a FOIA proceeding may also constitute a presentation in another proceeding if it addresses the merits of that proceeding.

(e)(1) When the request is received by the Managing Director, it will be assigned to the Freedom of Information Act (FOIA) Control Office, where it will be date-stamped and assigned to the appropriate custodian of the records. A FOIA request is then considered properly received. This will occur no later than ten calendar days after the request is first received by the agency.

(2)(i) Except for the purpose of making a determination regarding expedited processing under paragraph (h) of this section, the time for processing a request for inspection of records will be tolled

(A) While the custodian of records seeks reasonable clarification of the request;

(B) Until clarification with the requester of issues regarding fee assessment occurs, including:

(1) While there is an unresolved fee waiver issue pending under § 0.470(e), unless the requester has provided a written statement agreeing to pay some or all of the fees pending the outcome of the waiver question;

(*2*) Following the denial of a fee waiver, unless the requester had provided a written statement agreeing to pay the fees if the fee waiver was denied;

(*3*) Where advance payment is required pursuant to § 0.469 and has not been made.

(ii) Only one Commission request for information shall be deemed to toll the time for processing a request for

inspection of records under § 0.461(e)(2)(i)(A). Such request must be made no later than ten calendar days after a request is properly received by the custodian of records under § 0.461(e)(1).

(3) The FOIA Control Office will send an acknowledgement to the requester notifying the requester of the control number assigned to the request, the due date of the response, and the telephone contact number (202–418–0440) to be used by the requester to obtain the status of the request. Requesters may also obtain the status of an FOIA request via e-mail at *foia@fcc.gov*.

(4) Multiple FOIA requests by the same or different FOIA requesters may be consolidated for disposition. See also § 0.470(b)(2).

(f) Requests for inspection of records will be acted on as follows by the custodian of the records.

(1) If the Commission is prohibited from disclosing the records in question, the request for inspection will be denied with a statement setting forth the specific grounds for denial.

(2)(i) If records in the possession of the Commission are the property of another agency, the request will be referred to that agency and the person who submitted the request will be so advised, with the reasons for referral.

(ii) If it is determined that the FOIA request seeks only records of another agency or department, the FOIA requester will be so informed by the FOIA Control Officer and will be directed to the correct agency or department.

(3) If it is determined that the Commission does not have authority to withhold the records from public inspection, the request will be granted.

(4) If it is determined that the Commission does have authority to withhold the records from public inspection, the considerations favoring disclosure and non-disclosure will be weighed in light of the facts presented, and the request will be granted, either conditionally or unconditionally, or denied.

(5) If there is a statutory basis for withholding part of a document from inspection, that part will be deleted and the remainder will be made available for inspection. Records disclosed in part shall be marked or annotated to show the amount of information deleted unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted and the exemption under which the deletion is made also shall be indicated on the record, if technically feasible.

(6) In locating and recovering records responsive to an FOIA request, only those records within the Commission's possession and control as of the date of its receipt of the request shall be considered.

(g)(1) The custodian of the records will make every effort to act on the request within twenty business days after it is received and date-stamped by the FOIA Control Office.

However, if a request for clarification has been made under § 0.461(e)(2)(i)(A) or an issue is outstanding regarding the payment of fees for processing the FOIA request is pending under § 0.461(e)(2)(i)(B), the counting of time will start upon resolution of these requests. If it is not possible to locate the records and to determine whether they should be made available for inspection within twenty business days, the custodian may, in any of the following circumstances, extend the time for action by up to ten business days:

(i) It is necessary to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(ii) It is necessary to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) It is necessary to consult with another agency having a substantial interest in the determination of the request, or among two or more components of the Commission having substantial subject matter interest therein.

(2) The custodian of the records will notify the requester in writing of any extension of time exercised pursuant to paragraph (g) of this section. The custodian of the records may also call the requester to extend the time provided a subsequent written confirmation is provided. If it is not possible to locate the records and make the determination within the extended period, the person or persons who made the request will be provided an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request, and asked to consent to an extension or further extension. If the requester agrees to an extension, the custodian of the records will confirm the agreement in a letter or e-mail specifying the length of the agreed-upon extension. If he or she does not agree to an extension, the request will be denied, on the grounds that the custodian has not been able to locate the records and/or to make the determination within the period for a ruling mandated by the Freedom of Information Act, 5 U.S.C. 552. In that event, the custodian will continue to search for and/or assess the records and will advise the person who made the request of further developments; but that person may file an application for review by the Commission. When action is taken by the custodian of the records, written notice of the action will be given. Records will be made available with the written notice of action or as soon thereafter as is feasible.

(3) If the custodian of the records grants a request for inspection of records submitted to the Commission in confidence under § 0.457(d), § 0.459, or some other Commission rule or order, the custodian of the records will give the submitter written notice of the decision and of the submitter's right to seek review pursuant to § 0.461(i).

(h)(1) Requesters who seek expedited processing of FOIA requests shall submit such requests, along with their FOIA requests, to the Managing Director, as described in § 0.461(d). If the request is enclosed in an envelope, the envelope shall be marked ''Request for Expedited Proceeding—FOIA Request.'' An original and two copies of the request for expedition shall be submitted, but only one copy is necessary if submitted by e-mail or by the Internet. When the request is received by the Managing Director, it, and the accompanying FOIA request, will be assigned to the FOIA Control Office, where it will be date-stamped and assigned to the custodian of records.

(2) Expedited processing shall be granted to a requester demonstrating a compelling need that is certified by the requester to be true and correct to the best of his or her knowledge and belief.

(3) For purposes of this section, *compelling need* means—

(i) That failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public concerning actual or alleged Federal Government activity.

(4)(i) Notice of the determination whether to grant expedited processing shall be provided to the requester by the custodian of records within ten calendar days after receipt of the request by the FOIA Control Office. Once the determination has been made to grant expedited processing, the custodian

shall process the FOIA request as soon as practicable.

(ii) If a request for expedited processing is denied, the person seeking expedited processing may file an application for review within five business days after the date of the written denial. The application for review and the envelope containing it (if any) shall be captioned ''Review of FOIA Expedited Proceeding Request.'' The application for review shall be delivered or mailed to the General Counsel. (For general procedures relating to applications for review, see § 1.115 of this chapter.) The Commission shall act expeditiously on the application for review, and shall notify the custodian of records and the requester of the disposition of such an application for review.

(i)(1) If a request for inspection of records submitted to the Commission in confidence under § 0.457(d), § 0.459, or another Commission rule or order is granted in whole or in part, an application for review may be filed by the person who submitted the records to the Commission, by a third party owner of the records or by a person with a personal privacy interest in the records, or by the person who filed the request for inspection of records within the ten business days after the date of the written ruling. The application for review and the envelope containing it (if any) shall be captioned ''Review of Freedom of Information Action.'' The application for review shall be filed within ten business days after the date of the written ruling, shall be delivered or mailed to the General Counsel, and shall be served on the person who filed the request for inspection of records and any other parties to the proceeding. The person who filed the request for inspection of records may respond to the application for review within ten business days after it is filed.

(2) The first day to be counted in computing the time period for filing the application for review is the day after the date of the written ruling. If an application for review is not filed within this period, the records will be produced for inspection.

(3) If an application for review is denied, the person filing the application for review will be notified in writing and advised of his or her rights.

(4) If an application for review filed by the person who submitted, owns, or has a personal privacy interest in the records to the Commission is denied, or if the records are made available on review which were not initially made available, the person will be afforded ten business days from the date of the written ruling in which to move for a judicial stay of the Commission's action. The first day to be counted in computing the time period for seeking a judicial stay is the day after the date of the written ruling. If a motion for stay is not made within this period, the records will be produced for inspection.

(j) Except as provided in paragraph (i) of this section, an application for review of an initial action on a request for inspection of records, a fee determination (*see* § 0.467 through § 0.470), or a fee reduction or waiver decision (see § 0.470(e)) may be filed only by the person who made the request. The application shall be filed within 30 calendar days after the date of the written ruling by the custodian of records. The application for review and the envelope (if any) shall be captioned, ''Review of Freedom of Information Action.'' The application shall be delivered or mailed to the General Counsel. If the proceeding involves records subject to confidential treatment under § 0.457 or § 0.459, or involves a person with an interest as described in § 0.461(i), the application for review shall be served on such persons. That person may file a response within ten business days after the application for review is filed. If the records are made available for review, the person who submitted them to the Commission will be afforded ten business days after the date of the written ruling to seek a judicial stay. See paragraph (i) of this section. The first day to be counted in computing the time period for filing the application for review or seeking a judicial stay is the day after the date of the written ruling.

Note to paragraphs (i) and (j): The General Counsel may review applications for review with the custodian of records and attempt to informally resolve outstanding issues with the consent of the requester. For general procedures relating to applications for review, see § 1.115 of this chapter.

(k)(1)(i) The Commission will make every effort to act on an application for review of an action on a request for inspection of records within twenty business days after it is filed. In the following circumstances and to the extent time has not been extended under paragraphs (g)(1)(i), (ii), or (iii) of § 0.461(g) of this section, the Commission may extend the time for acting on the application for review up to ten business days. (The total period of extensions taken under this paragraph and under paragraph (g) of this section without the consent of the person who submitted the request shall not exceed ten business days.):

(A) It is necessary to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(B) It is necessary to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(C) It is necessary to consult with another agency having a substantial interest in the determination of the request or among two or more components of the Commission having substantial subject matter interest therein.

(ii) If these circumstances are not present, the person who made the request may be asked to consent to an extension or further extension. If the requester or person who made the request agrees to an extension, the General Counsel will confirm the agreement in a letter specifying the length of the agreed-upon extension. If the requestor or person who made the request does not agree to an extension, the Commission will continue to search for and/or assess the records and will advise the person who made the request of further developments; but that person may file a complaint in an appropriate United States district court.

(2) The Commission may at its discretion or upon request consolidate for consideration related applications for review filed under § 0.461(i) or § 0.461(j).

(l)(1) Subject to the application for review and judicial stay provisions of paragraphs (i) and (j) of this section, if the request is granted, the records will be produced for inspection at the earliest possible time.

(2) If a request for inspection of records becomes the subject of an action for judicial review before the custodian of records has acted on the request, or before the Commission has acted on an application for review, the Commission may continue to consider the request for production of records.

(m) Staff orders and letters ruling on requests for inspection are signed by the official (or officials) who give final approval of their contents. Decisions of the Commission ruling on applications for review will set forth the names of the Commissioners participating in the decision.

(n) Records shall be inspected within seven days after notice is given that they have been located and are available for inspection. After that period, they will be returned to storage, and additional charges may be imposed for again producing them.

§ 0.463 Disclosure of Commission records and information in legal proceedings in which the Commission is a non-party.

(a) This section sets forth procedures to be followed with respect to the production or disclosure of any material within the custody and control of the Commission, any information relating to such material, or any information acquired by any person while employed by the Commission as part of the person's official duties or because of the person's official status.

(b) In the event that a demand is made by a court or other competent authority outside the Commission for the production of records or testimony (*e.g.*, a subpoena, order, or other demand), the General Counsel shall promptly be advised of such demand, the nature of the records or testimony sought, and all other relevant facts and circumstances. The General Counsel, in consultation with the Managing Director, will thereupon issue such instructions as he or she may deem advisable consistent with this subpart.

(c) A party in a court or administrative legal proceeding in which the Commission is a non-party who wishes to obtain records or testimony from the Commission shall submit a written request to the General Counsel. Such request must be accompanied by a statement setting forth the nature of the proceeding (including any relevant supporting documentation, *e.g.*, a copy of the Complaint), the relevance of the records or testimony to the proceeding (including a proffer concerning the anticipated scope and duration of the testimony), a showing that other evidence reasonably suited to the requester's needs is not available from any other source (including a request submitted pursuant to § 0.460 or § 0.461 of the Commission's rules), and any other information that may be relevant to the Commission's consideration of the request for records or testimony. The purpose of the foregoing requirements is to assist the General Counsel in making an informed decision regarding whether the production of records or the testimony should be authorized.

(d) In deciding whether to authorize the release of records or to permit the testimony of present or former Commission personnel, the General Counsel, in consultation with the Managing Director, shall consider the following factors:

(1) Whether the request or demand would involve the Commission in issues or controversies unrelated to the Commission's mission;

(2) Whether the request or demand is unduly burdensome;

(3) Whether the time and money of the Commission and/or the United States would be used for private purposes;

(4) The extent to which the time of employees for conducting official business would be compromised;

(5) Whether the public might misconstrue variances between personal opinions of employees and Commission policy;

(6) Whether the request or demand demonstrates that the records or testimony sought are relevant and material to the underlying proceeding, unavailable from other sources, and whether the request is reasonable in its scope;

(7) Whether, if the request or demand were granted, the number of similar requests would have a cumulative effect on the expenditure of Commission resources;

(8) Whether the requestor has agreed to pay search and review fees as set forth in § 0.467 of this subpart;

(9) Whether disclosure of the records or the testimony sought would otherwise be inappropriate under the circumstances; and

(10) Any other factor that is appropriate.

(e) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which any of the following factors exist:

(1) Disclosure of the records or the testimony would violate a statute, Executive Order, rule, or regulation;

(2) The integrity of the administrative and deliberative processes of the Commission would be compromised;

(3) Disclosure of the records or the testimony would not be appropriate under the rules of procedure governing the case or matter in which the demand arose;

(4) Disclosure of the records, including release *in camera*, or the testimony, is not appropriate or required under the relevant substantive law concerning privilege;

(5) Disclosure of the records, except when *in camera* and necessary to assert a claim of privilege, or of the testimony, would reveal information properly classified or other matters exempt from unrestricted disclosure; or

(6) Disclosure of the records or the testimony could interfere with ongoing Commission enforcement proceedings or other legal or administrative proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, or disclose trade secrets or similarly confidential commercial or financial information.

(f) The General Counsel, following consultation with the Managing Director and any relevant Commission Bureau or Office, is authorized to approve non-privileged testimony by a present or former employee of the Commission or the production of non-privileged records in response to a valid demand issued by competent legal authority, or a request for records or testimony received under this section, and to assert governmental privileges on behalf of the Commission in litigation that may be associated with any such demand or request.

(g) Any employee or former employee of the Commission who receives a demand for records of the Commission or testimony regarding the records or activities of the Commission shall promptly notify the General Counsel so that the General Counsel may take appropriate steps to protect the Commission's rights.

(Secs. 4(i), 303(r), Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r); 5 U.S.C. 301; 47 CFR 0.231(d))

§ 0.465 Request for copies of materials which are available, or made available, for public inspection.

(a) The Commission awards a contract to a commercial duplication firm to make copies of Commission records and offer them for sale to the public. In addition to the charge for copying, the contractor may charge a search fee for locating and retrieving the requested documents from the Commission's files.

Note to paragraph (a): The name, address, telephone number, and schedule of fees for the current copy contractor are published at the time of contract award of renewal in a public notice and periodically thereafter. Current information is available at *http://www.fcc.gov/foia* and *http://www.fcc.gov/cgb*. Questions regarding this information should be directed to the Reference Information Center of the Consumer and Governmental Affairs Bureau at 202–418–0270.

(b) Audio or video recordings or transcripts of Commission proceedings are available to the public through the Commission's current copy contractor. In some cases, only some of these formats may be available.

(c)(1) Contractual arrangements which have been entered into with commercial firms, as described in this section, do not in any way limit the right of the public to inspect Commission records or to retrieve whatever information may be desired. Coin-operated and debit card copy machines are available for use by the public.

(2) The Commission has reserved the right to make copies of its records for its

own use or for the use of other agencies of the U.S. Government. When it serves the regulatory or financial interests of the U.S. Government, the Commission will make and furnish copies of its records free of charge. In other circumstances, however, if it should be necessary for the Commission to make and furnish copies of its records for the use of others, the fee for this service shall be ten cents ($0.10) per page or $5 per computer disk in addition to charges for staff time as provided in § 0.467. For copies prepared with other media, such as computer tapes, microfiche, videotape, the charge will be the actual direct cost including operator time. Requests for copying should be accompanied by a statement specifying the maximum copying fee the person making the request is prepared to pay. If the Commission estimates that copying charges are likely to exceed the greater of $25 or the amount which the requester has indicated that he/she is prepared to pay, then it shall notify the requester of the estimated amount of fees. Such a notice shall offer the requester the opportunity to confer with Commission personnel with the object of revising or clarifying the request.

Note to paragraph (c)(2): The criterion considered in acting on a waiver request is whether ''waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.'' 5 U.S.C. 552(a)(4)(A). A request for a waiver or reduction of fees will be decided by the General Counsel as set forth in § 0.470(e).

(3) *Certified Documents.* Copies of documents which are available or made available, for inspection under § 0.451 through § 0.465, will be prepared and certified, under seal, by the Secretary or his or her designee. Requests shall be in writing, specifying the exact documents, the number of copies desired, and the date on which they will be required. The request shall allow a reasonable time for the preparation and certification of copies. The fee for preparing copies shall be the same as that charged by the Commission as described in § 0.465(c)(2). The fee for certification shall be $10 for each document.

(d)(1) Computer maintained databases produced by the Commission and available to the public may be obtained from the FCC's Web site at *http://www.fcc.gov* or if unavailable on the Commission's Web site, from the copy contractor.

Note to paragraph (d)(1): The Commission awards a contract to provide the public with access to FCC databases from the copy contractor. See note to paragraph (a) of this section.

(2) Copies of computer generated data stored as paper printouts or electronic media and available to the public may also be obtained from the Commission's copy contractor (see paragraph (a) of this section).

(3) Copies of computer source programs and associated documentation produced by the Commission and available to the public may be obtained from the Office of the Managing Director.

(e) This section does not apply to records available on the Commission's Web site, *http://www.fcc.gov*, or printed publications which may be purchased from the Superintendent of Documents or private firms (see § 0.411 through § 0.420), nor does it apply to application forms or information bulletins, which are prepared for the use and information of the public and are available upon request (see § 0.421 and § 0.423) or on the Commission's Web site, *http://www.fcc.gov/formpage.html*.

(f) Anyone requesting copies of documents pursuant to this section may either come in person to the Commission (see § 0.461) or request that the copy contractor fulfill the request. If a request goes directly to the contractor, the requester will be charged by the contractor pursuant to the price list set forth in the latest contract.

§ 0.466 Definitions.

(a) For the purpose of § 0.467 and § 0.468, the following definitions shall apply:

(1) The term *direct costs* means those expenditures which the Commission actually incurs in searching for and duplicating (and in case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include the salary of the employee performing the work (the basic rate of pay for the employee plus twenty percent of that rate to cover benefits), and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses, such as costs of space, and heating or lighting the facility in which the records are stored.

(2) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material contained within documents. Such activity should be distinguished, however, from ''review'' of material in order to determine whether the material is exempt from disclosure (*see* paragraph (a)(3) of this section).

(3) The term *review* refers to the process of examining documents located in response to a commercial use request (see paragraph (a)(4) of this section) to determine whether any portion of a document located is exempt from disclosure. It also includes processing any documents for disclosure, *e.g.*, performing such functions that are necessary to excise them or otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of FOIA exemptions.

(4) The term *commercial use* request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial interests of the requester. In determining whether a requester properly falls within this category, the Commission shall determine the use to which a requester will put the documents requested. Where the Commission has reasonable cause to question the use to which a requester will put the documents sought, or where that use is not clear from the request itself, the Commission shall seek additional clarification before assigning the request to a specific category. The dissemination of records by a representation of the news media (see § 0.466(a)(7)) shall not be considered to be for a commercial use.

(5) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research.

(6) The term *non-commercial scientific institution* refers to an institution that is not operated on a commercial basis as that term is referenced in paragraph (a)(4) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(7) The term *representative of the news media* refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term *news* means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of news) who make their products available for purchase or subscription by, or free distribution to, the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example,

the adoption of electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Commission may also consider the past publication record of the requester in making such a determination. See 5 U.S.C. 552(a)(4)(A)(ii).

(8) The term *all other requester* refers to any person not within the definitions in paragraphs (a)(4) through (a)(7) of this paragraph.

(b) [Reserved]

§ 0.467 Search and review fees.

(a)(1) Subject to the provisions of this section, an hourly fee shall be charged for recovery of the full, allowable direct costs of searching for and reviewing records requested under § 0.460 or § 0.461, unless such fees are reduced or waived pursuant to § 0.470. The fee is based on the pay grade level of the FCC's employee(s) who conduct(s) the search or review, or the actual hourly rate of FCC contractors or other non-FCC personnel who conduct a search.

Note to paragraph (a)(1): The fees for FCC employees will be modified periodically to correspond with modifications in the rate of pay approved by Congress and any such modifications will be announced by public notice and will be posted on the Commission's Web site, *http://www.fcc.gov/foia/#feeschedule*.

(2) The fees specified in paragraph (a)(1) of this section are computed at Step 5 of each grade level based on the General Schedule and include twenty percent for personnel benefits. Search and review fees will be assessed in ¼ hour increments.

(b) Search fees may be assessed for time spent searching, even if the Commission fails to locate responsive records or if any records located are determined to be exempt from disclosure.

(c) The Commission shall charge only for the initial review, *i.e.*, the review undertaken initially when the Commission analyzes the applicability of a specific exemption to a particular record. The Commission shall not charge for review at the appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs of such a subsequent review, under these circumstances, are properly assessable.

(d) The fee charged will not exceed an amount based on the time typically required to locate records of the kind requested.

(e)(1) If the Commission estimates that search charges are likely to exceed the greater of $25 or the amount which the requester indicated he/she is prepared to pay, then it shall notify the requester of the estimated amount of fees. Such a notice shall offer the requester the opportunity to confer with Commission personnel with the object of revising or clarifying the request. See § 0.465(c)(2) and § 470(d).

(2) The time for processing a request for inspection shall be tolled while conferring with the requester about his or her willingness to pay the fees required to process the request. See § 0.461(e).

(f) When the search has been completed, the custodian of the records will give notice of the charges incurred to the person who made the request.

(g) The fee shall be paid to the Financial Management Division, Office of Managing Director, or as otherwise directed by the Commission.

(h) Records shall be inspected within seven days after notice is given that they have been located and are available for inspection. See § 0.461(n). After that period, they will be returned to storage, and additional charges may be imposed for again producing them.

§ 0.468 Interest.

Interest shall be charged those requesters who fail to pay the fees charged. The agency will begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. The date on which the payment is received by the agency will determine whether and how much interest is due. The interest shall be set at the rate prescribed in 31 U.S.C. 3717.

§ 0.469 Advance payments.

(a) The Commission may not require advance payment of estimated FOIA fees except as provided in paragraph (b) or where the Commission estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00 and the requester has no history of payment. Where allowable charges are likely to exceed $250.00 and the requester has a history of prompt payment of FOIA fees the Commission may notify the requester of the estimated cost and obtain satisfactory assurance of full payment. Notification that fees may exceed $250.00 is not, however, a prerequisite for collecting fees above that amount.

(b) Where a requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), the Commission may require the requester to pay the full amount owed plus any applicable interest as provided in § 0.468, and to make an advance payment of the full amount of the estimated fee before the Commission begins to process a new request or a pending request from that requester.

(c) When the Commission acts under paragraph (a) of this section, the administrative time limits prescribed in §§ 0.461(g) and (k) (*i.e.*, twenty business days from receipt of initial requests and twenty business days from receipt of appeals from initial denials, plus permissible extensions of these time limits (see § 0.461(g)(1)(i) through (iii) and § 0.461(k)(1)(i) through (iii)) will begin only after the agency has received the fee payments described in this section. See § 0.461(e)(2)(ii) and § 0.467(e)(2).

§ 0.470 Assessment of fees.

(a)(1) *Commercial use requesters.* (i) When the Commission receives a request for documents for commercial use, it will assess charges that recover the full direct cost of searching for, reviewing and duplicating the records sought pursuant to § 0.466 and § 0.467, above.

(ii) Commercial use requesters shall not be assessed search fees if the Commission fails to comply with the time limits under § 0.461(g)(1), if no unusual or exceptional circumstances (§ 0.461(g)(1)(i) through (iii)) apply to the processing of the request.

(2) *Educational and non-commercial scientific institution requesters and requesters who are representatives of the news media.* (i) The Commission shall provide documents to requesters in these categories for the cost of reproduction only, pursuant to § 0.465 above, excluding reproduction charges for the first 100 pages, provided however, that requesters who are representatives of the news media shall be entitled to a reduced assessment of charges only when the request is for the purpose of distributing information.

(ii) Educational requesters or requesters who are representatives of the news media shall not be assessed fees for the cost of reproduction if the Commission fails to comply with the time limits under § 0.461(g)(1), if no unusual or exceptional circumstances

(§ 0.461(g)(1)(i) through (iii)) apply to the processing of the request.

(3) *All other requesters.* (i) The Commission shall charge requesters who do not fit into any of the categories above fees which cover the full, reasonable direct cost of searching for and reproducing records that are responsive to the request, pursuant to § 0.465 and § 0.467, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

(ii) All other requesters shall not be assessed search fees if the Commission fails to comply with the time limits under § 0.461(g)(1), if no unusual or exceptional circumstances (§ 0.461(g)(1)(i) through (iii)) apply to the processing of the request.

(b)(1) The 100 page restriction on assessment of reproduction fees in paragraphs (a)(2) and (a)(3) of this section refers to 100 paper copies of a standard size, which will normally be ''8½ x 11'' or ''11 x 14,'' or microfiche containing the equivalent of 100 pages or 100 pages of computer printout.

(2) When the agency reasonably believes that a requester or group of requesters is attempting to segregate a request into a series of separate individual requests for the purpose of evading the assessment of fees, the agency will aggregate any such requests and assess charges accordingly.

(c) When a requester believes he or she is entitled to a reduced fee assessment pursuant to paragraphs (a)(2) and (a)(3) of this section, or a waiver pursuant to paragraph (e) of this section, the requester must include, in his or her original FOIA request, a statement explaining with specificity, the reasons demonstrating that he or she qualifies for a reduced fee or a fee waiver. Included in this statement should be a certification that the information will not be used to further the commercial interests of the requester.

Note to paragraph (c): Anyone requesting a reduced fee or a fee waiver must submit the request directly to the Commission and not to the contractor who will provide documents only at the contract price.

(d) If the Commission reasonably believes that a commercial interest exists, based on the information provided pursuant to paragraph (c) of this section, the requester shall be so notified and given an additional ten business days to provide further information to justify receiving a reduced fee. See § 0.467(e)(2). During this time period, the materials will be available for inspection to the extent that the time period exceeds the time period for responding to FOIA requests, as appropriate.

(e)(1) Copying, search and review charges shall be waived or reduced by the General Counsel when ''disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.'' 5 U.S.C. 552(a)(4)(A)(iii). Simply repeating the fee waiver language of section 552(a)(4)(A)(iii) is not a sufficient basis to obtain a fee waiver.

(2) The criteria used to determine whether disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government include:

(i) Whether the subject of the requested records concerns the operations or activities of the government;

(ii) Whether the disclosure is likely to contribute to an understanding of government operations or activities; and

(iii) Whether disclosure of the requested information will contribute to public understanding as opposed to the individual understanding of the requester or a narrow segment of interested persons.

(3) The criteria used to determine whether disclosure is primarily in the commercial interest of the requester include:

(i) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(4) This request for fee reduction or waiver must accompany the initial request for records and will be decided under the same procedures used for record requests.

(5) If no fees or de minimis fees would result from processing a FOIA request and a fee waiver or reduction has been sought, the General Counsel will not reach a determination on the waiver or reduction request.

(f) Whenever the total fee calculated under this section is $15 or less, no fee will be charged.

(g) Review of initial fee determinations under § 0.467 through § 0.470 and initial fee reduction or waiver determinations under § 0.470(e) may be sought under § 0.461(j).

[FR Doc. E9–7033 Filed 3–27–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

Railroad Accidents/Incidents: Reports Classification, and Investigations

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Notice of interpretation.

SUMMARY: FRA is issuing this notice of interpretation to inform interested parties of its application and enforcement of the harassment or intimidation provisions contained in 49 CFR part 225, specifically relating to situations in which a supervisor or other railroad official accompanies an injured employee into an examination room. This notice of interpretation informs the regulated community as to when such behavior constitutes harassment or intimidation calculated to discourage or prevent the reporting of an accident, incident, injury or illness. This document is not intended to address or impact statutory provisions related to providing ''prompt medical attention,'' as enforcement of those provisions fall within the jurisdiction of the U.S. Department of Labor.

FOR FURTHER INFORMATION CONTACT: Douglas H. Taylor, Staff Director, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue, SE., RRS–11, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6255); or Zeb Schorr, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., RCC–11, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6072).

SUPPLEMENTARY INFORMATION:

I. Background

Section 225.33(a) of Title 49 of the Code of Federal Regulations requires each railroad to ''adopt and comply with a written Internal Control Plan'' addressing the railroad's policies and procedures regarding accident/incident reporting. This section further requires that such Internal Control Plans include, at a minimum, a ''policy statement declaring the railroad's commitment * * * to the principle, in absolute terms, that harassment or intimidation of any person that is calculated to discourage or prevent such person from receiving proper medical treatment or from reporting such accident, incident, injury or illness will not be permitted or tolerated * * *.'' The FRA Guide for Preparing Accident/Incident Reports also notes that ''many railroad

employees fail to disclose their injuries to the railroad or fail to accept reportable treatment from a physician because they wish to avoid potential harassment from management or possible discipline that is sometimes associated with the reporting of such injuries.'' FRA Guide, Ch. 1, p.8. The FRA Guide goes on to state that supervisory personnel and mid-level managers in some instances ''are urged to engage in practices which may undermine or circumvent the reporting of injuries and illnesses.'' Id.

FRA is aware of incidents in which a supervisor or other railroad official (hereinafter collectively referred to as the ''supervisor'') has accompanied an injured employee into an examination room, or other room in which the injured employee received medical treatment (hereinafter collectively referred to as the ''examination room''). While FRA is concerned that injured employees in such situations may not receive complete or prompt medical treatment, responsibility for ensuring that such treatment is afforded has been assigned by Congress to the Department of Labor. FRA is concerned that when accompanied by a supervisor an injured employee may be discouraged or otherwise prevented from reporting an accident, incident, injury or illness. Similarly, a supervisor may influence the type or extent of medical treatment afforded the employee in an effort to affect the reportability of that injury. Although concerns have been expressed as to the need for a railroad to determine the extent of an employee's injuries, FRA does not believe that such concerns outweigh the potential pitfalls and problems associated with the practice of having supervisors accompany injured employees while they receive care from their physicians. Moreover, physicians are in the best position to evaluate the health of injured employees and the presence of a supervisor during such examinations would not, in most cases, add any value to the treatment of an employee and would, in general, be a distraction to both the employee and the physician.

The purpose of this document is to articulate a general principle regarding what behavior constitutes harassment or intimidation in violation of § 225.33(a)(1) in the particular context of supervisors accompanying injured employees in examination rooms. The interpretation contained in this notice reflects the longstanding position of FRA regarding this practice. This document is not intended to address or impact the meaning or application of the statutory provisions contained in 49 U.S.C. 20109 related to providing ''prompt medical attention,'' as enforcement and application of those provisions fall within the jurisdiction of the U.S. Department of Labor.

II. Interpretation

A. General Principle

Harassment and intimidation occur in violation of § 225.33(a)(1) when a railroad supervisor accompanies an injured employee into an examination room, unless one or more of the exceptions listed in section II(B) of this notice exists.

B. Exceptions

FRA recognizes that there are limited circumstances in which it is appropriate, and indeed preferable, for a supervisor to accompany an injured employee into an examination room. Thus, FRA believes that limited exceptions to the general principle articulated in section II(A) of this notice are necessary. Consequently, FRA recognizes the following limited exceptions:

(1) The injured employee issues a voluntary invitation to the supervisor to accompany him or her in the examination room. The injured employee must issue this invitation freely, without coercion, duress, or intimidation. For example, an injured employee may seek the attendance of a supervisor where the supervisor is a friend. This exception does not encompass invitations issued by third parties, including physicians, unless the invitations are made pursuant to the request of the injured employee.

(2) The injured employee is unconscious or otherwise unable to effectively communicate material information to the physician and the supervisor's input is needed to provide such material information to the physician. In these circumstances, the supervisor is assisting the injured employee in providing information to the physician so that the injured employee may receive appropriate and responsive medical treatment.

Issued in Washington, DC, on March 24, 2009.

Jo Strang,

Acting Deputy Administrator, Federal Railroad Administration.

[FR Doc. E9–6953 Filed 3–27–09; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 74, No. 59
Monday, March 30, 2009

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2008–0147]

Change in Disease Status of the Republic of Korea With Regard to Foot-and-Mouth Disease and Rinderpest

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations to add the Republic of Korea to the list of regions that are considered free of rinderpest and foot-and-mouth disease (FMD). We are taking this action because we have conducted an evaluation and determined that the Republic of Korea is free of rinderpest and FMD. We are also proposing to add the Republic of Korea to the list of regions that are subject to certain import restrictions on meat and meat products because of their proximity to or trading relationships with rinderpest- or FMD-affected countries. These actions would update the disease status of the Republic of Korea with regard to rinderpest and FMD while continuing to protect the United States from an introduction of those diseases by providing additional requirements for meat and other animal products imported into the United States from the Republic of Korea.

DATES: We will consider all comments that we receive on or before May 29, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0147* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0147, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0147.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence, Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Julia Punderson, Senior Staff Veterinarian, Regionalization Evaluation Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various communicable diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever, classical swine fever, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD is considered to exist in all other parts of the world not listed. Section 94.11 of the regulations lists regions of the world that have been determined to be free of rinderpest and FMD, but are subject to certain restrictions because of their proximity to or trading relationships with rinderpest or FMD-affected regions.

On April 18, 2000, we published in the **Federal Register** an interim rule (65 FR 20713–20714, Docket No. 00–033–1) amending the regulations to remove the Republic of Korea (South Korea) from the list in § 94.1 of regions declared free of FMD and rinderpest because of a confirmed FMD diagnosis. That rule was effective retroactively to March 20, 2000, which was the date when FMD was initially detected. The rule also removed the Republic of Korea from the list of countries listed in § 94.11 that are declared to be free of these diseases, but that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest or FMD-affected regions. As a result of the interim rule, the importation into the United States of any ruminant, or any fresh (chilled or frozen) meat of any ruminant that left the Republic of Korea on or after March 20, 2000, was prohibited or restricted.

The last FMD outbreaks in the Republic of Korea in 2000 and 2002 were limited in scope and rapidly controlled; no subsequent outbreaks have occurred since 2002. As for rinderpest, the Republic of Korea has not had an outbreak of the disease since 1931. In 2007, the Government of the Republic of Korea submitted information to APHIS to support an official request for recognition of its FMD-free status. In response, APHIS conducted a site visit to the Republic of Korea in March 2008 to substantiate information provided with the request and obtain evidence firsthand. We conducted a disease risk evaluation [1] and concluded the Republic of Korea is free of FMD. We also concluded that the surveillance, prevention, and control measures implemented by the Republic of Korea are sufficient to minimize the likelihood of introducing FMD or rinderpest into the United States via imports of susceptible species or products from such species.

In light of our conclusions, we propose to add the Republic of Korea to the list in § 94.1 of regions that have been declared free of FMD and rinderpest. We also propose to add the Republic of Korea to the list in § 94.11 of regions that are declared to be free of these diseases, but that are subject to certain restrictions because of their proximity to or trading relationships

[1] *APHIS Evaluation of the Status of the Republic of Korea Regarding Foot-and-Mouth Disease and Rinderpest.* Riverdale, MD: USDA, APHIS, Veterinary Services, October 2008.

with rinderpest or FMD-affected regions.

Risk Evaluation

Drawing on data submitted by the Government of the Republic of Korea and on observations from our site visit to the country, we have evaluated the animal health status of the Republic of Korea relative to FMD and rinderpest. Our evaluation was conducted according to the 11 factors identified in § 92.2, ''Application for recognition of the animal health status of a region,'' which are used to determine the level of risk associated with importing animals or animal products into the United States from a given region. A summary evaluation of each factor is discussed below.

Veterinary Authority and Infrastructure

All regulations related to the control of FMD in the Republic of Korea are based on that country's Act on the Prevention of Contagious Animal Diseases. These regulations address disease control and preventive measures, including notification of suspicious cases, stamping-out, movement controls, disinfection, vaccination, surveillance, importation quarantine, disposal, and compensation. Governmental veterinary services responsible for implementing these measures consist of the Animal Health Division of the Republic of Korea Ministry for Food, Agriculture, Forestry and Fisheries (MiFAFF), National Veterinary Research and Quarantine Service (NVRQS), and Provincial Veterinary Services. NVRQS is an executive agency within MiFAFF tasked with the prevention and control of major animal diseases. NVRQS responsibilities include quarantine inspection of animals and animal products, livestock product safety, veterinary research, and epidemiological surveillance.

Each of the Republic of Korea's nine provinces and seven metropolitan cities has its own animal health laboratory and veterinary service responsible for the prevention and control of major animal diseases within their region. They are also the primary diagnostic laboratories for animal diseases.

Animal health officials in the Republic of Korea have the legal authority to enforce all pertinent regulations pertaining to FMD and maintain the necessary veterinary infrastructure to carry out effective FMD surveillance and control activities. Governmental veterinary authorities, industry and trade organizations, and non-profit groups work together closely and effectively to monitor livestock health. These efforts minimize the risk of FMD and rinderpest to livestock in the United States via importation of ruminants and ruminant products from the Republic of Korea.

Disease Status in the Region

The Republic of Korea was free of FMD from 1934 until March 2000, when the disease was detected on a small dairy farm in Kyonggi Province. Control measures on the affected farm began immediately. Extensive disease surveillance was undertaken and by mid-April the full extent of the outbreak was confirmed on 11 additional farms. Two of these farms were also in Kyonggi Province, eight were in Chungnam Province, and one was in Chungbuk Province, 140 km southwest of the first infected farm.

Protection zones with a radius of 10 km were set up around each infected farm. Within these zones, animal movements were restricted and livestock markets and artificial insemination were suspended. In addition, a 20-km surveillance zone was set up around the infected farms. In both protection and surveillance zones, veterinary authorities immediately implemented testing, vaccination, and surveillance. Epidemiologically linked farms outside the zones were also investigated and tested. All animals found to be infected were cattle, with no evidence of infection in pigs. Although the last infected herd was identified in April 2000, testing for FMD continued through July. In all, a total of 17,831 animals on 4,782 farms were tested during the outbreak. Both cattle and swine were vaccinated and all vaccinated animals were permanently marked and subject to additional testing and clinical examination.

In May 2002, Korean veterinary authorities again confirmed the presence of FMD, this time on pig farms in Kyonggi and Chungbuk Provinces. Governmental veterinary authorities immediately implemented emergency animal disease control and eradication measures. FMD was found on 16 farms in May and June 2002. Two of these farms had mixed populations of animals, but infection could only be demonstrated in the swine. Control zones were immediately established around the infected farms, and an immediate stamping-out policy was implemented with movement controls, quarantine, and culling of affected animals. The last control zone was lifted in August 2002.

In June 2002, the Republic of Korea invited an International Epidemiology Assessment Team consisting of members from Australia, New Zealand, and the United States to assess its FMD control measures. The team determined that stamping-out and movement restrictions were effective in containing the spread of disease, as was the use of pen-side diagnostic tests for rapid detection of infected animals. They concluded that the capability for early diagnosis together with prompt stamping-out of infected farms significantly limited the number of FMD cases. No evidence exists of any species infected with FMD in the Republic of Korea.

Disease Status of Adjacent Regions and Separation Measures

The Republic of Korea shares its northern border with the Democratic People's Republic of Korea (North Korea). The two countries are separated by the 2.5 mile wide fenced and patrolled demilitarized zone (DMZ) that runs the full length of the border, making intentional or inadvertent entry of animals from North Korea unlikely. FMD must be considered to be endemic in North Korea, which has sporadically reported outbreaks to the World Organization for Animal Health (OIE) as recently as 2007. No commerce in livestock takes place by land between the Republic of Korea and North Korea.

Other close neighbors of the Republic of Korea are China and Japan. The Republic of Korea is separated from these countries by the Yellow Sea and the Sea of Japan. The last reported outbreak of FMD in Japan occurred in March and April 2000. China has reported FMD outbreaks to OIE on a nearly annual basis, but no evidence exists that FMD has been transported into the Republic of Korea from China or other surrounding regions since increased biosecurity and other disease control measures were instituted after the 2000 and 2002 outbreaks.

Disease Control Programs

The Republic of Korea does not currently maintain an active disease control program as there is no evidence of FMD in the country and no outbreaks have occurred since 2002. However, the Republic of Korea has in place a comprehensive surveillance system with both active (seroepidemiologic) and passive (clinical) components. In addition to surveillance, the Korean Government has instituted animal movement controls, border inspection, disinfection, and emergency plans to prevent the incursion of FMD into the country.

To promote reporting of possible disease outbreaks, the Republic of Korea has developed an indemnification

program encouraging farmers to report suspect cases and to deter movement of sick animals to slaughter or auction. The Republic of Korea also provides temporary subsistence funding as needed, and livestock cooperatives provide low interest loans and assistance with feed and management. An emergency hotline is available to encourage reporting of suspicious cases, as is a quarantine hotline to receive emergency reports from ports of entry. The Republic of Korea imposes sanctions to discourage delays in reporting suspect cases and provides rewards for third-person reporting of suspect cases as an incentive for early disease identification.

The Republic of Korea also levies penalties for cases of negligence related to disease reporting. Penalties include imprisonment for veterinarians or farmers failing to report sick or dead animals, importation of prohibited items, or failure to submit goods to quarantine inspection. Livestock owners or transporters who violate rules related to disease reporting and prevention face imprisonment or fines. Fines can also be levied on any person who refuses, obstructs, or evades an epidemiological investigation, violates animal import requirements, or evades quarantine inspections of mailed goods.

As part of its FMD disease prevention efforts, the Republic of Korea has also incorporated provisions governing garbage control and swill feeding. By law, swill or garbage is prohibited for use in animal feed. Because of the predominance of small farms, the Republic of Korea's training, education, and outreach efforts to increase awareness have targeted small-scale farmers. Disease education programs are organized through various agricultural cooperatives that provide contact and information for all farmers.

The Republic of Korea has an effective system for detecting and investigating suspect FMD cases. Frequent monitoring of animal premises and movements permits effective surveillance and virus detection in various FMD-susceptible species, and incentive programs encourage reporting of suspected cases. These efforts effectively minimize the risk of exposing livestock in the United States to FMD through importation of Korean cattle, beef, and related products.

Vaccination Status of the Region

Vaccination for FMD has not been practiced in the Republic of Korea since August 2000. During the 2002 FMD outbreak, which affected primarily swine, NVRQS decided not to vaccinate. The International Epidemiology Assessment Team reviewed this decision and concluded that, under the circumstances of the outbreak, vaccination would not have been advantageous. The time required to achieve immunity with vaccination in pigs takes several weeks and it was considered that many farms would already have been infected when the disease was first recognized; a program of emergency vaccination would have masked the presence of the virus and delayed eradication efforts.

The Republic of Korea's current policy of not vaccinating for FMD is scientifically sound and can help speed the identification of clinical signs if an FMD outbreak occurs again. The Republic of Korea has strong disincentives for non-reporting of suspected cases, maintains a generous indemnity program, and enforces supporting animal health regulations, making it likely that clinical signs of FMD would be reported promptly.

The Republic of Korea does not produce FMD vaccines but actively maintains a vaccine reserve, with plans for implementing emergency vaccinations if needed.

Animal Movement Controls and Biosecurity

Border controls are administered by the NVRQS and Customs, Immigration and Quarantine. Livestock and livestock products may enter the country legally at officially designated airports and maritime ports where they are inspected by animal quarantine officers. Importation of cloven-hoofed live animals, their meat, meat products, or milk from countries or via areas affected with FMD is prohibited. Importation of live cloven-hoofed animals from FMD-free countries requires prior notification and submission of a health certificate, and all are inspected and quarantined for a minimum of 15 days in the quarantine facilities of the NVRQS. Importation of genetic material requires certification from the exporting country that the material originated from countries without FMD or rinderpest and that these diseases have not been reported in the exporting country. Other movement requirements include the treatment of international garbage prior to incineration by a licensed company and the treatment of imported hay for feed or bedding.

Inspection of non-commercial items is focused on passengers, cargo, and mail arriving from regions or countries considered to be high-risk. Detector dogs are used to inspect cargo and mail at major international ports; confiscated items are bagged, disinfected, and incinerated. At ports of entry, disinfecting foot mats are placed at passenger disembarkation gates, and electronic message boards and posters with information on FMD in several languages are set up at passenger gates and at customs.

Movement of animals within the Republic of Korea primarily takes place through local livestock cooperatives. The Agricultural Cooperatives Act calls for these cooperatives to work closely with local veterinary authorities to monitor movements of animals and products. A national animal identification database, piloted by the national veterinary authorities, focuses on improved recordkeeping for small farms and will address movement control of animals from these farms. Farmers are required to keep track of all transactions of livestock sales and purchases, certificates of testing, and vaccination history for program diseases prior to movement. Movement certificates are required for all trade and are issued by the provincial veterinary services.

Livestock Demographics and Marketing Practices

The Republic of Korea produces less than 50 percent of the beef it consumes; in 2006, total beef consumption was 331,000 tons, of which 179,000 tons were imported. The country's cattle population is approximately 2.6 million. Low-density cattle production is predominant in the Republic of Korea, with more than 80 percent of farmers owning fewer than 10 animals. Other farmed FMD-susceptible species are found in very small numbers.

Beef cattle raised in the Republic of Korea consist primarily of traditional Korean native cattle, or Hanwoo, with a current national herd of around 2 million head. The most likely product to be exported to the United States would be specialized product, specifically the Hanwoo beef produced from Korean native cattle. Biosecurity measures and controls at Korean beef production facilities are effective in preventing FMD outbreaks, and commercial cattle operations do not constitute a significant risk for introducing FMD into the United States.

Disease Surveillance Capability

The Republic of Korea conducts extensive active and passive disease surveillance of livestock. Active surveillance incorporates statistical and purposive (targeted) sampling; passive surveillance includes reporting and followup of suspect cases. Intensive followup of suspicious samples is conducted in conjunction with

confirmatory testing, quarantine, and other necessary controls.

Following the 2000 FMD outbreak, the Republic of Korea expanded its active surveillance program. As part of this effort, clinical surveillance teams were organized to make periodic farm visits and examine all livestock on the premises. The Republic of Korea also conducts serological surveillance, which includes collecting statistically selected samples as well as samples from targeted populations. The active surveillance system also involves slaughterhouse and breeding farm surveillance and the use of a pen-side test for rapid detection of FMD-infected animals during an outbreak. Passive surveillance is done for all clinical suspects reported by farmers, veterinarians, or other animal health officials. All reports are investigated by the provincial veterinary services, and samples are collected for any suspicious cases.

Diagnostic Laboratory Capability

The Republic of Korea maintains a central national laboratory and laboratories in each province as part of the National FMD surveillance program. The Republic of Korea has the diagnostic capabilities to adequately test samples for the presence of the FMD virus with adequate quality control activities, laboratory equipment, and sufficient staffing.

Emergency Response Capability

The Republic of Korea has emergency response plans in place for controlling FMD should an outbreak of the disease occur. FMD emergency control guidelines describe standard operating procedures to be used during an FMD emergency. Contingency exercises are held annually to evaluate staff performance and update procedures as needed. In the event of an FMD outbreak, several governmental agencies are tasked with implementing a coordinated emergency response that includes epidemiological investigations, vaccine distribution, disinfection, movement restrictions, stamping-out operations, and public awareness and guidance.

The above findings are detailed in the evaluation document that may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. The document may also be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov). It explains the factors that have led us to conclude that the Republic of Korea is free of rinderpest and FMD. It also establishes that the Republic of Korea has adequate veterinary infrastructures in place to prevent, control, and manage FMD and rinderpest outbreaks. Therefore, we are proposing to recognize the Republic of Korea as free of rinderpest and FMD and add the country to the list in § 94.1(a)(2) of regions that are considered free of rinderpest and FMD.

This proposed action would also relieve certain restrictions due to FMD and rinderpest on the importation into the United States of certain live animals and animal products from the Republic of Korea. However, because the Republic of Korea imports meat from regions that APHIS does not consider to be FMD free and from regions where FMD status has not been reviewed, the importation of meat and other products from ruminants into the United States from the Republic of Korea would continue to be subject to certain restrictions. For this reason, we are proposing to add the Republic of Korea to the list in § 94.11(a) of regions declared free of rinderpest and FMD but that are subject to special restrictions on the importation of their meat and other animal products into the United States. The regions listed in § 94.11(a) are subject to these special restrictions because they: (1) Supplement their national meat supply by importing fresh (chilled or frozen) meat of ruminants or swine from regions that are designated in § 94.1(a) as regions where rinderpest or FMD exists, (2) have a common land border with regions where rinderpest or FMD exists, or (3) import ruminants or swine from regions where rinderpest or FMD exists under conditions less restrictive than would be acceptable for importation into the United States.

Under § 94.11, meat and other animal products of ruminants and swine, including ship stores, airplane meals, and baggage containing these meat or animal products, may not be imported into the United States except in accordance with § 94.11 and the applicable requirements of the USDA's Food Safety and Inspection Service at 9 CFR chapter III.

Section 94.11 generally requires that the meat and other animal products of ruminants and swine be: (1) Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and (2) accompanied by an additional certificate, issued by a full-time salaried veterinary official of the national government of the exporting region, assuring that the meat or other animal products have not been commingled with or exposed to meat or other animal products originating in, imported from, transported through, or that have otherwise been in a region where rinderpest or FMD exists.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to prepare and make available for public comment an initial regulatory flexibility analysis that will describe the impact of the proposed rule on small entities. In lieu of preparing a regulatory flexibility analysis, section 605 of the RFA allows an agency to certify that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The following is a factual basis for certification of this rule.

The proposed rule would amend the regulations to add the Republic of Korea to the list of regions considered to be free of rinderpest and FMD. The proposed action, which was requested by the Republic of Korea, follows a risk assessment conducted by APHIS concluding that the Republic of Korea is free of both diseases and has the veterinary infrastructure in place to detect and effectively eradicate the diseases if necessary. The effect of the rule would be to remove certain rinderpest and FMD-related prohibitions and restrictions on the importation into the United States of ruminants, or fresh (chilled or frozen) meat or other products of ruminants, from the Republic of Korea. APHIS imposes such restrictions because an FMD or rinderpest outbreak in the United States has the potential for severe economic consequences. Even though imports of swine and swine products would be allowed under APHIS' regulations related to FMD and rinderpest, those commodities would not be eligible for import from the Republic of Korea, due to USDA regulations designed to prevent the introduction of diseases other than FMD and rinderpest.[2]

We do not anticipate that changing the FMD and rinderpest status of the Republic of Korea would have a significant economic impact on a

[2] APHIS' risk evaluation states that the animal health status of swine for diseases other than FMD has not been evaluated. In the absence of a favorable evaluation, live swine and swine-derived products will not be eligible to be imported from the Republic of Korea, even with the proposed changes in effect.

substantial number of U.S. entities, large or small, because the volume of currently prohibited/restricted animals and animal products imported into the United States from the Republic of Korea is likely to be very small relative to overall U.S. supply of those commodities (production and net imports from all foreign sources). There are several reasons for this. First, the volume of U.S. imports from the Republic of Korea prior to March 20, 2000, when that country was considered to be free of FMD and rinderpest, was negligible.[3] During the 3-year period from 1997 to 1999, the United States did not import any reportable amounts of ruminants or fresh (chilled or frozen) meat or other products of ruminants from the Republic of Korea, other than 1.3 metric tons of dairy products in 1998.

Second, the Republic of Korea produces less beef, milk, and pork than it consumes, and is therefore a net importer of these commodities. Given this fact, there would not be a significant volume of exports of those commodities to the United States.

Finally, APHIS' staff expects that Hanwoo beef, a premium-priced specialty meat produced from Korean native cattle, is likely to be the Republic of Korea's primary export to the United States if the proposed rule becomes effective. Because of its premium price, the market for Hanwoo beef would be limited; it is likely to be sold to a niche market, such as Korean restaurants in the United States.

Importers, brokers, and others that would import Hanwoo beef, and restaurants that would serve that product, are the U.S. entities most likely to be affected by the rule. They stand to benefit from the increased business activity. The number of these entities is unknown but it is likely to be very small, given the expected limited market for Hanwoo beef in the United States. The size of these entities is also unknown, although it is reasonable to assume that, as with U.S. businesses in general, most are small under the standards of the U.S. Small Business Administration. The proposed action should have no noticeable effect on U.S. beef producers, given the expected limited demand for Hanwoo beef.

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

[3] Effective March 20, 2000, APHIS removed the Republic of Korea from the list of regions considered to be free of both rinderpest and FMD.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding the words ''Republic of Korea,'' after the word ''Japan,''.

§ 94.11 [Amended]

3. In § 94.11, paragraph (a) is amended by adding the words ''Republic of Korea,'' after the word ''Japan,''.

Done in Washington, DC, this 25th day of March 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–7013 Filed 3–27–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0284; Directorate Identifier 2009–CE–016–AD]

RIN 2120–AA64

Airworthiness Directives; DORNIER LUFTFAHRT GmbH Models Dornier 228–100, Dornier 228–101, Dornier 228–200, Dornier 228–201, Dornier 228–202, and Dornier 228–212 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

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

The manufacturer reported findings of missing primer on the internal of the elevator and rudder of aircraft S/N 8200. The aircraft S/N 8200 was with RUAG for maintenance purposes. Investigation performed by RUAG showed that the paint removal procedure for the rudder and elevator was changed from a paint stripping with brush and scraper to a procedure where the parts were submerged in a tank filled with hot liquid stripper. The stripper is called TURCO 5669 from Henkel Surface Technologies. The stripping process is described in the Technical Process Bulletin No. 238799 dated 09/01/1999. This paint stripping process change was not communicated to and not approved by the TC-Holder.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 29, 2009.

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

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

W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0284; Directorate Identifier 2009–CE–016–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On April 4, 2008, we issued AD 2008–08–15, Amendment 39–15467 (73 FR 21220; April 21, 2008). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2008–08–15, we have received new MCAI that changes the applicability and accomplishment instructions.

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, has issued AD D–2007–350R1, dated January 30, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The manufacturer reported findings of missing primer on the internal of the elevator and rudder of aircraft S/N 8200. The aircraft S/N 8200 was with RUAG for maintenance purposes. Investigation performed by RUAG showed that the paint removal procedure for the rudder and elevator was changed from a paint stripping with brush and scraper to a procedure where the parts were submerged in a tank filled with hot liquid stripper. The stripper is called TURCO 5669 from Henkel Surface Technologies. The stripping process is described in the Technical Process Bulletin No. 238799 dated 09/01/1999. This paint stripping process change was not communicated to and not approved by the TC-Holder.

The MCAI requires a detailed visual inspection of the inner structure of the rudder and elevator for signs of corrosion, de-bonded primer (yellow-green), and any deviation of surface protection. If the inspection results show corrosion beyond the acceptable level or areas with de-bonded primer, the inspection results have to be reported to RUAG Aerospace Services GmbH for further decisions. If necessary, repair the affected parts in accordance with the applicable repair instruction obtained from RUAG Aerospace Services GmbH. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–270, Rev. No. 1, dated November 28, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD will affect 17 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $4,080, or $240 per product.

We have no way of determining the number of airplanes or the associated costs of any follow-on repairs or replacements that might be required by this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15467 (73 FR 21220; April 21, 2008), and adding the following new AD:

DORNIER LUFTFAHRT GmbH: Docket No. FAA–2009–0284; Directorate Identifier 2009–CE–016–AD.

Comments Due Date

(a) We must receive comments by April 29, 2009.

Affected ADs

(b) This AD supersedes AD 2008–08–15, Amendment 39–15467 (73 FR 21220; April 21, 2008).

Applicability

(c) This AD applies to Dornier 228–100, Dornier 228–101, Dornier 228–200, Dornier 228–201, Dornier 228–202, and Dornier 228–212 airplanes, all serial numbers, that:

(1) Are certificated in any category; and

(2) Have had the rudder and/or elevator replaced or repaired at Fairchild Dornier or RUAG between the year 2000 and 2005. The concerned rudder and elevator part numbers and serial numbers are listed on page 7 of RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–270, Rev. No. 1, dated November 28, 2008.

Subject

(d) Air Transport Association of America (ATA) Code 51: Standard Practices/Structures.

Reason

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

The manufacturer reported findings of missing primer on the internal of the elevator and rudder of aircraft S/N 8200. The aircraft S/N 8200 was with RUAG for maintenance purposes. Investigation performed by RUAG showed that the paint removal procedure for the rudder and elevator was changed from a paint stripping with brush and scraper to a procedure where the parts were submerged in a tank filled with hot liquid stripper. The stripper is called TURCO 5669 from Henkel Surface Technologies. The stripping process is described in the Technical Process Bulletin No. 238799 dated 09/01/1999. This paint stripping process change was not communicated to and not approved by the TC-Holder.

Corrosion damage can occur through insufficient surface protection. Consequently, the MCAI requires a detailed visual inspection of the inner structure of the rudder and elevator for signs of corrosion, de-bonded primer (yellow-green), and any deviation of surface protection. If the inspection results show corrosion beyond the acceptable level or areas with de-bonded primer, the inspection results have to be reported to RUAG Aerospace Services GmbH for further decisions. If necessary, repair the affected parts in accordance with the applicable repair instruction obtained from RUAG Aerospace Services GmbH.

Actions and Compliance

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

(1) Within 2 months after the effective date of this AD, do a detailed visual inspection on the inner structure of the rudder and elevator for signs of corrosion, debonded primer (yellow-green), and any other deviation of surface protection following RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–270, Rev. No. 1, dated November 28, 2008.

(2) If you find corrosion or areas with debonded primer as a result of the inspection required by paragraph (f)(1) of this AD, before further flight, do the following:

(i) Report the inspection results to RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Federal Republic of Germany, telephone: +49 (0) 8153–30–2280; fax: +49 (0) 8153–30–3030 and request FAA-approved repair instructions following RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–270, Rev. No. 1, dated November 28, 2008.

(ii) Repair corrosion following FAA-approved repair instructions obtained from RUAG Aerospace Services GmbH.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI German AD D–2007–350R1, dated January 30, 2009; and RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–270, Rev. No. 1, dated November 28, 2008, for related information.

Issued in Kansas City, Missouri, on March 24, 2009.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–6984 Filed 3–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 10

[USCBP–2008–0105]

RIN 1505–AC07

Cost or Value of Foreign Repairs, Alterations, or Processing

AGENCIES: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking, published in the **Federal Register** on March 13, 2009 (74 FR 10849), that

proposed to amend the U.S. Customs and Border Protection (CBP) Regulations to exclude from the dutiable value of repairs, alterations, or processing performed abroad on articles exported from the United States and returned under subheading 9802.00.40, 9802.00.50, or 9802.00.60, Harmonized Tariff Schedule of the United States (HTSUS), the value of U.S.-origin parts used in the foreign repairs, alterations, or processing. The notice is being withdrawn to permit further consideration of the relevant issues involved in the proposed rulemaking.

DATES: The notice of proposed rulemaking is withdrawn on March 30, 2009.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Regulations and Rulings, Office of International Trade, 202–325–0038.

SUPPLEMENTARY INFORMATION:

Background

On March 13, 2009, CBP published in the **Federal Register** (74 FR 10849) a document that proposed to amend §§ 10.8(d) and 10.9(d) of the CBP regulations (19 CFR 10.8(d) and 10.9(d)) to exclude from the dutiable value of repairs, alterations, or processing performed abroad on articles exported and returned to the United States under subheading 9802.00.40, 9802.00.50, or 9802.00.60, HTSUS, the value of U.S.-origin parts used in the foreign repairs, alterations, or processing.

Withdrawal of Notice of Proposed Rulemaking

CBP is withdrawing the notice of proposed rulemaking published in the **Federal Register** on March 13, 2009, so that relevant issues involved in the proposed rulemaking may be further considered.

Jayson P. Ahern,

Acting Commissioner, Customs and Border Protection.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. E9–7154 Filed 3–27–09; 8:45 am]

BILLING CODE 9111–14–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4001, 4901 and 4902

Disclosure and Amendment of Records Pertaining to Individuals Under the Privacy Act

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is proposing to amend its regulations implementing the Privacy Act of 1974, *as amended*, to exempt certain records that will be maintained in a system of records entitled ''PBGC–17, Office of Inspector General Investigative File System)—PBGC'' from the access, contest, and certain other provisions of the Privacy Act. The amendment would protect the information gathered to carry out the Office of Inspector General's law enforcement mission to investigate criminal, civil, and administrative matters.

DATES: Comments must be received by April 29, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the Web site instructions for submitting comments.
- *E-mail: reg.comments@pbgc.gov*.
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

Comments received, including personal information provided, will be posted to *http://www.pbgc.gov*. Copies of comments may also be obtained by writing to Disclosure Division, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Margaret E. Drake, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4400 (extension 3228); or James Bloch, Program Analyst, Legislative & Regulatory Department; 202–326–4223 (extension 3530). (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4400 (extension 3228) or 202–326–4223 (extension 3530).)

SUPPLEMENTARY INFORMATION: The PBGC Office of Inspector General (OIG) conducts criminal, civil and administrative investigations and compiles and maintains case files containing identifying information about potential subjects and sources. PBGC is proposing a new system of records subject to the Privacy Act of 1974, *as amended*, 5 U.S.C. 552a (''Privacy Act''), entitled ''PBGC–17, Office of Inspector General Investigative File System—PBGC.'' (PBGC's notice of a new system of records appears elsewhere in today's **Federal Register**.) The proposed new system of records will cover only the files of investigation that identify by name, or other personal identifier, individuals who are subjects or sources of information. The system of records is necessary to the investigative functions performed by the OIG under the authority of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3. The files may contain information about criminal, civil or administrative wrongdoing, or about fraud, waste or mismanagement, or other violations of law or regulation. This information could be the basis for referrals to appropriate prosecutorial authorities for consideration of criminal or civil prosecution or to PBGC management for administrative corrective action. The collection and maintenance of these types of records that are subject to this system are not new; however, in the past they have not been retrieved by a name or other personal identifier. OIG is implementing an electronic records management system from which records will be retrieved by name or other personal identifier.

Proposed Regulatory Changes

Exemptions

PBGC is proposing to amend its regulations implementing the Privacy Act (29 CFR part 4902) to exempt, under 5 U.S.C. 552a(j) and (k), certain records that will be maintained in PBGC–17 from the access, contest, and certain other provisions of the Privacy Act. The amendment would protect the information gathered to carry out OIG's law enforcement mission to investigate criminal, civil, and administrative matters. The exemptions relate to records maintained by OIG pertaining to the enforcement of criminal laws (see 5 U.S.C. 552a(j)(2)) and investigatory material compiled for law enforcement generally (see 5 U.S.C. 552a(k)(2)), and for determining individuals' eligibility or qualifications for Federal employment or Federal contracts (see 5 U.S.C. 552a(k)(5)).

Other Changes

Section 411 of the Pension Protection Act of 2006, Public Law 109–280, amended section 4002(a) of ERISA to state that PBGC is to be administered by a Director appointed by the President, subject to Senate confirmation. Thus, PBGC proposes to replace all references

to the term ''Executive Director'' in part 4902 with the term ''Director.'' PBGC also proposes to replace all references to the term ''Deputy Executive Director'' in part 4902 with the term ''Deputy Director for Operations.''

This proposed rule would update the definition of PBGC's Disclosure Officer, remove the definition of Disclosure Officer from regulation § 4901.2 and § 4902.2, and centralize the definition in § 4001.2. The proposed rule also would direct individuals to PBGC's Web site (*http://www.pbgc.gov*) for information on where an individual can address a request to learn whether PBGC maintains any system of records that contains a record pertaining to the individual and, if so, how to obtain access to such a record.

Compliance With Rulemaking Guidelines

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

PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The rule would only affect the maintenance and disclosure of information about individuals by PBGC under the Privacy Act and therefore would have no economic impact on entities of any size. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

List of Subjects

29 CFR Part 4001

Pension insurance.

29 CFR Part 4901

Freedom of information.

29 CFR Part 4902

Privacy.

For the reasons set forth above, PBGC is proposing to amend 29 CFR parts 4001, 4901, and 4902 as follows:

PART 4001—TERMINOLOGY

1. The authority citation for Part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302(b)(3).

2. Section 4001.2 is amended by adding a new definition in alphabetical order to read as follows:

§ 4001.2 Definitions.

* * * * *

Disclosure officer means the official designated as disclosure officer in the Office of the General Counsel, PBGC.

* * * * *

PART 4901—EXAMINATION AND COPYING OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

3. The authority citation for Part 4901 continues to read as follows:

Authority: 5 U.S.C. 552, 29 U.S.C. 1302(b)(3).

§ 4901.2 [Amended]

4. Section 4901.2 is amended by removing the definition of *Disclosure officer*.

§ 4901.11 [Amended]

5. Section 4901.11 is amended by removing the words ''Communications and Public Affairs Department'' and adding in their place ''Office of the General Counsel''; and removing the number ''240'' and adding in its place the number ''11101''.

PART 4902—DISCLOSURE AND AMENDMENT OF RECORDS PERTAINING TO INDIVIDUALS UNDER THE PRIVACY ACT

6. The authority citation for Part 4902 continues to read as follows:

Authority: 5 U.S.C. 552a.

7. Section 4902.1 is revised to read as follows:

§ 4902.1 Purpose and Scope.

(a) *Procedures*. Sections 4902.3 through 4902.7 establish procedures under which:

(1) An individual may—

(i) Determine whether PBGC maintains any system of records that contains a record pertaining to the individual;

(ii) Obtain access to the individual's record upon request;

(iii) Make a request to amend the individual's record; and

(iv) Appeal a denial of a request to amend the individual's record; and

(2) PBGC will make an initial determination of a request to amend an individual's record.

(b) *Fees*. Section 4902.8 prescribes the fees for making copies of an individual's record.

(c) *Privacy Act provisions*. Section 4902.9 summarizes the Privacy Act (5 U.S.C. 552a) provisions for which PBGC claims an exemption for certain systems of records.

(d) *Exemptions*. Sections 4902.10 through 4902.11 set forth those systems of records that are exempted from certain disclosure and other provisions of the Privacy Act, and the reasons for the exemptions.

§ 4902.2 [Amended]

8. Section 4902.2 is amended by removing the definition of *Disclosure officer*.

§ 4902.3 [Amended]

9. Section 4902.3(a) is amended by removing the words ''on any working day in the Communications and Public Affairs Department, PBGC, 1200 K Street, NW., Suite 240, Washington, DC 20005–4026.'' and adding in their place ''on any working day. Current information on how to make a request, including the Disclosure Officer's mailing address and location, can be obtained on PBGC's Web site, *http://www.pbgc.gov.''*.

§ 4902.4 [Amended]

10. Section 4902.4(a) is amended by removing the words ''Communications and Public Affairs Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026'' and adding in their place ''PBGC''; and by adding at the end of the paragraph the words ''Current information on where the records may be inspected and copied can be obtained on PBGC's Web site, *http://www.pbgc.gov.''*.

§ 4902.6 [Amended]

11. Section 4902.6(a) is amended by removing the word ''Executive''.

§ 4902.7 [Amended]

12. In § 4902.7, paragraph (a) is amended by removing the words ''Deputy Executive Director'' and adding in their place ''Deputy Director for Operations'', and paragraph (b) is amended by removing the words ''the Executive Director'' and adding in their place ''the Director''; and by removing the words ''Deputy Executive Director'' wherever they appear, and adding in their place ''Deputy Director for Operations''.

13. Sections 4902.9 and 4902.10 are redesignated as §§ 4902.10 and 4902.12, respectively, and the newly redesignated § 4902.10 is revised to read as follows:

§ 4902.10 Specific exemption: Personnel Security Investigation Records

(a) *Exemption*. Under the authority granted by 5 U.S.C. 552a(k)(5), the PBGC hereby exempts the system of records entitled ''PBGC–12, Personnel Security Investigation Records—PBGC'' from the provisions of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f), to the extent that the disclosure of such material would reveal the identity of a source who furnished information to PBGC under an express promise of confidentiality or, before September 27,

1975, under an implied promise of confidentiality.

(b) *Reasons for Exemption.* The reasons for asserting this exemption are to insure the gaining of information essential to determining suitability and fitness for PBGC employment or for work for the PBGC as a contractor or as an employee of a contractor, access to information, and security clearances, to insure that full and candid disclosures are obtained in making such determinations, to prevent subjects of such determinations from thwarting the completion of such determinations, and to avoid revealing the identities of persons who furnish information to the PBGC in confidence.''

14. New §§ 4902.9 and 4902.11 are added to read as follows:

§ 4902.9 Privacy Act provisions for which PBGC claims an exemption.

Subsections 552a(j) and (k) of title 5, U.S.C., authorize the PBGC to exempt systems of records meeting certain criteria from various other subsections of section 552a. This section contains a summary of the Privacy Act provisions for which PBGC claims an exemption for the systems of records discussed in this part pursuant to, and to the extent permitted by, subsections 552a(j) and (k):

(a) Subsection (c)(3) of 5 U.S.C. 552a requires an agency to make available to the individual named in the records an accounting of each disclosure of records.

(b) Subsection (c)(4) of 5 U.S.C. 552a requires an agency to inform any person or other agency to which a record has been disclosed of any correction or notation of dispute the agency has made to the record in accordance with subsection (d) of the Privacy Act.

(c) Subsections (d)(1) through (4) of 5 U.S.C. 552a require an agency to permit an individual to gain access to records about the individual, to request amendment of such records, to request a review of an agency decision not to amend such records, and to provide a statement of disagreement about a disputed record to be filed and disclosed with the disputed record.

(d) Subsection (e)(1) of 5 U.S.C. 552a requires an agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose required by statute or executive order of the President.

(e) Subsection (e)(2) of 5 U.S.C. 552a requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under federal programs.

(f) Subsection (e)(3) of 5 U.S.C. 552a requires an agency to inform each person whom it asks to supply information of the authority under which the information is sought, whether disclosure is mandatory or voluntary, the principal purpose(s) for which the information will be used, the routine uses that may be made of the information, and the effects of not providing the information.

(g) Subsection (e)(4)(G) and (H) of 5 U.S.C. 552a requires an agency to publish a Federal Register notice of its procedures whereby an individual can be notified upon request whether the system of records contains information about the individual, how to gain access to any record about the individual contained in the system, and how to contest its content.

(h) Subsection (e)(5) of 5 U.S.C. 552a requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in making any determination about the individual.

(i) Subsection (e)(8) of 5 U.S.C. 552a requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record.

(j) Subsection (f) of 5 U.S.C. 552a requires an agency to establish procedures whereby an individual can be notified upon request if any system of records named by the individual contains a record pertaining to the individual, obtain access to the record, and request amendment.

(k) Subsection (g) of 5 U.S.C. 552a provides for civil remedies if an agency fails to comply with the access and amendment provisions of subsections (d)(1) and (d)(3), and with other provisions of the Privacy Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

§ 4902.11 Specific exemptions: Office of Inspector General Investigative File System.

(a) *Criminal Law Enforcement*—(1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(j)(2), the PBGC hereby exempts the system of records entitled ''PBGC–17, Office of Inspector General Investigative File System—PBGC'' from the provisions of 5 U.S.C. 552a(c)(3), (c)(4), (d)(1) through (4), (e)(1) through (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f), and (g) because the system contains information pertaining to the enforcement of criminal laws.

(2) *Reasons for exemption.* The reasons for asserting this exemption are:

(i) Disclosure to the individual named in the record pursuant to subsections (c)(3), (c)(4), or (d)(1) through (4) could seriously impede or compromise the investigation by alerting the target(s), subjecting a potential witness or witnesses to intimidation or improper influence, and leading to destruction of evidence.

(ii) Application of subsection (e)(1) is impractical because the relevance of specific information might be established only after considerable analysis and as the investigation progresses. Effective law enforcement requires the Office of Inspector General to keep information that may not be relevant to a specific Office of Inspector General investigation, but which may provide leads for appropriate law enforcement and to establish patterns of activity that might relate to the jurisdiction of the Office of Inspector General and/or other agencies.

(iii) Application of subsection (e)(2) would be counterproductive to performance of a criminal investigation because it would alert the individual to the existence of an investigation.

(iv) Application of subsection (e)(3) could discourage the free flow of information in a criminal law enforcement inquiry.

(v) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, PBGC has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(vi) Although the Office of Inspector General endeavors to maintain accurate records, application of subsection (e)(5) is impractical because maintaining only those records that are accurate, relevant, timely, and complete and that assure fairness in determination is contrary to established investigative techniques. Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses.

(vii) Application of subsection (e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(viii) The provisions of subsection (g) do not apply to this system if an exemption otherwise applies.

(b) *Other Law Enforcement*—(1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(k)(2), the PBGC hereby

exempts the system of records entitled ''PBGC–17, Office of Inspector General Investigative File System—PBGC'' from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) and (H), and (f) for the same reasons as stated in paragraph (a)(2) of this section, that is, because the system contains investigatory material compiled for law enforcement purposes other than material within the scope of subsection 552a(j)(2).

(2) *Reasons for exemption.* The reasons for asserting this exemption are because the disclosure and other requirements of the Privacy Act could substantially compromise the efficacy and integrity of the Office of Inspector General operations. Disclosure could invade the privacy of other individuals and disclose their identity when they were expressly promised confidentiality. Disclosure could interfere with the integrity of information which would otherwise be subject to privileges, *see*, *e.g.*, 5 U.S.C. 552(b)(5), and which could interfere with other important law enforcement concerns, *see*, *e.g.*, 5 U.S.C. 552(b)(7).

(c) *Federal Civilian or Contract Employment*—(1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(k)(5), the PBGC hereby exempts the system of records entitled ''PBGC–17, Office of Inspector General Investigative File System—PBGC'' from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) and (H), and (f) because the system contains investigatory material compiled for the purpose of determining eligibility or qualifications for federal civilian or contract employment.

(2) *Reason for exemption.* The reason for asserting this exemption is to protect from disclosure the identity of a confidential source when an express promise of confidentiality has been given to obtain information from sources who would otherwise be unwilling to provide necessary information.

Issued in Washington, DC, this 23rd day of March, 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. E9–6973 Filed 3–27–09; 8:45 am]

BILLING CODE 7709–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–650; MB Docket No. 08–101; RM–11438]

Television Broadcasting Services; Ann Arbor, MI

AGENCY: Federal Communications Commission.

ACTION: Dismissal.

SUMMARY: The Commission dismisses the pending rulemaking petition filed by Paxson Communications License Company, LLC (''Paxson''), permittee of WPXD–DT, post-transition digital television channel 31, which proposes to substitute digital television channel 19 for post-transition digital television channel 31 at Ann Arbor, Michigan. Paxson's proposed channel substitution requires coordination and concurrence with the Canadian government because the proposed facility is located within the Canadian coordination zone. The Canadian government has indicated that Paxson's proposed channel substitution is not acceptable. Therefore, the Commission cannot approve Paxson's rulemaking petition.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order*, MB Docket No. 08–101, adopted March 18, 2009, and released March 20, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this *Order* to the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) since this proposed rule is dismissed, herein.)

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–7032 Filed 3–27–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–638; MB Docket No. 09–33; RM–11521]

Television Broadcasting Services; Derby, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Entravision Holdings, LLC (''Entravision''), the permittee of KDCU–DT, DTV channel 46, Derby, Kansas. Entravision requests the substitution of DTV channel 31 for post-transition DTV channel 46 at Derby.

DATES: Comments must be filed on or before April 14, 2009, and reply comments on or before April 24, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Barry A. Friedman, Esq., Thompson Hine LLP, 1920 N Street, NW., Suite 800, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 09–33, adopted March 17, 2009, and released March 19, 2009. The full text of this document is available for public

inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Kansas, is amended by adding DTV channel 31 and removing DTV channel 46 at Derby.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–7055 Filed 3–27–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 260

[Docket No. FRA–2008–0061, Notice No. 2]

RIN 2130–AB91

Railroad Rehabilitation and Improvement Financing Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: On June 9, 2008, FRA published an NPRM in the **Federal Register** proposing to amend the eligibility and application form and content criteria of the Railroad Rehabilitation and Improvement Finance (RRIF) Program. For the reasons stated below, FRA has decided to withdraw the NPRM.

DATES: The NPRM published on June 9, 2008 at 73 FR 32515 is withdrawn as of March 30, 2009.

FOR FURTHER INFORMATION CONTACT: Casey Symington, Attorney Advisor, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., RCC–20, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6349).

SUPPLEMENTARY INFORMATION:

I. Background

The NPRM was developed in order to ensure the long-term sustainability of the Railroad Rehabilitation and Improvement Financing (RRIF) Program, promote the competitiveness of the railroad industry, and reduce the risk of default for applicants and the Federal government (government). The NPRM proposed to accomplish these goals by adding additional eligibility and application content requirements to the existing RRIF regulations. However, during and after the formal comment period on the NPRM, FRA received adverse comments on its provisions. After reviewing these comments, FRA has determined that it has insufficient information to ensure that the proposed provisions would achieve the stated goals of the NPRM or to ensure that the proposed provisions would not cause unintended consequences on the utilization of the RRIF program. Accordingly, FRA is withdrawing the NPRM.

FRA received 21 written comments in response to the NPRM. All commenters opposed the NPRM. Nine commenters requested that it be withdrawn and three commenters requested that the NPRM be suspended or not implemented. The majority of comments raised concerns about the need and purpose of the rulemaking, the inability of the proposed rule to address the stated goals, the negative effect of the proposed rule on small entities and non-railroad entities, the increased costs and expense of complying with the proposed rule, the NPRM's effect of limiting the availability of the RRIF program and the possible resulting reduction in rail infrastructure investment, possible contradictions of legislative intent, and potentially unclear language in several of the NPRM provisions.

The comments thoughtfully addressed a number of issues raised through the NPRM, and FRA appreciates the time and effort put forth by those who commented.

II. Reason for Withdrawal

FRA has carefully reviewed the comments submitted pursuant to the NPRM. Based on our review of the comments, there is insufficient information at this time to assure a final rule with the proposed provisions would not have the unintended negative consequences anticipated by the commenters.

FRA remains dedicated to ensuring responsible lending through the RRIF program. As such, this withdrawal does not preclude the agency from issuing a separate rulemaking concerning the program. Should FRA decide to undertake such a rulemaking in the future, FRA will re-propose actions and provide new opportunities for comment.

III. The Withdrawal

In consideration of the foregoing, the NPRM for FRA Docket No. FRA–2008–0061, as published in the **Federal Register** on June 9, 2008 (73 FR 32515) is hereby withdrawn.

Issued in Washington, DC, on March 24, 2009.

Jo Strang,

Acting Deputy Administrator.

[FR Doc. E9–6940 Filed 3–27–09; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register
Vol. 74, No. 59
Monday, March 30, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 25, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: National School Lunch Program.

OMB Control Number: 0584–0006.

Summary of Collection: Section 111 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265; June 30, 2004) amended section 9(h) of the Richard B. Russell School Lunch Act (NSLA) (42 U.S.C. 1758(h)) by increasing the number of mandatory food safety inspections for schools participating in the National School Lunch Program and the School Breakfast Program from one to two per year and by requiring schools to post the most recent inspection report in a visible location and to release a copy of the report to the public upon request.

Need and Use of the Information: The information will be collected to ensure that State agencies annually monitor the number of food safety inspections obtained by schools and to submit the results to the Food and Nutrition Service for each fiscal year 2009 through 2012.

Description of Respondents: State, local, or Tribal government.

Number of Respondents: 122,662.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Monthly; Annually.

Total Burden Hours: 9,558,282.

Food and Nutrition Service

Title: 7 CFR Part 220, School Breakfast Program.

OMB Control Number: 0584–0012.

Summary of Collection Section 4 of the Child Nutrition Act (CNA) of 1966, as amended, authorizes the School Breakfast Program (SBP). It provides for the appropriation of ''such sums as are necessary to enable the Secretary to carry out a program to assist the States and the Department of Defense through grants-in-aid and other means to initiate, maintain, or expand nonprofit breakfast programs in all schools which make application for assistance and agree to carry out a nonprofit breakfast program in accordance with the Act.'' The Food and Nutrition Service (FNS) administers the School Breakfast Program on behalf of the Secretary of Agriculture so that needy children may receive their breakfasts free or at a reduced price.

Need and Use of the Information: School food authorities provide information to State agencies. The State agencies report to FNS. FNS use the information submitted to determine the amount of funds to be reimbursed, evaluate and adjust program operations, and to develop projections for future program operations.

Description of Respondents: State, local, or Tribal government.

Number of Respondents: 100,339.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Monthly; Semi-annually; Annually.

Total Burden Hours: 2,713,749.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–7011 Filed 3–27–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 25, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–

7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Viral Hemorrhagic Septicemia (VHS); Interstate Movement and Import Restrictions on Certain Live Fish.

OMB Control Number: 0579–0340.

Summary of Collection: The Animal Health Protection Act of 2002 is the primary Federal law governing the protection of animal health. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is charged with disease prevention. APHIS regulations in 9 CFR, part 93 govern the importation of certain species of fish to prevent the introduction or spread of specific pests and diseases of aquaculture facilities within the United States. APHIS is establishing regulations to prevent the introduction of VHS into U.S. aquaculture facilities by controlling the movement of certain live fish species at risk of harboring VHS. VHS is listed as a notifiable disease by the World Organization for Animal Health. APHIS will use several forms to collect necessary information.

Need and Use of the Information: APHIS will collect the necessary information using the Interstate Certificate of Inspection (ICI); Permit for Movement of Restricted Animals VS Form 1–27; Cleaning and Disinfection Certificate; Application for Import or In-Transit Permit VS Form 17–129; Health Certificate and a 72-hour advance notification by the importer notifying the APHIS port veterinarian. If the information was collected less frequently or not collected at all, it would significantly cripple APHIS' ability to prevent the introduction of VHS into U.S. aquaculture facilities by controlling the movement of live fish at risk of harboring VHS virus.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 10.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 1

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–7028 Filed 3–27–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Solicitation of Nominations, Advisory Committee on Biotechnology and 21st Century Agriculture

AGENCY: Office of the Under Secretary, Research, Education, and Economics, USDA.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. App., the Agricultural Research Service is requesting nominations for qualified persons to serve as members of the Secretary's Advisory Committee on Biotechnology and 21st Century Agriculture (AC21). The charge for the AC21 is two-fold: To examine the long-term impacts of biotechnology on the U.S. food and agriculture system and USDA; and to provide guidance to USDA on pressing individual issues, identified by the Office of the Secretary, related to the application of biotechnology in agriculture.

DATES: Written nominations must be received by fax or postmarked on or before April 29, 2009.

ADDRESSES: All nomination materials should be sent to Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 14th and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Telephone (202) 720–3817.

SUPPLEMENTARY INFORMATION: Nominations are being sought for open Committee seats to supplement a pool of nominations received on or before December 22, 2008. AC21 members serve terms of up to 2 years, with terms for around half of the Committee members generally expiring in most years. The committee's Charter allows for a committee of 20 to 25 members and there are currently a minimum of 12 slots on the Committee that need to be filled, including that of the Chair. Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the Committee. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Nominees of the AC21 should have recognized expertise in one or more of the following areas: Recombinant-DNA (rDNA) research and applications using plants; rDNA research and applications using animals; rDNA research and applications using microbes; food science; silviculture and related forest science; fisheries science; ecology; veterinary medicine; the broad range of farming or agricultural practices; weed science; plant pathology; biodiversity; applicable laws and regulations relevant to agricultural biotechnology policy; risk assessment; consumer advocacy and public attitudes; public health/epidemiology; ethics, including bioethics; human medicine; biotechnology industry activities and structure; intellectual property rights systems; and international trade. Members will be selected by the Secretary of Agriculture in order to achieve a balanced representation of viewpoints to address effectively USDA biotechnology policy issues under consideration. Background information regarding the work of the AC21, including reports already developed by the Committee, is available on the USDA Web site at *http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1OB?navid=BIOTECH&parentnav=AGRICULTURE&navtype=RT*.

Nominations for AC21 membership must be in writing and provide the appropriate background documents required by USDA policy, including background disclosure form AD–755. All nomination materials should be sent to Michael Schechtman at the address listed in the **ADDRESSES** section. Forms may also be submitted by fax to (202) 690–4265. To obtain form AD–755 only, please contact Dianne Fowler, Office of Pest Management Policy, telephone (202) 720–4074, fax (202) 720–3191; e-mail *Dianne.fowler@ars.usda.gov*.

The AC21 meets in Washington, DC, up to four (4) times per year. The function of the AC21 is solely advisory. Members of the AC21 and its subcommittees serve without pay, but with reimbursement of travel expenses and per diem for attendance at AC21 and subcommittee functions for those AC21 members who require assistance in order to attend the meetings. While away from home or their regular place of business, those members will be

eligible for travel expenses paid by the Office of the Under Secretary, Research, Education, and Economics, USDA, including per diem in lieu of subsistence, at the same rate as a person employed intermittently in the government service is allowed under Section 5703 of Title 5, United States Code.

Submitting Nominations: Nominations should be typed and include the following:

1. A brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the AC21.
2. A resume or curriculum vitae.
3. A completed copy of form AD–755.

All nominations must be post marked no later than April 29, 2009.

Katherine Smith,

Acting Deputy Under Secretary, Research, Education and Economics.

[FR Doc. E9–6884 Filed 3–27–09; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801]

Ball Bearings and Parts Thereof from France: Initiation of Antidumping Duty Changed–Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from SKF Aeroengine France S.A.S.U., the Department of Commerce is initiating a changed–circumstances review of the antidumping duty order on ball bearings and parts thereof from France.

EFFECTIVE DATE: March 30, 2009.

FOR FURTHER INFORMATION CONTACT: Kristin Case or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; (202) 482–3174 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published an antidumping duty order on ball bearings and parts thereof from France on May 15, 1989. See *Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, Spherical Plain Bearings, and Parts Thereof From France*, 54 FR 20902 (May 15, 1989). On August 11, 2000, the Department revoked the order, effective May 1, 1999, with respect to sales of ball bearings by SNFA S.A. (SNFA). See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part*, 65 FR 49219 (August 11, 2000).

On March 2, 2007, pursuant to a request from SNFA, SKF France S.A., and SKF Aerospace France S.A.S., we initiated a changed–circumstances review in order to determine whether SNFA was a successor–in-interest to SKF France S.A. following SNFA's acquisition by that company or, alternatively, that post–acquisition SNFA was the successor–in-interest to the pre–acquisition SNFA. See *Ball Bearings and Parts Thereof from France: Initiation of an Antidumping Duty Changed–Circumstances Review*, 72 FR 9513 (March 2, 2007). During the course of the changed–circumstances review, the companies informed the Department that SNFA would be changing its name to SKF Aeroengine France S.A.S.U. (SKF Aeroengine).

On June 29, 2007, we initiated an administrative review of the antidumping duty order on ball bearings and parts thereof from France for the period May 1, 2006, through April 30, 2007, with respect to SKF France S.A. and SKF Aerospace France S.A.S. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review*, 72 FR 35690 (June 29, 2007). On October 26, 2007, we rescinded the changed–circumstances review and explained that, because we had initiated an administrative review with respect to SKF France S.A. and SKF Aerospace France S.A.S., we would address any issues that had arisen during the course of the changed–circumstances review in the context of the administrative review. See *Ball Bearings and Parts Thereof from France and Italy: Rescission of Antidumping Duty Changed–Circumstances Reviews*, 72 FR 60798 (October 26, 2007). In the final results of the 2006/07 administrative review, we determined that post–acquisition SNFA was the successor–in-interest to pre–acquisition SNFA and that, during the period of review, SNFA had not changed its name to SKF Aeroengine. See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823 (September 11, 2008), and accompanying Issues and Decision Memorandum at comment 12 (AFBs Final Results).

On February 6, 2009, SKF Aeroengine requested that, because the Department appeared to have left open the effect of the name change on its determination in *AFBs Final Results*, the Department either confirm that its determination encompassed the name change or, in the alternative, the Department initiate a changed–circumstances review to determine whether SKF Aeroengine is the successor–in-interest to SNFA.

No other party submitted comments.

Scope of the Order

The products covered by the order are ball bearings (other than tapered roller bearings) and parts thereof. These products include all bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

Although the HTSUS item numbers above are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Initiation of Changed–Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930 (the Act), as amended, and 19 CFR 351.216, the Department will conduct a changed–circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. SKF Aeroengine claims that it has satisfied the criteria to warrant such a review. We agree that the information submitted by SKF Aeroengine demonstrates changed circumstances sufficient to warrant a

review. Therefore, in accordance with the above–referenced regulation, the Department is initiating a changed–circumstances review.

SKF Aeroengine claims that the information contained in its February 6, 2009, request demonstrates that SKF Aeroengine is the successor–in-interest to SNFA and requests that the Department thus refrain from issuing a changed–circumstances questionnaire. In accordance with 19 CFR 351.221(b)(2) and (4) and 19 CFR 351.221(c)(3)(i), we may issue a questionnaire requesting factual information for the review and will publish a notice of preliminary results of the antidumping duty changed–circumstances review in the **Federal Register**. The notice will set forth the factual and legal conclusions upon which our preliminary results are based. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. We will issue our final results of review no later than the regulatory deadline in accordance with 19 CFR 351.216(e). During the course of this antidumping duty changed–circumstances review, we will not change the cash–deposit requirements for the subject merchandise. The cash–deposit rate will be altered, if warranted, pursuant only to the final results of this changed–circumstances review.

This notice of initiation is in accordance with section 751(b)(1) of the Act, 19 CFR 351.216(b) and (d), and 19 CFR 351.221(b)(1).

Dated: March 23, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–7018 Filed 3–27–09; 8:45 am]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

Notice of Roundtable on Cribs and Other Sleeping Environments for Infants

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: On August 14, 2008, the Consumer Product Safety Improvement Act (CPSIA) of 2008 was signed into law. Section 104 of the CPSIA requires the Commission to study and develop safety standards for durable infant and toddler products. The Commission is charged with examining and assessing the effectiveness of any voluntary consumer product safety standards for these products in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts. As part of the consultation process, the Commission will hold a Roundtable on Cribs and Other Sleeping Environments for Infants.

DATES: The Roundtable will be held from 9:30 a.m. to 4 p.m. on Wednesday, April 22, 2009.

ADDRESSES: The Roundtable will be held at CPSC's headquarters building at 4330 East West Highway, Bethesda, Maryland 20814, 4th Floor Hearing Room. There is no charge to attend the Roundtable. If you are interested in attending, you must register online at *http://www.cpsc.gov.* Click on the link entitled ''*CPSC Staff Roundtable: Cribs and Other Sleeping Environments for Infants*'' under ''What's Hot'' near the bottom of the home page. This link also has more information about the Roundtable.

FOR FURTHER INFORMATION CONTACT: Patricia L. Hackett, Directorate for Engineering Sciences, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504–7577 or e-mail: *phackett@cpsc.gov.*

SUPPLEMENTARY INFORMATION: On August 14, 2008, the CPSIA was signed into law. Section 104 of the CPSIA requires the Commission to study and develop safety standards for durable infant and toddler products. Section 104 of the CPSIA requires the Commission to examine and assess the effectiveness of any voluntary consumer product safety standards for these products in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts. Section 104(b)(1)(B) of the CPSIA requires the Commission to promulgate consumer product safety standards that are substantially the same as such voluntary standards or are more stringent than such voluntary standards if the Commission determines that more stringent standards would further reduce the risk of injury associated with such products.

The purpose of the Roundtable is to consult with interested stakeholders pursuant to section 104 of the CPSIA and to solicit input regarding the adequacy of the current voluntary and mandatory standards. At the Roundtable, CPSC staff intends to review recent incident data and provide copies of comments received from the Advance Notice of Proposed Rulemaking on Cribs, published on November 25, 2008 at 73 FR 71570.

All attendees will have the opportunity to ask questions or make comments at the Roundtable. For those attendees interested in making a formal presentation, please e-mail an abstract of 100 words or less, preferably in a Word format, with ''Crib Roundtable Abstract'' written in the subject line of the e-mail. The e-mail should be sent to Patricia Hackett at *phackett@cpsc.gov* no later than April 6, 2009. The abstracts may be edited for inclusion in the agenda for the Roundtable. In addition, please inform Patricia Hackett of any special equipment needs required to make a presentation. While an effort will be made to accommodate all persons who wish to make a presentation, the time allotted for presentations will depend on the number of persons who wish to speak on a given topic and the Roundtable schedule. If a presenter wishes attendees to have copies of his/her presentation or other handouts, the presenter should bring copies to the Roundtable. Please note that all comments should be restricted to cribs, bassinets, play yards, and the current voluntary or mandatory standards pertaining to these products. Accessories, including mattresses, bedding, crib tents, sleep positioners, etc., while of concern to the staff, will not be addressed at this Roundtable.

Dated: March 25, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–7034 Filed 3–27–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Scientific Advisory Board Notice of Meeting; Notice of Intent (NOI) To Prepare an Environmental Impact Statement (EIS) for Proposed Realignment of a Portion of National Guard Avenue and Construction of the New Main Gate for the 158th Fighter Wing, Vermont Air National Guard at Burlington International Airport, Burlington, VT

AGENCY: National Guard Bureau.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions

of NEPA (40 CFR Parts 1500–1508), and Air Force policy and procedures (32 CFR Part 989), the National Guard Bureau is issuing this notice to advise the public of its intent to prepare an EIS to evaluate the potential environmental impacts that could result from the proposed realignment of a portion of National Guard Avenue, and construction of a new main gate at the 158th Fighter Wing (158 FW) installation at Burlington International Airport.

A recent evaluation of infrastructure security at the installation identified several vulnerabilities revealing a potential threat to mission-critical resources. Realignment of a segment of National Guard Avenue would remedy some of these vulnerabilities, and protect mission-critical resources. Work conducted would be in compliance with anti-terrorism/force protection (AT/FP) standoff criteria. Preliminary studies indicate that potential significant adverse effects to wetlands and to sensitive Native American sites may result from realignment of the roadway. In addition to the road segment realignment, the 158 FW would also construct a new main gate along a portion of the realigned roadway, construct a new Security Forces facility, which would be collocated with the new main gate, and construct an internal roadway loop that would improve vehicular safety and circulation to a portion of the installation.

In addition to the proposed action, another action alternative will evaluate the potential impacts of an alternative roadway alignment for National Guard Avenue, and redesigning the main gate in its current location to meet AT/FP criteria. The Security Forces and internal roadway loop would remain as described under the Proposed Action. The no-action alternative will also be analyzed in the EIS.

The National Guard Bureau will conduct a scoping meeting to solicit public input concerning the proposal. The scoping process will help identify issues to be addressed in the environmental analysis. Comments will be accepted at any time during the environmental impact analysis process. However, to ensure the Air Force has sufficient time to consider public input in the preparation of the Draft EIS, comments should be submitted to the address below by 16 April 2009.

Notices will be posted and published in the Burlington Free Press. The scoping meetings will be held at the South Burlington High School, Cafeteria #2, 550 Dorset Street, South Burlington, VT 05403, on 16 April 2009, from 6–9 p.m.

FOR FURTHER INFORMATION CONTACT: Please direct any written comments or requests for information to Robert Dogan, NGB/A7AM, at Conaway Hall, 3500 Fetchet Avenue, Andrews Air Force Base, Maryland 20762–5157; (301) 836–8859; or fax (301) 836–7428.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E9–7054 Filed 3–27–09; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Department of the Navy Report to the Council on Environmental Quality on the Use of Alternative Arrangements

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (Navy) announces the availability of its report to the Council on Environmental Quality (CEQ) on the value and effectiveness of the Alternative Arrangements for the U.S. Navy's Composite Training Unit Exercises (COMPTUEXs) and Joint Task Force Exercises (JTFEXs) that occurred between January 15, 2008 and January 23, 2009, in the Southern California (SOCAL) Operating Area. The full text of the Navy's report to the CEQ is available for public viewing on the Web site established for the SOCAL Range Complex Environmental Impact Statement (EIS) at *http://www.socalrangecomplexeis.com*.

SUPPLEMENTARY INFORMATION: On January 15, 2008, the Navy accepted alternative arrangements approved by the CEQ, for implementing the procedural provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* for five COMPTUEXs and four JTFEXs that occurred between January 15, 2008 and January 23, 2009 in the SOCAL Operating Area. These alternative arrangements specifically addressed the use of mid-frequency active (MFA) sonar and its effects on marine mammals during Navy exercises in the SOCAL Operating Area.

The Secretary of the Navy's decision memorandum documenting the Navy's acceptance of these alternative arrangements was published in the **Federal Register** on January 24, 2008. The decision memorandum provided that, after the conclusion of the alternative arrangements, and no later than March 23, 2009, the Navy would provide a report to the CEQ that reviewed the value and effectiveness of the approved alternative arrangements.

This notice announces the public availability of the Navy's report to the CEQ. The full text of the report is available for public viewing on the Web site established for the SOCAL Range Complex EIS at *http://www.socalrangecomplexeis.com*.

Dated: March 25, 2009.

A. M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–7049 Filed 3–27–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Intent To Repay to the Northwest Indian College Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

Education (Secretary) intends to repay to the Northwest Indian College (NWIC) an amount that represents approximately 57 percent of the amount of funds recovered by the Department of Education (Department) as a result of final audit determinations for audit findings covering fiscal years 1999–2001. The Department's recovery of funds followed resolution of the audit disallowances identified in a September 30, 2004 Program Determination Letter (PDL) issued by the Office of Vocational and Adult Education (OVAE) for the period of July 1, 1999 through November 26, 2001. The PDL sought recovery of $316,096. On December 1, 2004, NWIC appealed the monetary findings in the September 30, 2004 PDL to the Department's Office of the Administrative Law Judges (OALJ). Following discussions and exchanges of information between the parties, on March 27, 2006, the parties entered into a Repayment Agreement (Agreement) that fully resolved the issues in the proceeding and under which NWIC agreed to repay the Department $316,096. The NWIC has repaid the full amount in accordance with the Agreement.

This notice describes NWIC's plan for the use of a portion of the repaid funds and the terms and conditions under which the Secretary intends to make grantback funds available to NWIC.

This notice invites comments on the proposed grantback.

DATES: We must receive your comments on or before April 29, 2009.

ADDRESS: All written comments concerning the proposed grantback should be addressed to Gwen Washington, U.S. Department of Education, 400 Maryland Avenue, SW., room 11076, Potomac Center Plaza (PCP), Washington, DC 20202–7241. If you prefer to send your comments through the internet, use the following address: *gwen.washington@ed.gov.* You must include the term ''Northwest Indian College Grantback'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Gwen Washington. *Telephone:* (202) 245–7790. *Fax:* (202) 245–7170 or by *e-mail: gwen.washington@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS) toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of this notice in an accessible format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the person listed in this section.

SUPPLEMENTARY INFORMATION: *Invitation to Comment:* We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect on the Secretary's decision regarding awarding this grantback, we urge you to identify clearly the specific proposal that each comment addresses.

During and after the comment period, you may inspect all public comments about this notice in room 11076, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

A. Background

Under the terms of a March 27, 2006 Repayment Agreement between the Department and NWIC, the Department recovered a total of $316,096 from NWIC following resolution of audit findings contained in an audit report issued by the Department's Office of Inspector General (OIG) covering audit periods July 1, 1999 through June 30, 2001 and October 1, 1999 through November 26, 2001 (Audit Control Number ED–OIG/A09–C0026). Prior to entering into the Agreement, the Department and NWIC engaged in the cooperative audit resolution of the findings contained in the audit report in an effort to address the root causes of the problems and to avoid recurrence of these findings in the future. The OIG audit report and this grantback request involve two Department grants awarded under the Indian Vocational Education Program (IVEP) (CFDA 84.101A): a Document Imaging Specialist Certificate (DISC) grant and a Promising Practices grant.

The IVEP was authorized under section 103 of the Carl D. Perkins Vocational and Applied Technology Education Act of 1990 (Perkins II). The IVEP was succeeded by the Native American Vocational and Technical Education Program (NAVTEP), authorized under section 116 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III). The NAVTEP was replaced by the Native American Career and Technical Education Program (NACTEP), authorized under section 116 of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV).

1. IVEP—DISC Grant

Under the terms of the DISC grant, NWIC was to provide vocational education and training in electronic document management and document conversion services to unemployed and low-income members of its tribal service population. One finding resulting in NWIC's repayment of funds related to NWIC's improper awards of stipends to certain DISC students who were either ineligible to receive stipends or received more than they were eligible to receive. Moreover, section 103(b)(1)(D) of Perkins II and the regulations in effect when the DISC Project grant award was made to NWIC (34 CFR 401 (1999)) established the conditions under which an IVEP grantee was authorized to provide stipends to students. The Department determined that NWIC had used its IVEP grant to pay stipends in a manner inconsistent with Perkins II and its implementing regulations. The stipend finding resulted in the Department's claim for recovery of $150,670.

2. IVEP—Promising Practices Grant

Under the Promising Practices grant, NWIC was required to survey, assemble, and distribute best practices in the use of technology on projects funded by the IVEP. Required deliverables included:

- A survey instrument developed in consultation with OVAE personnel;
- Identification of eight promising practices sites;
- Manuals summarizing practices for all IVEP projects;
- A list of contacts at each IVEP project who were responsible for technology; and
- A presentation at an annual project directors' meeting for IVEP grantees.

NWIC failed to complete most of the activities it had committed to completing under the grant and failed to provide required products and deliverables. The products and deliverables and the draft documents that NWIC provided to the Department contained no comprehensive discussion of survey findings, and the case studies on the selected sites were not prepared. In addition, the quality of products and deliverables that NWIC did prepare under the Promising Practices project had been severely compromised because NWIC had not used a panel of experts to select the sites of Promising Practices and because NWIC had not identified the criteria or standards it had used to select Promising Practices sites. Moreover, although required to do so under the terms of the Promising Practices grant, NWIC did not produce any Promising Practices manuals.

Because NWIC did not deliver the agreed-upon products and manuals proposed in its approved grant, neither the Department nor its NAVTEP grantees benefited from the information on best practices in the use of technology, and the Department was denied a resource for providing technical assistance to future NAVTEP grantees. Based on NWIC's failure to deliver products and deliverables under the Promising Practices grant, the Department sought repayment of $57,800.

3. DISC and Promising Practices Grants Unsupported Costs

The Department also sought recovery of $107,626 due to NWIC's charging of unreasonable and unallowable charges to both the DISC and the Promising Practices grants and because NWIC lacked the required supporting documentation for certain transactions under both grants.

Under the terms of the Agreement between the Department and NWIC, NWIC has repaid to the Department the full $316,096 and established the necessary managerial and financial systems needed to provide oversight of institutional and grant resources. NWIC is requesting approval of a grantback in the amount of $179,855, which is

approximately 57 percent of the amount it repaid to the Department.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), provides that, whenever the Secretary has recovered funds under an applicable program because the recipient made an expenditure of funds that was not allowable, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the grantee affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback requested by NWIC if the Secretary determines that—

(a) The NWIC practices and procedures that resulted in the audit findings in question have been corrected, and NWIC is in compliance with the requirements of the applicable programs;

(b) NWIC has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program and, to the extent possible, benefits the population that was affected by the failure to comply or by misexpenditures that resulted in the recovery; and

(c) The use of funds to be awarded under the grantback arrangement in accordance with NWIC's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. NWIC's Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, NWIC has applied for a grantback totaling $179,855, which is approximately 57 percent of the principal amount of the recovered funds and has submitted a plan outlining the activities that NWIC would support with the grantback funds. Specifically, NWIC plans to utilize the grantback of funds recovered under the IVEP to pay costs associated with a proposed Digital Media and Web Technology program. As proposed, students would take the entire Digital Media and Web Technology program in a 20-week block, consisting of 10 weeks of intensive classroom instruction at the main NWIC Lummi campus followed immediately by 10 weeks of an internship and an integrated capstone project. The intensive classes would consist of 24 contact hours a week (six hours per day, Monday through Thursday). The program would provide participants who successfully complete the course training, an internship, and a capstone course with a certificate of completion. Program completers would receive the skills and knowledge necessary to: (1) Pass Adobe's Certified Associate exams in: Web Communication—using Adobe ''Dreamweaver,'' Rich Media Communication—using Adobe ''Flash,'' and Visual Communication—using Adobe ''Photoshop;'' (2) obtain Adobe Certified Associate certifications in one or more of those Adobe applications; and (3) subsequently obtain high-quality employment in the field of digital media. It is important to note that the proposed new certification program does not supplant non-Federal funds already available to NWIC.

The proposed project would focus strongly on career and technical education (CTE) skill development in digital media and web technology and provide course content that is experiential and individually directed, and concludes with an internship and a capstone project. The capstone project has been specifically designed to integrate and assess the skills developed in the courses taught during the first 10 weeks of the Digital Media and Web Technology program. Students would be expected to demonstrate mastery of the Adobe Certified Associate skills through a capstone project presentation that reflects both their classroom and internship work. Together, the classroom work, internship, and capstone segments constitute a single coherent and integrated curriculum—the goal of which is to prepare students to master the Adobe Certified Associate skills, receive an Award of Completion, pass the Certified Adobe Associate exam, and gain successful employment.

Funding for the program would support: (1) limited pre-award costs for recruiting students who are academically prepared to benefit from the intensive Digital Media and Web Technology program, and (2) implementation costs, including salaries for the project director and classroom instructors, costs of supervising and advising students, and employment placement costs, through September 30, 2009. In its grantback request, NWIC has stated that a total of 32 students, equally divided between two cycles, would participate in the program with an expected job placement rate of 85 percent within six months of program completion. The proposed Digital Media and Web Technology program is a CTE program using Adobe software and incorporating all of the learning objectives identified by Adobe for the Adobe Certified Associate programs: Web Communication Using Adobe ''Dreamweaver,'' Rich Media Communication Using Adobe ''Flash,'' and Visual Communication using Adobe ''Photoshop.'' The Digital Media and Web Technology program will prepare students to enter their chosen disciplines upon completion of the program. As part of the program, NWIC plans to provide opportunities for students to practice taking the Adobe Certified Associate exams and expects to administer the exams after the completion of each of the two training cycles. NWIC proposes that exam preparation and testing would be fully integrated into the Digital Media and Web Technology program. In addition, NWIC will identify and recruit potential students in an effort to be fully prepared to start training the first cohort of students by late April or early May 2009, if a grantback is awarded.

NWIC has designed this program to be sustainable after completion of the two cycles, allowing NWIC to continue to deliver a Digital Media and Web Technology program on an ongoing basis once Federal grantback funds are no longer available. NWIC notes in its grantback request that the proposed Digital Media and Web Technology program broadens its technical offerings into areas that are in demand both within tribal communities and throughout the Pacific Northwest. NWIC is hopeful that the Digital Media and Web Technology program will provide attractive long-term employment opportunities, because it will emphasize marketing, recruiting, internship, and placement activities to a greater extent than does NWIC's current computer technology programming. It is NWIC's intention that these activities and their benefits would continue beyond the proposed project time frame and would increase the reach and sustainability of NWIC's computer and technology educational programming. Additionally, preparing NWIC students to pass the Adobe Certified Associate exams would prepare those students for nationally recognized certifications thereby further broadening their employment options.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by NWIC. Based upon that review, the Secretary has determined that the conditions under section 459(a) of GEPA have been met.

This determination is based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 459(a) of GEPA have been met, the Secretary makes no determination concerning any pending audit

recommendations or final audit determinations.

The Secretary also has concluded that, to the extent possible, this grantback award would support the provision of services to the population of intended beneficiaries of the program under which the DISC and Promising Practices grants were originally made. The population of intended beneficiaries under IVEP and NAVTEP may not have received the full benefit of the services intended by the Perkins IVEP grant awards, currently NACTEP, due to the problems that gave rise to the audit recovery described in Section A of this notice. The Secretary has determined that if awarded, this grantback would advance and support the same policy goals and purposes of the statutory Perkins II provisions that authorized the initial DISC and Promising Practices grants and would be used in compliance with all current statutory and regulatory program requirements.

E. Notice of the Secretary's Intent to Enter into a Grantback Arrangement with NWIC

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment would be made. In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to NWIC under a grantback arrangement. The grantback award would be in the amount of $179,855, which is approximately 57 percent of the principal amount recovered as a result of the Agreement.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement with NWIC Would Be Made

NWIC agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(a) The funds awarded under the grantback must be spent in accordance with—

(1) All applicable statutory and regulatory requirements;

(2) The plan that NWIC submitted and any amendments to the plan that are approved in advance by the Secretary; and

(3) The budget that NWIC submitted with the approved plan and any amendments to the budget that are approved in advance by the Secretary.

(b) All funds received under the grantback arrangement must be obligated by NWIC by September 30, 2009, in accordance with section 459(c) of GEPA and NWIC's approved plan.

(c) NWIC must, no later than December 31, 2009, submit a report to the Secretary that—

(1) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and any amendments that have been approved in advance by the Secretary; and

(2) Describes the results and effectiveness of the project for which the funds were spent, including the number of students who enrolled in the training sessions, the number of students who received an Award of Completion, the number of students who took the Adobe exams, and the number of students who passed the exams and obtained Adobe certifications.

(d) NWIC must maintain separate accounting records documenting the expenditures of funds awarded under the grantback arrangement.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Numbers: 84.101A, Native American Career and Technical Education Program.)

Dated: March 25, 2009.

Dennis Berry,

Acting Assistant Secretary for Vocational and Adult Education.

[FR Doc. E9–7036 Filed 3–27–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

March 23, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–320–103.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits Negotiated Rate Capacity Release Agreement.
Filed Date: 03/18/2009.
Accession Number: 20090319–0219.
Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Docket Numbers: RP96–389–091.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Company submits FTS–1 Service Agreement No 68436-Revision No 4 between Columbia Gulf Transmission Company and JP Morgan Ventures Energy Corporation.
Filed Date: 03/18/2009.
Accession Number: 20090319–0218.
Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Docket Numbers: RP02–534–014.
Applicants: Guardian Pipeline, L.L.C.
Description: Guardian Pipeline, LLC submits Eleventh Revised Sheet No. 6 *et al.* to FERC Gas Tariff, Original Volume No. 1, to effective 4/1/09.
Filed Date: 03/02/2009.
Accession Number: 20090304–0130.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: RP09–385–002.
Applicants: Caledonia Energy Partners, L.L.C.
Description: Caledonia Energy Partners, LLC submits First Revised Sheet No 43 *et al.* to FERC Gas Tariff, Original Volume No 1.
Filed Date: 03/19/2009.
Accession Number: 20090320–0095.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 31, 2009.

Docket Numbers: RP09–233–001.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits Substitute Sixth Revised Sheet 285 to FERC Gas Tariff, Fifth Revised Volume 1, to be effective 2/21/09.
Filed Date: 03/20/2009.
Accession Number: 20090323–0033.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 01, 2009.

Docket Numbers: RP09–394–001.

Applicants: KO Transmission Company.

Description: KO Transmission Company submits Substitute Fourth Revised Sheet 50 *et al.* to its FERC Gas Tariff, Original Volume 1.

Filed Date: 03/20/2009.

Accession Number: 20090323–0034.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 01, 2009.

Docket Numbers: RP09–459–000.

Applicants: Sabine Pipe Line LLC.

Description: Sabine Pipe Line LLC submits request for temporary waiver of the tariff provisions for the dates of 3/26/09 and 3/28/2009.

Filed Date: 03/18/2009.

Accession Number: 20090319–0220.

Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Docket Numbers: RP09–460–000.

Applicants: Chandeleur Pipe Line Company.

Description: Chandeleur Pipe Line Company submits Request for Temporary Waiver of FERC Gas Tariff, Second Revised Volume 1 *et al.*

Filed Date: 03/18/2009.

Accession Number: 20090319–0221.

Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Docket Numbers: RP09–461–000.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc submits Fourth Revised Sheet 2000 *et al.* to its FERC Gas Tariff, Third Revised Volume 1, to become effective 4/18/09.

Filed Date: 03/19/2009.

Accession Number: 20090320–0098.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 31, 2009.

Docket Numbers: RP09–462–000.

Applicants: Great Lakes Gas Transmission Limited Par.

Description: Great Lakes Gas Transmission Limited Partnership submits Twenty-Third Revised Sheet 1 *et al.* to FERC Gas Tariff, Second Revised Volume No 1, to be effective 4/18/09.

Filed Date: 03/19/2009.

Accession Number: 20090320–0097.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 31, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–6978 Filed 3–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

February 25, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09–30–000.

Applicants: High Lonesome Mesa, LLC.

Description: Self Certification Notice of High Lonesome Mesa, LLC under EG09–30.

Filed Date: 02/18/2009.

Accession Number: 20090218–5051.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 11, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05–1218–003; ER00–2887–006; ER05–1219–003; ER06–703–002; ER07–1341–003; ER96–149–013; ER97–2414–012.

Applicants: Bayonne Plant Holding, L.L.C.; Newark Bay Cogeneration Partnership, L.P; Camden Plant Holding, L.L.C.; Pedricktown Cogeneration Company, LP; York Generation Company LLC; Dartmouth Power Associates Limited Partnership; Lowell Cogeneration Company Limited Partnership.

Description: Supplement to Updated Market Power Analysis of Bayonne Plant Holding, L.L.C., *et al.*

Filed Date: 02/17/2009.

Accession Number: 20090217–5063.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 10, 2009.

Docket Numbers: ER09–198–002.

Applicants: New York Independent System Operator, Inc.

Description: 90-Day Report on Development of Solutions to Loop Flow and Inter-ISO/RTO Congestion Management of New York Independent System Operator, Inc.

Filed Date: 02/17/2009.

Accession Number: 20090217–5209.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 10, 2009.

Docket Numbers: ER09–732–000.

Applicants: Windhorse Energy, Inc.

Description: Windhorse Energy, Inc submits a Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.

Filed Date: 02/23/2009.

Accession Number: 20090224–0112.

Comment Date: 5 p.m. Eastern Time on Monday, March 16, 2009.

Docket Numbers: ER09–737–000.

Applicants: BE Walton LLC.

Description: BE Walton LLC submits Notice of Cancellation to its FERC Electric Tariff, Original Volume 1.

Filed Date: 02/23/2009.

Accession Number: 20090224–0061.

Comment Date: 5 p.m. Eastern Time on Monday, March 16, 2009.

Docket Numbers: ER09–738–000.

Applicants: BE Colquitt LLC.

Description: BE Colquitt LLC submits Notice of Cancellation to its FERC Electric, Original Volume 1.

Filed Date: 02/23/2009.

Accession Number: 20090224–0060.

Comment Date: 5 p.m. Eastern Time on Monday, March 16, 2009.

Docket Numbers: ER09–739–000.

Applicants: BE Satilla LLC.
Description: BE Satilla LLC submits Notice of Cancellation to its FERC Electric Tariff, Original Volume 1.
Filed Date: 02/23/2009.
Accession Number: 20090224–0059.
Comment Date: 5 p.m. Eastern Time on Monday, March 16, 2009.

Docket Numbers: ER09–740–000.
Applicants: Carolina Power & Light Company.
Description: Carolina Power & Light Company submits new cost based power supply and coordination agreement between Progress and North Carolina Electric Membership Corporation, Rate Schedule FERC No 182.
Filed Date: 02/23/2009.
Accession Number: 20090224–0058.
Comment Date: 5 p.m. Eastern Time on Monday, March 16, 2009.

Docket Numbers: ER09–742–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc *et al.* submits Fourth Revised Sheet No. 1 *et al.* to First Revised Rate Schedule No. 168.
Filed Date: 02/20/2009.
Accession Number: 20090224–0099.
Comment Date: 5 p.m. Eastern Time on Friday, March 13, 2009.

Docket Numbers: ER09–743–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits Third Revised Sheet No. 26 to FERC Electric Tariff, First Revised Volume No. 5.
Filed Date: 02/20/2009.
Accession Number: 20090224–0107.
Comment Date: 5 p.m. Eastern Time on Friday, March 13, 2009.

Docket Numbers: ER09–744–000.
Applicants: Niagara Mohawk Power Corporation.
Description: Niagara Mohawk Power Corp submits the Engineering, Permitting and Construction Services Agreement.
Filed Date: 02/20/2009.
Accession Number: 20090224–0108.
Comment Date: 5 p.m. Eastern Time on Friday, March 13, 2009.

Docket Numbers: ER09–745–000.
Applicants: Baltimore Gas and Electric Company.
Description: Baltimore Gas and Electric Company submits Appendix A—Revised PJM Tariff sheets showing the proposed changes to Attachment H–2A *et al.* effective 6/1/09.
Filed Date: 02/20/2009.
Accession Number: 20090224–0100.
Comment Date: 5 p.m. Eastern Time on Friday, March 13, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–20–000.
Applicants: NorthWestern Corporation.
Description: Application of Northwestern Corporation for Authorization to Issue Securities and Request for Shortened Comment Period.
Filed Date: 02/17/2009.
Accession Number: 20090217–5210.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 10, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–39–003; OA08–71–003.
Applicants: Xcel Energy Services Inc.
Description: Order No. 890 OATT Filing of Xcel Energy Services Inc. under OA08–71 and OA07–31, *et al.*
Filed Date: 02/18/2009.
Accession Number: 20090218–5068.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 11, 2009.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9–6948 Filed 3–27–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

March 11, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–4421–012; ER96–2350–029; ER01–570–012; ER99–3677–011; ER99–791–010; ER99–806–009.
Applicants: Consumers Energy Company; CMS Energy Resource Management Company; Dearborn Industrial Generation, L.L.C.; CMS Generation Michigan Power, L.L.C.; Grayling Generation Station Limited Partnership; Genesee Power Station Limited Partnership.
Description: Notice of Non-Material Change in Status of Consumers Energy Company.
Filed Date: 03/10/2009.
Accession Number: 20090310–5152.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 31, 2009.

Docket Numbers: ER00–1026–018; ER00–33–013; ER01–1315–007; ER01–2401–013; ER01–751–013; ER05–442–005; ER09–38–001; ER97–2904–009; ER98–2184–016; ER98–2185–016; ER98–2186–017; ER99–1228–008; ER99–1761–007; ER99–1773–011; ER99–2284–011.
Applicants: Indianapolis Power & Light Company, AEE 2 LLC, AES Alamitos, LLC, AES CREATIVE RESOURCES LP, AES Eastern Energy, LP, AES Energy Storage, LLC, AES Huntington Beach, L.L.C., AES Ironwood LLC, AES RED OAK LLC, AES Redondo Beach, L.L.C., AES Placerita Inc., Condon Wind Power, LLC, Lake Benton Power Partners LLC,

Mountain View Power Partners, LLC, Storm Lake Power Partners II LLC.

Description: Amendment to its Triennial Market Power Update filing and on 3/9/09 filed an Errata to Amendment to Compliance Filing of Indianapolis Power & Light Company, et. al.

Filed Date: 02/26/09; 03/09/2009.

Accession Number: 20090302–0303; 20090309–5142.

Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Docket Numbers: ER00–2398–009.

Applicants: Baconton Power LLC.

Description: Baconton Power, LLC submits an updated market power analysis for the Southeast Region and further revisions to its market based sales tariff to comply with Order 697.

Filed Date: 03/04/2009.

Accession Number: 20090306–0006.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 25, 2009.

Docket Numbers: ER03–534–009.

Applicants: Ingenco Wholesale Power, LLC.

Description: Supplement to Application for Finding of Category 1 Seller Status and Filing of Revised Market-Based Rate Tariff of Ingenco Wholesale Power, LLC.

Filed Date: 03/02/2009.

Accession Number: 20090302–5190.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: ER06–456–019; ER06–1271–014; ER06–880–014; ER06–954–015; ER07–424–010.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits compliance filing, one day out of time.

Filed Date: 03/02/2009.

Accession Number: 20090305–0005.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: ER07–189–005; ER07–190–005; ER07–191–005; ER07–192–003.

Applicants: Duke Energy Indiana, Inc.; Duke Energy Kentucky, Inc.; Duke Energy Ohio, Inc.; Duke Energy Business Services, Inc., Duke Energy Shared Services, Inc.

Description: Duke Energy MBR Companies submits Substitute Sheet 2 *et al.* to FERC Electric Tariff, Second Revised Volume 1.

Filed Date: 03/02/2009.

Accession Number: 20090305–0053.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: ER07–1332–003.

Applicants: Smoky Hills Wind Farm, LLC.

Description: Supplemental Information to April 2008 Change in Status Filing and Request for Shortened Notice Period of Smoky Hills Wind Farm, LLC.

Filed Date: 02/20/2009.

Accession Number: 20090220–5146.

Comment Date: 5 p.m. Eastern Time on Friday, March 13, 2009.

Docket Numbers: ER08–444–003; ER06–1143–003; ER98–1992–005.

Applicants: NSTAR Electric Company; MATEP LLC; Medical Area Total Energy Plant Inc.

Description: NSTAR Electric Co *et al.* submits First Revised Sheet No. 3 *et al.* to FERC Electric Tariff, Second Revised Volume No. 10.

Filed Date: 03/05/2009.

Accession Number: 20090305–0178.

Comment Date: 5 p.m. Eastern Time on Thursday, March 26, 2009.

Docket Numbers: ER08–1051–002.

Applicants: NSTAR Electric Company.

Description: NSTAR Electric Company submits updated Annual Informational filing containing the true up billings under Schedule 21–NSTAR to Schedule II of the ISO New England Inc Transmission, Markets and Services Tariff, FERC Electric Tariff No 3.

Filed Date: 03/03/2009.

Accession Number: 20090306–0071.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 24, 2009.

Docket Numbers: ER08–1335–003.

Applicants: Southern Company Services, Inc.

Description: Southern Companies submits an errata to Fourth Substitute Fourth Revised Service Agreement 391 to FERC Electric Tariff, Fourth Revised Volume 5 in compliance with the Commission's letter order issued 1/9/09.

Filed Date: 03/03/2009.

Accession Number: 20090306–0008.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 24, 2009.

Docket Numbers: ER08–1410–002.

Applicants: PacifiCorp.

Description: PacifiCorp submits Second Revised Rate Schedule FERC 262 filed on 12/15/08 in compliance with Order 614.

Filed Date: 03/02/2009.

Accession Number: 20090303–0234.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: ER09–368–001.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits filing to comply with directives in the FERC 1/30/09 order on tariff revisions in the proceeding.

Filed Date: 03/02/2009.

Accession Number: 20090305–0006.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: ER09–404–001.

Applicants: Langdon Wind, LLC.

Description: Langdon Wind, LLC submits Compliance Filing of Jurisdictional Agreement.

Filed Date: 03/04/2009.

Accession Number: 20090305–0177.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 25, 2009.

Docket Numbers: ER09–538–001.

Applicants: Granite State Electric Company.

Description: Granite State Electric Company submits revised tariff sheets in compliance with Commission Staff's.

Filed Date: 03/02/2009.

Accession Number: 20090305–0004.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: ER09–726–001.

Applicants: Vision Power, LLC.

Description: Vision Power, LLC submits petition for acceptance of initial rate schedule, waivers and blanket authorization *et al.*

Filed Date: 03/04/2009.

Accession Number: 20090305–0176.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 25, 2009.

Docket Numbers: ER09–732–001.

Applicants: Windhorse Energy, Inc.

Description: Windhorse Energy, Inc submits amended Public Petition for Acceptance of Initial Tariff Waivers and Blanket Authority, and one portion of the Petition for Acceptance of Initial Tariff Waivers and Blanket Authority *etc.*

Filed Date: 03/05/2009.

Accession Number: 20090306–0075.

Comment Date: 5 p.m. Eastern Time on Thursday, March 26, 2009.

Docket Numbers: ER09–746–001.

Applicants: Optim Energy Marketing, LLC.

Description: Optim Energy Marketing, LLC submits revised Exhibit A et al to FERC Electric Tariff, Original Volume 1.

Filed Date: 03/02/2009.

Accession Number: 20090304–0149.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: ER09–750–000.

Applicants: Windy Flats Partners, LLC.

Description: Amendment to Application for Order Accepting Market Based Rate Tariff of Windy Flats Partners, LLC.

Filed Date: 03/10/2009.

Accession Number: 20090310–5154.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 31, 2009.

Docket Numbers: ER09–798–000.

Applicants: Elm Road Services LLC.

Description: Elm Road Services, LLC submits Power Agreement Providing for

Sales of Test Power between ERS and Wisconsin Electric Power Company.

Filed Date: 03/05/2009.

Accession Number: 20090306–0074.

Comment Date: 5 p.m. Eastern Time on Thursday, March 26, 2009.

Docket Numbers: ER09–799–000.

Applicants: Sempra Energy Trading, LLC.

Description: Sempra Energy Trading LLC submits itsFERC Electric tariff, Original Volume 2 under which specifies its revenue requirement for the sale of cost-based Reactive Supply and Voltage Control from Generation Sources Service *etc.*

Filed Date: 03/05/2009.

Accession Number: 20090306–0073.

Comment Date: 5 p.m. Eastern Time on Thursday, March 26, 2009.

Docket Numbers: ER09–800–000.

Applicants: Panda Brandywine L.P.

Description: Panda-Brandywine, LP submits its proposed FERC Electric Tariff, Original Volume 2 and supporting cost data.

Filed Date: 03/05/2009.

Accession Number: 20090309–0006.

Comment Date: 5 p.m. Eastern Time on Thursday, March 26, 2009.

Docket Numbers: ER09–801–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits revisions to Attachment AD of its Open Access Transmission Tariff, to be effective 2/1/09.

Filed Date: 03/05/2009.

Accession Number: 20090309–0007.

Comment Date: 5 p.m. Eastern Time on Thursday, March 26, 2009.

Docket Numbers: ER09–802–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits proposed revisions to its Market Administration and Control Area Services Tariff.

Filed Date: 03/05/2009.

Accession Number: 20090309–0008.

Comment Date: 5 p.m. Eastern Time on Thursday, March 26, 2009.

Docket Numbers: ER09–803–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits proposed revisions to its Market Administration and Control Area Services Tariff.

Filed Date: 03/05/2009.

Accession Number: 20090309–0009.

Comment Date: 5 p.m. Eastern Time on Thursday, March 26, 2009.

Docket Numbers: ER09–806–000.

Applicants: Northeast Utilities Service Company.

Description: Northeast Utilities Service Company *et al.* submit Amendment No 2 to Revised Standard Large Generator Interconnection Agreement.

Filed Date: 03/02/2009.

Accession Number: 20090306–0072.

Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–6950 Filed 3–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 11, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–4159–016; ER07–157–006; ER06–399–010; ER06–398–010; ER04–268–013.

Applicants: Macquarie Cook Power Inc., Duquesne Light Company, Duquesne Power, LP, Duquesne Keystone, LLC, Duquesne Conemaugh, LLC.

Description: Notice of Change in Status of Duquesne Light Company.

Filed Date: 03/09/2009.

Accession Number: 20090309–5141.

Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Docket Numbers: ER99–845–016.

Applicants: Puget Sound Energy, Inc.

Description: Notice of Change in Status re Puget Sound Energy, Inc.

Filed Date: 03/09/2009.

Accession Number: 20090309–5139.

Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Docket Numbers: ER01–989–007.

Applicants: Green Mountain Power Corporation.

Description: Supplement to Non-Material Change-in-Status Report of Green Mountain Power Corporation.

Filed Date: 03/09/2009.

Accession Number: 20090309–5144.

Comment Date: 5 p.m. Eastern Time on Thursday, March 19, 2009.

Docket Numbers: ER05–1489–002.

Applicants: Craven County Wood Energy Limited Partnership.

Description: Craven County Wood Energy Limited Partnership submits request for Category 1 Seller classification pursuant to order No 697 and 697A.

Filed Date: 03/09/2009.

Accession Number: 20090310–0074.

Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Docket Numbers: ER06–1265–002; ER02–1336–005.

Applicants: Orlando Cogen Ltd LP, Vandolah Power Company, LLC.

Description: Orlando CoGen Limited, LP *et al.* submits revised market based rate tariffs.

Filed Date: 03/06/2009.
Accession Number: 20090310–0053.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER07–1105–005.
Applicants: Cedar Creek Wind Energy, LLC.
Description: Cedar Creek Wind Energy, LLC informs FERC that on the 7/30/08 they submitted notification of a non-material change in facts with respect to its market-based rate authority etc.
Filed Date: 02/18/2009.
Accession Number: 20090220–0071.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 25, 2009.

Docket Numbers: ER07–1356–007; ER05–1232–015; ER07–1115–006; ER07–1118–006; ER07–1120–006; ER07–1122–006; ER08–148–006; ER09–335–001.
Applicants: BE Alabama LLC; J.P. Morgan Ventures Energy Corporation; BE Colquitt LLC; BE Rayle LLC; BE Satilla LLC; BE Walton LLC; Central Power & Lime, Inc.; J.P. Morgan Ventures Energy Corporation.
Description: JP Morgan Companies submits Further Supplement to Updated Market Power Analysis.
Filed Date: 03/03/2009.
Accession Number: 20090306–0010.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 24, 2009.

Docket Numbers: ER09–498–002.
Applicants: Vickers Power, LLC.
Description: Vickers Power, LLC submits application for market based authorization, request for waivers expedited action, and blanket approval.
Filed Date: 03/09/2009.
Accession Number: 20090310–0073.
Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Docket Numbers: ER09–537–001.
Applicants: Massachusetts Electric Company.
Description: Massachusetts Electric Company submits Attachment A *et al.* to FERC Electric Tariff, First Revised Volume No 1.
Filed Date: 03/06/2009.
Accession Number: 20090309–0160.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–606–001.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas. LLC submits substitute Transmission Service Agreement for Network Integration Transmission Service between itself and the Town of Dallas.
Filed Date: 03/06/2009.
Accession Number: 20090309–0162.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–629–001.
Applicants: Dynegy Marketing and Trade, LLC.
Description: Dynegy Marketing and Trade, LLC submits amended tariff sheet to correct a pagination error that was included in its 1/30/09 filing.
Filed Date: 03/06/2009.
Accession Number: 20090309–0161.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–732–001.
Applicants: Windhorse Energy, Inc.
Description: Windhorse Energy, Inc submits amended Public Petition for Acceptance of Initial Tariff Waivers and Blanket Authority, and one portion of the Petition for Acceptance of Initial Tariff Waivers and Blanket Authority etc.
Filed Date: 03/06/2009.
Accession Number: 20090306–0076.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–770–001.
Applicants: Xcel Energy Operating Companies.
Description: Xcel Energy Operating Companies submits Errata to Form of Service Agreement for Reserve Sharing Energy Service.
Filed Date: 03/06/2009.
Accession Number: 20090309–0145.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–807–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits revisions to Schedule 16 and Schedule 17 of its Open Access Transmission, Energy and Operating Reserve Markets Tariff, FERC Electric Tariff, Fourth Revised Volume No 1.
Filed Date: 03/06/2009.
Accession Number: 20090309–0146.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–808–000.
Applicants: Reliant Energy Power Supply, LLC.
Description: Reliant Energy Power Supply, LLC submits a Notice of Cancellation of their FERC Electric Tariff, Original Volume 1.
Filed Date: 03/06/2009.
Accession Number: 20090309–0147.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–809–000.
Applicants: Kentucky Utilities Company.
Description: Kentucky Utilities submits amendment to a contract between KU and the City Utility Commission of City of Owensboro.
Filed Date: 03/06/2009.
Accession Number: 20090309–0148.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–810–000.
Applicants: Kentucky Utilities Company.
Description: Kentucky Utilities submits amendment to a contract between KU and the City of Paris under FERC Rate Schedule 301.
Filed Date: 03/06/2009.
Accession Number: 20090309–0149.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–811–000.
Applicants: Kentucky Utilities Company.
Description: Kentucky Utilities submits amendment to a contract between KU and the City of Bardstown under FERC Rate Schedule 302.
Filed Date: 03/06/2009.
Accession Number: 20090309–0150.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–812–000.
Applicants: Kentucky Utilities Company.
Description: Kentucky Utilities submits amendment to a contract between KU and the City of Nicholasville under FERC Rate Schedule 303.
Filed Date: 03/06/2009.
Accession Number: 20090309–0152.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–813–000.
Applicants: Kentucky Utilities Company.
Description: Kentucky Utilities submits amendment to a contract between KU and the City of Barbourville under FERC Rate Schedule 304.
Filed Date: 03/06/2009.
Accession Number: 20090309–0151.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–814–000.
Applicants: Kentucky Utilities Company.
Description: Kentucky Utilities submits amendment to a contract between KU and the City of Providence under FERC Rate Schedule 305.
Filed Date: 03/06/2009.
Accession Number: 20090309–0153.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–815–000.
Applicants: Kentucky Utilities Company.
Description: Kentucky Utilities submits amendment to a contract between KU and the City of Madisonville under FERC Rate Schedule 306.

Filed Date: 03/06/2009.
Accession Number: 20090309–0156.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–816–000.
Applicants: Kentucky Utilities Company.
Description: Kentucky Utilities submits amendment to a contract between KU and the City of Bardwell under FERC Rate Schedule 307.
Filed Date: 03/06/2009.
Accession Number: 20090309–0154.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–817–000.
Applicants: Kentucky Utilities Company.
Description: Kentucky Utilities submits amendment to a contract between KU and the City of Benham under FERC Rate Schedule 308.
Filed Date: 03/06/2009.
Accession Number: 20090309–0155.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–818–000.
Applicants: Kentucky Utilities Company.
Description: Kentucky Utilities submits amendment to a contract between KU and the City of Corbin under FERC Rate Schedule 309.
Filed Date: 03/06/2009.
Accession Number: 20090309–0157.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–819–000.
Applicants: Kentucky Utilities Company.
Description: Kentucky Utilities submits amendment to a contract between KU and the City of Falmouth under FERC Rate Schedule 310.
Filed Date: 03/06/2009.
Accession Number: 20090309–0159.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–820–000.
Applicants: Kentucky Utilities Company.
Description: Kentucky Utilities submits amendment to a contract between KU and the Frankfort City Electric and Water Plant Board of City of Frankfort under FERC Rate Schedule 311.
Filed Date: 03/06/2009.
Accession Number: 20090309–0158.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–821–000.
Applicants: American Electric Power Service Corporation.
Description: AEP Texas North Company submits revised sheets of the Interconnection Agreement with Brazos Electric Power Coop, Inc.
Filed Date: 03/06/2009.
Accession Number: 20090310–0007.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–822–000.
Applicants: Reliant Energy Solutions Northeast, LLC.
Description: Reliant Energy Solutions Northeast, LLC submits its Notice of Cancellation of its market based rate tariff designated as FERC Electric Tariff, Original Volume 1.
Filed Date: 03/06/2009.
Accession Number: 20090310–0006.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Docket Numbers: ER09–823–000.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits unexecuted Large Generator Interconnection Agreement between itself and Clipper Windpower.
Filed Date: 03/09/2009.
Accession Number: 20090310–0072.
Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Docket Numbers: ER09–824–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits Transmission Access Charge Informational Filing.
Filed Date: 03/09/2009.
Accession Number: 20090310–0079.
Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Docket Numbers: ER09–825–000.
Applicants: PSEG Energy Resources & Trade LLC.
Description: PSEG Energy Resources & Trade LLC submits revised tariff sheets in conformance with Order No 614.
Filed Date: 03/09/2009.
Accession Number: 20090310–0075.
Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–22–000.
Applicants: NorthWestern Corporation.
Description: Application of Northwestern Corporation for Authorization Under Section 204 of the Federal Power Act.
Filed Date: 03/06/2009.
Accession Number: 20090306–5074.
Comment Date: 5 p.m. Eastern Time on Friday, March 27, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–44–005.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company Annual Report on Penalty Assessments and Distributions under Order No. 890.
Filed Date: 03/10/2009.
Accession Number: 20090310–5081.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 31, 2009.

Docket Numbers: OA08–17–002.
Applicants: WSPP Inc.
Description: WSPP Inc submits revisions to its Open Access Transmission Tariff.
Filed Date: 03/09/2009.
Accession Number: 20090310–0070.
Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH09–16–000.
Applicants: Puget Holdings LLC.
Description: Waiver Notification of Puget Holdings LLC.
Filed Date: 03/09/2009.
Accession Number: 20090309–5146.
Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–6951 Filed 3–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

March 24, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–240–001.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America, LLC submits Sub First Revised Sheet 422, FERC Gas Tariff, Seventh Revised Volume 1, to be effective 2/22/09.

Filed Date: 03/23/2009.

Accession Number: 20090324–0051.

Comment Date: 5 p.m. Eastern Time on Monday, April 6, 2009.

Docket Numbers: RP09–265–001.

Applicants: Kinder Morgan Interstate Gas Transmission LLC.

Description: Kinder Morgan Interstate Gas Transmission, LLC submits Third Revised Sheet 48A.02 to FERC Gas Tariff, Fourth Revised Volume 1–B, to be effective 2/26/09.

Filed Date: 03/23/2009.

Accession Number: 20090324–0053.

Comment Date: 5 p.m. Eastern Time on Monday, April 6, 2009.

Docket Numbers: RP09–266–001.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline, LLC submits First Revised Sheet 190 to FERC Gas Tariff, Second Revised Volume 1, to be effective 2/26/09.

Filed Date: 03/23/2009.

Accession Number: 20090324–0052.

Comment Date: 5 p.m. Eastern Time on Monday, April 6, 2009.

Docket Numbers: RP09–465–000.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Co submits Fourth Revised Sheet 108 *et al.* to FERC Gas Tariff, Second Revised Volume 1, to be effective 4/20/09.

Filed Date: 03/20/2009.

Accession Number: 20090324–0003.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 1, 2009.

Docket Numbers: RP09–466–000.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Co submits Third Revised Sheet 12 *et al.* to FERC Gas Tariff, Second Revised Volume 1, to be effective 4/20/09.

Filed Date: 03/20/2009.

Accession Number: 20090324–0002.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 1, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–6977 Filed 3–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 23, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–60–000.

Applicants: Midland Cogeneration Venture Limited Partnership.

Description: Application of Midland Cogeneration Venture Limited Partnership for Section 203 Authorization for the Disposition of Facilities and Request for Expedited Consideration and Confidential Treatment.

Filed Date: 03/20/2009.

Accession Number: 20090320–5085.

Comment Date: 5 p.m. Eastern Time on Friday, April 3, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–2640–031; ER01–205–033.

Applicants: Northern States Power Company-Wisconsin; Xcel Energy Services Inc.

Description: Errata to Market-based Rate Authorization Triennial Market Power Analysis of Xcel Energy Services Inc. for Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin).

Filed Date: 03/20/2009.

Accession Number: 20090320–5013.

Comment Date: 5 p.m. Eastern Time on Friday, April 10, 2009.

Docket Numbers: ER06–629–005.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits revisions to its Small Generator

Interconnection Procedures in compliance with the Commission's 3/3/09 Order.

Filed Date: 03/20/2009.

Accession Number: 20090323–0100.

Comment Date: 5 p.m. Eastern Time on Friday, April 10, 2009.

Docket Numbers: ER06–630–004.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation *et al.* submit revisions to their pro forma Small Generator Interconnection Agreement.

Filed Date: 03/20/2009.

Accession Number: 20090323–0099.

Comment Date: 5 p.m. Eastern Time on Friday, April 10, 2009.

Docket Numbers: ER09–486–001.

Applicants: Ashtabula Wind, LLC.

Description: Ashtabula Wind, LLC submits their Common Facilities Agreement with Otter Tail Corporation for the OTP Project dated 10/9/08 designated as Rate Schedule FERC 1, in compliance with FERC's 2/19/09 Order.

Filed Date: 03/20/2009.

Accession Number: 20090323–0101.

Comment Date: 5 p.m. Eastern Time on Friday, April 10, 2009.

Docket Numbers: ER09–704–001.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits the clean as well redlined copies of the corrected 2/10/09 filing of a Standard Large Generator Interconnection Agreement with North Carolina Electric Member Corp.

Filed Date: 03/19/2009.

Accession Number: 20090320–0090.

Comment Date: 5 p.m. Eastern Time on Thursday, April 9, 2009.

Docket Numbers: ER09–759–001.

Applicants: E. ON U.S. LLC.

Description: E.ON U.S. submits removal of SPP as signatory to the Agreements does not affect the division of functional responsibilities under the ITO agreement etc.

Filed Date: 03/17/2009.

Accession Number: 20090317–0266.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 7, 2009.

Docket Numbers: ER09–864–000.

Applicants: ISO New England Inc.; New England Power Pool.

Description: ISO New England Inc and New England Power Pool submits Installed Capacity Requirements for the 2009/2010 Capability Year.

Filed Date: 03/19/2009.

Accession Number: 20090320–0092.

Comment Date: 5 p.m. Eastern Time on Thursday, April 9, 2009.

Docket Numbers: ER09–865–000.

Applicants: Allegheny Energy Supply Company, LLC.

Description: Allegheny Energy Supply Company, LLC request for authorization to make wholesale power sales to Potomac Edison Co pursuant to a master Full Requirements Service Agreement dated 10/22/08 etc.

Filed Date: 03/19/2009.

Accession Number: 20090320–0094.

Comment Date: 5 p.m. Eastern Time on Thursday, April 9, 2009.

Docket Numbers: ER09–866–000.

Applicants: Allegheny Energy Supply Company, LLC.

Description: Allegheny Energy Supply Company, LLC request authorization to make wholesale power sales to Potomac Edison Company pursuant to the terms of a master Full Requirements Service Agreement etc.

Filed Date: 03/19/2009.

Accession Number: 20090320–0093.

Comment Date: 5 p.m. Eastern Time on Thursday, April 9, 2009.

Docket Numbers: ER09–867–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power and Light Co. submits a Network Integration Transmission Service and Network Operating Agreement.

Filed Date: 03/20/2009.

Accession Number: 20090323–0036.

Comment Date: 5 p.m. Eastern Time on Friday, April 10, 2009.

Docket Numbers: ER09–868–000.

Applicants: WSPP Inc.

Description: WSPP Inc submits revised pages to the WSPP Agreement to incorporate a cost-based Rate Schedule 6 into the Agreement pursuant to the Commission's 3/3/09 Order.

Filed Date: 03/20/2009.

Accession Number: 20090323–0102.

Comment Date: 5 p.m. Eastern Time on Friday, April 10, 2009.

Docket Numbers: ER09–869–000.

Applicants: Ameren Services Company.

Description: Central Illinois Public Service Company *et al.* submits an executed service agreement for Wholesale Distribution Service with Illinois Municipal Electric Agency etc.

Filed Date: 03/20/2009.

Accession Number: 20090323–0103.

Comment Date: 5 p.m. Eastern Time on Friday, April 10, 2009.

Docket Numbers: ER09–870–000.

Applicants: Ameren Energy Marketing Company.

Description: Ameren Energy Marketing Company submits amended sheets to its Market-Based Rate Tariff, effective 6/1/09.

Filed Date: 03/20/2009.

Accession Number: 20090323–0104.

Comment Date: 5 p.m. Eastern Time on Friday, April 10, 2009.

Docket Numbers: ER09–871–000.

Applicants: Falesafe, Inc.

Description: Portland General Electric Company submits Fale-Safe's First Revised Rate Schedule FERC 1, a Long Term Power Sale Agreement with San Diego Gas & Electric Company.

Filed Date: 03/23/2009.

Accession Number: 20090323–0111.

Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: ER09–872–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits Second Revised Sheet 362 to FERC Electric Tariff, Fourth Revised Volume 1 effective 5/19/09.

Filed Date: 03/20/2009.

Accession Number: 20090323–0105.

Comment Date: 5 p.m. Eastern Time on Friday, April 10, 2009.

Docket Numbers: ER09–873–000.

Applicants: ISO New England Inc.; New England Power Pool

Description: ISO New England Inc & the New England Power Pool submits Third Revised Sheet 7245 *et al.* to FERC Electric Tariff 3 *et al.* effective 7/1/09.

Filed Date: 03/20/2009.

Accession Number: 20090323–0106.

Comment Date: 5 p.m. Eastern Time on Friday, April 10, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–13–000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection L.L.C. supplements its section 204 application.

Filed Date: 03/20/2009.

Accession Number: 20090320–5076.

Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Docket Numbers: ES09–14–000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection L.L.C. submits supplemental Information to its January 30, 2009 application.

Filed Date: 03/20/2009.

Accession Number: 20090320–5077.

Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–19–001; OA08–63–001.

Applicants: Ohio Valley Electric Corporation.

Description: OATT of Ohio Valley Electric Corporation.

Filed Date: 03/20/2009.

Accession Number: 20090320–5028.

Comment Date: 5 p.m. Eastern Time on Friday, April 10, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–6980 Filed 3–27–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–43–000]

Arkansas Public Service Commission, Complainant v. Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, Inc., Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, LLC, Entergy Texas, Inc., Respondents; Notice of Complaint

March 23, 2009.

Take notice that on March 20, 2009, pursuant to section 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2008) and sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824(e) and 825(e), Arkansas Public Service Commission (Complainant) filed a formal complaint against Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, LLC, and Entergy Texas, Inc. (Respondents) seeking relief by way of a modification of certain text found in Section 30.12 of Service Schedule MSS–3 to the System Agreement (Rough Production Cost Equalization Formula Tariff) among the Complainant and Respondents, which relates to the definitions of depreciation expense, nuclear decommissioning expense, and accumulated provision for depreciation and amortization.

The Complainant certifies that copies of the complaint were served on the representatives of the Respondents listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 9, 2009.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–6949 Filed 3–27–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filings

February 6, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–2508–005.

Applicants: ENMAX Energy Marketing, Inc.

Description: ENMAX Energy Marketing Inc submits notice of change in status.

Filed Date: 02/02/2009.

Accession Number: 20090204–0086.

Comment Date: 5 p.m. Eastern Time on Monday, February 23, 2009.

Docket Numbers: ER02–537–018.

Applicants: Shady Hills Power Company, L.L.C.

Description: GE Companies submits a supplement to their 7/28/08 filing of a Notice of Change in Status.

Filed Date: 02/04/2009.

Accession Number: 20090206–0281.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 25, 2009.

Docket Numbers: ER06–738–016; ER06–739–016; ER03–983–013; ER07–501–014; ER02–537–018; ER07–758–010; ER08–649–008.

Applicants: Cogen Technologies Linden Venture, L.P.; East Coast Power Linden Holding, LLC; Fox Energy Co. LLC; Birchwood Power Partners, L.P.; Shady Hills Power Company, L.L.C.; Inland Empire Energy Center L.L.C.; EFS Parlin Holdings, LLC.

Description: GE Companies submits a supplement to their 7/28/08 filing of a Notice of Change in Status.

Filed Date: 02/04/2009.

Accession Number: 20090206–0281.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 17, 2009.

Docket Numbers: ER07–650–001.

Applicants: Integrys Energy Services, Inc.

Description: Integrys Energy Services, Inc submits an amendment to request for Category 1 Seller status in the Southwest Power Pool Region and on December 23, 2008, submitted a request for Category 1 Seller classification for the Southeast Region.

Filed Date: 02/03/2009.

Accession Number: 20090205–0273.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 24, 2009.

Docket Numbers: ER07–1136–001.

Applicants: Camp Grove Wind Farm LLC.

Description: Camp Grove Wind Farm LLC submits revised sheets to its market-based rate tariff for Order 697.

Filed Date: 01/30/2009.

Accession Number: 20090203–0151.

Comment Date: 5 p.m. Eastern Time on Friday, February 20, 2009.

Docket Numbers: ER09–573–000; ER09–91–001.

Applicants: Midwest Independent Transmission System Operator, Inc

Description: Midwest ISO submits revised Sheet 1883 *et al.* to FERC Electric Tariff, Third Revised Volume 1.

Filed Date: 01/15/2009.

Accession Number: 20090127–0315.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 17, 2009.

Docket Numbers: ER09–646–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation submits for filing Transmission Service Agreement with The Energy Authority.

Filed Date: 02/02/2009.

Accession Number: 20090203–0258.

Comment Date: 5 p.m. Eastern Time on Monday, February 23, 2009.

Docket Numbers: ER09–647–000.

Applicants: Orange and Rockland Utilities, Inc.

Description: Orange and Rockland Utilities, Inc submit notice of cancellation for multiple power sales Service Agreements executed pursuant to Orange and Rockland's FERC Electric Tariff, Second Revised Volume 4.

Filed Date: 02/02/2009.

Accession Number: 20090203–0256.

Comment Date: 5 p.m. Eastern Time on Monday, February 23, 2009.

Docket Numbers: ER09–648–000.

Applicants: Orange and Rockland Utilities, Inc.

Description: Orange and Rockland Utilities, Inc submits notices of cancellation for multiple rate schedules that provided for wholesale power sales and transmission service subject to the Commission's jurisdiction.

Filed Date: 02/02/2009.

Accession Number: 20090203–0259.

Comment Date: 5 p.m. Eastern Time on Monday, February 23, 2009.

Docket Numbers: ER09–652–000.

Applicants: Connecticut Light & Power Company.

Description: Northeast Utilities Service Company submits the Joint Request for Expedited Consideration and Limited Waiver of Demand Resource Qualification Deposit Payment Deadline etc.

Filed Date: 01/30/2009.

Accession Number: 20090203–0257.

Comment Date: 5 p.m. Eastern Time on Friday, February 20, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–6947 Filed 3–27–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0123; FRL–8405–9]

Pentachloronitrobenzene (PCNB); Notice of Receipt of Requests to Amend Registrations to Terminate Uses of Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by the registrants to voluntarily amend their registrations to terminate uses of certain products containing the pesticide pentachloronitrobenzene, or PCNB. The requests would terminate PCNB use on golf course roughs (i.e., use on golf courses will be limited to tees, greens, and fairways); residential sites including lawns, yards, and ornamental plants and gardens around homes and apartments; grounds around day care facilities; school yards; parks (except industrial parks); playgrounds; and athletic fields (except professional and college fields). The requests would not terminate the last PCNB products registered for use in the United States. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests within this period. Upon acceptance of these requests, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before April 29, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0123, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0123. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jill Bloom, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8019; fax number: (703) 308–7070; e-mail address: *bloom.jill@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background on the Receipt of Requests to Amend Registrations to Delete Uses

This notice announces receipt by EPA of requests from the registrants, Amvac Chemical Corporation and Chemtura Corporation, to amend 31 PCNB product registrations to terminate certain uses. PCNB is a fungicide used to control diseases of turf, ornamentals, cole crops, potatoes, cotton, and other agricultural and horticultural crops. In letters dated February 10, 2009, Amvac and Chemtura each requested that EPA amend the pesticide product registrations identified in this notice to terminate certain uses. Specifically, Amvac and Chemtura requested the termination of the uses of PCNB on golf course roughs; residential sites including lawns, yards, and ornamental plants and gardens around homes and apartments; grounds around day care facilities; school yards; parks (except industrial parks); playgrounds; and athletic fields (except professional and college fields). The registrants' requests will not terminate the last PCNB products registered in the United States for these uses. The Amvac and Chemtura products include manufacturing-use products from which

other U.S.-registered PCNB products are formulated; after the relevant existing stocks provisions have expired, end-use products formulated from those manufacturing-use products must bear labeling consistent with the revised labeling on the Amvac and Chemtura products.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of requests from the registrants to amend certain PCNB product registrations to terminate the uses detailed in Unit II. The affected products and the registrants making the requests are identified in Tables 1 and 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period for minor uses, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The PCNB registrants have requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued amending the affected registrations.

TABLE 1.—PCNB PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration Number	Product Name	Product Type	Company
400–399	Terraclor 75W Wettable Powder	End-use	Chemtura Corporation
400–401	Terraclor Technical	Manufacturing–use	Chemtura Corporation
400–402	Terraclor 10% Granular, Revere 10% Granular	End-use	Chemtura Corporation
400–403	Greenback Lawn Fungicide	End-use	Chemtura Corporation
400–404	Turfcide Emulsifiable Fungicide	End-use	Chemtura Corporation
400–407	Turfcide 10% Granular	End-use	Chemtura Corporation
400–414	Terraclor 90% Dust Concentrate	Manufacturing–use	Chemtura Corporation
400–453	Terraclor Flowable Fungicide	End-use	Chemtura Corporation
400–454	Turfcide 4F, Turfcide 400, Terraclor 400, Revere 4,000	End-use	Chemtura Corporation
400–457	Turfcide 15G	End-use	Chemtura Corporation
400–458	Terraclor 15G	End-use	Chemtura Corporation
400–459	Terrazan PCNB Technical 99%	Manufacturing–use	Chemtura Corporation
400–460	Terrazan 24% Emulsifiable Concentrate	End-use	Chemtura Corporation
400–479	Turfcide WDG	End-use	Chemtura Corporation
400–504	Terraclor Tech 96	Manufacturing–use	Chemtura Corporation
5481–197	Technical Grade PCNB 95%	Manufacturing–use	Amvac Chemical Corporation
5481–211	PCNB 10% Granules Soil Fungicide	End-use	Amvac Chemical Corporation
5481–214	PCNB Soil & Turf Liquid Drench	End-use	Amvac Chemical Corporation
5481–279	PCNB 75% Wettable Powder	End-use	Amvac Chemical Corporation
5481–419	PCNB 75W Turf and Ornamental Soil Fungicide	End-use	Amvac Chemical Corporation
5481–438	80% PCNB	Manufacturing-use	Amvac Chemical Corporation
5481–441	PCNB 75 DG	End-use	Amvac Chemical Corporation
5481–443	PCNB 2 Flowable Turf & Ornamental Soil Fungicide	End-use	Amvac Chemical Corporation

TABLE 1.—PCNB PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT—Continued

Registration Number	Product Name	Product Type	Company
5481–444	PCNB 10 G Turf & Ornamental Soil Fungicide	End-use	Amvac Chemical Corporation
5481–450	PCNB 20% WDG Soil Fungicide	End-use	Amvac Chemical Corporation
5481–453	PCNB 75 WSP	End-use	Amvac Chemical Corporation
5481–457	Turfpro WSP Turf & Ornamental Soil Fungicide	End-use	Amvac Chemical Corporation
5481–464	Par-Flo 6F	End-use	Amvac Chemical Corporation
5481–465	Par-Flo	End-use	Amvac Chemical Corporation
5481–471	Win-Flo 6F	End-use	Amvac Chemical Corporation
5481–472	Win-Flo	End-use	Amvac Chemical Corporation

Table 2 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 of this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company Number	Company Name and Address
400	Chemtura Chemical Corporation, 1995 Benson Road, Middlebury, CT 06749
5481	Amvac Chemical Corporation, 4695 MacArthur Court, Suite 1250, Newport Beach, CA 92660

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before April 29, 2009. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) requests listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

In any order issued in response to these requests for amendments to terminate uses, the Agency proposes to include the following provisions for the treatment of any existing stocks of the products identified or referenced in Table 1 in Unit III.

Amvac Corporation and Chemtura Chemical Corporation will be permitted to sell or distribute existing stocks of the manufacturing-use products referenced in Table 1 of Unit III. with labels that are not revised per their request as described in Unit III. (i.e., ''previously approved labeling''), until 6 months after the effective date of cancellation. Persons other than Amvac Corporation or Chemtura Chemical Corporation may continue to use existing stocks of the manufacturing-use products referenced in Table 1 of Unit III. with previously approved labeling, for formulation into end-use products until 18 months after the effective date of cancellation.

Amvac Corporation and Chemtura Chemical Corporation will be permitted to sell or distribute existing stocks of the end-use products referenced in Table 1 of Unit III. with previously approved labeling, until 18 months after the effective date of cancellation. Users will be allowed to use existing stocks of the affected PCNB end-use products with previously approved labeling until such stocks are exhausted, provided such use is in a manner consistent with the previously approved labeling for that product.

If the requests for use termination are granted, the Agency intends to publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 18, 2009.

Richard P. Keigwin, Jr.,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E9–7043 Filed 3–27–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 11:01 a.m. on Thursday, March 26, 2009, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Public-Private Investment Fund.

In calling the meeting, the Board determined, on motion of Vice Chairman Martin J. Gruenberg, seconded by Acting Director Scott M. Polakoff (Office of Thrift Supervision), concurred in by Director Thomas J. Curry (Appointive), Julie L. Williams, acting in the place and stead of Director John C. Dugan (Comptroller of the Currency), and Chairman Sheila C. Bair, that Corporation business required its

consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(8), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: March 26, 2009.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–7188 Filed 3–26–09; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before May 29, 2009.

ADDRESSES: You may submit comments, identified by *FR 1380 or FR 3051* by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- *Fax:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission including, the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

Report title: Studies to Develop and Test Consumer Regulatory Disclosures.

Agency form number: FR 1380.

OMB control number: 7100–0312.

Frequency: Consumer surveys: Qualitative testing, 4; Quantitative testing, and 4; Institution or Stakeholder surveys: Qualitative survey, 50; Quantitative survey, 2.

Reporters: Consumers, financial institutions, or stakeholders that engage in consumer lending and provide other financial products and services.

Estimated Annual Reporting Hours: 20,884 hours.

Estimated Average Hours per Response: Consumer surveys: Qualitative testing, 2 hours; Quantitative testing, 0.33 hours; and Institution or Stakeholder surveys: Qualitative survey, 10 hours; Quantitative survey, 15 hours.

Estimated Number of Respondents: Consumer surveys: Qualitative testing, 225; Quantitative testing, 1,200; and Institution or Stakeholder surveys: Qualitative survey, 20; Quantitative survey, 250.

General Description of Report: This information collection is authorized pursuant to the: Home Mortgage Act, Section 806 (12 U.S.C. 2804(a)); Community Reinvestment Act, Section 806 (12 U.S.C. 2905); Competitive Equality Banking Act, Section 1204 (12 U.S.C. 3806) (adjustable rate mortgage caps); Expedited Funds Availability Act, Section 609 (12 U.S.C. 4008); Truth in Saving Act, Section 269 (12 U.S.C. 4308); Federal Trade Commission Act, Section 18(f) (15 U.S.C. 57a(f)); Truth in Lending Act, Section 105 (15 U.S.C. 1604); Mortgage Disclosure

Improvement Act, Sections 2501 through 2503 of the Housing and Economic Recovery Act of 2008 (15 U.S.C. 1638(b)(2)) (early disclosures for home refinance loans and home equity loans) Higher Education Opportunity Act of 2008, Section 1021(a) (15 U.S.C. 1638(e)(5)) (private student loan disclosures) Fair Credit Reporting Act, Section 621 (15 U.S.C. 1681s(e)); Equal Credit Opportunity Act, Section 703 (15 U.S.C. 1691b(a)); Electronic Funds Transfer Act, Section 904 (15 U.S.C. 1693b); and Gramm-Leach-Bliley Act, Section 504 (15 U.S.C. 6804). Respondent participation in the survey is voluntary. If the Federal Reserve contracts with an outside firm that retains the respondent identifying data and, pursuant to a contractual agreement, that data cannot be reported to the Federal Reserve, then the respondent identifying data cannot be considered an agency record and would not be subject to disclosure under the Freedom of Information Act (FOIA). However, if there is no contractual agreement between the Federal Reserve and an outside firm regarding the reporting of respondent identifying data, or if the Federal Reserve conducted the survey itself, the information could be considered an agency record subject to subsection (b)(6) of the FOIA. The confidentiality of the information obtained from financial institutions and other stakeholders will be determined on a case-by-case basis when the specific questions to be asked on each particular survey are formulated, but before respondents are contacted. Depending upon the survey questions, confidential treatment could be warranted under subsection (b)(4) of the FOIA. 5 U.S.C. § 552(b)(4) and (6).

Abstract: The FR 1380 is used to gather qualitative and quantitative information directly from consumers (consumer studies), and also to gather qualitative and quantitative information from financial institutions offering consumer financial products and services and from other stakeholders, such as brokers, appraisers, settlement agents, software vendors, and consumer groups (stakeholder studies). This information collection is specifically targeted to the development of consumer regulations. The consumer studies gather information about individual consumers' knowledge of, and attitudes toward, consumer disclosures used by financial institutions in compliance with Federal Reserve regulations. The consumer studies may also enable the Federal Reserve to develop and test consumer education resources. The stakeholder studies gather information from the institutions offering financial products and services and other third parties regarding products, disclosure, marketing, advertising, and sales practices.

Proposal to approve under OMB delegated authority the implementation of the following report:

Report Title: Microeconomic Survey.

Agency Form Number: FR 3051.

OMB Control Number: 7100–0321.

Frequency: Annually and monthly, as needed.

Reporters: Individuals, households, and financial and non-financial businesses.

Estimated Annual Reporting Hours: Annual, 6,000 hours; Monthly, 18,000 hours.

Estimated Average Hours per Response: Annual, 30 minutes; Monthly, 60 minutes.

Estimated Number of Respondents: Annual, 6,000; Monthly, 3,000.

General Description of Report: This information collection is voluntary (12 U.S.C. 225A and 263). Generally, when the survey or study is conducted by an outside firm, names or other such directly identifying characteristics would not be reported to the Federal Reserve. In circumstances where identifying information is provided to the Federal Reserve, such information could possibly be protected from Freedom of Information Act disclosure by FOIA exemptions 4 and 6 (5 U.S.C. 552(b)(4) and (6)).

The Federal Reserve Board's Microeconomic Surveys section in the Division of Research and Statistics is an official statistical unit, as defined under the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2002 (44 U.S.C. 3501). When information is collected by a private contractor under the oversight of that section, there are stringent requirements for protecting the data and respondents may be given a legally binding pledge of confidentiality. The pledge would disallow any use of the data for a non-statistical purpose.[1] When the Federal Reserve collects data directly (that is, without the use of a private data collection company or other such agent), respondents may also be offered such a pledge if the data are intended for a statistical purpose.

Abstract: The Federal Reserve would use this event-driven survey to obtain information specifically tailored to the Federal Reserve's supervisory, regulatory, operational, and other responsibilities. The Federal Reserve proposes to conduct the FR 3051 up to 13 times per year (including one survey on an annual basis and another on a monthly basis). The frequency and content of the questions would depend on changing economic, regulatory, or legislative developments.

Board of Governors of the Federal Reserve System, March 24, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–6923 Filed 3–27–09; 8:45 am]

BILLING CODE 6210–01–P

[1] "Non-statistical" is defined precisely in CIPSEA. Loosely, an information collection undertaken for a non-statistical purpose would be one intended to support a regulatory action or other action specifically targeted to the entity on which data were collected.

GENERAL SERVICES ADMINISTRATION

Notice of Intent To Prepare an Environmental Impact Statement for the Reconfiguration and Expansion of the San Luis I Land Port of Entry

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Notice of intent with request for comments.

SUMMARY: The General Services Administration (GSA) announces its intent to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) of 1969 to assess the potential impacts of reconfiguration and expansion of the San Luis I Land Port of Entry (LPOE) in San Luis, Arizona.

The proposed action is for GSA to reconfigure the existing downtown San Luis LPOE and expand it to improve its functionality, capacity, and security. The San Luis I LPOE was built in 1984 and is operated by the U.S. Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP). The facility currently handles all traffic modes, including commercial vehicles, buses, privately operated vehicles (POVs), and pedestrians. However, the existing facility is inadequate relative to CBP's security standards and is incapable of adequately handling current and projected traffic volumes. GSA therefore is proposing to reconfigure and expand the existing San Luis I LPOE so that it may continue to serve POV's, buses and pedestrians. GSA is currently constructing San Luis II LPOE that will become the commercial port of entry for Yuma County, which it expects to complete in late 2009 at which time the commercial operations at San Luis I will cease.

GSA proposes to expand the current port by utilizing the vacated commercial space and acquiring approximately one

acre of land along the eastern boundary of the LPOE, and approximately one acre along the western boundary of the LPOE. This expansion will mitigate traffic congestion in the port and allow an increase of the number of inspection lanes and employee parking. The expansion and reconfiguration of the LPOE will accommodate 11 primary booths for northbound inspection and allow for the future accommodation of four additional booths, including one booth for U.S./Mexico Emergency Vehicle pathway. The current six primary northbound U.S. entry lanes will be converted into three primary booths for U.S. entry for bus/high occupancy vehicles/recreational vehicles (HOV/RV) and bicycles. Southbound vehicle inspection lanes will be expanded from two to three lanes and four adjacent secondary inspection stalls will be constructed. Under the proposed action, a new headhouse facility will be constructed, administrative offices will be renovated, and pedestrian processing facilities would be expanded. Roadway modifications within the port will be conducted to improve traffic movement through the port and to enhance pedestrian safety. These modifications will also allow for establishment of an emergency route through the port.

The EIS will evaluate the potential environmental impacts associated with alternatives to implement the proposed action, including the No Action Alternative:

Alternative 1: Reconfigure the existing San Luis I LPOE and expand facilities through acquisition of approximately one acre of adjacent land to the west and approximately one acre of adjacent land to the east.

No Action Alternative: Continue operations in the existing LPOE facilities as they are currently configured. This alternative is included to provide a basis of comparison to the action alternative as required by NEPA regulations (40 CFR 1002.14[d]).

SUPPLEMENTARY INFORMATION: The public scoping period starts with publication of this notice in the **Federal Register** and will continue for 45 days from the date of the notice. GSA will consider all comments received or post-marked by that date in defining the scope of the EIS.

A public scoping meeting will be held to provide the public with an opportunity to present comments, ask questions, and discuss concerns regarding the scope of the EIS with GSA representatives. GSA will hold a public scoping meeting on April 14, 2009 at the San Luis City Hall Council Chambers, 1090 E. Union Street from 4 to 7 p.m.

DATES: Interested parties should submit written comments on or before May 14, 2009.

ADDRESSES: Written comments concerning the scope of the EIS should be sent to GSA San Luis Scoping, c/o Parsons, 1700 Broadway Suite 900, Denver, CO 80290 or send an e-mail to *GSASanLuis@parsons.com.*

FOR FURTHER INFORMATION CONTACT: Maureen Sheehan by phone at (415) 522–3601 or by e-mail at *Maureen.sheehan@gsa.gov.*

Dated: March 20, 2009.

Abdee Gharavi,

Portfolio Division Director, 9PT.

[FR Doc. E9–7158 Filed 3–27–09; 8:45 am]

BILLING CODE 6820–YF–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0937–0198]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–6974.

Proposed Project: Public Health Service Polices on Research Misconduct (42 CFR Part 93)–OMB No 0937–0198-Extension-Office of Resource Integrity.

Abstract: This is a request to extend the currently approved collection. The purpose of the Annual Report on Possible Research Misconduct (Annual Report) form is to provide data on the amount of research misconduct activity occurring in institutions conducting PHS supported research. In addition this provides an annual assurance that the institution has established and will follow administrative policies and procedures for responding to allegations of research misconduct that comply with the Public Health Service (PHS) Policies on Research Misconduct (42 CFR Part 93). Research misconduct is defined as receipt of an allegation of research misconduct and/or the conduct of an inquiry and/or investigation into such allegations. These data enable the ORI to monitor institutional compliance with the PHS regulation. Lastly, the form will be used to respond to congressional requests for information to prevent misuse of Federal funds and to protect the public interest.

ESTIMATED ANNUALIZED BURDEN

Forms (If necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
PHS–6349	Awardee Institutions	5246	1	6/60	525

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E9–7023 Filed 3–27–09; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–09BG]

Proposed Data Collection Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Field Test of Communication and Marketing Variables for Health Protection—New—National Center for Health Marketing/Coordinating Center for Health Information Service (NCHM/CCHIS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC does not have a mechanism to assess and monitor the health communication and marketing components of health protection. While CDC does evaluate specific health communication and marketing programs and projects, the common elements rooted in communication and marketing theories and constructs are not identified across programs and projects, nor frequently compared after the fact to ascertain the underlying factors and dynamics that inform and shape individual and group behaviors and actions. The purpose of this project is to develop a core set of communication and marketing constructs to inform CDC health protection programs and projects as well as track population-level changes over time.

CDC seeks a flexible platform that can be adapted to explore a wide range of health protection behaviors and inform communication and marketing efforts across CDC program areas. The survey platform underlying this field test is based on the People and Places framework (Maibach *et al.*, 2007; *http://www.biomedcentral.com/1471=2458/7/88*), and incorporates key constructs from health behavior theories and communication models to illustrate how personal and environmental factors may influence behavior. This platform offers the flexibility to develop survey items to assess a specific health topic (*e.g.*, pan/seasonal flu, natural hazards, bioterrorism, etc.) while simultaneously relying on a standardized set of core underlying social-psychological and communication constructs.

The proposed data collection is to conduct a field test of the survey instrument focusing on the core communication and marketing constructs for health protection behaviors. The field test survey will be administered to a purposive sample of 1,500 respondents. Two modes of administration will be tested, telephone (both landline and cell) and self-administration via the Web. The telephone survey will be conducted in three metropolitan areas. The Web survey will use an on-going national consumer panel.

Rather than representative random sampling from the population, the sampling is purposive, designed to reach subpopulations of those who are vulnerable from a health protections perspective and those who have low health literacy, that is, difficulty accessing and/or understanding health messages. Therefore, included in the target groups are the elderly, who may be somewhat isolated and for whom health messages may be confusing; people of low socioeconomic status, whose level of education can be a barrier to comprehending and following health messages; and persons not fluent in English, for whom innovative ways of communicating health messages may be necessary. For this nonprobability sample, telephone respondents will be recruited through commercial lists that optimize reaching specific subpopulations. Members of the general population will be surveyed as well in order to provide a benchmark for the subpopulations of interest. Web respondents will be recruited through an existing national consumer panel.

CDC will use the field test data to assess continuity of response patterns within each of the subgroups and to determine differences in administration time. In addition to subgroup population differences in attitudes, beliefs, and health behaviors, CDC will use the data to examine item-level mode effects, regional differences, and administrative/logistical barriers to guide the design of core measure surveys for other health protection behaviors.

There is no cost to respondents other than their time to complete the survey.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Screener	15,000	1	2/60	500
General Population Survey	750	1	18/60	225
Elderly Survey	250	1	18/60	75
Low SES English Survey	250	1	18/60	75
Hispanic (in-language) Survey	150	1	18/60	45
Chinese (in-language) Survey	50	1	18/60	15

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Vietnamese (in-language) Survey	50	1	18/60	15
Total	16,500			950

Dated: March 16, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–6938 Filed 3–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–09–09BC]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Exploring HIV Prevention Communication Among Black Men Who Have Sex with Men In New York City: Project BROTHA—New—National Center for HIV/AIDS, Viral Hepatitis, Sexually Transmitted Diseases, and Tuberculosis Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description: CDC is requesting OMB approval to administer a survey, conduct interviews and offer HIV rapid testing in Black Men who have sex with Men (BMSM) and other Men who have Sex with Men (MSM) in New York City. The purpose of the proposed study is to assess how interpersonal communication within BMSM social networks may be related to risk for HIV infection and attitudes towards HIV testing.

Data collection will occur over the course of 2–3 years. After screening for eligibility, a total of 300 BMSM and other MSM in their social networks will be enrolled in 2 phases: (1) 350 BMSM will be recruited and screened to find 100 eligible BMSM participants, and (2) the 100 first phase participants will then recruit 200 other MSM within their social networks to participate in the second phase. Quantitative surveys will be administered by computers and personal interviews will be conducted to collect qualitative data (at baseline and 3-month follow-up). Participants in both phases will be offered rapid HIV testing, and declining an HIV test will not negatively impact their study participation. The research questions being explored are relevant for understanding how interpersonal communication with members of one's social networks are related to risk for contracting HIV infection and attitudes towards HIV testing.

This study will provide important epidemiologic information useful for the development of HIV prevention interventions for BMSM. Men will complete a 5-minute eligibility screening interview. The baseline computer-based survey will take 45 minutes. The qualitative interview will take approximately 75 minutes. The number of respondents who will accept HIV testing is estimated to be 200 (accounting for those who did not test at baseline and those who do not consent to test at follow-up). HIV counseling and rapid testing will take 45 minutes. The 3-month follow-up survey will take approximately 30 minutes; the follow-up qualitative interview will take approximately 45 minutes. There is no cost to the respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Respondents	Types of data collection	Number of respondents	Number of responses per respondent	Burden per response (In hours)	Total burden (In hours)
BMSM respondents only:	Screening interview	750	1	5/60	63
BMSM and other MSM respondents: Baseline.	ACASI survey interview	300	1	45/60	225
	Qualitative interview	300	1	1.25	375
	HIV testing & counseling	200	1	45/60	150
BMSM and other MSM respondents: 3 month follow-up.	ACASI survey interview	300	1	30/60	150
	Qualitative interview	300	1	45/60	225
	HIV testing & counseling	200	1	45/60	150

ESTIMATE OF ANNUALIZED BURDEN TABLE—Continued

Respondents	Types of data collection	Number of respondents	Number of responses per respondent	Burden per response (In hours)	Total burden (In hours)
Total Burden Hours				1338	

March 12, 2009.

Marilyn S. Radke,

Reports Clearance Officer; Centers for Disease Control and Prevention.

[FR Doc. E9–6939 Filed 3–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Time and Date: 8:30 a.m.–3:30 p.m., April 16, 2009.

Place: Marriott Key Bridge, 1401 Lee Highway, Arlington, VA 22209.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people. Teleconference available toll-free; please dial (877)507–3792, Participant Pass Code 7271586.

Purpose: The Secretary, the Assistant Secretary for Health, and by delegation the Director, Centers for Disease Control and Prevention, are authorized under Sections 301 and 308 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The Board of Scientific Counselors shall provide guidance to the Director, National Institute for Occupational Safety and Health on research and prevention programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings and disseminating results. The Board shall evaluate the degree to which the activities of the National Institute for Occupational Safety and Health: (1) Conform to appropriate scientific standards, (2) address current, relevant needs, and (3) produce intended results.

Matters to be Discussed: Agenda items include a report from the Acting Director of NIOSH; NIOSH Implementation of the National Academies Program Recommendations for Personal Protective Technologies, Respiratory Diseases, and Agriculture, Forestry and Fishing; Occupational Safety and Health Surveillance Program Needs; Health Communications Using Social Media; Occupational Safety and Health Training Recommendations; and Future Meetings and Closing Remarks.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Roger Rosa, Executive Secretary, BSC, NIOSH, CDC, 395 E Street, SW., Suite 9200, Patriots Plaza Building, Washington, DC 20201, telephone (202) 245–0655, fax (202) 245–0664.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 16, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. E9–6941 Filed 3–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): CDC Grants for Public Health Research Dissertation, Panel I, Funding Opportunity Announcement (FOA) PAR07–231

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 12:30 p.m.–4:30 p.m., May 13, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to ''CDC Grants for Public Health Research Dissertation, Panel I, FOA PAR07–231.''

Contact Person for More Information: Maurine F. Goodman, M.A., M.P.H., Scientific Review Officer, Office of the Director, Office of the Chief Science Officer, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone: (404) 639–4640.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 23, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–6987 Filed 3–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): CDC Grants for Public Health Research Dissertation, Panel H, Funding Opportunity Announcement (FOA) PAR07–231

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 12:30 p.m.–4:30 p.m., May 12, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to ''CDC Grants for Public Health

Research Dissertation, Panel H, FOA PAR07–231.''

For More Information Contact: Maurine F. Goodman, M.A., M.P.H., Scientific Review Officer, Office of the Director, Office of the Chief Science Officer, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone: (404) 639–4640.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 23, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–6989 Filed 3–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Strengthening Infectious Disease Research Capacity for Public Health Action in Guatemala and Central America, Funding Opportunity Announcement (FOA) GH09–001

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 2 p.m.–5 p.m., April 30, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to ''Strengthening Infectious Disease Research Capacity for Public Health Action in Guatemala and Central America, FOA GH09–001.''

For Further Information Contact: Maurine F. Goodman, M.A., M.P.H., Scientific Review Officer, Office of the Director, Office of the Chief Science Officer, CDC, 1600 Clifton Road, NE., Mailstop D74, Atlanta, GA 30333, Telephone: (404) 639–4640.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 20, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. E9–6990 Filed 3–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control

Special Emphasis Panel (SEP): CDC Grants for Public Health Research Dissertation, Panel D, Funding Opportunity Announcement (FOA) PAR07–231

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 9 p.m.–5 a.m., May 14, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to ''CDC Grants for Public Health Research Dissertation, Panel D, FOA PAR07–231.''

Contact Person for More Information: Susan B. Stanton, D.D.S., Scientific Review Officer, Office of the Director, Office of the Chief Science Officer, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone: (404) 639–4640.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 23, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–7010 Filed 3–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Addressing Emerging Infectious Diseases in Bangladesh, Funding Opportunity Announcement (FOA) Number CI 09–002

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 12 p.m.–2 p.m., May 6, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of an application received in response to ''Addressing Emerging Infectious Diseases in Bangladesh, FOA CI 09–002.''

Contact Person for More Information: Gregory Anderson, M.P.H., M.S., Scientific Review Administrator, Strategic Science and Program Unit, Office of the Director, Coordinating Center for Infectious Diseases, CDC, 1600 Clifton Road, Mailstop E–60, Atlanta, GA 30333, Telephone: (404) 498–2275.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 23, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–7012 Filed 3–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): CDC Grants for Public Health Research Dissertation, Panel E, Funding Opportunity Announcement (FOA) PAR07–231

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 2 p.m.—4 p.m., May 5, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to ''CDC Grants for Public Health Research Dissertation, Panel E, FOA PAR07–231.''

For Further Information Contact: Susan B. Stanton, D.D.S., Scientific Review Officer, Office of the Director, Office of the Chief Science Officer, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone: (404) 639–4640.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 23, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–7015 Filed 3–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): CDC Grants for Public Health Research Dissertation, Panel G, Funding Opportunity Announcement (FOA) PAR07–231

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 12 p.m.—3 p.m., May 12, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to ''CDC Grants for Public Health Research Dissertation, Panel G, FOA PAR07–231.''

For Further Information Contact: Christine J. Morrison, PhD, Scientific Review Officer, Office of the Director, Office of the Chief Science Officer, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, *Telephone*: (404) 639–3098.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 23, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–7059 Filed 3–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): CDC Grants for Public Health Research Dissertation, Panel J, Funding Opportunity Announcement (FOA) PAR07–231

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 1:30 p.m.–3 p.m., May 14, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to ''CDC Grants for Public Health Research Dissertation, Panel J, FOA PAR07–231.''

Contact Person for More Information: Maurine F. Goodman, M.A., M.P.H., Scientific Review Officer, Office of the Director, Office of the Chief Science Officer, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, *Telephone*: (404) 639–4640.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 23, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–7062 Filed 3–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee for Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned subcommittee:

Time and Date: 9:30 a.m.–5 p.m., April 16, 2009.

Place: Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018. *Telephone:* (859) 334–4611, *Fax:* (859) 334–4619.

Status: Open to the public, but without a public oral comment period. To access by conference call dial the following information 1–(866) 659–0537, Participant Pass Code 9933701.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2009.

Purpose: The Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose

reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

Matters To Be Discussed: The agenda for the Subcommittee meeting includes: Discussion of cases under review from the 6th, 7th, and 8th sets of individual dose reconstructions; preparation of a letter report on the first 100 dose reconstruction cases reviewed; and, discussion of selection criteria and review rate for 2009.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person for More Information: Theodore Katz, Executive Secretary, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta GA 30333, *Telephone:* (513) 533–6800, Toll Free 1(800) CDC–INFO, E-mail *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 20, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–7064 Filed 3–27–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

National Center for Injury Prevention and Control Initial Review Group (NCIPC IRG)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC announces the following meeting of the aforementioned review group:

Times and Dates:

6 p.m.–6:30 p.m., April 13, 2009 (Open).
6:30 p.m.–8 p.m., April 13, 2009 (Closed).
8 a.m.–5 p.m., April 14, 2009 (Closed).
8 a.m.–5 p.m., April 15, 2009 (Closed).

Place: Doubletree Atlanta Buckhead (Smoke Free), 3342 Peachtree Road, NE., Atlanta, GA 30326, Telephone: (404) 231–1234.

Status: Portions of the meetings will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

Purpose: This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications submitted in response to Fiscal Year 2009 Requests for Applications related to the following individual research announcement: CE09–002, Adaptations of Evidence-Based Parenting Programs to Engage Fathers in Child Maltreatment Prevention (U01).

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Lisa T. Garbarino, B.S., NCIPC, Division of Injury Response, CDC, 4770 Buford Highway, NE., Mail-Stop F62, Atlanta, Georgia 30341–3724, Telephone: (404) 723–1527.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 20, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–7014 Filed 3–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control, Initial Review Group, (NCIPC, IRG)

In accordance with section 10(a)2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following meeting of the aforementioned review group:

Times and Date:

9 a.m.–9:30 a.m., April 22, 2009 (Open).
9:30 a.m.–6 p.m., April 22, 2009 (Closed).

Place: W Hotel, Atlanta Midtown, 188 14th Street, Atlanta, GA 30361, Telephone: (404) 892–6000.

Status: Portions of the meetings will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

Purpose: This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of individual research cooperative agreement applications submitted in response to Fiscal Year 2009 Requests for Applications related to the following individual research announcement: RFA-CE–09–008 ''Identifying Neighborhood Level Protective and Promotive Factors for Youth Violence (U01)''.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Jane Suen, Dr.P.H., M.S., NCIPC, CDC, 4770 Buford Highway, N.E., Mailstop F–62, Atlanta, Georgia 30341, Telephone: (770) 488–4281.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 20, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–7016 Filed 3–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Performance Progress Report.

OMB No.: 0970–0334.

Description: The Performance Progress Report (SF-PPR) is a set of uniform reporting formats used for standard reporting on performance

under grants and cooperative agreements.

In addition to allowing for uniformity of information collection, these formats will support systematic electronic collection and submission of information. These formats will provide interim and final performance progress information as required by OMB Circulars A–102 and 2 CFR 215.

The SF-PPR consists of a cover page and six optional formats. The Cover Page contains identifying data elements and a section for a performance narrative. Use of the cover page is required, and programs may require their respondents to submit only this page and/or attach a performance narrative. Alternatively, programs may opt to require the cover page and one or more of the six optional formats: Performance Measures, Program Indicators, Benchmark Evaluations, Table of Activity Results, Activity-Based Expenditures, and Program/Project Management.

The SF-PPR has been successfully piloted at the Administration for Children and Families (ACF). All discretionary programs (starting with FY09 awards) are to submit the SF-PPR to the ACF Office of Grants Management. Program offices with expiring data collections are required to migrate to the SF-PPR format. Additionally, a number of program offices have voluntarily migrated their collections to the SF-PPR format in anticipation of government-wide standardization. ACF, with its Online Data Collection tool (OLDC), has provided program offices with the capability to collect SF-PPR data electronically.

ACF and the Grants Center of Excellence (CoE) is sponsoring this collection on behalf of the Grants Policy Committee, other Federal grant-making agencies, and the CoE partners.

CoE Partners are Defined as:

Corporation for National and Community Service.
Denali Commission.
Department of State.
DHHS/Administration on Aging.
DHHS/Centers for Medicare Services.
DHHS/Health Research and Services Administration.
DHHS/Indian Health Services.
DHHS/Office of Public Health Services.
DOT/Federal Air Administration.
DOT/Federal Highway Administration.
DOT/Federal Motor Carrier Safety Administration.
DOT/Federal Railroad Administration.
DOT/Federal Transport Administration.
DOT/Pipeline and Hazardous Materials Safety Administration.
Environmental Protection Agency.
Institute of Museum and Library Services.
Social Security Administration.
Department of the Treasury.
USDA/Food Safety and Inspection Service.
Veterans Administration.

The revised burden estimates are based on grant projects and awards for ACF and its CoE partners for FY2008 as reported by internal ACF reporting systems and USASpending.gov.

Respondents: Federal government grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Performance progress report (SF-PPR)	131,281	1	0.42	55,138.02
Cover Page Continuation (SF-PPR–2)	86	1	0.33	28.38
Performance Measures (SF-PPR-A)	430	1	0.75	322.50
Program Indicators (SF-PPR-B)	8,961	1	3	26,883
Benchmark Evaluations (SF-PPR-C)	248	1	1.50	372
Table of Activity Results (SF-PPR-D)	4,238	1	0.75	3,178.50
Activity Based Expenditures (SF-PPR-E)	2,616	1	0.33	863.28
Program/Project Management (SF-PPR-F)	45	1	0.50	22.50

Estimated Total Annual Burden Hours: 86,808.18

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: infocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 25, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–7021 Filed 3–27–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0286]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Survey to Evaluate FDA's Food Defense Awareness Initiative ALERT

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 29, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and title ''Survey to Evaluate FDA's Food Defense Awareness Initiative ALERT.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Survey to Evaluate FDA's Food Defense Awareness Initiative ALERT

In July 2006, FDA announced its Food Defense Awareness Initiative, called ALERT (the letters stand for the five key components of the initiative: assure, look, employees, report, and threat). The ALERT initiative is intended to raise the awareness of State and local government agencies and the food industry regarding food defense issues. ALERT identifies five key points that industry and businesses can use to decrease the risk of intentional food contamination at their facility. The ALERT Web-based training module and more information on ALERT are available at *www.cfsan.fda.gov/~dms/defterr.html*.

Under section 903(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(b)(2)), FDA is authorized to conduct research relating to foods and to conduct educational and public information programs relating to the safety of the nation's food supply. Under this authority, FDA is planning to conduct a survey of first line supervisors working in a range of capacities in the food industry about their awareness and perceptions of the agency's ALERT initiative and the ALERT initiative informational materials. The purpose of the survey is to help FDA evaluate ALERT informational materials and to gauge whether the materials succeed in informing food industry supervisory employees about the risk of intentional food contamination and in motivating them to engage in protective behaviors. The survey results will be used to assess how knowledge and awareness, threat perceptions, attitudes, norms, benefits and barriers affect the implementation of the ALERT initiative.

The data will be collected using a Web-based questionnaire. The survey will employ a stratified sampling design. Using industry networks and listings, we will randomly sample from databases of seven industry groups (growers, packers, processors, warehouses, transporters, retailers, and food service operators). We will stratify within groups by organization size (small, medium, and large) based on number of employees on the payroll, for a total random sample of 2,500 organizations. Participation in the survey is voluntary. Cognitive interviews and a pre-test will be conducted prior to fielding the survey.

In the **Federal Register** of May 22, 2008 (73 FR 29759), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Cognitive Interviews	7	1	7	1	7
Telephone Interview - Pre-test Invitation	28	1	28	0.10	3
Completed Pre-test	14	1	14	0.25	4
Telephone Interview - Survey Invitation	5,000	1	5,000	0.10	500
Completed Survey	2,500	1	2,500	0.25	625
Total					1,139

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

In the 60-day notice published on May 22, 2008, FDA estimated the total burden hours to be 94 hours. FDA has made several changes to its burden estimate, reflected in table 1 of this document. The agency reduced the number of cognitive interviews from 10 to 7, added hours for 28 telephone pre-test invitations, increased the number of pre-tests from 10 to 14, added 5,000 survey invitations, and increased the number of completed surveys from 200 to 2,500. The total burden hours are estimated to be 1,138.3 (rounded to 1,139).

Cognitive interviews will be conducted with seven participants. We estimate that the cognitive interviews will take 60 minutes (1 hour) to complete for a total of 7 hours. An invitation to take a pre-test will be extended to 28 food-defense decision-makers; we estimate that it will take respondents 6 minutes (0.10 hours) to respond to the invitation and make arrangements to complete the pretest, for a total of 2.8 hours (rounded to 3). Fourteen respondents will complete the pre-test; we estimate that it will take respondents 15 minutes (0.25 hour) to complete the pretest for a total of 3.5 hours (rounded to 4). An invitation to take the survey will be extended to 5,000 food defense decision-makers; we estimate that it will take 6 minutes (0.10 hours) to respond to the invitation and make arrangements to complete the survey, for a total of 500 hours. Twenty-five hundred respondents will complete the survey. We estimate that it will take a respondent 15 minutes (0.25 hours) to complete the entire survey, for a total of 625 hours. Thus, the total estimated burden is 1,138.3 hours (rounded to 1,139).

FDA's burden estimate is based on prior experience with surveys that are similar to this proposed survey.

Dated: March 23, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–7002 Filed 3–27–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Maternal and Child Health Bureau Performance Measures for Discretionary Grants (OMB No. 0915–0298): Revision

The Maternal and Child Health Bureau (MCHB) intends to continue to collect performance data for Special Projects of Regional and National Significance (SPRANS), Community Integrated Service Systems (CISS), and other grant programs administered by MCHB.

The Health Resources and Services Administration (HRSA) proposes to continue using reporting requirements for SPRANS projects, CISS projects, and other grant programs administered by MCHB, including national performance measures, previously approved by OMB, and in accordance with the ''Government Performance and Results Act (GPRA) of 1993'' (Pub. L. 103–62). This Act requires the establishment of measurable goals for Federal programs that can be reported as part of the budgetary process, thus linking funding decisions with performance. Performance measures for MCHB discretionary grants were initially approved in January 2003. Approval from OMB is being sought to continue the use of these measures. Some of these measures are specific to certain types of programs, and will not apply to all grantees. Furthermore, these measures are based primarily on existing data, thereby minimizing the response burden consistent with program administration and management needs. Through the experience of utilizing these measures, we are enhancing them to better reflect program goals.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Burden hours per response	Total burden hours
Grant Report	898	1	898	6	5,388

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to OIRA *submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: March 18, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–6910 Filed 3–27–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Generic Clearance to Conduct Voluntary Customer/Partner Surveys

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Library of Medicine (NLM), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: *Title:* Generic Clearance to Conduct Voluntary Customer/Partner Surveys; *Type of Information Collection Request:* Extension of currently approved collection [OMB No. 0925–0476, expiration date 07/31/2009], *Form Number:* NA; *Need and Use of Information Collection:* Executive Order 12962 directed agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. Additionally, since 1994, the NLM has been a ''Federal Reinvention Laboratory'' with a goal of improving its methods of delivering information to the public. An essential strategy in accomplishing reinvention goals is the ability to periodically receive input and feedback from customers about the design and quality of the services they receive.

The NLM provides significant services directly to the public including health providers, researchers, universities, other federal agencies, state and local governments, and to others through a range of mechanisms, including publications, technical assistance, and Web sites. These services are primarily focused on health and medical information dissemination activities. The purpose of this submission is to obtain OMB's generic approval to continue to conduct satisfaction surveys of NLM's customers. The NLM will use the information provided by individuals and institutions to identify strengths and weaknesses in current services and to make improvements where feasible. The ability to periodically survey NLM's customers is essential to continually update and upgrade methods of providing high quality service. *Frequency of Response:* Annually or biennially. *Affected Public:* Individuals or households; businesses or other for profit; State or local governments; Federal agencies; non-profit institutions; small businesses or organizations. *Type of Respondents:* Organizations, medical researchers, physicians and other health care providers, librarians, students, and the general public. The annual reporting burden is as follows:

Types of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Researchers, Physicians, Other Health Care Providers, Librarians, Students, General Public	27,910	1	.129	3,607

The annualized cost to respondents for each year of the generic clearance is estimated to be $23,126. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: David Sharlip, National Library of Medicine, Building 38A, Room B2N12, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll free number 301–402–9680 or E-mail your request to *sharlipd@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: March 23, 2009.

Betsy L. Humphreys, M.L.S.,

Deputy Director, National Library of Medicine, National Institutes of Health.

[FR Doc. E9–6934 Filed 3–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Method of Making a Vaccine

Description of Technology: Current invention describes the methods to prepare vaccines, and to use such vaccines in the vaccination and treatment of human disease, *e.g.*, the human immunodeficiency virus (HIV) infections and cancer. More specifically, the present invention provides a vaccine and method for making same which is effective to elicit a desired antibody against a target antigen comprising a primary immunogen and a secondary immunogen, wherein the primary immunogen is effective to elicit B cell receptors (BCRs) that are on the maturational pathway of the desired antibody and have an intermediate degree of somatic mutational diversity, and the secondary immunogen comprises an epitope of the desired target antibody and is effective to further diversify the BCRs sufficient to form mature BCRs having the identical or substantially identical sequence as the desired antibody.

Applications: Treatment and prevention of HIV infection.

Advantages: Novel methods to design vaccines for HIV treatment and prevention; May also be used for designing vaccines for cancer treatment.

Development Status: In vitro data available.

Market: HIV therapeutics and preventatives.

Inventor: Dimiter S. Dimitrov (NCI).

Publications:

1. MY Zhang, Y Shu, S Phogat, X Xiao, F Cham, P Bouma, A Choudhary, YR Feng, I Sanz, S Rybak, CC Broder, GV Quinnan, T Evans, DS Dimitrov. Broadly cross-reactive HIV neutralizing human monoclonal antibody Fab selected by sequential antigen panning of a phage display library. J Immunol Methods. 2003 Dec;283(1–2):17–25.

2. MY Zhang, X Xiao, IA Sidorov, V Choudhry, F Cham, PF Zhang, P Bouma, M Zwick, A Choudhary, DC Montefiori, CC Broder, DR Burton, GV Quinnan Jr, DS Dimitrov. Identification and characterization of a new cross-reactive human immunodeficiency virus type 1-neutralizing human monoclonal antibody. J Virol. 2004 Sep;78(17):9233–9242.

3. Z Zhu, AS Dimitrov, KN Bossart, G Crameri, KA Bishop, V Choudhry, BA Mungall, YR Feng, A Choudhary, MY Zhang, Y Feng, LF Wang, X Xiao, BT Eaton, CC Broder, DS Dimitrov. Potent neutralization of Hendra and Nipah viruses by human monoclonal antibodies. J Virol. 2006 Jan;80(2):891–899.

4. MY Zhang, V Choudhry, IA Sidorov, V Tenev, BK Vu, A Choudhary, H Lu, GM Stiegler, HW Katinger, S Jiang, CC Broder, DS Dimitrov. Selection of a novel gp41-specific HIV-l neutralizing human antibody by competitive antigen panning. J Immunol Methods. 2006 Dec 20;317(1–2):21–30.

5. V Choudhry, MY Zhang, IA Sidorov, JM Louis, I Harris, AS Dimitrov, P Bouma, F Cham, A Choudhary, SM Rybak, T Fouts, DA Montefiori, CC Broder, GV Quinnan Jr, DS Dimitrov. Cross-reactive HIV–1 neutralizing monoclonal antibodies selected by screening of an immune human phage library against an envelope glycoprotein (gpI40) isolated

from a patient (R2) with broadly HIV-l neutralizing antibodies. Virology. 2007 Jun 20;363(1):79–90.

6. Z Zhu, S Chakraborti, Y He, A Roberts, T Sheahan, X Xiao, LE Hensley, P Prabakaran, B Rockx, IA Sidorov, D Corti, L Vogel, Y Feng, JO Kim, LF Wang, R Baric, A Lanzavecchia, KM Curtis, GJ Nabel, K Subbarao, S Jiang, DS Dimitrov. Potent cross-reactive neutralization of SARS coronavirus isolates by human monoclonal antibodies. Proc Natl Acad Sci USA. 2007 Jul 17;104(29):12123–12128.

7. Z Zhu, KN Bossart, KA Bishop, G Crameri, AS Dimitrov, JA McEachern, Y Feng, D Middleton, LF Wang, CC Broder, DS Dimitrov. Exceptionally potent cross-reactive neutralization of Nipah and Hendra viruses by a human monoclonal antibody. J Infect Dis. 2008 Mar 15;197(6):846–853.

8. MY Zhang, BK Vu, A Choudhary, H Lu, M Humbert, H Ong, M Alam, RM Ruprecht, G Quinnan, S Jiang, DC Montefiori, JR Mascola, CC Broder, BF Haynes, DS Dimitrov. Cross-reactive human immunodeficiency virus type 1-neutralizing human monoclonal antibody which recognizes a novel conformational epitope on gp41 and lacks reactivity against self antigens. J Virol. 2008 Jul;82(14):6869–6879.

Patent Status: U.S. Provisional Application No. 61/104,706 filed 11 Oct 2008 (HHS Reference No. E–322–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Sally Hu, Ph.D.; 301–435–5606; *HuS@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this method. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Anti-Hepatitis C Virus Activity of the Protein Scytovirin (SVN)

Description of Technology: The invention provides compositions and methods of use for potent anti-HCV protein scytovirin to prevent and treat HCV infections. Currently there is neither effective treatment nor vaccine against HCV infection and chronic HCV infection may lead to liver cancer and death. Scytovirin can be used alone or in combination with other anti-HCV drugs for HCV treatment and prevention.

Applications: The treatment and prevention of HCV infections.

Advantages: Potent anti-HCV activity; Can be applied both systematically or locally.

Development Status: In vitro data available.

Market: HCV therapeutics and preventatives.

Inventors: Barry R. O'Keefe et al. (NCI).

Publications: Data collection and manuscripts may be submitted in 2009.

Patent Status: U.S. Provisional Application No. 61/137,511 filed 31 Jul 2008 (HHS Reference No. E–161–2008/0–US–01).

Related Technology: HHS Reference No. E–017–2002/0—Scytovirins and Related Conjugates, Antibodies, Compositions, Nucleic Acids, Vectors, Host Cells, Methods of Production and Methods of Using Scytovirin.

Licensing Status: Available for licensing.

Licensing Contact: Sally Hu, Ph.D.; 301–435–5606, *HuS@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute CCR Molecular Targets Development Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: March 19, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–6933 Filed 3–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Treatment of Schistosomiasis Using Substituted Oxadiazole 2-Oxides

Description of Technology: Available for licensing and commercial development are pharmaceutical compositions and methods for the treatment of schistosomiasis in mammals. The various compositions are based on a number of compounds derived from 1,2,5-oxadiazole that are potent inhibitors of thioredoxin glutathione reductase (TGR), a critical parasite redox protein.

Schistosomiasis is a chronic disease caused by trematode flatworms of the genus *Schistosoma*, including *S. mansoni, S. japonicum* and *S. haematobium*. Adult schistosome parasites live in an aerobic environment within human hosts, and therefore must have effective mechanisms to maintain cellular redox balance. Additionally, the worms must be able to evade reactive oxygen species generated by the host's immune response. In most eukaryotes there are two major systems to detoxify reactive oxygen species, one based on the tripeptide glutathione and the other based on the protein thioredoxin. Glutathione reductase (GR) reduces glutathione disulfide, whereas thioredoxin reductases (TrxR) are pivotal in the Trx-dependent system. It was recently discovered that specialized TrxR and GR enzymes are absent in schistosomes. Instead, they are replaced by the unique multifunctional enzyme TGR. This reliance on a single enzyme for both glutathione disulfide and thioredoxin reduction suggests that the parasite's redox systems are subject to a bottleneck dependence on TGR, and that TGR represents a potentially important drug target.

Schistosomiasis remains a major and neglected health problem in many tropical areas. The health burden resulting from schistosomiasis is estimated to include more than 200 million people infected, 779 million at risk of infection, 280,000 deaths annually, and more than 20 million individuals experiencing high morbidity. Clinical manifestations of schistosomiasis infection include abdominal pain, cough, diarrhea,

eosinophilia, fever, fatigue, and hepatosplenomegaly. The primary route of infection occurs through contact with infected river and lake water, at which time the parasite burrows into the skin, matures, then migrates to other areas of the body. Adult schistosome parasites reside in the mesenteric veins of their human hosts, where they can survive for up to 30 years. The need to control schistosomiasis is acute and efforts have been ongoing for years on three main fronts: Prevention (via establishment and maintenance of sources of safe potable water), development of a vaccine, and use of drugs to treat the infection.

Applications: Treatment of schistosomiasis.

Advantages: The specific inhibition of TGR by the composition of this invention could satisfy the current need for new broad spectrum drugs to treat schistosomiasis, given the limitations of other drugs currently used or under development. Praziquantel, the only drug currently used against the infection, although stable, effective and relatively inexpensive, must be administered on an annual or semi-annual basis. Furthermore, there are preliminary reports of praziquantel-resistant cases. Arteminisinin has shown promise as a new drug for the treatment of schistosomiasis, but its use must be restricted in areas of malaria transmission so that its use as an antimalarial is not put at risk. Oxamniquine, a tetrahydroquinoline derivative, is effective only against *S. mansoni* and resistance has been reported, further reducing its potential value in schistosomiasis control.

Development Status: To date, the general oxadiazole-2-oxide chemotype described here has shown efficacy in animal models. Efforts to define the pharmacophore and optimize this chemotype in terms of potency, efficacy and selectivity will be reported in due course. Currently, selected oxadiazole-2-oxides are being evaluated in advanced ADME/T assays and are being formulated for oral dosing experiments.

Inventors: Craig J. Thomas (NHGRI) *et al.*

Publications

1. G Rai *et al.* Structure-mechanism insights and the role of nitric oxide donation guide the development of oxadiazole-2-oxides as targeted agents against Schistosomiasis. In preparation.

2. G Rai, CJ Thomas, W Leister, DJ Maloney. Synthesis of oxadiazole-2-oxide analogues as potential antischistosomal agents. Tetrahedron Lett., accepted.

3. AA Sayed, A Simeonov, CJ Thomas, J Inglese, CP Austin, DL Williams. Identification of oxadiazoles as new drug leads for the control of schistosomiasis. Nat Med. 2008 Apr;14(4):407–412.

4. A Simeonov, A Jadhav, AA Sayed, Y Wang, ME Nelson, CJ Thomas, J Inglese, DL Williams, CP Austin. Schistosoma mansoni thioredoxin-glutathione reductase (TGR) inhibitors identified via quantitative high-throughput screen. PLoS Negl Trop Dis. 2007;2:1–10.

Patent Status: U.S. Provisional Application No. 61/088,970 filed 14 Aug 2008, entitled ''Oxadiazole-2-Oxides as Antischistosomal Agents'' (HHS Reference No. E–162–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Cristina Thalhammer-Reyero, Ph.D., MBA; 301–435–4507; *thalhamc@mail.nih.gov*.

Collaborative Research Opportunity: The NIH Chemical Genomics Center is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize appropriate lead compounds described in U.S. Provisional Application No. 61/088,970. Please contact Dr. Craig J. Thomas via e-mail (*craigt@nhgri.nih.gov*) for more information.

Dendrimer Conjugates Targeting Adenosine Receptors, P2Y Receptors and Other Receptors of the GPCR Superfamily, for Use in the Treatment of Various Disorders, Including Neurodegenerative Diseases, Stroke, Epilepsy, Pain and Thrombosis

Description of Technology: Available for licensing and commercial development are conjugate compositions useful in the treatment of a variety of diseases, comprising a dendrimer and a ligand. The ligand is a functionalized congener of an agonist or antagonist of a receptor of the G-protein coupled receptor (GPCR) superfamily. More specifically, the invention focuses on several agonists and antagonists of A_1, A_{2A}, A_{2B}, and A_3 adenosine receptors and P2Y receptors, all members of the GPCR superfamily. For example, an agonist of the A_1 adenosine receptor is useful for treating a number of diseases including neurodegeneration, stroke, epilepsy, and pain. Antithrombotic treatment is another example of the use of this dendrimer technology. Dendrimers are polymers made from branched monomers through the iterative organic synthesis by adding one layer at each step to provide a symmetrical structure. Certain drugs, such as taxol, cisplatin, methotrexate, and ibuprofen, have been covalently linked to dendrimers in a reversible fashion. However, dendrimer conjugates in this application are biologically active without cleavage of the drug or cellular uptake. The conjugate of the invention can include any suitable dendrimer, particularly a poly(amidoamine) (PAMAM) dendrimer. The invention further provides pharmaceutical compositions and methods of treating various diseases and diagnostic methods employing such conjugates.

Applications

- Treatment of a number of diseases involving receptors of the GPCR superfamily.
- Determination of a potential treatment of a patient with an agonist or antagonist or receptors of the GPCR superfamily.

Advantages: The dendrimer conjugates described in this invention have one or more advantages over corresponding monomeric drugs, including altered pharmacokinetics, decreased toxicity, increased solubility, enhanced potency or selectivity due to the multivalency.

Development Status: The development is still in the early stages.

Inventors: Kenneth A. Jacobson *et al.* (NIDDK).

Relevant Publications: The published patent applications are listed below. In addition, the technology is further described in the following publications:

1. Y Kim, B Hechler, A Klutz, C Gachet, KA Jacobson. Toward multivalent signaling across G protein-coupled receptors from poly(amidoamine) dendrimers. Bioconjug Chem. 2008 Feb;19(2):406–411.

2. Y Kim, AM Klutz, KA Jacobson. Systematic investigation of polyamidoamine dendrimers surface-modified with poly(ethylene glycol) for drug delivery applications: Synthesis, characterization, and evaluation of cytotoxicity. Bioconjug Chem. 2008 Aug;19(8):1660–1672.

3. Y Kim, AM Klutz, B Hechler, ZG Gao, C Gachet, KA Jacobson. Application of the functionalized congener approach to dendrimer-based signaling agents acting through A_{2A} adenosine receptors. Purinergic Signal. 2009 Mar;5(1):39–50.

4. AA Ivanov and KA Jacobson. Molecular modeling of a PAMAM–CGS21680 dendrimer bound to an A_{2A} adenosine receptor homodimer. Bioorg Med Chem Lett. 2008 Aug 1;18(15):4312–4315.

5. AM Klutz, ZG Gao, J Lloyd, A Shainberg, KA Jacobson. Enhanced A_3 adenosine receptor selectivity of multivalent nucleoside-dendrimer conjugates. J Nanobiotechnol. 2008 Oct 23;6:12.

Patent Status

- U.S. Provisional Application No. 60/947,121 filed 20 Jun 2007 (HHS Reference No. E–219–2007/0–US–01).
- U.S. Provisional Application No. 61/045,498 filed 16 Apr 2008 (HHS Reference No. E–219–2007/1–US–01).
- International Application No. PCT/US08/067683 filed 20 Jun 2008, which published as WO2009/006046 on 08 Jan 2009 (HHS Reference No. E–219–2007/2–PCT–01).
- U.S. Patent Application No.12/143,451 filed 20 Jun 2008, which published as U.S. 20090012035 on 08 Jan 2009 (HHS Reference No. E–219–2007/2–US–02).

Licensing Status: Available for licensing.

Licensing Contact: Cristina Thalhammer-Reyero, PhD, MBA; 301–435–4507; *thalhamc@mail.nih.gov*.

Collaborative Research Opportunity: The Laboratory of Bioorganic Chemistry of the National Institute of Diabetes & Digestive & Kidney Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize dendrimer conjugates of suitably functionalized small molecule ligands of adenosine receptors and P2Y nucleotide receptors. Please contact Dr. Kenneth A. Jacobson at 301–496–9024, or e-mail *kajacobs@helix.nih.gov*, for more information.

Dated: March 19, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–6935 Filed 3–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

M2e Peptide Vaccine Against Influenza Virus

Description of Technology: The invention offered here is a vaccine candidate that can potentially confer protection against many types of influenza. Current vaccines against influenza virus are comprised of inactivated virus or purified influenza virus proteins and are targeted primarily to induce neutralizing antibodies against the viral hemagglutinin (HA) protein. The virus can mutate or shift antigenic types of HA rapidly rendering the vaccines ineffective and thus the vaccine has to be evaluated yearly to predict next year's circulating strains for vaccine preparation. Unlike HA, the small M2 protein is highly conserved among different strains of influenza virus and thus vaccines based on the M2 protein have the potential to be effective against different strains of influenza. The current invention relates to peptide vaccines composed of the extracellular domain of the M2 protein (M2e) conjugated to a carrier protein. In animals studies a mutant diphtheria toxin-M2e—conjugate induced high antibody levels to both vaccine components in mice.

Applications:

- Preventative and therapeutic for influenza virus.
- Vaccine against seasonal and pandemic influenza virus strains.

Advantages: Novel vaccine candidate with potential heterosubtypic protection.

Development Status: In vitro and *in vivo* data can be provided upon request.

Market: Influenza virus vaccines.

Inventors: Mark A. Miller (FIC), Rachel Schneerson (NICHD), Joanna Kubler-Kielb (NICHD), John B. Robbins (NICHD), Zuzanna Biesova (NICHD), and Jerry Keith (NICHD).

Patent Status: U.S. Provisional Application No. 61/089,384 filed 15 Aug 2008 (HHS Reference No. E–304–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Kevin W. Chang, Ph.D.; 301–435–5018; *changke@mail.nih.gov*.

Therapeutic HIV Vaccine and Associated Protocols

Description of Technology: This technology describes a therapeutic HIV DNA vaccine to be administered to individuals who have previously experienced or are undergoing antiretroviral therapy (ART). The therapeutic DNA vaccine can also be administered in combination with a vector encoding an IL–15 and/or IL–15 receptor alpha (IL–15Ra) polypeptide. In primate studies, the technology was found to be particularly effective when the vaccine composition was administered by electroporation and expressed six (6) HIV antigens (including two (2) gag polypeptides and two (2) envelope polypeptides) and IL–15 and IL–15Ra. The antigens are typically modified with a destabilizing sequence, a secretory polypeptide and/or a degradation signal. Successive administration up to as many as nine resulted in continual boost of the immune response against the encoded antigen. A potent immunotherapeutic vaccine as described here could be an important technology for the fight against HIV/AIDS.

Applications: Therapeutic HIV DNA vaccines.

Development Status: Primate data available.

Inventor: Barbara Felber *et al.* (NCI).

Patent Status:

PCT Application No. PCT/US2008/51004 filed 14 Jan 2008, which published as WO 2008/089144 on 24 Jul 2008 (HHS Reference No. E–103–2007/0–PCT–02); claiming priority to 12 Jan 2007.

PCT Application No. PCT/US2007/000774 filed 12 Jan 2007, which published as WO 2007/084342 on 26 Jul 2007 (HHS Reference No. E–254–2005/2–PCT–01); claiming priority to 13 Jan 2006. National Stage filed in AU, BR, CA, CN, EP, IL, IN, JP, MX, NZ, and US.

PCT Application No. PCT/US2001/45624 filed 01 Nov 2001, which published as WO 2002/36806 on 10 May 2002 (HHS Reference No. E–308–2000/0–PCT–02); claiming priority to 01 Nov 2000. National Stage filed in AU, CA, EP, JP, and US.

U.S. Patent Application No. 11/571,879 filed 09 Jan 2007 (HHS Reference No. E–249–2004/1–US–02).

Licensing Status: Available for licensing.

Licensing Contact: Kevin W. Chang, Ph.D.; 301–435–5018; *changke@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize HIV DNA vaccines. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: March 19, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–6936 Filed 3–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; NIH Loan Repayment Program Regarding Clinical & Pediatric Researchers.

Date: April 29, 2009.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/Keystone Bldg., Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27709.

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. (919) 541–0752. *mcgee1@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6930 Filed 3–27–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) National Advisory Council will meet on April 30, 2009 from 1 p.m. to 3 p.m. via teleconference.

The meeting will include discussion and evaluation of grant applications reviewed by Initial Review Groups. Therefore, the meeting will be closed to the public as determined by the Acting Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, Section 10(d).

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained either by accessing the SAMHSA Committee's Web site at *https://nac.samhsa.gov/CSAPcouncil/index.aspx* as soon as possible after the meeting, or by contacting CSAP National Advisory Council's Designated Federal Official, Ms. Tia Haynes (see contact information below).

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention National Advisory Council.

Date/Time/Type: April 30, 2009, 1 p.m. to 3 p.m.: CLOSED.

Place: 1 Choke Cherry Road, Conference Room 4–1058, Rockville, Maryland 20857.

Contact: Tia Haynes, Designated Federal Official, SAMHSA/CSAP National Advisory Council, 1 Choke Cherry Road, Room 4–1066, Rockville, MD 20857, Telephone: (240) 276–2436; FAX: (240) 276–2430, E-mail: *tia.haynes@samhsa.hhs.gov*.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health, Services Administration.

[FR Doc. E9–6960 Filed 3–27–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0192]

Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) Charter Renewal

AGENCY: Coast Guard, DHS.

ACTION: Notice of recertification.

SUMMARY: The purpose of this notice is to inform the public that the Coast Guard has recertified the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) as an alternative voluntary advisory group for Prince William Sound, Alaska. This certification allows the PWSRCAC to monitor the activities of terminal facilities and crude oil tankers under the Prince William Sound Program established by statute.

DATES: This recertification is effective for the period from February 28, 2009, through February 28, 2010.

FOR FURTHER INFORMATION CONTACT: LCDR Gary Koehler, Seventeenth Coast Guard District, by telephone at (907) 463–2809, or by mail at 709 W. Ninth Street, Juneau, Alaska 99801.

SUPPLEMENTARY INFORMATION:

Background and Purpose

As part of the Oil Pollution Act of 1990 (OPA 90), Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), 33 U.S.C. 2732, to foster a long-term partnership among industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals and oil tankers.

On October 18, 1991, the President delegated his authority under 33 U.S.C 2732(o) to the Secretary of Transportation in Executive Order 12777, section 8(g) (see 56 FR 54757; Oct. 22, 1991), for purposes of certifying advisory councils, or groups, subject to the Act. On March 3, 1992, the Secretary redelegated that authority to the Commandant of the Coast Guard (see 57 FR 8582; Mar. 11, 1992). The

Commandant redelegated that authority to the Chief, Office of Marine Safety, Security and Environmental Protection (G-M), on March 19, 1992 (letter #5402).

On July 7, 1993, the Coast Guard published a policy statement (58 FR 36504), to clarify the factors that shall be considered in making the determination as to whether advisory councils, or groups, should be certified in accordance with the Act.

The Assistant Commandant for Marine Safety and Environmental Protection (G-M), redelegated recertification authority for advisory councils, or groups, to the Commander, Seventeenth Coast Guard District, on February 26, 1999 (letter #16450).

On September 16, 2002, the Coast Guard published a policy statement (67 FR 58440), that changed the recertification procedures such that applicants are required to provide the Coast Guard with comprehensive information every three years (triennially). For each of the two years between the triennial application procedure, applicants submit a letter requesting recertification that includes a description of any substantive changes to the information provided at the previous triennial recertification. Further, public comment is not solicited prior to recertification during streamlined years, only during the triennial comprehensive review.

The Alyeska Pipeline Service Company pays the PWSRCAC $2.9 million annually in the form of a long-term contract. In return for this funding, the PWSRCAC must annually show that it ''fosters the goals and purposes'' of OPA 90 and is ''broadly representative of the communities and interests in the vicinity of the terminal facilities and Prince William Sound.'' The PWSRCAC is an independent, nonprofit organization founded in 1989. Though it receives Federal oversight like many independent, non-profit organizations, it is not a Federal agency. The PWSRCAC is a local organization that predates the passage of OPA 90. The existence of the PWSRCAC was specifically recognized in OPA 90 where it is defined as an ''alternate voluntary advisory group.''

Alyeska funds the PWSRCAC, and the Coast Guard makes sure the PWSRCRC operates in a fashion that is broadly consistent with OPA 90.

Recertification: By letter dated March 10, 2009, the Commander, Seventeenth Coast Guard, certified that the PWSRCAC qualifies as an alternative voluntary advisory group under 33 U.S.C. 2732(o). This recertification terminates on February 28, 2010.

Dated: March 17, 2009.

A.E. Brooks,

Rear Admiral, U.S. Coast Guard Commander, Seventeenth Coast Guard District.

[FR Doc. E9–6974 Filed 3–27–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Federal Radiological Preparedness Coordinating Committee; Notice of Public Meeting

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of public meeting.

SUMMARY: The Federal Radiological Preparedness Coordinating Committee (FRPCC) is holding a public meeting on April 14, 2009 in Washington, DC.

DATES: The meeting will take place on April 14, 2009, from 9 a.m. to 11 a.m. Send written statements and requests to make oral statements to the contact person listed below by close of business April 6, 2009.

ADDRESSES: The meeting will be held in the ''Discovery II'' meeting room at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Timothy Greten, FRPCC Executive Secretary, DHS/FEMA, South Bell Street—CC847, Mail Stop 3025, Arlington, VA 20598–3025; telephone (202) 646–3907; fax (703) 305–0837; or e-mail *timothy.greten@dhs.gov*.

SUPPLEMENTARY INFORMATION: The role and functions of the Federal Radiological Preparedness Coordinating Committee (FRPCC) are described in 44 CFR parts 351.10(a) and 351.11(a). The FRPCC is holding a public meeting on April 14, 2009, from 9 a.m. to 11 a.m., at the Holiday Inn Capitol, in Washington, DC. Please note that the meeting may close early. This meeting is open to the public, subject to the availability of space. Public meeting participants must pre-register to be admitted to the meeting. To pre-register, please provide your name and telephone number by close of business on April 6, 2009, to the contact person listed above.

The tentative agenda for the FRPCC meeting includes: (1) Introductions, (2) reports from FRPCC Subcommittees, (3) old business and new business, and (4) business from the floor. The FRPCC Chair shall conduct the meeting in a way that will facilitate the orderly conduct of business. Reasonable provisions will be made, if time permits, for oral statements from the public of not more than five minutes in length. Any member of the public who wishes to make an oral statement at the meeting should send a written request for time by close of business on April 6, 2009, to the contact person listed above. Any member of the public who wishes to file a written statement with the FRPCC should provide the statement by close of business on April 6, 2009, to the contact person listed above.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please write or call the contact person listed above as soon as possible.

Authority: 44 CFR 351.10(a) and 351.11(a).

Dated: March 16, 2009.

James R. Kish,

Director, Technological Hazards Division, National Preparedness Directorate, Department of Homeland Security, Federal Emergency Management Agency, Chair, Federal Radiological Preparedness Coordinating Committee.

[FR Doc. E9–6661 Filed 3–27–09; 8:45 am]

BILLING CODE 9110–21–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–929, Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–929, Petition for Qualifying Family Member of a U–1 Nonimmigrant. OMB Control No. 1615–0106.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 12, 2008, at 73 FR 75540, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 29,

2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0106 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Petition for Qualifying Family Member of a U–1 Nonimmigrant.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–929. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households. Section 245(m) of the Immigration and Nationality Act (Act) allows certain qualifying family members who have never held U nonimmigrant status to seek lawful permanent residence or apply for immigrant visas. Before such family members may apply for adjustment of status or seek immigrant visas, the U–1 nonimmigrant who has been granted adjustment of status must file an immigrant petition on behalf of the qualifying family member using Form I–929. The information collection is necessary in order for USCIS to make a determination that the eligibility requirements and conditions are met regarding the qualifying family member.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Washington, DC 20529–2210, (202) 272–8377.

Dated: March 25, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–7065 Filed 3–27–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2475–09; DHS Docket No. USCIS–2009–0009]

RIN 1615–ZA87

Filing Procedures and Automatic Extension of Employment Authorization and Related Documentation for Liberians Provided Deferred Enforced Departure

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This Notice announces a six-month automatic extension of employment authorization documents (EADs) for Liberians (and persons without nationality who last habitually resided in Liberia) for whom deferred enforced departure (DED) has been extended in accordance with the memorandum of March 20, 2009 from President Obama to the Secretary of Homeland Security, Janet Napolitano. The memorandum directed that DED for certain Liberians be extended and that employment be authorized for 12 months from April 1, 2009, through March 31, 2010. This Notice further informs Liberians covered by DED and their employers how to determine which EADs are automatically extended. This Notice also sets forth procedures necessary for individuals who are covered by DED to file for employment authorization for the full 12-month extension with U.S. Citizenship and Immigration Services (USCIS). Finally, this Notice provides instructions for those Liberians who have been provided DED and who would like to apply for permission to travel outside the United States during the 12-month DED period.

DATES: This Notice is effective March 30, 2009. The six-month automatic extension of employment authorization for Liberians who are eligible for DED, including the extension of their EADs, as specified in this notice, is effective as of 12:01 a.m. April 1, 2009. This automatic extension will expire on September 30, 2009.

FOR FURTHER INFORMATION CONTACT: DED Operations Program Manager, Status and Family Branch, Office of Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2060, telephone (202) 272–1533. This is not a toll-free call. Further information will also be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at *http://www.uscis.gov*. Note: The phone number provided here is solely for questions regarding this notice and the information it contains. It is not for individual case status inquiries. Applicants seeking information about the status of individual cases can check Case Status Online available at the USCIS Web site, or may call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

SUPPLEMENTARY INFORMATION:

Employment Authorization Filing Requirements

Who is eligible for employment authorization under the Presidential Memorandum that extended DED for certain Liberians for 12 months?

On March 20, 2009, President Obama issued a memorandum to Secretary of Homeland Security, Janet Napolitano, to extend DED for 12 additional months to individuals who are currently covered by Liberian DED through March 31, 2009. See Memorandum from President Obama to the Secretary of Homeland Security dated March 20, 2009 (''Presidential Memorandum''). The DED extension and the procedures for employment authorization in this notice apply to Liberian nationals (and persons without nationality who last habitually resided in Liberia) who were covered by DED as of March 31, 2009, which only includes those who held Temporary Protected Status (TPS) on September 30, 2007. The DED extension, however, does not include any individual:

- Who would be ineligible for TPS for the reasons provided in Immigration and Nationality Act (INA); § 244(c)(2)(B); 8 U.S.C. 1254a(c)(2)(B);
- Whose removal the Secretary of Homeland Security determines is in the interest of the United States;
- Whose presence or activities in the United States the Secretary of State has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the United States;
- Who has voluntarily returned to Liberia or his or her country of last habitual residence outside the United States;
- Who was deported, excluded, or removed prior to March 20, 2009, the date of the Presidential Memorandum directing that Liberian DED be extended; or
- Who is subject to extradition.

What do I need to file if I am covered by DED and would like to have evidence of employment authorization?

If you are covered under DED for Liberia, and would like employment authorization during the 12-month extension of DED, you must apply for an Employment Authorization Document (EAD). You must file USCIS Form I–765, Application for Employment Authorization Document, during the DED extension period. Please carefully follow the instructions for completing Form I–765. Please submit Form I–765 and supporting documentation to: Vermont Service Center, Attn: I–765, 75 Lower Welden St., St. Albans, VT 05479–0001.

On Form I–765, you must:

- Indicate that you are eligible for DED; and
- Include a copy of your last Form I–797, Notice of Action, showing that you were approved for TPS as of September 30, 2007, if such copy is available. (Please note that evidence of TPS as of September 30, 2007 is necessary to show that you were covered under the previous DED for Liberia as of March 31, 2009).

If biometrics are required to produce the secure EAD, you will be scheduled for an appointment at a USCIS Application Support Center. The new EAD will be valid through March 31, 2010. This EAD bearing a March 31, 2010 expiration date may be presented to employers for I–9 purposes.

What editions of Form I–765 should I submit?

Only versions of Form I–765 dated May 27, 2008 (Rev. 5/27/08), or later, will be accepted. The revision date can be found in the bottom right corner of the form. The proper forms can be obtained on the Internet at *http://www.uscis.gov* or by calling the USCIS forms hotline at 1–800–870–3676.

Can I file my application (Form I–765) electronically?

No. Electronic filing is not available for filing Form I–765 based on DED.

How will I know if I have to report to an Application Support Center (ASC) to submit biometrics?

USCIS will mail you a notice with instructions as to whether or not you are required to appear at an ASC for biometrics collection.

What documents should I bring to my ASC appointment?

When you report to an ASC, you must bring the following documents:

(1) Your receipt notice for your application;

(2) Your ASC appointment notice; and

(3) Your current EAD.

If no further action is required for your case, you will receive a new EAD by mail valid through March 31, 2010. If your case requires further consideration, USCIS will contact you in writing to explain what additional information, if any, is necessary to resolve your case. If your application is subsequently approved, you will receive a new EAD in the mail valid through March 31, 2010.

What will happen if I do not appear at the ASC?

Failure to appear at an ASC for a required ASC appointment will result in denial of your case due to abandonment unless you submit and USCIS has received an address change notification (see instruction below) or a rescheduling request prior to your appointment, and USCIS excuses your failure to appear. See 8 CFR 103.2(b)(13)(ii).

What if my address changes after I file my EAD application?

If your address changes after you file your application, you must complete and submit Form AR–11 by mail or electronically. The mailing address is: U.S. Citizenship and Immigration Services, Change of Address, P.O. Box 7134, London, KY 40742–7134.

Form AR–11 can also be filed electronically by following the directions on the USCIS Web site at: *http://www.uscis.gov*.

To facilitate processing your address change on your EAD application, you may call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833) to request that your address be updated on your application. Please note that calling the USCIS National Customer Service Center does not relieve you of your burden to properly file a Form AR–11 with USCIS.

Extension of Employment Authorization and EADs

Who is eligible for a six-month automatic extension of employment authorization through September 30, 2009?

The Department of Homeland Security (DHS) is granting a six-month automatic extension of employment authorization and the EADs specified in this notice to Liberians who are provided DED in accordance with the Presidential Memorandum. As described in that Presidential Memorandum, eligible individuals are nationals of Liberia (or persons without nationality who last habitually resided in Liberia) who are covered by DED as of March 31, 2009.

In accordance with his constitutional authority to conduct the foreign relations of the United States, the President has directed that such Liberians who are eligible be provided DED for an additional 12-month period after their current DED status ends. In addition, the President directed the Secretary of Homeland Security to implement the necessary steps to authorize employment for 12 months from March 31, 2009, for Liberians (and persons without nationality who last resided in Liberia) who are eligible for DED in accordance with the Presidential Memorandum.

Which EADs are automatically extended through September 30, 2009?

This automatic extension is limited to EADs issued to Liberians (or persons without nationality who last habitually resided in Liberia) on Form I–766, Employment Authorization Document, bearing an expiration date of September 30, 2007. These EADs must also bear the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.''

Additionally, this automatic extension includes EADs issued to Liberians (or persons without nationality who last habitually resided in Liberia) on Form I–766, Employment Authorization Document, bearing an expiration date of March 31, 2009. These EADs must also bear the notation ''A–11'' on the face of the card under ''Category.''

How may employers determine whether an EAD has been automatically extended for six months through September 30, 2009, and is therefore acceptable for completion of the Form I–9?

A Form I–766 (EAD) issued to a Liberian national (or person without nationality who last habitually resided in Liberia) bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category,'' and having an expiration date of September 30, 2007, on the face of the card, is acceptable for completion of the Form I–9. Furthermore, a Form I–766 (EAD) issued to a Liberian national (or person without nationality who last habitually resided in Liberia) bearing the notation ''A–11'' on the face of the card under ''Category,'' and having an expiration date of March 31, 2009, on the face of the card, is acceptable for completion of the Form I–9. This notice provides a six-month automatic extension of such EADs until September 30, 2009. Employers should not request proof of Liberian citizenship.

Employers should accept an EAD as a valid ''List A'' document and not ask for additional Form I–9 documentation if presented with an EAD that has been extended pursuant to this **Federal Register** Notice, and the EAD reasonably appears on its face to be genuine and to relate to the employee. Employers are reminded that an applicant for employment or an employee can present any legally acceptable document as proof of identity and eligibility for employment.

Note to Employers: Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those setting forth re-verification requirements. For questions, employers may call the USCIS Customer Assistance Office at 1–800–357–2099. Employers may also call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html.*

What documents may a qualified individual show to his or her employer as proof of employment authorization and identity when completing Form I–9?

Through September 30, 2009, Liberians (and persons without nationality who last habitually resided in Liberia) who are eligible for DED, as described in the Presidential Memorandum, may present a copy of this **Federal Register** Notice regarding the automatic extension of employment authorization documentation, along with:

- Their Form I–766s (EADs) bearing the notation ''A–12'' or ''C–19'' on the face of the cards under ''Category,'' and having an expiration date of September 30, 2007, on the face of the cards, or
- Their Forms I–766 (EADs) bearing the notation ''A–11'' on the face of the cards under ''Category,'' and having an expiration date of March 31, 2009, on the face of the cards.

In the alternative, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented as proof of identity and employment eligibility.

May I request an interim EAD at my local district office?

No. USCIS will not issue interim EADs to individuals eligible for DED under the Presidential Memorandum at local district offices.

May an individual who is covered by DED under the Presidential Memorandum travel outside of the United States and be permitted to return during the 12-month DED period?

Individuals covered under DED who would want to travel outside of the United States must apply for and receive advance parole by filing Form I–131, Application for Travel Document, with required fees. *See* 8 CFR 223.2(a). The determination whether to grant advance parole is within the discretion of DHS and is not guaranteed in all cases. If you seek advance parole in order to go to Liberia, you may risk being found ineligible to re-enter the United States under DED because the President's Memorandum excludes persons ''who have voluntarily returned to Liberia.''

Dated: March 26, 2009.

Michael Aytes,

Acting Deputy Director, U.S. Citzenship and Immigration Services.

[FR Doc. E9–7092 Filed 3–26–09; 11:15 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5288–N–02]

Notice of Proposed Information Collection for Public Comment; Indian Housing Block Grant Information Collection

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 29, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202.402.8048, (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian.L.Deitzer@hud.gov* for a copy of the proposed forms, or other available information.

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202–708–0713, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of

information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Indian Housing Block Grant Information Collection.

OMB Control Number: 2577–0218.

Description of the Need for the Information and Proposed Use: Section 102 of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (NAHASDA) requires that an Indian Tribe or Tribally designated housing entity for the Tribe submit an *Indian Housing Plan* (IHP), form HUD–52735. The IHP provides a description of how the Tribe or housing entity will use the Indian Housing Block Grant (IHBG) funds to provide affordable housing for its low to moderate income Tribal members. The IHP will be reviewed on a limited basis to determine that the planned activities are in compliance with NAHASDA requirements, as defined at 24 CFR Part 1000.

Section 404 of NAHASDA requires the IHBG recipient to review progress made on implementing the IHP and submit an *Annual Performance Report* (APR), form HUD–52735–AS. The APR is to include a description of how the IHBG funds were used and to correlate the uses of the funds to the goals and objectives in the IHP. The regulations authorize HUD to extend the APR due date if the recipient submits a justified request. The information in the APR will be used to review the recipient's progress in implementing the IHP, determine if the activities are eligible and to determine if the recipient has the capacity to continue implementing the IHP in a timely manner. The information in the APR also will be used to provide Congress, stakeholders, and other interested parties with information on how the IHBG funds are being used to meet affordable housing needs within Native American communities.

Throughout the year, the recipient is to submit quarterly a *Federal Cash Transactions Report* (HUD–272–I) that provides a snapshot of the grant funds drawn from the recipient's line of credit (Title 24 CFR 85.41 (c)). HUD uses the financial information to monitor IHBG expenses, investments, and activities.

Participants in the IHBG program are responsible for notifying HUD of changes to the Formula Current Assisted Stock (FCAS) component of the IHBG formula. HUD is notified of changes in the FCAS through a *Formula Response Form* (HUD–4117), as defined at 24 CFR 1000.302. A Tribe, TDHE, or HUD may challenge the data from the U.S. Decennial Census or provide an alternative source of data by submitting the *Guidelines for Challenging U.S. Decennial Census Data Document* (HUD–4119). Census challenges are due June 15 of each fiscal year, as defined at 24 CFR 1000.336. This information collection is required of participants in the IHBG program to demonstrate compliance with eligibility and other requirements of NAHASDA; provision of correction or challenge documentation of the formula calculation; and provision of data for HUD's annual report to Congress. The information gathered will be used to allocate funds under the IHBG program. The quality assurance of data reported is a very important issue in maintaining HUD's databases used to monitor participant's proposed plans, accomplishments, determine program compliance, and to ensure fair and equitable allocations. In some cases, the FCAS information addressing the conveyances and conversions of units has resulted in the recouping of funds. The information collected will allow HUD to accurately audit the program.

Agency Form Number: HUD–52735, HUD 52735–AS, HUD–272–I, HUD–4117, HUD–4119.

Members of Affected Public: Native American Tribes and Tribally Designated Housing Entities, Alaska Natives and Corporations, and Native Hawaiians.

ESTIMATION OF THE TOTAL NUMBER OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, AND HOURS OF RESPONSE

Type of submission	Number of respondents	Frequency of response	Estimated hours to complete	Estimated annual burden in hours
HUD–52735	366	1	120	43,920
HUD–52735–AS	366	1	120	43,920
HUD–272–I	366	4	2	2,928
HUD–4117	579	1	.5	290
HUD–4119	15	1	150	2,250
Total	579			93,308

Status of the Proposed Information Collection: Revision of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 24, 2009.

Merrie Nichols-Dixon,

Deputy Director for Policy, Program and Legislative Initiatives.

[FR Doc. E9–6945 Filed 3–27–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5288–N–04]

Notice of Proposed Information Collection for Public Comment Public Housing Lease Requirements

AGENCY: Office of the Assistance Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 29, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202–402–8048 (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian.L.Deitzer@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202–402–3374, for copies of other available documents (this is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to the Office of Management and Budget (OMB) for review, as required by the Paper Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Public Housing Lease Requirements—24 CFR 966.4.

OMB Control Number: 2577–0006.

Description of the Need for the Information and Proposed Use: HUD regulations 24 CFR 966.4 prescribe the provisions that shall be incorporated in leases by public housing agencies (PHAs) for dwelling units assisted under the U.S. Housing Act of 1937 in projects owned by or leased to PHAs and leased or subleased by PHAs to the tenants.

This recordkeeping requirement imposed upon PHAs by HUD regulations and associated information collected by the PHA from tenants is incidental to the PHAs' day-to-day operations as landlords of rental housing. If these minimal requirements were not imposed; the Federal Government would have no assurance that PHAs were adopting leases consistent with the law and regulations and no assurance that tenants were being provided proper access to the PHA's grievance procedures.

Agency Form Numbers: None.

Members of Affected Public: State or local Government; Public Housing Agencies (PHAs), Individuals or Households.

Estimation of the Total Number of Hours Needed to Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response: 3,300 respondents; 144 average number of tenants; annually frequency of responses;.33 hours per response (recordkeeping); 156,816 total burden hours.

Status of the Proposed Information Collection: Extension.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 24, 2009.

Merrie Nichols-Dixon,

Deputy Director for Policy, Program and Legislative Initiatives.

[FR Doc. E9–6946 Filed 3–27–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 5288–N–05]

Notice of Proposed Information Collection for Public Comment Screening and Eviction for Drug Abuse and Other Criminal Activity

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 29, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202–402.8048 (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian.L.Deitzer@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202–402–3374, for copies of other available documents (this is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Screening and Eviction for Drug Abuse and Other Criminal Activity.

OMB Control Number: 2577–0232.

Description of the need for the information and proposed use: The collection of information implements statute and gives Public Housing Agencies (PHAs) and assisted housing owners the tools for adopting and implementing fair, effective and comprehensive policies for screening out program applicants who engage in illegal drug use or other criminal activity and for evicting or terminating assistance of persons who engage in such activity. PHAs that administer a Section 8 or public housing program under an Annual Contributions Contract (ACC) with HUD may request criminal history records from any law enforcement agency concerning an adult member of a household applying for admission to a public housing or Section 8 program.

Agency form numbers: None.

Members of affected public: State or Local Government; Public Housing Agencies (PHAs).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 3300 PHAs (respondents); estimated average number of respondents 15,200; total annual burden hours 73,550.

Status of the proposed information collection: Extension.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 24, 2009.

Merrie Nichols-Dixon,

Deputy Director for Policy, Program and Legislative Initiatives.

[FR Doc. E9–6952 Filed 3–27–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5298–N–01]

Low-Income Housing Tax Credit (LIHTC) Tenant Data Collection; Advance Solicitation of Comment on Data Collection Methodology

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The Housing and Economic Recovery Act of 2008 requires state agencies administering properties receiving low-income housing tax credits to submit to HUD, not less than annually, certain demographic and economic information on households residing in such properties. This statute also requires HUD to establish standards and definitions for the information that state housing agencies must submit, and to provide them with technical assistance in establishing systems to compile and submit such information. This notice seeks early input from applicable state agencies, and other interested stakeholders on a methodology or approach to meet this statutory requirement in advance of HUD's submission of a formal proposal for public comment.

Comment Due Date: May 29, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, 451 7th Street, SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov*

FOR FURTHER INFORMATION CONTACT: For questions on LIHTC tenant data collection, contact Michael K. Hollar, Senior Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8216, Washington, DC 20410–6000, telephone number (202) 402–5878, or send an e-mail to *Michael.K.Hollar@hud.gov.* For specific legal questions pertaining to Section 42 of the Internal Revenue Code, contact Branch 5, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone number (202) 622–3040, fax number (202) 622–4451. Additional copies of this notice are available through HUD User at (800) 245–2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice and additional information about the LIHTC program are available electronically on the Internet at *http://www.huduser.org/datasets/lihtc.html.*

SUPPLEMENTARY INFORMATION:

I. Background

Housing and Economic Recovery Act of 2008 (HERA)

Section 2835(d) of HERA (Pub. L. 110–289, approved July 30, 2008) amends Title I of the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) to add a new section 36 (to be codified as 42 U.S.C. 1437z-8) that requires each state agency administering tax credits under section 42 of the Internal Revenue Code of 1986 (low-income housing tax credits or LIHTC) to furnish HUD, not less than annually, information concerning the race, ethnicity, family composition, age, income, use of rental assistance under section 8(o) of the U.S. Housing of 1937 or other similar assistance, disability status, and monthly rental payments of households residing in each property receiving such credits through such agency. New section 36(a) of the 1937 Act further provides that, to the extent feasible, each agency administering tax

credits should collect such information through existing reporting processes and in a manner that minimizes the burden on property owners.

New section 36(b) requires HUD to establish standards and definitions for the information to be collected by state agencies and to provide states with technical assistance in establishing systems to compile and submit such information and, in coordination with other federal agencies administering housing programs, establish procedures to minimize duplicative reporting requirements for properties assisted under multiple housing programs.

New section 36(c) provides that HUD ''shall, not less than annually, compile and make publicly available the information submitted to the Secretary pursuant to subsection (a).''

Low-Income Housing Tax Credit

LIHTC is a tax incentive intended to increase the availability of low-income housing. Section 42 of the Internal Revenue Code of 1986 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The credits allocated are based on the cost of units placed in service as low-income units under particular minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for LIHTC: (1) At least 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the area median gross income (AMGI); or (2) At least 40 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term ''rent-restricted'' means that gross rent, including an allowance for tenant-paid utilities, cannot exceed 30 percent of the tenant's imputed income limitation (*i.e.* , 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

Currently, there is no comprehensive administrative database containing data on LIHTC tenant households. HUD's Office of Policy Development and Research, under its broad authority to conduct research on housing and urban development issues, has collected and published data on LIHTC projects periodically throughout the life of the LIHTC program, and annually since 1999. The HERA requirement reflects Congressional intent to have data on households residing in LIHTC properties collected annually and submitted under uniform standards.

This Document

Through this notice, HUD seeks to inform all the public of its responsibilities with respect to LIHTC data collection, and to reach a broader audience (than is possible through informal meetings) to solicit early input from state agencies and other interested members of the public on standards and definitions that would be helpful to state agencies in their collection of the information required by section 36 of the 1937 Act, as well as input on procedures that would minimize duplicative reporting requirements.

In an effort to initiate discussion of these statutory requirements and commence the solicitation of informal feedback on these requirements, the data collection requirements were first discussed in a public forum at the Tenant Rental Assistance Certification System (TRACS) quarterly industry meeting on October 22, 2008. At that time, HUD also announced its intention to create an informal working group, open, at any time, to any interested parties, for the members of the working group to share their individual views of this data collection effort, and any past experiences with similar data collection efforts. HUD will use the information provided by the various members of the working group and consider the members' individual recommendations and suggestions in its development of the standards and definitions that HUD is charged with issuing under section 36 of the 1937 Act.

HUD is seeking feedback from the public on the standards, definitions, and procedures for collecting the required data. One possible approach for which it solicits early comment, is to use two forms, one requesting data on LIHTC properties, indicating among other things project-based subsidies (so that universally applicable project data need not be separately reported for each tenant), and the other requesting data on LIHTC tenants and unit-specific characteristics. HUD requests that the public provide comments on whether this approach will minimize reporting burden on property managers, and on any other approaches that HUD should consider.

To collect LIHTC property characteristics, HUD seeks comments on whether the agency should use the form currently used to collect data in HUD's LIHTC projects placed in service database. Annually, HUD requests, through a contractor, data on a volunteer basis from the state housing finance agencies on LIHTC projects placed in service. This form has two advantages over creating a new form. First, it is OMB-approved through 2011 and therefore would not require a new review under the Paperwork Reduction Act unless modifications are made. Second, the state housing agencies currently use this form and are familiar with it. Continuing with a familiar form would assist the goal of minimizing the reporting burden. More information on HUD's current LIHTC projects placed in service database can be found here: *http://lihtc.huduser.org/.*

The proposed tenant data collection form is based on the National Council of State Housing Agencies' (NCSHA's) best practices Tenant Income Certification (TIC) Form. The IRS does not require a standard form across states to certify tenants residing in LIHTC-financed units. NCSHA's best practices TIC form is used by many state housing finance agencies, either as is or in a slightly modified version. Since the data requested on this form is already collected by many state housing finance agencies, HUD believes this form, modified to account for additional information that HUD is required by statute to report, would minimize the reporting burden on the state agencies. The form contemplated by HUD amends NCSHA's TIC to include race, ethnicity, and disability status.

HUD anticipates publishing its formal proposal for implementing the data collection during the summer of 2009. Once data transmission methods are in place, data collection could begin as early as the first or second quarter of 2010.

Dated: March 19, 2009.

Jean Lin Pao,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. E9–7041 Filed 3–27–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO200–LLCOF02000–L07770900–XZ0000–241A00]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range

Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held April 22, 2009 from 9:15 a.m. to 3:45 p.m.

ADDRESSES: BLM Royal Gorge Field Office, 3028 East Main Street, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Cass Cairns, (719) 269–8553.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Royal Gorge Field Office and San Luis Valley, Colorado. Planned agenda topics include: Manager updates on current land management issues, including 2009 Fire season outlook, Rags Over the Arkansas River (ROAR) on the Over The River proposed project, the Garden Park and Shaws Park Travel Management Plan Environmental Assessment alternatives, overview of Statewide RAC meeting held in February, and Charter renewal.

All meetings are open to the public. The public is encouraged to make oral comments to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting minutes and agenda (10 days prior to each meeting) are also available at: *http://www.blm.gov/rac/co/frrac/co_fr.htm* .

Dated: March 23, 2009.

Roy L. Masinton,

Field Manager, Royal Gorge Field Office.

[FR Doc. E9–6983 Filed 3–27–09; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Scientific Committee (SC); Announcement of Plenary Session

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Meeting.

SUMMARY: The OCS Scientific Committee will meet at the Sheraton Anchorage Hotel in Anchorage, AK.

DATES: Wednesday, April 29, 2009, from 8:30 a.m. to 5 p.m.; Thursday, April 30, 2009, from 8 a.m. to 4:30 p.m.; and Friday, May 1, 2009, 8 a.m. to 4:30 p.m.

ADDRESSES: Sheraton Anchorage Hotel, 401 E. 6th Avenue, Anchorage, Alaska 99501, telephone (907) 276–8700.

FOR FURTHER INFORMATION CONTACT: A copy of the agenda may be requested from MMS by calling Ms. Carolyn Beamer at (703) 787–1211. Other inquiries concerning the OCS SC meeting should be addressed to Dr. James Kendall, Executive Secretary to the OCS SC, Minerals Management Service, 381 Elden Street, Mail Stop 4043, Herndon, Virginia 20170–4817 or by calling (703) 787–1656.

SUPPLEMENTARY INFORMATION: The OCS SC will provide advice on the feasibility, appropriateness, and scientific value of the OCS Environmental Studies Program to the Secretary of the Interior through the Director of the MMS. The SC will review the relevance of the research and data being produced to meet MMS scientific information needs for decision making and may recommend changes in scope, direction, and emphasis.

The Committee will meet in plenary session on Wednesday, April 29. The Deputy Associate Director will address the Committee on the general status of the MMS and its activities. There will be an update on OCS activities in the Alaska OCS Region and Regional Supervisors for Environment and Leasing from each region will present an overview of the Environmental Studies Program and current issues.

On Thursday, April 30, the Committee will meet in discipline breakout groups (i.e., biology/ecology, physical sciences, and social sciences) to review the specific research plans of the MMS regional offices for Fiscal Years 2010 and 2011.

On Friday, May 1, the Committee will meet in plenary session for reports of the individual discipline breakout sessions of the previous day and to continue with Committee business.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary session.

Authority: Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget's Circular A–63, Revised.

Date: March 24, 2009.

Chris C. Oynes,

Associate Director for Offshore Energy and Minerals Management.

[FR Doc. E9–7060 Filed 3–27–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf Civil Penalties

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice summarizing Outer Continental Shelf Civil Penalties paid from January 1, 2008, through December 31, 2008.

SUMMARY: This notice provides a listing of civil penalties paid from January 1, 2008, through December 31, 2008, for violations of the Outer Continental Shelf Lands Act. The goal of the MMS Outer Continental Shelf Civil Penalties Program is to assure safe and clean oil, gas, sulphur, or other minerals operations on the Outer Continental Shelf. Through the pursuit, assessment, and collection of civil penalties and referrals for the consideration of criminal penalties, the program is designed to encourage compliance with applicable statutes and regulations. The purpose of publishing the penalties summary is to provide information to the public on violations of the Outer Continental Shelf Lands Act and to provide an additional incentive for safe and environmentally sound operations.

FOR FURTHER INFORMATION CONTACT: Joanne McCammon, Program Coordinator, at 703–787–1292.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA 90) strengthened section 24 of the Outer Continental Shelf (OCS) Lands Act Amendments of 1978. Section 8201 of OPA 90 increased the amount of the civil penalty from a maximum of $10,000 to a maximum of $20,000 per violation for each day of noncompliance. More importantly, OPA 90 provided the Secretary of the Interior (Secretary) with the authority to assess a civil penalty without first providing a period of time for corrective action in cases where a failure to comply with applicable regulations constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life); property; any mineral deposit; or the marine, coastal, or human environment.

The provisions of OPA 90 also require the Secretary to adjust the maximum civil penalty to reflect any increases in the Consumer Price Index (CPI). Every 3 years, MMS analyzes the maximum civil penalty amount in conjunction with the CPI prepared by the U.S. Department of Labor. If an adjustment is necessary, MMS informs the public through the **Federal Register** of the new

maximum amount. The MMS has published regulations adjusting the civil penalty assessment to $25,000 on August 8, 1997 (62 FR 42667); to $30,000 on October 29, 2003 (68 FR 61622); and to $35,000 on February 28, 2007 (72 FR 8897).

Between August 18, 1990, when OPA 90 was enacted, and December 31, 2008, MMS initiated 648 civil penalty reviews. Operators have paid 529 civil penalties for a total of $20,752,042 in fines.

On September 1, 1997, the Associate Director of Offshore Minerals Management issued a notice informing lessees and operators of Federal oil, gas, and sulphur leases on the OCS that MMS will annually publish a summary of OCS civil penalties paid. The purpose of publishing the penalties summary is to provide information to the public on violations of the OCS Lands Act and to provide an additional incentive for safe and environmentally sound operations. The annual summary will highlight the identity of the party, a description of the violation, the amount of the penalty and date paid, and the regulation violated. The following table provides a listing of the 31 penalties paid between January 1, 2008, and December 31, 2008. The total amount collected is $2,210,250. The list is posted on the MMS's Web page at *http://www.mms.gov/civilpenalties/.*

2008 CIVIL/CRIMINAL PENALTIES SUMMARY PENALTIES PAID IN CALENDAR YEAR 2008

[1/1/2008–12/31/2008]

Operator name and case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated 30 CFR
Pogo Producing Co., G–2007–009.	During the investigation of a 3/4 mile by 16 mile oil slick on November 29, 2006, the MMS Inspector discovered operators had bypassed basically the entire platform safety system including the emergency shut down to keep production online. Further investigation revealed a second pollution incident on November 21, 2006, in which oil was blown out of the flare boom leaving the platform covered with oil and causing pollution.	$505,000, 2/8/2008.	
	29–NOV–2006—29–NOV–2006		§ 250.803(c).
	29–NOV–2006—29–NOV–2006		§ 250.803(c).
	29–NOV–2006—29–NOV–2006		§ 250.803(c).
	29–NOV–2006—29–NOV–2006		§ 250.803(c).
	29–NOV–2006—29–NOV–2006		§ 250.803(c).
	21–NOV–2006—21–NOV–2006		§ 250.300(a).
	21–NOV–2006—21–NOV–2006		§ 250.300(a).
	29–NOV–2006—29–NOV–2006		§ 250.1004.
	29–NOV–2006—29–NOV–2006		§ 250.1004.
	29–NOV–2006—29–NOV–2006		§ 250.1004.
	21–NOV–2006—29–NOV–2006		§ 250.107.
SPN Resources, LLC, G–2007–012.	MMS Inspectors found the accumulator with no air supply connected to it. The remote blowout preventer (BOP) control station was also found with no operating pressure on it. The Inspection also revealed that there was not a full opening work-string safety valve or TIW wrench located on the rig floor. Personnel were witnessed working greater than 6 feet above the deck with no fall protection. The Inspector also found stairs to the BOP and pipe rack to be in an unsafe location which required personnel to climb over the handrails.	$100,000, 1/18/08.	
	01–SEP–2006—01–SEP–2006		§ 250.107(a).
	01–SEP–2006—01–SEP–2006		§ 250.515(d).
	01–SEP–2006—01–SEP–2006		§ 250.515(d).
	01–SEP–2006—01–SEP–2006		§ 250.515(c).
	01–SEP–2006—01–SEP–2006		§ 250.515(c).
	01–SEP–2006—01–SEP–2006		§ 250.401.
W&T Offshore, Inc., G–2007–016	Operator failed to properly barricade the 4′ X 4′ opening and a 7′10″ X 16″ opening during work over operations.	$130,000, 3/12/2008.	
	04–APR–2007—16–APR–2007		§ 250.107.
Helis Oil & Gas Company, LLC (Hercules Offshore Drilling) G–2007–021.	The operator failed to supply sufficient accumulator fluid capacity required to close and hold closed the 30-inch annular installed on the diverter system.	$40,000, 1/17/2008.	
	06–MAY–2007—07–MAY–2007		§ 250.430.
W&T Offshore, G–2007–022	Firewater Pump low discharge pressure with two hoses opened and Aqueous Film Forming Foam Concentrate (AFFF) light water unit had lost the required pressure for the system.	$145,000, 10/2/08.	
	31–MAR–2007—28–APR–2007		§ 250.803(b)(8).
Remington Oil and Gas Corp., G–2007–025.	Failure to properly secure grating led to an accident with injury	$45,000, 1/09/2008.	
	26–APR–2007—27–APR–2007		§ 250.107.
Exxon Mobil Corp., G–2007–027	Well bypassed at the panel	$30,000, 2/29/08.	
	12–APR–2007—17 APR–2007		§ 250.803.

2008 CIVIL/CRIMINAL PENALTIES SUMMARY PENALTIES PAID IN CALENDAR YEAR 2008—Continued

[1/1/2008–12/31/2008]

Operator name and case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated 30 CFR
Pogo Producing Co., G–2007–029.	There was an excessive number of safety devices bypassed while bringing the platform online. With only one person watching the computer, it was impossible to safely monitor all of the bypassed devices. During these start-up operations, operators overflowed the float cell, pouring a hydrocarbon/water mixture onto the deck. Once the platform was shut-in, the operators received an alarm on the pressure safety high (PSH) for the fuel gas scrubber and there was no action taken in response to the alarm. The AFFF unit, which was protecting the wet/dry oil tanks, was found to be empty.	$80,000, 2/08/2008.	
	03–APR–2007—03–APR–2007		§ 250.107(a).
	03–APR–2007—03–APR–2007		§ 250.803(c).
	29–MAR–2007—08–MAY–2007		§ 250.107.
Exxon Mobil Corp., G–2007–030	The actuator for the compressor suction shut down valve (SDV) had been removed.	$35,000, 1/14/2008.	
	13–MAY–2007—21–MAY–2007		§ 250.803.
Pogo Producing Co., G–2007–031.	The Inspectors noticed that the block valve for the pressure safety valve (PSV) located on the test separator had been left in the closed position. The Inspectors witnessed personnel working with no fall protection at a height greater than 6 feet above the deck. The Inspectors found that the AFFF unit which was protecting the wet/dry oil tanks contained an empty bottle; and additionally, that the valve handles had been removed from the fire monitors, which were the secondary form of protection for the wet/dry oil tanks. It was also discovered that the operator had ''failed to correct'' the location of the level safety high (LSH) for the sump.	$150,250, 2/08/2008.	
	29–MAR–2007—30–MAR–2007		§ 250.803(c).
	30–MAR–2007—30–MAR–2007		§ 250.107(a).
	30–MAR–2007—30–MAR–2007		§ 250.107.
	30–MAR–2007—30–MAR–2007		§ 250.107.
	30–MAR–2007—30–MAR–2007		§ 250.107.
Pogo Producing Co., G–2007–033.	Temperature safety element (TSE) on the rental generator was found with the block valve closed on the supply line, rendering the TSE inoperable.	$25,000, 2/11/2008.	
	17–MAY–2007—17–MAY–2007		§ 250.803.
Pogo Producing Co., G–2007–034.	Gas-lift line was open ended with 1,000 psi on the down stream side of the check valve and the gas-lift header was found with 700 psi on it and all flanges associated with the header had missing bolts.	$40,000, 2/11/2008.	
	17–MAY–2007—17–MAY–2007		§ 250.107.
	17–MAY–2007—17–MAY–2007		§ 250.107.
Forest Oil Corp., G–2007–035	During welding/cutting operations to remove a cantilever deck, a fire/explosion occurred when hot slag fell between 10 and 15 feet into an open ended connection on top of the out of service oil storage tank.	$35,000, 3/31/08.	
	26–JUN–2007—26–JUN–2007		§ 250.401.
Palm Energy Offshore, LLC, G–2007–037.	The top block valve on the LSH fluid chamber was found closed	$15,000, 2/11/2008.	
	10–JUL–2007—10–JUL–2007		§ 250.803
Energy XXI GOM, LLC, G–2007–039.	There was a closed block valve upstream of the PSV on the First Stage Suction Scrubber which rendered the PSV inoperable. Also, the Surface Controlled Subsurface Safety Valve (SCSSV) was found with pressure trapped on the control line which locked open the SCSSV.	$15,000, 1/17/2008.	
	11–JUL–2007—11–JUL–2007		§ 250.803(c).
	11–JUL–2007—11–JUL–2007		§ 250.803(c).
Energy Resource Technology, Inc., G–2007–041.	A pollution event of less than 200 bbls, seventeen safety devices not tested prior to initiating production, leaking gas from 2'' line, and four safety devices bypassed.	$135,000, 9/26/08.	
	14–MAY–2007—17 MAY 2007		§ 250.101.
	15–MAY–2007—17 MAY 2007		§ 250.107.
	17–MAY–2007—17 MAY 2007		§ 250.300(a).
Apache Corp. (Island Operators, Inc.) G–2007–043.	A flash fire that resulted in an injury, occurred since a flowline had not been properly isolated or blind flanged from the process header. The welder was injured when his torch came in contact with hydrocarbons that were released through the open ended flowline.	$85,000, 4/29/08.	
	05–SEP–2007—07–SEP–2007		§ 250.803(c).

2008 CIVIL/CRIMINAL PENALTIES SUMMARY PENALTIES PAID IN CALENDAR YEAR 2008—Continued

[1/1/2008–12/31/2008]

Operator name and case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated 30 CFR
W&T Offshore, Inc., G–2007–044	Lead sump pump inoperable	$35,000, 4/11/08.	
	21–JUN–2007—21–JUN–2007		§ 250.300(b).
Nexen Petroleum U.S.A., Inc., G–2008–001.	The pneumatic fire detection system installed over the gas generator was found inoperable since the TSE was not connected to the supply line.	$15,000, 5/9/08.	
	02–NOV–2007—02–NOV–2007		§ 250.803(c).
Linder Oil Company, A Partnership, G–2008–003.	MMS Inspectors found the Surface Safety Valve (SSV) and Wing SDV on Well #4 bypassed with fusible caps. There was also a 1 inch open ended line on the fuel gas header where a PSV had been removed.	$180,000, 8/7/08.	
	03–DEC–2007—07–DEC–2007		§ 250.803(c).
	03–DEC–2007—10–DEC–2007		§ 250.803(c).
Forest Oil Corporation, G–2008–004.	The SCSSV for the B–1 well was bypassed at the panel for a total of 6 days.	$60,000, 12/30/08.	
	01–DEC–2007—06–DEC–2007		§ 250.803(c)(1).
Dauphin Island Gathering Partners, G–2008–005.	The handrails on the north end of the well bay had not been maintained in a safe condition. The handrails were corroded and deteriorated to a point that they were no longer a suitable guard and they could not adequately hold a person's weight.	$25,000, 8/5/08.	
	08–NOV–2007—08–NOV–2007		§ 250.107.
Apache Corporation, G–2008–006.	Repairs were made to the damaged crane boom that was not in accordance with API RP 2D, Section 4.3.3(e) and the crane was placed back in service without conducting a load test.	$50,000, 7/25/08.	
	14–JAN–2008—15–JAN–2008		§ 250.108.
Dominion Exploration & Production, Inc., g–2008–008.	The PSV for the Glycol Contactor was bypassed with a closed manual block valve.	$5,000, 8/29/08.	
	28–NOV–2006—28–NOV–2006		§ 250.803(c).
Marathon Oil Co., G–2008–009	The MMS Inspector found that the SCSSV and the vertical run SSV had been rendered inoperable. The SCSSV was blocked at the supply line; and the SSV was locked in the open position with a nonfusible cap.	$30,000, 7/14/08.	
	18–DEC–2007—18–DEC–2007		§ 250.803(c).
McMoRan Oil & Gas LLC, G–2008–011.	The cantilever deck was not properly guard railed or barricaded	$15,000, 9/25/08.	
	14–APR–2008—14–APR–2008		§ 250.107
Medco Energi U.S. LLC, G–2008–012.	Unsafe situations were discovered by the MMS Inspector on four Caissons. Equipment had not been maintained in a safe manner and precautions had not been made to provide for the safety of personnel.	$75,000, 11/21/08.	
	06–MAY–2008—06–MAY–2008		§ 250.107(a)(2).
	06–MAY–2008—06–MAY–2008		§ 250.107(a)(2).
	06–MAY–2008—06–MAY–2008		§ 250.107(a)(2).
	06–MAY–2008—06–MAY–2008		§ 250.107(a)(2).
	06–MAY–2008—06–MAY–2008		§ 250.107(b).
	06–MAY–2008—06–MAY–2008		§ 250.107(b).
	29–APR–2008—29–APR–2008		§ 250.107(b).
SPN Resources, LLC, G–2008–017.	A section of grating on the boat landing was severely corroded and damaged, creating a large opening that was unsafe for personnel. There was no barricade or guard to restrict the area and alert personnel of the hazard.	$15,000, 12/30/08.	
	10–JUL–2008—10–JUL–2008		§ 250.107.
Plains Exploration & Production Company, P–2006–002.	A flash fire involving a flare scrubber vessel resulted in minor burns to an employee. Work involving a glycol skid did not follow operator's safety manual.	$40,000, 4/8/08.	
	18–JUL–2006—18–JUL–2006		§ 250.803(b)(1).
	18–JUL–2006—18–JUL–2006		§ 250.803(b)(1).
DCOR LLC, P–2006–003	Five Incidents of Non-Compliance were issued following a 7/27/06 incident that resulted in significant damage to the unit crane during an operation to remove stuck progressive cavity pump rods.	$35,000, 1/30/2008.	
	27–JUL–2006—27–JUL–2006		§ 250.107(a).
	27–JUL–2006—27–JUL–2006		§ 250.108.
	27–JUL–2006—27–JUL–2006		§ 250.108.
	27–JUL–2006—27–JUL–2006		§ 250.108.
	27–JUL–2006—27–JUL–2006		§ 250.606.
Arguello Inc., P–2006–004	During rerouting of gas flow (in connection with drilling rig demobilization and work on the condensate stabilizer vessel) a valve was erroneously opened resulting in H2S exposure.	$20,000, 4/8/08.	
	12–AUG–2006—12–AUG–2006		§ 250.107(a).

2008 CIVIL/CRIMINAL PENALTIES SUMMARY PENALTIES PAID IN CALENDAR YEAR 2008—Continued

[1/1/2008–12/31/2008]

Operator name and case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated 30 CFR
Total Penalties Paid: 1/1/08–12/31/08 31 Cases: $2,210,250			

Authority: 43 U.S.C. 1331 *et seq.*

Dated: March 12, 2009.

Chris C. Oynes,

Associate Director for Offshore Energy and Minerals Management.

[FR Doc. E9–7061 Filed 3–27–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement on Proposed Brooks River Bridge and Boardwalk at Katmai National Park

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement—Environmental Impact Statement on proposed Brooks River bridge and boardwalk at Katmai National Park.

SUMMARY: The National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) on a proposed Brooks River bridge and boardwalk, and associated access changes, to the Brooks Camp Area within Katmai National Park and Preserve. The purpose of the EIS is to evaluate a reasonable range of alternatives for a bridge and boardwalk that would span the lower Brooks River. The existing floating bridge would be removed. A new bridge would provide for the existing floatplane access to the Brooks Camp Area to continue, with planes beaching on the shore of Naknek Lake on the north side of Brooks River. This proposal would tier off the 1996 Brooks River Area Development Concept Plan (DCP) and EIS. If the decision is to construct a new bridge, it would result in an amendment to the access decision, which called for construction of a new floatplane dock, breakwater, one-mile access road on the south side of Brooks River, and required a shuttle system.

In addition to the No Action alternative, the EIS will evaluate a reasonable range of alternatives to provide improved access to the Brooks Camp Area, to better protect natural and cultural resources, and to facilitate dependable travel between the north and south sides of Brooks River. Dependable access across Brooks River will advance the phased relocation of facilities and operations from the north side to the south side of the river, as set forth in the record of decision following the 1996 DCP/EIS. Public input is sought by the NPS regarding the range of alternatives. This EIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 *et seq.*), and its implementing regulations at 40 CFR part 1500.

Scoping: The NPS requests input from Federal and State agencies, local governments, private organizations, recreational users, and the public on the scope of issues to be addressed in this EIS. Scoping comments are being solicited. NPS representatives will be available to discuss issues, resource concerns, and the planning process at public scoping meetings. Scoping meetings will be held in Anchorage and King Salmon, Alaska in early 2009. When public meetings have been scheduled, their dates, times, and locations will be announced in local newspapers and posted on the NPS Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/KATM*.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Comments concerning the scope of this EIS should be received 60 days after the last scoping meeting referenced above. The draft EIS is projected to be available to the public in the spring of 2010. Electronic comments may be submitted to the NPS Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/KATM*. Written comments also may be mailed or faxed to the address and phone number provided below.

FOR FURTHER INFORMATION CONTACT: Ralph Moore, Superintendent, Katmai National Park and Preserve, P.O. Box 7, King Salmon, Alaska 99613. Telephone (907) 246–3305, Fax (907) 246–2116.

SUPPLEMENTARY INFORMATION: Katmai National Monument, originally designated in 1918 and subsequently expanded by four Presidential Proclamations, was enlarged and re-designated as a National Park and Preserve by the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. Brooks Lodge was established in the 1950s on the north side of the lower Brooks River as a world-class recreational rainbow trout and salmon fishery and a premier recreational destination. In subsequent years, the Brooks Camp Area has become a high-quality bear viewing location due to the large population of brown bears that feed on the abundant salmon at Brooks River. The Brooks Camp Area currently receives up to 15,000 visitors annually. In addition to its abundant natural resources, the Brooks Camp Area also contains an internationally significant concentration of cultural resources, with cultural remains spanning a 4,500 year period and comprising some of the largest and most important prehistoric cultural sites in Alaska. It is a designated National Historic Landmark (NHL) and elements of the NHL have been nominated as a Cultural Landscape.

The record of decision following the 1996 DCP/EIS called for the relocation of facilities and infrastructure in the Brooks Camp Area to the south side of the Brooks River. The reasons for the proposed relocation were to protect natural and cultural resources, including prime brown bear habitat, and to improve visitor safety by reducing the potential for bear/human encounters. This proposal helps facilitate the phased relocation of NPS and concessionaire operations to the south side of the river, by providing a safe and dependable means of access across the river, and to the Brooks Camp Area via floatplane.

Currently, visitors to the Brooks Camp Area arrive by floatplane on the north side of Brooks River. The start of Valley of 10,000 Smokes bus tour is on the south side of the river, as are three heavily used bear viewing platforms that overlook the Brooks River, some NPS housing and maintenance facilities, and concessionaire maintenance operations.

Providing dependable access across the Brooks River will improve safety and facilitate traffic flow for access to current and future facilities.

The existing floating bridge is the only way the river can be crossed by visitors and employees. In 2007, the NPS devoted considerable time and personnel (2,690 hours) to visitor safety at the floating bridge to minimize bear-human encounters. Over the past five years, the total number of bears regularly using Brooks River has ranged from 43 to 70, which represents more than double the number of bears from 1988–1992. The Brooks Camp Area is visited by as many as 300 people per day at season peak. A new bridge and boardwalk would allow bears to move and use preferred feeding areas without encountering visitors and staff at ground level. In addition, the existing floating bridge is past its life expectancy and frequently requires repairs due to damage by bears, storms and high water events, and river current. Erosion control and annual rebuilding are necessary to keep the current access trail intact.

Dated: February 11, 2009.

Sue Masica,

Regional Director, Alaska Region.

[FR Doc. E9–7053 Filed 3–27–09; 8:45 am]

BILLING CODE 4312–HD–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36 CFR 60.13(b,c)) and (36 CFR 63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from February 9 to February 13, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th floor, Washington, DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov*.

Dated: March 24, 2009.

Patrick Andrus,

Acting Chief, National Register of Historic Places.

Key: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

ARIZONA

Maricopa County

La Hacienda Historic District, Bounded by N. 3rd St. to the W., N. 7th St. to the E., E. Catalina Dr. to the N., E. Thomas Rd. to the S., Phoenix, 09000002, Listed, 2/13/09

ARKANSAS

Faulkner County

Mt. Zion Missionary Baptist Church, 249 AR 107, Enola, 09000003, Listed, 2/05/09 (Mixed Masonry Buildings of Silas Owens, Sr. MPS)

GEORGIA

Troup County

Jones, R.M., General Store, 6926 Whitesville Rd., LaGrange vicinity, 08001321, Listed, 2/11/09

GUAM

Guam County

Umang Dam, S. side of Finile Rd., Agat, 08001408, Listed, 2/06/09

KENTUCKY

Fayette County

Pepper, James E., Distillery, 1200 Manchester St., Lexington, 09000006, Listed, 2/11/09

KENTUCKY

McCracken County

Kenmil Place, 4300 Alben Barkley Dr., Paducah, 09000008, Listed, 2/11/09

MAINE

Androscoggin County

Blake-Ham House, 354 Main St., Lewiston, 09000009, Determined Eligible, 2/12/09

MAINE

Androscoggin County

Peck, Bradford, House, 506 Main St., Lewiston, 09000010, Listed, 2/12/09

MAINE

Aroostook County

Donovan-Hussey Farms Historic District, 546 and 535 Ludlow Rd., Houlton, 09000012, Listed, 2/13/09

MAINE

Aroostook County

Duncan, Beecher H., Farm, 26 Shorey Rd., Westfield, 09000011, Listed, 2/11/09

MAINE

Lincoln County

Brick House Historic District, Address Restricted, Newcastle, 09000013, Listed, 2/13/09

MAINE

Oxford County

Stearns Hill Farm, 90 Stearns Hill Rd., West Paris, 09000014, Listed, 2/11/09

MISSISSIPPI

Madison County

Fairview School, 1278 N. Old Canton Rd., Canton, 08000199, Listed, 2/11/09

MISSOURI

Texas County

Houston High School, 423 W. Pine, Houston, 09000016, Listed, 2/12/09

NEW YORK

Allegany County

Friendship Free Library, 40 W. Main St., Friendship, 08000769, Listed, 8/15/08

NEW YORK

Dutchess County

Pulver—Bird, House, 983 Hunns Lake Rd., Stanford vicinity, 08000700, Listed, 7/25/08

NEW YORK

Erie County

Sardinia Old Town Hall, 12070 Savage Rd., Sardinia, 08001231, Listed, 12/23/08

NEW YORK

Livingston County

Corby Farm Complex, 7400 Corby Rd., Honeoye Falls vicinity, 08000273, Listed, 4/01/08 (Lima MRA)

NEW YORK

Washington County

Home Farm, 591 Co. Rt. 18, East Whitehall, 08001147, Listed, 12/05/08

OREGON

Lincoln County

Bloch, Ernest, House, 116 NW. Gilbert Way, Newport, 09000049, Determined Eligible, 2/09/09

WASHINGTON

King County

John N. Cobb (fisheries research vessel), NOAA NW Regional Office, 7600 Sand Point Way NE., Seattle, 09000047, Listed, 2/11/09

WISCONSIN

St. Croix County

Kriesel, Louis C. and Augusta, Farmstead, 132 State Trunk Hwy 35/64, St. Joseph, 09000021, Listed, 2/12/09

WISCONSIN

St. Croix County

Thelen, John Nicholas and Hermina, House, 1383 and 1405 Thelen Farm Trail, St. Joseph, 09000022, Listed, 2/12/09

[FR Doc. E9–6911 Filed 3–27–09; 8:45 am]

BILLING CODE

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–672]

In the Matter of Certain Electronic Devices Having Image Capture or Display Functionality and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 20, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of LG Electronics, Inc. of Seoul, Korea. A letter supplementing the complaint was filed on March 10, 2009. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices having image capture or display functionality and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 5,995,767; 5,774,131; and 6,281,895. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2008).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 24, 2009, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electronic devices having image capture or display functionality or components thereof that infringe one or more of claims 1–4 of U.S. Patent No. 5,995,767; claims 12–15 of U.S. Patent No. 5,774,131; and claims 16–19 and 21–25 of U.S. Patent No. 6,281,895, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—LG Electronics, Inc., LG Twin Towers, 20, Yeouido-dong, Yeongdeungpo-gu, Seoul 150–721, Korea;

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Eastman Kodak Company, 343 State Street, Rochester, New York 14650;

(c) The Commission investigative attorney, party to this investigation, is Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: March 25, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–7003 Filed 3–27–09; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: October 1–2, 2009.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: The Langham Hotel, 250 Franklin Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: March 24, 2009.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. E9–6975 Filed 3–27–09; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: June 1–2, 2009.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Mecham Conference Center, One Columbus Circle, NE., Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: March 24, 2009.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. E9–6979 Filed 3–27–09; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

[OMB Number 1121–0291]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review; Census of Juveniles on Probation (Reinstatement, with change, of a previously approved collection for which approval has expired).

The Department of Justice (DOJ), Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until May 29, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Janet Chiancone, (202) 353–9258, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection whose approval has expired.

(2) *The Title of the Form/Collection:* Census of Juveniles on Probation.

(3) *The Agency Form Number, if any, and the Applicable Component of the Department Sponsoring the Collection:* The form number is CJ–17, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice.

(4) *Affected Public Who Will Be Asked or Required to Respond, as Well as a Brief Abstract:* Primary: Federal Government, State, local or tribal. Other: Not-for-profit institutions; business or other for-profit.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond/Reply:* It is estimated that 1,600 respondents will complete a 3 hour questionnaire.

(6) *An Estimate of the Total Public Burden (In Hours) Associated With the Collection:* Approximately 4,800 hours.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530 (phone: 202–514–4304).

Dated: March 24, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–6954 Filed 3–27–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration Submission for OMB Emergency Review: Comment Request

March 24, 2009.

The Department of Labor has submitted the following information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13. OMB approval has been requested by March 30, 2009. A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov*. Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor-ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/ Fax: 202–395–6974 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov*.

Comments and questions about the ICR listed below should be received by March 30, 2009.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Agency: Employment and Training Administration.

Title of Collection: State/Local Consultations on Readiness for Implementing the American Recovery and Reinvestment Act of 2009 (ARRA).

OMB Control Number: Pending.

Frequency of Collection: One time collection.

Affected Public: State Workforce Agencies and Local Areas designated under the Workforce Investment Act.

Estimated Time per Respondent: 45 minutes.

Total Estimated Number of Respondents: 78.

Total Estimated Annual Burden Hours: 59 hours.

Total Estimated Annual Costs Burden: $0.

Description: The American Recovery and Reinvestment Act of 2009 (ARRA) outlines the public workforce system's important role in helping workers prepare for and find employment, and providing work experience for youth. The Act contains many provisions for ensuring a successful implementation of effective workforce interventions. To ensure success, Federal, State and local workforce systems must be guided by four overriding principles: (1) Transparency and accountability in the use of funds; (2) timely spending of the funds and implementation of quality activities; (3) expanded workforce system capacity and service levels; and, (4) increased training leading to increased employment opportunities. The first step in the process is to accurately assess workforce system readiness across key administrative and program areas and to identify Technical Assistance (TA) needs. To do this, ETA Regional Offices will conduct an assessment of states and many local areas, compile those assessment responses, and provide recommendations on technical assistance actions ETA should take to support state and local implementation of the ARRA.

Why Are We Requesting Emergency Processing?

If DOL were to comply with standard PRA clearance procedures, it would not be able to properly comply with the ARRA-mandated requirement to assess and mitigate risk associated with the allocation of ARRA funds. The Department will take all necessary steps in consulting with state workforce agencies to minimize the burden of collecting the readiness information.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–6968 Filed 3–27–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Information Collection Extension Request for the Impact Evaluation of the Trade Adjustment Act Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data for the Impact Evaluation of the Trade Adjustment Assistance Program.

A copy of the proposed Information Collection Request can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm*.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 29, 2009.

ADDRESSES: Submit written comments to Charlotte Schifferes, Room N–5641, Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number: 202–693–3655 (this is not a toll-free number). Fax: 202–693–2766. E-mail: *schifferes.charlotte@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Employment and Training Administration is soliciting comments regarding an extension of an approved Information Collection Request (ICR) for the Impact Evaluation of the Trade Adjustment Assistance (TAA) Program. The ICR was approved by the Office of Management and Budget (OMB) in a Notice of Action (NOA) (ICR Reference Number 200606–1205–009) on November 15, 2006. The NOA identified November 30, 2009 as the expiration date for the ICR. An extension of the ICR is now needed in order to complete data collection activities for the impact analysis and process study of the TAA evaluation.

The TAA program provides training, income support, and other reemployment and supportive services to workers who lose their jobs or have their work hours or salary reduced because of increased imports or shifts in production to foreign countries. The evaluation is intended to generate information that will be useful in developing administrative guidance, technical assistance, and legislative or budgetary proposals.

The evaluation will estimate impacts of the TAA program on the employment and earnings of participants by comparing the outcomes of TAA participants to statistically matched comparison groups of Unemployment Insurance (UI) recipients. This quasi-experimental approach requires extensive information on demographic and personal characteristics as well as on programmatic experiences of both TAA participants and comparison group members. Such information will be gleaned from state TAA and UI administrative records and from baseline and follow-up surveys of individuals in the treatment and comparison groups.

The process study undertaken as part of the evaluation is designed to

understand how various program and administrative practices affect TAA performance, including the types of collaboration and administrative arrangements through which TAA operates in the One-Stop Career Center system under the Workforce Investment Act (WIA).

An extension of the ICR is needed in order to obtain follow-up data on employment and earnings outcomes. In order to complete the study prior to the expiration date of funds for the evaluation, only a single follow-up survey will be conducted in 2010, as approved by OMB (in an NOA, ICR Reference Number 2008–12–1205–001, dated December 17, 2008) in lieu of the two follow-up surveys as originally planned. The burden for this data collection will therefore be lower than proposed under the first ICR, even though the sample has been slightly expanded in order to assure a sufficient number of responses, due to lower-than-anticipated response rates for different subgroups.

Below is table which shows the burden for different respondents.

RESPONDENT HOURS BURDEN FOR THE TAA EVALUATION

Activity	Total respondents	Frequency	Average minutes per response	Burden hours
Burden Under the Proposed Extension (November 2009 to Project Completion)				
Impact Analysis:				
State Administrative Data	26	Once	480	208
25–Month Follow-up Survey	3,540	One time	30	1,770
Process Analysis:				
Administration of Site Visit Protocols				
1. TAA Reauthorization	180	One time	100	300
2. Promising Practices	325	One time	100	542
Total Estimated Burden				9,236

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension with revisions.

Title: Impact Evaluation of the Trade Adjustment Assistance Program.

OMB Number: 1205–0460.

Affected Public: Individuals in the TAA program or who applied for UI benefits, and State and local administrators in the UI and WIA programs.

Form: Questionnaire and site visit protocols.

Total Respondents: See table above.

Frequency: Once.

Total Responses: See table above.

Average Time per Response: See table above.

Estimated Total Burden Hours: See table above.

Total Burden Cost: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: March 23, 2009.

Thomas M. Dowd,

Administrator, Office of Policy Development and Research, Employment and Training Administration.

[FR Doc. E9–6970 Filed 3–27–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision to the ''American Time Use Survey (ATUS).'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individuals listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before May 29, 2009.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The ATUS is the Nation's first federally administered, continuous survey on time use in the United States.

It measures, for example, time spent with children, working, sleeping, or doing leisure activities. In the United States, several existing Federal surveys collect income and wage data for individuals and families, and analysts often use such measures of material prosperity as proxies for quality of life. Time-use data substantially augment these quality-of-life measures. The data also can be used in conjunction with wage data to evaluate the contribution of non-market work to national economies. This enables comparisons of production between nations that have different mixes of market and non-market activities.

The ATUS develops nationally representative estimates of how people spend their time. Respondents also report who was with them during activities, where they were, how long each activity lasted, and if they were paid. All of this information has numerous practical applications for sociologists, economists, educators, government policymakers, businesspersons, health researchers, and others, potentially answering the following questions:

- Do the ways people use their time vary across demographic and labor force characteristics, such as age, sex, race, ethnicity, employment status, earnings, and education?
- How much time do parents spend in the company of their children, either actively providing care or being with them while socializing, relaxing, or doing other things?
- How are earnings related to leisure time—do those with higher earnings spend more or less time relaxing and socializing?
- Where do people work—at a workplace, in their homes, or someplace else?
- How does the way people use their time affect their health, safety, and well-being?

The ATUS data are collected on an ongoing, monthly basis, so time series data will eventually become available, allowing analysts to identify changes in how people spend their time.

II. Current Action

Office of Management and Budget clearance is being sought for the ATUS. This survey collects information on how individuals in the United States use their time. Collection is done on a continuous basis with the sample drawn monthly. The survey sample is drawn from households completing their final month of interviews for the Current Population Survey (CPS). Households are selected to ensure a representative demographic sample, and one individual from each household is selected to take part in one Computer Assisted Telephone Interview. In this interview, respondents are asked to report all of their activities for one pre-assigned 24-hour day, which is the day prior to the interview. A short series of summary questions and CPS updates follow the core time diary collection. After each full year of collection, annual national estimates of time use for an average weekday or weekend day are available.

Beginning in January 2010, well-being questions sponsored by the National Institute on Aging are proposed to be added to the ATUS. These questions will be included in the survey for 12 months (through December 2010). These questions will ask respondents to rate on a 0-to-6 scale how happy, tired, stressed, sad, and in pain they felt during randomly selected activities. Respondents will not be asked these questions about personal activities. Additional questions will be asked about general health, use of pain medications, and interactions with others.

The data from this module will provide a richer description of work. Specifically, the results will measure how workers feel during work episodes compared to nonwork episodes, and how often and with whom workers interact on the job. The results also can be used to measure whether the amount of pain varies by occupation and disability status. These data will also allow for research into how pain and aging affect time usage.

Because the ATUS sample is a subset of households completing interviews for the CPS, the same demographic information collected from that survey is available for ATUS respondents. Comparisons of activity patterns across characteristics such as sex, race, age, disability status, and education of the respondent, as well as the presence of children and the number of adults living in the respondent's household, are possible.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: American Time Use Survey.

OMB Number: 1220–0175.

Affected Public: Individuals or households.

Total Respondents: 13,240.

Frequency: Monthly.

Total Responses: 13,240.

Average Time per Response: 19.75 minutes.

Estimated Total Burden Hours: 4,358 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 24th day of March 2009.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E9–6969 Filed 3–27–09; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Data Users Advisory Committee; Notice of Meeting and Agenda

The first meeting of the Data Users Advisory Committee will be held Thursday, April 23, 2009. The meeting will be held in the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Data Users Advisory Committee is a technical committee composed of data users from various sectors of the U.S. economy, including labor, business, research, academic and government communities. Committee members are called upon to provide advice on technical matters related to the collection, tabulation, and analysis of the Bureau's statistics, on its published reports, and on the broader

aspects of its overall mission and function.

The meeting will be held in Meeting Room 1 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

8:30 Registration
9:00 Opening Remarks and introductions
10:15 Discussion of future priorities
11:15 BLS Web site redesign
1:15 BLS product initiatives
2:45 Debunking myths about BLS data series
4:45 Conclusion

The meeting is open to the public. Any questions concerning the meeting should be directed to Tracy A. Jack, Data Users Advisory Committee, on 202–691–5869. Individuals with disabilities, who need special accommodations, should contact Ms. Jack at least two days prior to the meeting date.

Signed at Washington, DC, the 25th day of March 2009.

Philip L. Rones,

Deputy Commissioner, Bureau of Labor Statistics.

[FR Doc. E9–6998 Filed 3–27–09; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–032)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described and claimed in U.S. Patent No. 6,763,083 ''Article Screening System'' to GaN Corporation, having its principal place of business in Huntsville, AL. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Mr. James J. McGroary, Chief Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–0013.

FOR FURTHER INFORMATION CONTACT: Sammy A. Nabors, Technology Transfer Program Office/ED03, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Dated: March 20, 2009.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. E9–6801 Filed 3–27–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Environmental Research and Education (9487).

Dates: April 27, 2009, 9 a.m.–5 p.m. and April 28, 2009, 9 a.m.–1 p.m.

Place: Stafford I, Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Alan Tessier, National Science Foundation, Suite 635, 4201 Wilson Blvd., Arlington, Virginia 22230. Phone 703–292–7198.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda:

April 27

Introduction of new members.
Update on budget and recent NSF environmental activities.
Discussion with Dr. Timothy L. Killeen, NSF Assistant Director for Geosciences.
Presentation by Dr. Stephanie Pfirman, Barnard College.
Discussion with Dr. Arden L. Bement, NSF Director.

April 28

Discussion of the Committee's report: *Transitions and Tipping Points in Complex Environmental Systems.*
Discussion of future AC/ERE activities.

Dated: March 24, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–6932 Filed 3–27–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site Visit review of the Materials Research Science and Engineering Center (MRSEC) at Yale University, also called Center for Research on Interface Structures and Phenomena, by NSF Division of Materials Research (DMR) #1203.

Dates & Times: Thursday, May 7, 2009; 7:45 a.m.–9 p.m.; Friday, May 8, 2009; 8 a.m.–3:30 p.m.

Place: Yale University, New Haven, CT.

Type of Meeting: Part-open.

Contact Person: Dr. Thomas Rieker, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–8428.

Purpose of Meeting: To provide advice and recommendations concerning further support of the MRSEC at Yale University.

Agenda:

Thursday, May 7, 2009

7:45 a.m.–9 a.m. Closed—Executive Session.
9 a.m.–4:15 p.m. Open—Review of the Yale MRSEC.
4:15 p.m.–6 p.m. Closed—Executive Session.
6 p.m.–9 p.m. Open—Poster Session and Dinner.

Friday, May 8, 2009

8 a.m.–9 a.m. Closed—Executive session.
9 a.m.–9:45 a.m. Open—Review of the Yale MRSEC.

9:45 a.m.–3:30 p.m. Closed—Executive Session, Draft and Review Report.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 24, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–6931 Filed 3–27–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., April 7, 2009.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED:

8087 Aviation Accident Report—In-Flight Left Engine Fire, American Airlines Flight 1400, McDonnell Douglas DC–9–82, N454AA, St. Louis, Missouri, September 28, 2007.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, April 3, 2009.

The public may view the meeting via a live or archived Webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: March 26, 2009.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. E9–7181 Filed 3–26–09; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0136]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 244, Registration Certificate—Use of Depleted Uranium under General License.

2. *Current OMB approval number:* 3150–0031.

3. *How often the collection is required:* On occasion. NRC Form 244 is submitted when depleted uranium is received or transferred under general license. Information on NRC Form 244 is collected and evaluated on a continuing basis as events occur.

4. *Who is required or asked to report:* Persons receiving, possessing, using, or transferring depleted uranium under the general license established in 10 CFR 40.25(a).

5. *The number of annual respondents:* 23 (4 NRC Licensees and 19 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 23 (1 hour per response—4 hours for NRC licensees and 19 hours for Agreement State licensees).

7. *Abstract:* 10 CFR Part 40 establishes requirements for licenses for the receipt, possession, use and transfer of radioactive source and byproduct material. NRC Form 244 is used to report receipt and transfer of depleted uranium under general license, as required by section 40.25. The registration certification information required by NRC Form 244 is necessary to permit the NRC to make a determination on whether the possession, use, and transfer of depleted uranium source and byproduct material is in conformance with the Commission's regulations for protection of public health and safety.

Submit, by May 29, 2009, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2009–0136. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2009–0136. Mail comments to NRC Clearance Officer, Gregory Trussell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Gregory Trussell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6445, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 20th day of March, 2009.

For the Nuclear Regulatory Commission,

Gregory Trussell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–6996 Filed 3–27–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–123; NRC–2009–0139]

Missouri University of Science and Technology Nuclear Research Reactor; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of a renewed Facility Operating License No. R–79,

held by the Missouri University of Science and Technology (the licensee or MST), which would authorize continued operation of the Missouri University of Science and Technology Research Reactor (MSTR), located in Rolla City, Phelps County, Missouri. Therefore, as required by 10 CFR 51.21, the NRC is issuing this Environmental Assessment and Finding of No Significant Impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would renew Facility Operating License No. R–79 for a period of twenty years from the date of issuance of the renewed license. The proposed action is in accordance with the licensee's application dated August 20, 2004, as supplemented on November 16, November 27, and December 26, 2007, and January 17, March 6, June 26, September 16, and November 7, 2008. In accordance with 10 CFR 2.109, the existing license remains in effect until the NRC takes final action on the application.

Need for the Proposed Action

The proposed action is needed to allow the continued operation of the MSTR to routinely provide teaching, research, and services to numerous institutions for a period of twenty years.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action to issue a renewed Facility Operating License No. R–79 to allow continued operation of the MSTR for a period of twenty years and concludes there is reasonable assurance that the MSTR will continue to operate safely for the additional period of time. The details of the staff's safety evaluation will be provided with the renewed license that will be issued as part of the letter to the licensee approving its license renewal application.

The MSTR is located in a separated building on the east side of the main campus of the MST. The reactor is housed in a steel frame structure with insulated metal walls. The reactor building footprint is 49 feet x 33 feet (approximately 15 meters x 10 meters). Utilities such as electrical supply, sewage, and water are provided by the main campus systems. There are no nearby industrial, transportation, or military facilities that could pose a threat to the MSTR.

In December 1961, the U.S. Atomic Energy Commission (AEC) issued an operating license to the University of Missouri—Rolla (renamed Missouri University of Science and Technology) for operation of a research reactor on its campus. The MSTR is based on the design of the bulk shielding reactor (BSR) at Oak Ridge National Laboratory, which was a materials testing reactor (MTR). Reactors of this type have common features, such as light-water moderation, natural convection cooling, open pools, and plate-type fuel. This license, R–79, authorized the facility to operate at steady-state power levels up to 10 kW(t). In 1967, the license was amended to allow operation up to its current power level of 200 kW(t). In 1992, the fuel was converted from high-enriched uranium (HEU) to low-enriched uranium (LEU). The low power level of the core allows for sufficient cooling by natural convection. The reactor's experimental facilities include a pneumatic transfer system, in-core irradiation tube, a beam tube, and a thermal column. There are four control rods loaded in any particular core configuration to allow the MSTR to routinely operate with various powers and experiments. The MSTR has no pulse capability. The sum of the absolute values of all experiments is limited to a maximum reactivity of 1.2% $\Delta k/k$ by technical specification, which is well below the maximum reactivity limit of 1.5% $\Delta k/k$ established in the safety analysis. The licensee's analysis in Chapter 13 of the safety analysis report (SAR) shows that a stepwise reactivity insertion of 1.5% $\Delta k/k$ does not adversely affect the health and safety of public and the reactor staff.

The licensee has not requested any changes to the facility design or operating conditions as part of the renewal request. Therefore, the license renewal should not change the environmental impact of facility operation.

I. Radiological Impact

Gaseous effluents are discharged by the reactor ventilation fan at a volumetric flow rate of approximately 140 m^3/min (5×10^3 ft^3/min). Other release pathways exist; however, they are normally secured during reactor operation and have insignificant volumetric flow rates compared to the ventilation fan. The dose rate at the reactor bridge with the reactor operating at 200 kW is less than 5 mrem/hr. Nitrogen-16, argon-41, and direct radiation from the reactor core contribute to this dose rate. Nitrogen-16 has a very short half-life (7.13 sec), and the reactor has a core diffuser system which creates a water circulation pattern designed to suppress nitrogen-16 transported to the surface of the pool and reduce the reactor pool surface dose rate. Because of the short half-life of nitrogen-16 compared to the transit time, exposure to the public is negligible. Analysis of effluent samples has found only argon-41. The licensee measured the dose from normal operations to a person in the unrestricted area. The concentration of argon-41 leaving the reactor roof fan exhaust where argon-41 is released to the general public was measured at 4.24 $\times 10^{-10}$ microcuries per milliliter (μCi/ml). The calculations very conservatively assume that the reactor operates continuously for a year and that the member of the public stands at the point of maximum exposure continuously for the entire year. Using the conservative assumption above, the measured result was 2 mrem. This is below the 10 CFR Part 20, Appendix B, Table 2, limit of 50 mrem for submersion. The licensee also measured occupational exposure to argon-41 in the reactor bay. Using the worst-case conditions, the conservative measurement of argon-41 concentration in the reactor building from pool release was 1.80 10^{-7} μCi/ml, more than a factor of 10 below the regulatory limit of 3.0×10^{-6} μCi/ml (10 CFR Part 20, Appendix B). These calculations demonstrate that routine airborne effluents released from the MSTR are well within 10 CFR Part 20 criteria for occupational workers and members of the public, and are therefore acceptable to the staff.

Pool water activity is monitored monthly to ensure that no gross pool contamination or fuel cladding rupture has occurred. Liquid effluents are analyzed for radioactive contamination and approved by the MSTR Radiation Safety Office before discharge.

Un-compacted solid low-level radioactive waste consists of gloves, pads, used resins, filters, and various activation products from experiments conducted using the MSTR. This radioactive waste is transferred to the MSTR Dangerous Materials Storage Facility (DMSF) for future shipment to a commercial burial site, in accordance with the requirements of applicable NRC and Department of Transportation regulations, including 10 CFR Part 61, 10 CFR Part 71, and 49 CFR Part 170 through 178.

Facility personnel, staff, and students involved with the operation of the MSTR are assigned dosimeters. Personnel exposures reported to the NRC were within the limits set by 10 CFR 20.1201, and were as low as reasonably achievable (ALARA). Visitors are also monitored with direct reading dosimeters. No visitors received

any reportable or significant exposure in the past 20 years. No changes in reactor operation that would lead to an increase in occupational doses are expected as a result of license renewal.

The environmental impacts of the fuel cycle and transportation of fuels and wastes are described in Tables S–3 and S–4 of 10 CFR 51.51 and 10 CFR 51.52, respectively. An additional NRC generic environmental assessment (53 FR 30355, dated August 11, 1988, as corrected by 53 FR 32322, dated August 24, 1988) evaluated the applicability of Tables S–3 and S–4 to higher burn-up cycle and concluded that there is no significant change in environmental impact from the parameters evaluated in Tables S–3 and S–4 for fuel cycles with uranium enrichments up to 5 weight percent uranium-235 and burn-ups less than 60,000 MWt days per metric ton of uranium-235 (MWd/MTU). The MSTR uranium enrichment limit and the burn-up limit would stay within the 5 percent and the 60,000 MWd/MTU limits. Therefore, the environmental impacts of the fuel cycle and transportation of fuels and wastes, to and from the site, would not be significant.

II. Non-Radiological Impact

The MSTR core is submerged in an open pool containing 30,000 gallons (113,560 liters) of demineralized light water. The core is cooled by natural convection. Heat from the water pool is dissipated primarily by evaporation into the reactor bay and discharged to the environment by the ventilation system. The auxiliary cooling system with a heat exchanger is also available to reduce the water temperature if needed. Release of thermal effluents from the MSTR will not have a significant effect on the environment. The small amount of waste heat, approximately 200 kW at full power operation, is released to the atmosphere by means of the dry cooler, and therefore will not lead to the creation of fog. Extensive drift will not occur at this heat dissipation rate.

Environmental Effects of Accidents

The maximum hypothetical accident (MHA) scenario is discussed in Chapter 13 of the MSTR SAR. The accident scenario assumes that a capsule, containing fissile material after irradiation in the fuel experiment, breaks and releases all gaseous fission products in the reactor building and uncontrolled environment. In analyzing the MHA, occupational doses resulting from this accident would be 410 mrem (4.10 mSV), which is more than a factor of ten below 10 CFR Part 20 limits of 5000 mrem (50 mSV). Maximum doses for members of the general public were conservatively calculated to be 46 mrem (0.46 mSv), and are below the 10 CFR Part 20 limit of 100 mrem (1 mSv). The analysis shows that the failure of an irradiated fueled experiment will not exceed 10 CFR Part 20 limits. Therefore, it is acceptable to the staff.

National Environmental Policy Act (NEPA) Considerations

I. Endangered Species Act (ESA)

The site occupied by the MSTR does not contain any Federally- or State-protected fauna or flora, nor do the MSTR effluents impact the habitats of any such fauna or flora.

II. Costal Zone Management Act (CZMA)

The site occupied by the MSTR is not located within any managed coastal zones, nor do the MSTR effluents impact any managed coastal zones.

III. National Historical Preservation Act (NHPA)

The National Register Information System lists several historical sites located around the Missouri University of Science and Technology, but operation of the MSTR will not impact any historical sites.

IV. Fish and Wildlife Coordination Act (FWCA)

The licensee is not planning any water resource development projects, including any of the modifications relating to impounding a body of water, damming, diverting a stream or river, deepening a channel, irrigation, or altering a body of water for navigation or drainage.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to license renewal, the staff considered denial of the proposed action. If the Commission denied the application for license renewal, facility operations would end and decommissioning would be required with no significant impact on the environment. The environmental impacts of license renewal and this alternative action are similar. However, the benefits of teaching, research, and services provided by facility operation would be lost.

Alternative Use of Resources

The proposed action does not involve the use of any different resources or significant quantities of resources beyond those previously considered in the issuance of Amendment No. 9 to Facility Operating License No. R–79 for the Missouri University of Science and Technology Research Reactor dated March 5, 1991, for the HEU to LEU conversion.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Agencies and Persons Consulted

In accordance with its stated policy, on February 14, 2008, the NRC staff consulted with the Missouri State official, Floyd Gilzow, of the State Liaison Office, Department of Natural Resources, regarding the environmental impacts of the proposed action. The State official had no comments.

For further details with respect to the proposed action, see the licensee's letter dated August 30, 2004 (ADAMS Accession No. ML042820116), as supplemented by letters dated November 16, 2007 (ADAMS Accession No. ML073240523), November 27, 2007 (ADAMS Accession No. ML073320467), December 26, 2007 (ADAMS Accession No. ML080070088), January 17, 2008 (ADAMS Accession No. ML080240307), March 6, 2008 (ADAMS Accession No. ML080930439), June 26, 2008 (ADAMS Accession No. ML081820410), September 16, 2008 (ADAMS Accession No. ML 082630565), and November 7, 2008 (ADAMS Accession No. ML083190529), and Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 19th day of March, 2009.

For the Nuclear Regulatory Commission.

Kathryn Brock,

Chief, Research and Test Reactors Branch A, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E9–6997 Filed 3–27–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–08–072]; [NRC–2009–0141]

In the Matter of: Jennifer O'Neill-Torres; Order Prohibiting Involvement in NRC-Licensed Activities

I

Jennifer O'Neill-Torres is the President and Radiation Safety Officer (RSO) at S&M Testing Laboratory (S&M Testing) (Licensee) in Gurabo, Puerto Rico (PR). S&M Testing Laboratory holds License No. 52–25133–01 originally issued to Turabo Corporation by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on March 25, 1991, and transferred to S&M Testing on December 31, 2002. The license authorizes possession and use of sealed radioactive sources for use in portable gauging devices for measuring physical properties of materials in accordance with the conditions specified therein. Jennifer O'Neill-Torres is listed on the license as the Radiation Safety Officer.

II

An NRC inspection was conducted from May 1, 2007, through September 23, 2008, and an investigation by the NRC Office of Investigations (OI) was initiated on March 7, 2008, regarding licensed activities at S&M Testing Laboratory. An OI investigation was conducted, in part, to determine whether a deliberate violation of NRC requirements had occurred and was completed on November 10, 2008. Based on the results of the inspection and the investigation, the NRC concluded that Jennifer O'Neill-Torres deliberately caused the Licensee to be in violation of NRC regulations, namely: (1) 10 CFR 30.34I, in that she deliberately failed to obtain NRC approval via an amendment to S&M Testing's NRC license to authorize storage of licensed gauges at an alternate location prior to moving all gauges from authorized storage location in Caguas, PR to an unauthorized storage location in Gurabo, PR; and (2) 10 CFR 30.52(a), in that she deliberately failed to provide the NRC an opportunity to inspect the gauges after she: failed to respond to repeated contact attempts by the NRC; was uncooperative and refused to provide an NRC inspector information regarding the licensed gauges including their location and conditions of storage during a telephone conversation on December 6, 2007; and failed to respond to subsequent contact attempts until located by the NRC OI with assistance from the Federal Bureau of Investigation on August 6, 2008.

III

Based on the above, it appears that Jennifer O'Neill-Torres, an employee of S&M Testing has engaged in deliberate misconduct, contrary to 10 CFR 30.10, which states, in part, that any Licensee or employee of a Licensee may not engage in deliberate misconduct that causes a Licensee to be in violation of any rule, regulation, or order issued by the Commission. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements. Jennifer O'Neill-Torres's action in deliberately causing the Licensee to violate NRC requirements, including 10 CFR 30.34I and 10 CFR 30.52(a), has raised serious doubt as to whether she can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Jennifer O'Neill-Torres were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Jennifer O'Neill-Torres be prohibited from any involvement in NRC-licensed activities for a period of 5 years from the date of this Order. Additionally, Jennifer O'Neill-Torres is required to notify the NRC of her first employment in NRC-licensed activities for a period of 5 years following the prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered, that:

1. Jennifer O'Neill-Torres is prohibited for 5 years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Jennifer O'Neill-Torres is currently involved with another licensee in NRC-licensed activities, she must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of 5 years after the 5 year period of prohibition has expired, Jennifer O'Neill-Torres shall, within 20 days of acceptance of her first employment offer involving NRC-licensed activities or her becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, of the name, address, and telephone number of the employer or the entity where she is, or will be, involved in the NRC-licensed activities. In the notification, Jennifer O'Neill-Torres shall include a statement of her commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that she will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Jennifer O'Neill-Torres of good cause.

V

In accordance with 10 CFR 2.202, Jennifer O'Neil-Torres must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its issuance. In addition, Jennifer O'Neil-Torres and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007, 72 FR 49,139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which

it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MHSD.Resource@nrc.gov.*

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If a person other than Jennifer O'Neill-Torres requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by Jennifer O'Neill-Torres or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated this 23rd day of March 2009.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Director, Office of Enforcement.

[FR Doc. E9–6995 Filed 3–27–09; 8:45 am]

BILLING CODE

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act of 1974, System of Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of new system of records.

SUMMARY: This document provides notice of a proposed new Privacy Act system of records. The Pension Benefit Guaranty Corporation (PBGC) is establishing a new system of records entitled ''PBGC–17, Office of Inspector General Investigative File System—PBGC,'' subject to the Privacy Act of 1974, as amended. The information from the new system of records will be used by the PBGC's Office of Inspector General to conduct criminal, civil, and administrative investigations, and will contain identifying information about potential subjects and sources.

DATES: Comments on the new system of records and proposed routine uses must be received on or before April 29, 2009. The new system of records will become effective on May 14, 2009 without further notice, unless comments result in a contrary determination and a notice is published to that effect.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *E-mail: reg.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

Comments received, including personal information provided, will be posted to *http://www.pbgc.gov.* Copies of comments may also be obtained by writing to Disclosure Division, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-

free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Margaret E. Drake, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4400 (extension 3228); or James Bloch, Program Analyst, Legislative & Regulatory Department; 202–326–4223 (extension 3530). (For TTY/TDD users, call the federal relay service toll-free at (800) 877–8339 and ask to be connected to 202–326–4400 (extension 3228) or 202–326–4223 (extension 3530).)

SUPPLEMENTARY INFORMATION: PBGC is proposing to establish a new system of records entitled ''PBGC–17, Office of Inspector General Investigative File System—PBGC.'' (PBGC's proposed rule on disclosure and amendment of records pertaining to individuals under the Privacy Act appears elsewhere in today's **Federal Register**.) The proposed system of records is necessary to the functions performed by the Office of Inspector General (OIG), and will cover only those files of investigation that identify by name, or other personal identifier, individuals who are subjects of investigations or sources of information. The files may contain information about civil, criminal, or administrative wrongdoing, or about fraud, waste, or mismanagement, or other violations of law or regulation. This information could be the basis for referrals to appropriate prosecutorial authorities for consideration of criminal or civil prosecution or to PBGC management for administrative corrective action. OIG, as it has always done, will continue to respect the privacy of individuals named in these files and will disclose, within the boundaries of the law, the least amount of information necessary to perform its law-enforcement responsibilities.

The collection and maintenance of records subject to this system are not new because records of the same type have been collected and maintained in the OIG since its establishment in 1989. Those records, however, were not maintained or retrieved by a name or other personal identifier. With the implementation of an electronic records management system, these records will now be in a system of records, as defined in *The Privacy Act Implementation: Guidelines and Responsibilities*, 40 FR 28,498 (July 9, 1975). Electronic information will be kept in an environment with physical and logical security, including encryption of information on external computer media. Computers and hard copy records are maintained in a secured environment.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written comments on this proposal. A report on the following proposed system has been sent to Congress and the Office of Management and Budget for their evaluation.

Issued in Washington, DC, this 23rd day of March, 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

PBGC–17

SYSTEM NAME:

Office of Inspector General Investigative File System—PBGC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Office of Inspector General, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Persons who are named individuals in investigations conducted by OIG.
2. Complainants and subjects of complaints collected through the operation of the OIG Hotline.
3. Other individuals, including witnesses, sources, and members of the general public, who are named individuals in connection with investigations conducted by OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information within this system relates to OIG investigations carried out under applicable statutes, regulations, policies, and procedures. The investigations may relate to criminal, civil, or administrative matters. These OIG files may contain investigative reports; copies of financial, contractual, and property management records maintained by PBGC; background data including arrest records, statements of informants and witnesses, and laboratory reports of evidence analysis; search warrants, summonses and subpoenas; and other information related to investigations. Personal data in the system may consist of names, Social Security numbers, addresses, fingerprints, handwriting samples, reports of confidential informants, physical identifying data, voiceprints, polygraph tests, photographs, and individual personnel and payroll information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. 3.

PURPOSE(S):

This system of records is used to maintain information related to investigations of criminal, civil, or administrative matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

PBGC General Routine Uses G1, G2, G4, G5, and G7 listed in PBGC's *Privacy Act of 1974; Systems of Records,* 60 FR 57,462 (Nov. 15, 1995) apply to this system of records. In addition:

1. A record relating to a person held in custody pending or during arraignment, trial, sentence, or extradition proceedings or after conviction may be disclosed to a federal, state, local, or foreign prison; probation, parole, or pardon authority; or any other agency or individual involved with the maintenance, transportation, or release of such a person.
2. A record relating to a case or matter may be disclosed to an actual or potential party or his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings.
3. A record may be disclosed to any source, either private or governmental, when reasonably necessary to elicit information or obtain the cooperation of a witness or informant when conducting any official investigation or during a trial or hearing or when preparing for a trial or hearing.
4. A record relating to a case or matter may be disclosed to a foreign country, through the United States Department of State or directly to the representative of such country, under an international treaty, convention, or executive agreement; or to the extent necessary to assist such country in apprehending or returning a fugitive to a jurisdiction that seeks that individual's return.
5. A record originating exclusively within this system of records may be disclosed to other federal offices of inspectors general and councils comprising officials from other federal offices of inspectors general, as required by the Inspector General Act of 1978, as amended. The purpose is to ensure that OIG audit and investigative operations can be subject to integrity and efficiency peer reviews, and to permit other offices of inspectors general to investigate and report on allegations of misconduct by senior OIG officials as directed by a council, the President, or Congress. Records originating from any other PBGC systems of records, which may be duplicated in or incorporated into this system, also may be disclosed with all

personally identifiable information redacted.

6. A record may be disclosed to the Department of the Treasury and the Department of Justice when the OIG seeks an *ex parte* court order to obtain taxpayer information from the Internal Revenue Service.

7. A record may be disclosed to a ''consumer reporting agency,'' as that term is defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)), to obtain information in the course of an investigation, audit, or evaluations.

8. A record may be disclosed to any governmental, professional or licensing authority when such record reflects on qualifications, either moral, educational or vocational, of an individual seeking to be licensed or to maintain a license.

9. A record may be disclosed to any direct or indirect recipient of federal funds, e.g., a contractor, where such record reflects problems with the personnel working for a recipient, and disclosure of the record is made to permit a recipient to take corrective action beneficial to the Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information in the records is maintained in a variety of media, including paper, magnetic tapes or discs, and an automated database. The records are maintained in limited access areas during duty hours and in locked offices at all other times.

RETRIEVABILITY:

Records are indexed by name or other personal identifier, subject category, or assigned case number.

SAFEGUARDS:

Paper records, computers, and computer-storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge. Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections. Computers are protected by mechanical locks, card-key systems, or other physical-access control methods. The use of computer systems is regulated with installed security software, computer-logon identifications, and operating-system controls including access controls, terminal and transaction logging, and file-management software.

RETENTION AND DISPOSAL:

1. Official investigative case files, evidence and custody files, and informant files are retained up to 11 years after closeout of the investigation. If significant, the files are transferred to the National Archives and Records Administration.

2. Information reports, investigative analysis reports, and inquiry files are retained up to 6 years after closeout of the investigation.

3. Internal administrative reports are retained up to 3 years after closeout of the investigation.

Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC, 20005–4026.

NOTIFICATION PROCEDURE:

Individuals wanting to know if information about them is maintained in this system of records must address inquiries to the system manager; include full name, address, and date of birth; and label the request ''Privacy Act Request.'' Inquiries must comply with the procedures in 29 CFR 4902.3.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and PBGC Privacy Act regulations regarding access to records and verification of identity under 29 CFR 4902.3.

CONTESTING RECORD PROCEDURES:

An individual wanting to contest or amend information maintained in the system should direct a request to the Disclosure Officer according to the procedures in 29 CFR 4902.3. In addition, the request should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. *See* 29 CFR 4902.5.

RECORD SOURCE CATEGORIES:

The information contained in this system may be derived or received from individual complainants, witnesses, interviews conducted during investigations, Federal, state and local government records, individual or company records, claim and payment files, employer medical records, insurance records, court records, articles from publications, financial data, bank information, telephone data, insurers, service providers, other law enforcement organizations, grantees and subgrantees, contractors and subcontractors, and other sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j) and (k), PBGC has established regulations at 29 CFR 4902.11 that exempt records in this system depending on their purpose.

[FR Doc. E9–6972 Filed 3–27–09; 8:45 am]

BILLING CODE 7709–01–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0197; Form RI 38–107]

Proposed Information Collection; Request for Comments on an Existing Information Collection:

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for comments on an existing information collection. This information collection, ''Verification of Who is Getting Payments'' (OMB Control No. 3206–0197: Form RI 38–107), is designed for use when OPM, for any reason, must verify that the entitled person is indeed receiving the monies payable. Failure to collect this information would cause OPM to pay monies absent the assurance of a correct payee.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

There are approximately 25,400 changes per year. Each form takes approximately 10 minutes to complete. The annual estimated burden is 4,234 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to

Cyrus.Benson@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: James K. Freiert, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: *For Information Regarding Administrative Coordination Contact:* Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–0623.

U.S. Office of Personnel Management

Kathie Ann Whipple,

Acting Director.

[FR Doc. E9–6921 Filed 3–27–09; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0168; Form RI 20–80]

Submission for OMB Review; Request for Extension, Without Change, of a Currently Approved Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for extension, without change, of a currently approved information collection. This information collection, ''Alternative Annuity Election'' (OMB Control No. 3206–0168; Form RI 20–80), is used for individuals who are eligible to elect whether to receive a reduced annuity and a lump-sum payment equal to their retirement contributions (alternative form of annuity) or an unreduced annuity and no lump sum.

There are approximately 200 Alternative Annuity Elections per year. Each form takes approximately 20 minutes to complete. The annual estimated burden is 67 hours.

For copies of this proposal, contact Cyrus S. Benson by telephone at (202) 606–4808, FAX (202) 606–0910 or by e-mail to *Cyrus.Benson@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to:

Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500; and

Alexander Hunt, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415. (202) 606–0623.

Kathie Ann Whipple,

Acting Director, U.S. Office of Personnel Management.

[FR Doc. E9–6922 Filed 3–27–09; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0033; Form RI 25–7]

Proposed Information Collection; Request for Comments on a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for comments on a revised information collection. This information collection Marital Status Certification Survey (OMB Control No. 3206–0033; Form RI 25–7), is used to determine whether widows, widowers, and former spouses receiving survivor annuities from OPM have remarried before reaching age 55 and, thus, are no longer eligible for benefits.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 2,500 forms are completed annually. Each form takes approximately 15 minutes to complete; the annual estimated burden is 625 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via e-mail to *Cyrus.Benson@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to— James K. Freiert, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, 1900 E Street, NW., Room 4H28, Washington, DC 20415. (202) 606–0623.

Kathie Ann Whipple,

Acting Director, U.S. Office of Personnel Management.

[FR Doc. E9–6924 Filed 3–27–09; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0230; STANDARD Form 2817]

Submission for OMB Review; Comment Request for Extension, Without Change of a Currently Approved Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for extension, without change, of a currently approved

information collection. This information collection, ''Life Insurance Election'' (OMB Control No. 3206–0230; SF 2817), is used by Federal employees and assignees (those who have acquired control of an employee/annuitant's coverage through an assignment or ''transfer'' of the ownership of the life insurance). Clearance of this form for use by active Federal employees is not required according to the Paperwork Reduction Act (Pub. L. 98–615). The Public Burden Statement meets the requirements of 5 CFR 1320.8(b)(3). Therefore, only the use of this form by assignees, *i.e.* members of the public, is subject to the Paperwork Reduction Act.

Approximately 150 SF 2817 forms are completed annually by assignees. The form takes approximately 15 minutes to complete. The annual estimated burden is 37.5 hours

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via e-mail to *Cyrus.Benson@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Christopher N. Meuchner, Life Insurance & Long Term Care Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 2H22, Washington, DC 20415–3661; and

Alexander Hunt, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415. (202) 606–0623.

Kathie Ann Whipple,

Acting Director, U.S. Office of Personnel Management.

[FR Doc. E9–6925 Filed 3–27–09; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0156 (STANDARD FORMS 2800 AND 2800A)]

Submission for OMB Review; Request for Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, ''Application for Death Benefits under the Civil Service Retirement System (CSRS)'' (OMB Control No. 3206–0156; form SF 2800), is needed to collect information so that OPM can pay death benefits to the survivors of Federal employees and annuitants. ''Documentation and Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death'' (OMB Control No. 3206–0156; form SF 2800A), is needed for deaths in service so that survivors can make the needed elections regarding military service. Every applicant who uses SF 2800 should read SF 2800–1, Applying for Death Benefits under CSRS. This brief booklet provides the general information applicants need to understand what they are applying for.

Approximately 68,000 SF 2800's are processed annually. The completion time for this form is approximately 45 minutes. An annual burden of 51,000 hours is estimated. Approximately 6,800 applicants will use SF 2800A annually. Each form takes approximately 45 minutes to complete. An annual estimated burden of 5,100 hours is estimated. The total annual burden for this information collection is 56,100 hours.

For copies of this proposal, contact Cyrus S. Benson by telephone (202) 606–4808, FAX (202) 606–0910 or by e-mail to *Cyrus.Benson@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to:

James K. Freiert, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500; and

Alexander Hunt, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For information regarding administrative coordination contact:

Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415. (202) 606–0623.

Kathie Ann Whipple,

Acting Director, U.S. Office of Personnel Management.

[FR Doc. E9–6927 Filed 3–27–09; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0245; RI 20–120]

Proposed Information Collection; Request for Comments on an Existing Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of an existing information collection. This information collection, ''Request for Change to Unreduced Annuity'' (OMB Control No. 3206–0245; Form RI 20–120), is designed to collect required information so that OPM may comply with the wishes of the retired Federal employee whose marriage has ended. This form will provide an organized way for the retiree to give us everything at one time.

Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through

the use of appropriate technological collection techniques or other forms of information technology.

There are approximately 5,000 requests annually. This form takes an average of 30 minutes per response to complete. The annual burden is estimated to be 2,500 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via e-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: James K. Freiert, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

Kathie Ann Whipple,

Acting Director, U.S. Office of Personnel Management.

[FR Doc. E9–6928 Filed 3–27–09; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Request for Comments on an Existing Information Collection

[OMB Control No. 3206–0141; OPM Form 2809]

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of an existing information collection. This information collection, ''Health Benefits Election Form'' (OMB Control No. 3206–0141; OPM Form 2809), is used by annuitants and former spouses to elect, cancel, suspend, or change health benefits enrollment during periods other than open season.

There are approximately 30,000 changes to health benefits coverage per year. Of these, 20,000 are submitted on OPM Form 2809 and 10,000 verbally or in written correspondence. Each form takes approximately 45 minutes to complete; data collection by telephone or mail takes approximately 10 minutes. The annual burden for the form is 15,000 hours; the burden not using the form is 1,667 hours. The total burden is 16,667 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or by E-mail to *Cyrus.Benson@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

James K. Freiert,
Deputy Assistant Director,
Retirement Services Program,
Center for Retirement and Insurance Services,
U.S. Office of Personnel Management,
1900 E Street, NW., Room 3305,
Washington, DC 20415–3500; and
Alexander Hunt,
OPM Desk Officer,
Office of Information & Regulatory Affairs,
Office of Management and Budget,
New Executive Office Building,
725 17th Street, NW.,
Room 10235,
Washington, DC 20503.

For Information Regarding Administrative Coordination Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW Room 4H28, Washington, DC 20415, (202) 606–0623.

U.S. Office of Personnel Management.

Kathie Ann Whipple,

Acting Director.

[FR Doc. E9–7047 Filed 3–27–09; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: Glenda Haendschke, Acting Group Manager, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between February 1, 2009, and February 28, 2009. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of September 30 is published each year. The following Schedules are not codified in the Code of Federal Regulations. These are agency specific exceptions.

Schedule A

Schedule A appointments in the month of February 2009.

Section 213.3106(1) Special Inspector General for Afghanistan Reconstruction

(1) Positions needed to establish the Special Inspector General for Afghanistan Reconstruction. These positions provide for the independent and objective conduct and supervision of audits and investigations relating to the programs and operations funded with amounts appropriated and otherwise made available for the reconstruction of Afghanistan. These positions are established at the General Schedule (GS) grade levels 12–15, for initial employment not to exceed 3 years and may, with prior approval of OPM, be extended for an additional period of 2 years. No new appointments may be made under this authority after January 31, 2011.

Schedule B

No Schedule B appointments were approved for February 2009.

Schedule C

The following Schedule C appointments were approved during February 2009.

Section 213.3305 Department of the Treasury

DYGS00377 Special Assistant to the Special Assistant to the Secretary. Effective February 17, 2009.

DYGS00413 White House Liaison to the Chief of Staff. Effective February 17, 2009.

DYGS00423 Special Assistant to the Secretary. Effective February 17, 2009.

DYGS00440 Public Affairs Specialist to the Director, Public Affairs. Effective February 17, 2009.

DYGS00468 Public Affairs Specialist to the Director, Public Affairs. Effective February 17, 2009.

DYGS00482 Deputy Executive Secretary to the Executive Secretary. Effective February 17, 2009.

DYGS00486 Special Assistant to the Director of Scheduling and Advance. Effective February 17, 2009.
DYGS00501 Special Assistant to the Under Secretary for Domestic Finance. Effective February 17, 2009.
DYGS00507 Special Assistant to the Secretary. Effective February 17, 2009.
DYGS00508 Special Assistant to the Executive Secretary. Effective February 17, 2009.
DYGS00511 Special Assistant to the Counselor to the Secretary. Effective February 17, 2009.
DYGS60139 Director of Scheduling and Advance to the Chief of Staff. Effective February 17, 2009.
DYGS60277 Speechwriter to the Assistant Secretary (Public Affairs). Effective February 7, 2009.
DYGS60421 Special Assistant to the Deputy Assistant Secretary for Legislative Affairs (Tax and Budget). Effective February 17, 2009.
DYGS00250 Director, Public Affairs to the Deputy Assistant Secretary (Public Affairs). Effective February 23, 2009.

Section 213.3306 Department of Defense

DDGS17184 Deputy White House Liaison to the Special Assistant to the Secretary of Defense for White House Liaison. Effective February 13, 2009.

Section 213.3311 Department of Homeland Security

DMGS00613 Speechwriter to the Director of Speechwriting. Effective February 23, 2009.
DMGS00664 Advance Representative to the Director of Scheduling and Advance. Effective February 23, 2009.
DMGS00765 Special Assistant to the Chief of Staff. Effective February 23, 2009.
DMGS00769 Confidential Assistant to the White House Liaison. Effective February 23, 2009.
DMGS00770 Confidential Assistant to the Secretary of the Department of Homeland Security. Effective February 23, 2009.
DMGS00800 Deputy Chief of Staff (Policy) to the Chief of Staff to the Secretary (Policy). Effective February 23, 2009.

Section 213.3311 Department of Homeland Security

DIGS01134 Deputy Director, Office of Communications to the Director, Office of Communications. Effective February 06, 2009.
DIGS01135 Special Assistant to the Secretary. Effective February 06, 2009.
DIGS01142 Special Assistant to the Director, External and Intergovernmental Affairs. Effective February 20, 2009.
DIGS01136 Special Assistant to the White House Liaison. Effective February 23, 2009.
DIGS01137 Special Assistant to the Deputy Chief of Staff. Effective February 23, 2009.
DIGS01138 Special Assistant to the Special Assistant to the Secretary. Effective February 23, 2009.
DIGS01139 Special Assistant to the Special Assistant to the Secretary. Effective February 23, 2009.

Section 213.3314 Department of Commerce

DCGS00205 Special Assistant to the Administrator to the Under Secretary Oceans and Atmosphere (Administrator National Oceanic and Atmospheric Administration). Effective February 10, 2009.
DCGS00428 Deputy Director, Office of the White House Liaison to the Director Office of White House Liaison. Effective February 10, 2009.
DCGS60001 Deputy Director, Office of Business Liaison to the Director, Office of Business Liaison. Effective February 11, 2009.

Section 213.3315 Department of Labor

DLGS60007 Special Assistant to the Secretary of Labor. Effective February 19, 2009.
DLGS60170 Special Assistant to the Secretary of Labor. Effective February 19, 2009.
DLGS60181 Special Assistant to the Secretary of Labor. Effective February 19, 2009.
DLGS60132 Senior Advisor to the Secretary of Labor. Effective February 24, 2009.
DLGS60042 Special Assistant to the Assistant Secretary for Public Affairs. Effective February 25, 2009.
DLGS60118 Staff Assistant to the Secretary of Labor. Effective February 25, 2009.
DLGS60182 Special Assistant to the Secretary of Labor. Effective February 25, 2009.
DLGS60231 Office Clerk to the Deputy Secretary of Labor. Effective February 27, 2009.

Section 213.3316 Department of Health and Human Services

DHGS60070 Special Assistant to the Assistant Secretary for Planning and Evaluation. Effective February 10, 2009.

Section 213.3317 Department of Education

DBGS00262 Confidential Assistant to the Deputy Chief of Staff for Strategy. Effective February 09, 2009.
DBGS00511 Executive Assistant to the Deputy Chief of Staff for Strategy. Effective February 09, 2009.
DBGS00523 Director, White House Liaison to the Deputy Chief of Staff for Strategy. Effective February 09, 2009.
DBGS00537 Special Assistant to the Deputy Chief of Staff for Strategy. Effective February 09, 2009.
DBGS00576 Special Assistant to the Deputy Chief of Staff for Strategy. Effective February 09, 2009.
DBGS00635 Special Assistant to the Deputy Chief of Staff for Strategy. Effective February 09, 2009.
DBGS00589 Confidential Assistant to the Assistant Secretary, Office of Communications and Outreach. Effective February 10, 2009.
DBGS00652 Special Assistant to the Director, Executive Management Staff. Effective February 10, 2009.
DBGS00276 Confidential Assistant to the Deputy Chief of Staff for Strategy. Effective February 11, 2009.
DBGS00396 Special Assistant to the Deputy Chief of Staff for Strategy. Effective February 11, 2009.
DBGS00543 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective February 25, 2009.
DBGS00554 Confidential Assistant to the Director, Scheduling and Advance Staff. Effective February 25, 2009.
DBGS00655 Special Assistant to the Director, Scheduling and Advance Staff. Effective February 25, 2009.

Section 213.3318 Environmental Protection Agency

EPGS07013 Deputy to the Scheduler to the Director of Scheduling. Effective February 06, 2009.
EPGS07020 Confidential Assistant to the Deputy Administrator. Effective February 06, 2009.
EPGS08002 Deputy Associate Administrator to the Associate Administrator for Public Affairs. Effective February 06, 2009.
EPGS09006 Deputy Press Secretary to the Associate Administrator for Public Affairs. Effective February 10, 2009.
EPGS07023 Advance Specialist to the Deputy Chief of Staff (Operations). Effective February 19, 2009.
EPGS03606 Press Secretary to the Associate Administrator for Public Affairs. Effective February 25, 2009.
EPGS08007 Director of Operations to the Deputy Chief of Staff (Operations). Effective February 25, 2009.
EPGS09007 Confidential Assistant to the Administrator. Effective February 25, 2009.
EPGS09008 White House Liaison to the Administrator. Effective February 25, 2009.

EPGS05006 Speech Writer to the Associate Administrator for Public Affairs. Effective February 26, 2009.
EPGS05017 Deputy Associate Administrator for Congressional Affairs to the Associate Administrator for Congressional and Intergovernmental Relations. Effective February 26, 2009.

Section 213.3325 United States Tax Court

JCGS60067 Trial Clerk to the Chief Judge. Effective February 13, 2009.
JCGS60069 Trial Clerk to the Chief Judge. Effective February 18, 2009.

Section 213.3327 Department of Veterans Affairs

DVGS60038 Special Assistant to the Deputy Secretary of Veterans Affairs. Effective February 23, 2009.
DVGS60013 Special Assistant to the Secretary of Veterans Affairs. Effective February 25, 2009.

Section 213.3331 Department of Energy

DEGS00703 Special Assistant to the Secretary, Department of Energy. Effective February 03, 2009.
DEGS00702 Advisor to the Secretary to the Secretary, Department of Energy. Effective February 04, 2009.
DEGS00710 Deputy Press Secretary to the Director, Office of Public Affairs. Effective February 04, 2009.
DEGS00709 Special Assistant and Scheduler to the Secretary to the Director, Office of Public Affairs. Effective February 05, 2009.
DEGS00711 Deputy Director of Public Affairs to the Director, Office of Public Affairs. Effective February 05, 2009.
DEGS00712 Press Secretary to the Director, Office of Public Affairs. Effective February 05, 2009.
DEGS00713 Special Assistant to the Secretary, Department of Energy. Effective February 05, 2009.
DEGS00704 Special Assistant to the Secretary, Department of Energy. Effective February 10, 2009.
DEGS00714 Special Assistant to the White House Liaison. Effective February 13, 2009.
DEGS00715 White House Liaison to the Secretary, Department of Energy. Effective February 13, 2009.
DEGS00716 Deputy Chief of Staff to the Chief of Staff. Effective February 13, 2009.
DEGS00717 Special Assistant to the Secretary, Department of Energy. Effective February 19, 2009.
DEGS00718 Economic Recovery Advisor to the Assistant Secretary (Electricity Delivery and Energy Reliability). Effective February 25, 2009.
DEGS00719 Press Assistant to the Director, Office of Public Affairs. Effective February 25, 2009.
DEGS00720 Lead Advance Representative to the Secretary, Department of Energy. Effective February 26, 2009.
DEGS00721 Chief Speechwriter to the Director, Office of Public Affairs. Effective February 27, 2009.
DEGS00722 Special Assistant to the Secretary, Department of Energy. Effective February 27, 2009.
DEGS00724 Director, Office of Scheduling and Advance to the Secretary, Department of Energy. Effective February 27, 2009.

Section 213.3332 Small Business Administration

SBGS00675 Special Assistant to the Administrator. Effective February 06, 2009.
SBGS00677 Confidential Assistant to the Administrator. Effective February 11, 2009.
SBGS00678 Special Assistant to the Administrator. Effective February 20, 2009.
SBGS00680 Assistant Administrator for the Office of Communications and Public Liaison. Effective February 27, 2009.

Section 213.3379 Commodity Futures Trading Commission

CTOT00005 Administrative Assistant to the Commissioner to a Commissioner. Effective February 18, 2009.
CTOT00082 Chief of Staff to the Chairperson. Effective February 18, 2009.

Section 213.3382 National Endowment for the Arts

NAGS00075 Director, Office of Government Affairs to the Chairman National Endowment for the Arts. Effective February 03, 2009.

Section 213.3384 Department of Housing and Urban Development

DUGS60054 Director of Press Relations to the Chief of Staff. Effective February 26, 2009.
DUGS60199 Staff Assistant to the Assistant Secretary for Public Affairs. Effective February 27, 2009.
DUGS60240 Speechwriter to the Assistant Secretary for Public Affairs. Effective February 27, 2009.

Section 213.3394 Department of Transportation

DTGS60358 Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance. Effective February 11, 2009.
DTGS60375 White House Liaison to the Chief of Staff. Effective February 11, 2009.
DTGS60357 Special Assistant to the White House Liaison and Scheduling and Advance to the Director for Scheduling and Advance. Effective February 17, 2009.

Section 213.33 National Labor Relations Board

NLGS06891 Attorney-Advisor (Chief of Staff) to the Chairman. Effective February 18, 2009.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Kathie Ann Whipple,

Acting Director, U.S. Office of Personnel Management.

[FR Doc. E9–6981 Filed 3–27–09; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 27e–1 and Form N–27E–1, SEC File No. 270–486, OMB Control No. 3235–0545.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 27(e) of the Investment Company Act of 1940 (''Act'') (15 U.S.C. 80a–27(e)) provides in part that a registered investment company issuing a periodic payment plan certificate,[1] or any depositor or underwriter for such company (collectively ''issuer''), must notify in writing ''each certificate holder who has missed three payments or more, within thirty days following the expiration of fifteen months after the issuance of the certificate, or, if any such holder has missed one payment or

[1] As discussed below, the Military Personnel Financial Services Protection Act banned the issuance or sale of new periodic payment plans, effective October 2006.

more after such period of fifteen months but prior to the expiration of eighteen months after the issuance of the certificate, at any time prior to the expiration of such eighteen month period, of his right to surrender his certificate * * * and inform the certificate holder of (A) the value of the holder's account * * *, and (B) the amount to which he is entitled * * * ''.

Section 27(e) authorizes the Commission to ''make rules specifying the method, form, and contents of the notice required by this subsection.'' Rule 27e–1 (17 CFR 270.27e–1) under the Act, entitled ''Requirements for Notice to Be Mailed to Certain Purchasers of Periodic Payment Plan Certificates Sold Subject to Section 27(d) of the Act,'' provides instructions for the delivery of the notice required by section 27(e).

Rule 27e–1(f) prescribes Form N–27E–1 (17 CFR 274.127e–1), which sets forth the language the issuing registered investment company or its depositor or underwriter must use ''to inform certificate holders of their right to surrender their certificates pursuant to Section 27(d).'' The instructions to the form require that a notice containing the language on the form be sent to certificate holders on the sender's letterhead. The issuer is not required to file with the Commission a copy of the Form N–27E–1 notice.

The Form N–27E–1 notice to certificate holders who have missed certain payments is intended to encourage certificate holders, in light of the potential for further missed payments, to weigh the anticipated costs and benefits associated with continuing to hold their certificates. The disclosure assists certificate holders in making careful and fully informed decisions about whether to continue investing in periodic payment plan certificates.

Effective October 27, 2006, the Military Personnel Financial Services Protection Act banned the issuance or sale of new periodic payment plans. Accordingly, the staff estimates that there is no longer any information collection burden associated with rule 27e–1 and Form N–27E–1. For administrative purposes, however, we are requesting approval for an information collection burden of one hour per year. This estimate of burden hours is not derived from a comprehensive or necessarily even a representative study of the cost of the Commission's rules and forms.

Complying with the collection of information requirements of rule 27e–1 is mandatory for issuers of periodic payment plans or their depositors or underwriters in the event holders of plan certificates miss certain payments within eighteen months after issuance. The information provided pursuant to rule 27e–1 will be provided to third parties and, therefore, will not be kept confidential. The Commission is seeking OMB approval, because an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: March 24, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6964 Filed 3–27–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59622; File No. SR–FICC–2009–05]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Technical Modifications

March 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 27, 2009, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC proposes to amend the rules of its Government Securities Division (''GSD'') and Mortgage-Backed Securities Division (''MBSD'') in order to make them consistent with the rules of the National Securities Clearing Corporation (''NSCC''), an affiliated clearing agency.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Payment of Fines

Prior to this rule change, GSD Rule 37, Section 8, provided that a member must pay a fine assessed by FICC within 30 calendar days of notification that the fine has been assessed. There was no corresponding provision in MBSD's or NSCC's rules.

Consistent with FICC's project to harmonize its rules with those of affiliated clearing agencies that have common members, FICC proposes to delete GSD Rule 37, Section 8, and to adopt the language used in NSCC Rule 17 by stating that fines shall be payable at such time and in such manner as determined by FICC. Initially, such fines will be collected through the GSD monthly billing process after notification to the member, which is consistent with the manner and timing

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

that MBSD and NSCC collect such fines. GSD members will continue to be entitled to contest fines pursuant to GSD Rule 37.

2. Member Response to FICC Reports

Prior to this rule change, GSD and MBSD members are required to report promptly to FICC any information contained in a FICC report that the member believes to be an error or discrepancy. However, GSD Rule 11, Section 12, and Rule 5, Section 5, place an additional requirement for members using GSD's netting or comparison services to report the discrepancy no later than 10 calendar days after receipt of the report. A similar requirement is made with respect to MBSD members under MBSD Article V, Rule 4, Section 3, which requires that the discrepancy be reported no later than 10 calendar days. NSCC's rules require that discrepancies be reported by NSCC members promptly but do not reference a specific member of days. The proposed rule change conforms the GSD and MBSD rules to those of NSCC by deleting the specific reference to a 10-day requirement in favor of the general requirement that the member report the discrepancy promptly.

In addition, FICC proposes to change the terminology regarding the definitions of ''Foreign Affiliate,'' ''Foreign Affiliate Trade,'' ''Foreign Netting Member,'' and ''Foreign Person'' in GSD Rule 1 to incorporate the defined terms used in NSCC's and The Depository Trust Company's (also a FICC-affliliate) rules, by refering to ''Non-U.S.'' or ''Non-domestic'' in place of ''Foreign.''

FICC believes that the proposed rule change is consistent with Section 17A of the Act [4] and the rules promulgated thereunder because it makes technical changes to clearing agency rules that conform with the obligations required of a common member.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not solicited or received written comments relating to the proposed rule change. FICC will notify the Commission of any comments it receives.

[4] 15 U.S.C. 78q–1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [5] and Rule 19b–4(f)(4) thereunder.[6] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–FICC–2009–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC, 20549–1090.

All submissions should refer to File No. SR–FICC–2009–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filing also will be available for inspection and copying at FICC's principal office and on FICC's Web site at *http://ficc.com/gov/gov.docs.jsp?NS-query=#rf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submission should refer to File No. SR–FICC–2009–05 and should be submitted on or before April 20, 2009.

[5] *Supra* note 2.

[6] *Supra* note 3.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6963 Filed 3–27–09; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59620; File No. SR–NYSEALTR–2009–29]

Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operative Date of Rule 92(c)(3) From March 31, 2009 to July 31, 2009

March 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 13, 2009, NYSE Alternext US LLC [3] (''NYSE Alternext'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 USC. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that NYSE Alternext US LLC recently changed its name to NYSE Amex LLC. *See* Securities Exchange Act Release No. 59575 (March 13, 2009) (SR–NYSEALTR–2009–24).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operative date of Rule 92(c)(3) from March 31, 2009 to July 31, 2009. The text of the proposed rule change is available at NYSE Alternext, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend the delayed operative date of Rule 92(c)(3) from March 31, 2009 to July 31, 2009. The Exchange believes that this extension will provide the time necessary for the Exchange, the New York Stock Exchange LLC (''NYSE''), and the Financial Industry Regulatory Authority, Inc. (''FINRA'') to harmonize their respective rules concerning customer order protection to achieve a standardized industry practice.[6]

Merger Background

As described more fully in a related rule filing,[7] NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC (''Amex''), a subsidiary of AMC, became a subsidiary of NYSE Euronext and was renamed NYSE Alternext US LLC (''NYSE Alternext'' or the ''Exchange''), and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the ''Act'').[8] The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the ''Equities Relocation''). The Exchange's equity trading systems and facilities at 11 Wall Street (the ''NYSE Alternext Trading Systems'') are operated by the NYSE on behalf of the Exchange.[9]

As part of the Equities Relocation, NYSE Alternext adopted NYSE Rules 1–1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Alternext Equities Rules to govern trading on the NYSE Alternext Trading Systems.[10] The NYSE Alternext Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Alternext Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

Rule 92 Background

On July 5, 2007, the Commission approved amendments to NYSE Rule 92 to permit riskless principal trading at the NYSE.[11] These amendments were filed in part to begin the harmonization process between NYSE Rule 92 and FINRA's Manning Rule.[12] In connection with those amendments, the NYSE implemented for an operative date of January 16, 2008, NYSE Rule 92(c)(3), which permits NYSE member organizations to submit riskless principal orders to the NYSE, but requires them to submit to a designated NYSE database a report of the execution of the facilitated order. That rule also requires members to submit to that same database sufficient information to provide an electronic link of the execution of the facilitated order to all of the underlying orders.

For purposes of NYSE Rule 92(c)(3), the NYSE informed member organizations that when executing riskless principal transactions, firms must submit order execution reports to the NYSE's Front End Systemic Capture (''FESC'') database linking the execution of the riskless principal order on the NYSE to the specific underlying orders. The information provided must be sufficient for both member firms and the NYSE to reconstruct in a time-sequenced manner all orders, including allocations to the underlying orders, with respect to which a member organization is claiming the riskless principal exception.

Because the rule change required both the NYSE and member organizations to make certain changes to their trading and order management systems, the NYSE filed for immediate effectiveness to delay to May 14, 2008 the operative date of the NYSE Rule 92(c)(3) requirements, including submitting end-of-day allocation reports for riskless principal transactions and using the riskless principal account type indicator.[13] The NYSE filed for an additional extension of the operative date of Rule 92(c)(3) to March 31, 2009.[14] Because NYSE Alternext adopted NYSE Rule 92 in its then current form, the delayed operative date of March 31, 2009 for the NYSE Rule 92(c)(3) reporting requirements also applies for NYSE Alternext Equities Rule 92(c)(3) reporting requirements.

Request for Extension

FINRA, NYSE, and the Exchange have been working diligently on fully harmonizing their respective rules, including reviewing the possibilities for a uniform reporting standard for riskless principal transactions. However, because of the complexity of the existing customer order protection rules, including the need for input from industry participants as well as Commission approval, the Exchange, NYSE, and FINRA will not have harmonized their respective customer order protection rules by March 31, 2009.

The Exchange notes that it has reached agreement with NYSE and FINRA on a harmonized approach to customer order protection rules. As authorized by their respective Boards, FINRA and NYSE Regulation, Inc. have

[6] *See* SR–NYSE–2009–30 (formally submitted on March 13, 2009).

[7] *See* Securities Exchange Act Release No. 58673 (Sept. 29, 2008), 73 FR 57707 (Oct. 3, 2008) (SR–NYSE–2008–60 and SR–Amex 2008–62) (approving the Merger).

[8] 15 U.S.C. 78f.

[9] *See* Securities Exchange Act Release No. 58705 (Oct. 1, 2008), 73 FR 58995 (Oct. 8, 2008) (SR–Amex–2008–63) (approving the Equities Relocation).

[10] *See* Securities Exchange Act Release Nos. 58705 (Oct. 1, 2008), 73 FR 58995 (Oct. 8, 2008) (SR–Amex–2008–63); No. 58833 (Oct. 22, 2008), 73 FR 64642 (Oct. 30, 2008) (SR–NYSE–2008–106); No. 58839 (Oct. 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03); No. 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR–NYSEALTR–2008–10); and No. 59027 (Nov. 28, 2008), 73 FR 73681 (Dec. 3, 2008) (SR–NYSEALTR–2008–11).

[11] *See* Securities Exchange Act Release No. 56017 (Jul. 5, 2007), 72 FR 38110 (Jul. 12, 2007) (SR–NYSE–2007–21).

[12] *See* NASD Rule 2111 and IM–2110–2.

[13] *See* Securities Exchange Act Release No. 56968 (Dec. 14, 2007), 72 FR 72432 (Dec. 20, 2007) (SR–NYSE–2007–114).

[14] *See* Securities Exchange Act Release No. 57682 (Apr. 17, 2008), 73 FR 22193 (Apr. 24, 2008) (SR–NYSE–2008–29).

each published a Notice to Members/Information Memo that solicit comments from their respective member participants on the proposed harmonized approach to customer order protection.[15] Because industry participants need to code their trading systems to comply with customer order protection rules, the Exchange believes that industry input is vital to ensuring that the approach to customer order protection both meets regulatory needs of protecting customer orders, but is also feasible technologically.

The Exchange continues to believe that pending full harmonization of the respective customer order protection rules, it would be premature to require firms to meet the current Rule 92(c)(3) FESC reporting requirements.[16] Indeed, having differing reporting standards for riskless principal orders would appear to defeat the overall goal of the harmonization process.

Accordingly, to provide the Exchange, NYSE, and FINRA the time necessary to review their respective rules and develop a harmonized rule set that would apply across their respective marketplaces, the Exchange is proposing to delay the operative date for NYSE Alternext Equities Rule 92(c)(3) from March 31, 2009 to July 31, 2009.

Pending the harmonization of the three rules, the Exchange will continue to require that, as of the date each member organization implements riskless principal routing, the member organization have in place systems and controls that allow them to easily match and tie riskless principal execution on the Exchange to the underlying orders and that they be able to provide this information to the Exchange upon request. To make clear that this requirement continues, the Exchange proposes to add supplementary material to Rule 92 that explains that the Rule 92(c)(3) reporting requirements are suspended until July 31, 2009 and that member organizations are required to have in place such systems and controls relating to their riskless principal executions on the Exchange. Moreover, the Exchange will coordinate with NYSE and FINRA to examine for compliance with the rule requirements.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, insofar as it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed extension provides the Exchange, NYSE, and FINRA the time necessary to develop a harmonized rule concerning customer order protection that will enable member organizations to participate in the national market system without unnecessary impediments.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[21] However, Rule 19b–4(f)(6)(iii)[22] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to extend the operative date of NYSE Alternext Equities Rule 92(c)(3) without interruption. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEALTR–2009–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEALTR–2009–29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[15] *See* NYSE Regulation Information Memo 09–13 (March 12, 2009); FINRA Regulatory Notice 09–15 (March 12, 2009).

[16] The Exchange notes that it would also need to make technological changes to implement the proposed FESC reporting solution for Rule 92(c)(3).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this notice requirement.

[22] *Id.*

[23] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEALTR–2009–29 and should be submitted on or before April 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6961 Filed 3–27–09; 8:45 am]

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[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59621; File No. SR–NYSE–2009–30]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operative Date of NYSE Rule 92(c)(3) From March 31, 2009 to July 31, 2009

March 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 13, 2009, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operative date of NYSE Rule 92(c)(3) from March 31, 2009 to July 31, 2009. The text of the proposed rule change is available at NYSE, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend the delayed operative date of NYSE Rule 92(c)(3) from March 31, 2009 to July 31, 2009. The Exchange believes that this extension will provide the time necessary for the Exchange and the Financial Industry Regulatory Authority, Inc. (''FINRA'') to harmonize their respective rules concerning customer order protection to achieve a standardized industry practice.

Background

On July 5, 2007, the Commission approved amendments to NYSE Rule 92 to permit riskless principal trading at the Exchange.[5] These amendments were filed in part to begin the harmonization process between Rule 92 and FINRA's Manning Rule.[6] In connection with those amendments, the Exchange implemented for an operative date of January 16, 2008, NYSE Rule 92(c)(3), which permits Exchange member organizations to submit riskless principal orders to the Exchange, but requires them to submit to a designated Exchange database a report of the execution of the facilitated order. That rule also requires members to submit to that same database sufficient information to provide an electronic link of the execution of the facilitated order to all of the underlying orders.

For purposes of NYSE Rule 92(c)(3), the Exchange informed member organizations that when executing riskless principal transactions, firms must submit order execution reports to the Exchange's Front End Systemic Capture (''FESC'') database linking the execution of the riskless principal order on the Exchange to the specific underlying orders. The information provided must be sufficient for both member firms and the Exchange to reconstruct in a time-sequenced manner all orders, including allocations to the underlying orders, with respect to which a member organization is claiming the riskless principal exception.

Because the rule change required both the Exchange and member organizations to make certain changes to their trading and order management systems, the NYSE filed for immediate effectiveness to delay to May 14, 2008 the operative date of the NYSE Rule 92(c)(3) requirements, including submitting end-of-day allocation reports for riskless principal transactions and using the riskless principal account type indicator.[7] The Exchange filed for an additional extension of the operative date of Rule 92(c)(3) to March 31, 2009.[8]

Request for Extension[9]

FINRA and the Exchange have been working diligently on fully harmonizing their respective rules, including reviewing the possibilities for a uniform reporting standard for riskless principal transactions. However, because of the complexity of the existing customer order protection rules, including the need for input from industry participants as well as Commission approval, the Exchange and FINRA will not have harmonized their respective customer order protection rules by March 31, 2009.

The Exchange notes that it has reached agreement with FINRA on a harmonized approach to customer order protection rules. As authorized by their respective Boards, FINRA and NYSE Regulation, Inc. have each published a

[5] *See* Securities Exchange Act Release No. 34–56017 (July 5, 2007), 72 FR 38110 (July 12, 2007), SR–NYSE–2007–21.

[6] *See* NASD Rule 2111 and IM–2110–2.

[7] *See* Securities Exchange Act Release No. 56968 (Dec. 14, 2007), 72 FR 72432 (Dec. 20, 2007), SR–NYSE–2007–114.

[8] *See* Securities Exchange Act Release No. 57682 (April 17, 2008), 73 FR 22193 (April 24, 2008), SR–NYSE–2008–29.

[9] NYSE Amex LLC has filed a companion rule filing to conform its Equities Rules to the changes proposed in this filing. *See* SR–NYSEALTR–2009–29, formally submitted March 13, 2009).

Notice to Members/Information Memo that solicits comments from their respective member participants on the proposed harmonized approach to customer order protection.[10] Because industry participants need to code their trading systems to comply with customer order protection rules, the Exchange believes that industry input is vital to ensuring that the approach to customer order protection both meets regulatory needs of protecting customer orders, but is also feasible technologically.

The Exchange continues to believe that pending full harmonization of the respective customer order protection rules, it would be premature to require firms to meet the current Rule 92(c)(3) FESC reporting requirements.[11] Indeed, having differing reporting standards for riskless principal orders would appear to defeat the overall goal of the harmonization process.

Accordingly, to provide the Exchange and FINRA the time necessary to review their respective rules and develop a harmonized rule set that would apply across their respective marketplaces, the Exchange is proposing to delay the operative date for NYSE Rule 92(c)(3) from March 31, 2009 to July 31, 2009.

Pending the harmonization of the two rules, the Exchange will continue to require that, as of the date each member organization implements riskless principal routing, the member organization have in place systems and controls that allow them to easily match and tie riskless principal execution on the Exchange to the underlying orders and that they be able to provide this information to the Exchange upon request. To make clear that this requirement continues, the Exchange proposes to add supplementary material to Rule 92 that explains that the Rule 92(c)(3) reporting requirements are suspended until July 31, 2009 and that member organizations are required to have in place such systems and controls relating to their riskless principal executions on the Exchange. Moreover, the Exchange will coordinate with FINRA to examine for compliance with the rule requirements.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, insofar as it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed extension provides the Exchange and FINRA the time necessary to develop a harmonized rule concerning customer order protection that will enable member organizations to participate in the national market system without unnecessary impediments.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[16] However, Rule 19b–4(f)(6)(iii)[17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to extend the operative date of NYSE Rule 92(c)(3) without interruption. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2009–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[10] See NYSE Regulation Information Memo 09–13 (March 12, 2009); FINRA Regulatory Notice 09–15 (March 12, 2009).

[11] The Exchange notes that it would also need to make technological changes to implement the proposed FESC reporting solution for Rule 92(c)(3).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] *Id.*

[18] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 am and 3 pm. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–30 and should be submitted on or before April 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6962 Filed 3–27–09; 8:45 am]

BILLING CODE

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6561]

Culturally Significant Objects Imported for Exhibition Determinations: ''Wine, Worship and Sacrifice: The Golden Graves of Ancient Vani''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Wine, Worship and Sacrifice: The Golden Graves of Ancient Vani,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owner or custodian. The objects were originally exhibited in the United States in 2007 and 2008, went on to an international tour, and are now returning. I also determine that the exhibition or display of the exhibit objects at the Getty Villa, Los Angeles, CA, from on or about July 16, 2009, until on or about October 5, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 20, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–7038 Filed 3–27–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6550]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 2 p.m. to 4 p.m. on Tuesday, April 21, 2009, at the U.S. Department of State, 2201 C Street NW., Room 1107, Washington, DC. The meeting will be hosted by the Acting Assistant Secretary of State for Economic, Energy, and Business Affairs David Nelson and Committee Chair Ted Kassinger. The ACIEP serves the U.S. Government in a solely advisory capacity, and provides advice concerning issues and challenges in international economic policy. The meeting will focus on a discussion about the global economic crisis—the impact of the recession on doing business abroad and ways to recover. Subcommittee reports and discussions will be led by the Economic Empowerment in Strategic Regions Subcommittee and the Economic Sanctions Subcommittee.

This meeting is open to public participation, though seating is limited. Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by Friday, April 17, their name, professional affiliation, valid government-issued ID number (i.e., U.S. Government ID [agency], U.S. military ID [branch], passport [country], or drivers license [state]), date of birth, and citizenship to Sherry Booth by fax (202) 647–5936, e-mail (*BoothSL@state.gov*), or telephone (202) 647–0847. One of the following forms of valid photo identification will be required for admission to the State Department building: U.S. driver's license, U. S. Government identification card, or any valid passport. Enter the Department of State from the C Street lobby. In view of escorting requirements, non-Government attendees should plan to arrive 15 minutes before the meeting begins.

For additional information, contact Senior Coordinator Nancy Smith-Nissley, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic, Energy and Business Affairs, at (202) 647–1682 or *Smith-NissleyN@state.gov*.

Dated: March 23, 2009.

Sandra E. Clark,

Office Director, Office of Economic Policy Analysis and Public Diplomacy, Department of State.

[FR Doc. E9–7037 Filed 3–27–09; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held April 14, 2009 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a NextGen Mid-Term Implementation Task Force meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions).
- Review/Approve Summary of December 16, 2008 PMC Meeting, RTCA Paper No. 028–09/PMC–700.
- Publication Consideration/Approval.

• Final Draft, New Document, Minimum Operational Performance Standards for Global Positioning System/Aircraft Based Augmentation System Airborne Equipment, RTCA Paper No. 072–09/PMC–701, prepared by SC–159.

• Final Draft, New Document—Minimum Operational Performance Standards (MOPS) for Aircraft Surveillance Applications (ASAS), RTCA Paper No. 073–09/PMC–702, prepared by SC–186.

• Final Draft, Revised DO–272A, User Requirements for Aerodrome Mapping Information, RTCA Paper No. 074–09/PMC–703, prepared by SC–217.

• Final Draft, Revised DO–291, Interchange Standards for Terrain, Obstacle, and Aerodrome Mapping Data, RTCA Paper No. 075–09/PMC–704, prepared by SC–217.

• Final Draft, Change 1 to DO–270, Minimum Aviation System Performance Standards (MASPS) for the Aeronautical Mobile-Satellite(R)Service (AMS(R)S) as Used in Aeronautical Data Links, RTCA Paper No. 076–09/PMC–705, prepared by SC–215.

• Action Item Review

• SC–203—Unmanned Aircraft Systems (UAS)—Discussion—Status Review.

• SC–214—Standards for Air Traffic Data Communications Services—Discussion—Status—Review/Approve Terms of Reference and Discussion of 4DTRAD.

• PMC Ad Hoc—Interrelationships between Communication, Navigation and Surveillance Committee activities—Discussion—Review Integration and Coordination Committee recommendation.

• SC–220—Automatic Flight Guidance and Control—Discussion—Review/Approve Terms of Reference.

• DO–222—Inmarsat AMS(R)S—Discussion—Status—Review/Approve Terms of Reference.

• DO–218—Future ADS–B/TCAS Relationships—Discussion—Status

• DO–217—Terrain and Airport Databases—Discussion—Status—Review/Approve Terms of Reference.

• Discussion

• Airport Surface Wireless Link—Discussion—Possible New Special Committee.

• Special Committee Chairman's Reports.

• Closing Plenary (Other Business, Document Production, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 20, 2009.

Meredith Gibbs,

RTCA Advisory Committee.

[FR Doc. E9–6993 Filed 3–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fourth Meeting, Special Committee 213/EUROCAE: Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS), EUROCAE Working Group 79 (WG–79)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 213/EUROCAE, Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS), EUROCAE Working Group 79 (WG–79).

SUMMARY: The FAA is issuing this notice to advise the public of a third meeting of RTCA Special Committee 213, Standards for Air Traffic Data Communication Services.

DATES: The meeting will be held April 28–30, 2009 from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at Cologne, Germany (EASA HQ), Ottoplatz 1, D–50679 Cologne, Germany, Tel.: +49 (0)221 8999 0000, *http://www.easa.eu.int.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 213 meeting. The agenda will include:

28 April

• Plenary (Welcome, Introductions, Review Agenda and Objectives),

• Plenary briefings,

• Plenary work group updates, action item review, LED lighting, SC–217 requirements discussion for aerodrome mapping,

• Separate work group 1 and work group 2 discussions.

29 April

• Separate work group 1 and 2 discussions,

• Plenary discussion.

30 April

• Separate work group 1 and 2 discussions,

• Plenary discussion,

• Summarize work group discussions,

• Review action items,

• Approve committee requirements submittal to SC–217,

• Administrative.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the ''**FOR FURTHER INFORMATION CONTACT**'' section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 23, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–6992 Filed 3–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Second Meeting—Special Committee 222—Inmarsat Aeronautical Mobile Satellite (Route) Services

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 221 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 222: Inmarsat Aeronautical Mobile Satellite (Route) Services.

DATES: The meeting will be held April 22–23, 2009. Times: April 22 from 1 p.m. to 5 p.m. and April 23 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

Note: Business Casual.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee

222, Inmarsat Aeronautical Mobile Satellite (Route) Services. The agenda will include:

- Opening Plenary Session (Greetings and Introductions).
- Review and Approval SC–222 first plenary summary.
- Review and Approval SC–222 second plenary agenda.
- Old Business.
- Review of/reports for the currently active Action Items regarding ATCt issues.
- *Inmarsat:* Determine if $\Delta T/T = 6\%$ is based on logged-on status or on the acquisition phase.
- *Rockwell Collins, EMS, and Honeywell:* Determine if the AEC interference tolerance threshold of -52 dBm at the AEC receiver RF input port (the DNLA antenna port in ARINC systems) is based on BER.
- *Inmarsat:* Clarify ATCt use U.S. airspace vs. other continental airspace.
- Review of/reports for the currently active Action Items regarding SBB Safety issues.
- *Inmarsat:* Complete the tables for DO–262 and DO–270 listing in Working Paper WP–4.
- Working Papers, Discussions, and Schedule Review regarding ATCt issues.
- Overview & Interpretations of ATCt Spectrum Plans—Inmarsat.
- ATCt Interference Model including NTIA Approved Propagation Model—Inmarsat.
- Aircraft Interference Scenarios—Sky Terra.
- Aero Classic Equipment—Initial Results—Inmarsat.
- Discussion of aeronautical Ancillary Terrestrial Component (ATCt) Interference Model—(ToR Task 2) All.
- Working Papers, Discussions, and Schedule Review regarding SBB & Classic Safety Services.
- Review Initial Draft Material related to DO–270 (ToR Task 3).
- Review Initial Draft Material related to DO–262 (ToR Task 4).
- Document revision of DO–210D (ToR Task 5).
- Review and Update the Terms of Reference—All.
- Review of Planning & Schedule of Delivery of SC Products (ToR Task 1).
- Development of report to PMC regarding any changes to ToR.
- Other Business.
- Electronic Access to SC–222 Artifacts—Daryl McCall, Fastek.
- Review of Assignments and Action Items.
- Date and Location for the 3rd Meeting of SC–222.
- Schedule Next Meeting, adjourn (No later than January 16, 12 noon).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 19, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–6988 Filed 3–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group Aviation Rulemaking Committee

ACTION: Notice.

SUMMARY: By **Federal Register** notices (See 73 FR 61447; October 16, 2008 and 73 FR 77102, December 18, 2008) the National Park Service (NPS) and the Federal Aviation Administration (FAA) invited interested persons to apply to fill a vacant position on the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee (ARC). This notice invited interested persons to apply to fill the vacancy representing Native American tribal concerns due to the incumbent member's completion of a three-year term appointment on April 2, 2009. This notice informs the public of the person selected to fill the vacancy on the NPOAG ARC.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone: (310) 725–3800, e-mail: *Barry.Brayer@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

In accordance with the Act, the advisory group provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Membership

The current NPOAG ARC is made up of one member representing general aviation, three members representing the commercial air tour industry, four members representing environmental concerns, and two members representing Native American interests.

Current members of the NPOAG ARC are as follows: Randy Kenagy representing general aviation; Alan Stephen, Elling Halvorson, and Matthew Zuccaro representing commercial air tour operations; Chip Dennerlein, Greg Miller, Mark Peterson, and Don Barger representing environmental interests; and Rory Majenty and Richard Deertrack representing Native American tribes.

Selection

Selected to fill this vacancy, for an additional term, is returning member Rory Majenty. Mr. Majenty's term begins on April 3, 2009. The term of service for NPOAG ARC members is 3 years.

Issued in Hawthorne, CA on March 9, 2009.

Barry Brayer,

Manager, Special Progams Staff, Western-Pacific Region.

[FR Doc. E9–5667 Filed 3–27–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Air Traffic Management Advisory Committee; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction; Notice of RTCA Government/Industry Air Traffic Management Advisory Committee.

SUMMARY: The FAA is correcting a notice of a meeting that was published on March 20, 2009 (72 FR 11987; FR Doc. E9–6176]. In that notice the FAA advised the public of a meeting of the RTCA Government/Industry Air Traffic Management Advisory Committee. Inadvertently the notice was published with an incorrect meeting date of March 16, 2009. The correct date of the RTCA Government/Industry Air Traffic Management Advisory Committee meeting is May 27, 2009.

DATES: The meeting will be held May 27, 2009, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center (2nd Floor), Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org. METRO: L'Enfant Plaza Station (Use 7th & Maryland Exit).*

SUPPLEMENTARY INFORMATION: Correction: In the **Federal Register** of March 20, 2009 (FR Doc. E9–6176) in the third column in the **DATES** section change the date of the meeting from ''March 16, 2009'' to ''May 27, 2009''. Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Air Traffic Management Advisory Committee meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions);
- Report from RTCA Task Force on NextGen Mid-Term Implementation (NextGen TF);
- ATMAC Member Discussion and Recommendations;
- Closing Plenary (Other Business, Member Discussion, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 20, 2009.

Meredith Gibbs,

RTCA Advisory Committee.

[FR Doc. E9–6991 Filed 3–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Supplemental Policy on Assessing Maximum Fines under the Motor Carrier Safety Improvement Act of 1999 (MCSIA) Section 222

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of policy change.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) provides notice to the motor carrier industry of policy changes regarding the assessment of maximum fines under section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). Section 222 requires the Agency to assess maximum statutory penalties if a person is found to have committed a pattern of violations of critical or acute regulations, or previously committed the same or a related violation of critical or acute regulations.

DATES: *Effective Date:* This change in policy is effective April 1, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. David Mancl, Acting Chief, Enforcement and Compliance Division, MC–ECE, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–6830. Office hours are from 7:45–4:45 p.m., e.t., Monday through Friday, except Federal holidays. Web site address: *http://www.fmcsa.dot.gov.*

SUPPLEMENTARY INFORMATION

Background

Section 222 of MCSIA directs the Secretary of Transportation to ''assess the maximum civil penalty for each violation by any person who is found to have committed a pattern of violations of critical or acute regulations, or to have previously committed the same or a related violation of critical or acute regulations.'' [Pub. L. 106–159, 113 Stat. 1748, 1769, Dec. 9, 1999; codified in 49 U.S.C. 521 note.]

On September 8, 2000, FMCSA issued a policy memorandum that changed its fine assessment policy to meet the requirements of section 222 of MCSIA. On December 28, 2004, FMCSA published a clarification of its September 8, 2000, policy statement implementing section 222 of MCSIA (69 FR. 77828). The memorandum and subsequent **Federal Register** notice defined both a ''pattern of violations'' and ''previously committed the same or related violation'' as three cases closed with findings of violation occurring within the last six years. The three cases—also known as ''three strikes''—consist of two cases that have been closed with findings of violations, followed by a third case, in which the discovery of violations during an on-site compliance review, shipper review or terminal review involved the same part of the Federal Motor Carrier Safety Regulations (FMCSR) and/or Federal Hazardous Materials Regulations (HMR) in Title 49 of the Code of Federal Regulations.

In an August 2007 report,[1] the Government Accountability Office (GAO) concluded that FMCSA's ''three-strikes'' policy failed to assess maximum penalties against all serious violators and achieve MCSIA's statutory intent that maximum penalties be imposed in two distinct situations for a pattern of violations, and for repeat violations of the same or related regulations. The GAO recommended that FMCSA revise its policy to include (1) a definition for a pattern of violations that is distinct from a repeated violation of the same or related regulations and (2) a two-strike, rather than a three-strike, policy. In an earlier 2006 report,[2] the Department of Transportation's Office of Inspector General (OIG) similarly recommended that FMCSA develop procedures to implement the section 222 ''pattern of violations'' provision and additionally to count for section 222 purposes all acute and critical violations discovered during a compliance review. Based on these recommendations, FMCSA re-examined its policy and adopts the revisions contained in this notice.

Policy

This policy supplements FMCSA's existing policy and continues its implementation of section 222 of MCSIA consistent with the statutory language and in response to the GAO

[1] ''Federal Safety Agency Identifies Many High-Risk Carriers but Does Not Assess Maximum Fines as Often as Required by Law'' (GAO–07–584, August 2007).

[2] ''Significant Improvements for Motor Carrier Safety Program since 1999 Act but Loopholes for Repeat Violators Need Closing'' (OIG Report No. MH–2006–046, April 21, 2006).

and OIG recommendations. In order to ensure adequate notice to the regulated industry, only those investigations and cases initiated on or after the effective date of this notice will be used to support imposition of maximum penalties under the ''two-strikes'' policy. Investigations and cases initiated prior to the effective date of this notice will continue to be considered for maximum penalty assessment under the ''three-strikes'' policy.

''Pattern of Violations''

Effective with this policy, FMCSA is separately defining a ''pattern of violations'' as occurring when the Agency discovers two or more critical and/or acute violations [3] in each of three or more different regulatory parts (i.e., a minimum of six acute and/or critical violations). A ''pattern of violations'' does not require previous enforcement and can be found even during a first-time investigation. A motor carrier will be subject to maximum fines when a ''pattern'' of critical or acute violations is discovered after having previous contact with FMCSA, a State motor carrier safety enforcement agency, or other FMCSA-designated representative acting on behalf of FMCSA. This contact may have been through a previous New Entrant Safety Audit, Pre-Authorization Safety Audit, Expedited Action Letter, Compliance Review, Notice of Violation, Notice of Claim, Warning Letter or other significant documented contact reasonably likely to have alerted the motor carrier to FMCSA's regulatory and enforcement jurisdiction. The previous contact may have occurred prior to the effective date of this notice. A roadside inspection, alone, however, is not a previous contact for the purpose of subjecting a motor carrier to a section 222 pattern of violations finding. Notices of Claim that allege the requisite pattern of violations described herein will include a proposed civil penalty in the maximum amount authorized by statute for each qualifying violation.

''Two Strikes''

Effective with this policy, FMCSA expands its interpretation of ''previously committed the same or related violation'' and adopts a ''two-strikes'' policy that is similar to the Agency's existing ''three-strikes'' policy. Under this supplemental policy, maximum penalties will be applied in cases where an acute violation is discovered during an investigation within six years of a previously closed case that contained a finding of violation of a critical or acute regulation in the same FMCSR and/or HMR part. The same standards applied by FMCSA under the three-strikes policy will apply to cases being used as a previous strike under the two-strikes policy. The previous case must have been closed within six years prior to the completion of the investigation in which the second strike is discovered (but no earlier than the effective date of this two-strikes policy); it must contain one or more violations of critical or acute regulations in the same regulatory part(s); and those violations must have been admitted or adjudicated with a finding of violation. FMCSA will continue to measure the six-year period from the date the previous enforcement case was closed to the date the investigation is completed. The revision of the definition of ''previously committed the same or related violation'' in this supplemental policy is consistent with the emphasis FMCSA places on violations of acute regulations.

Categories of Investigations

Effective with this supplemental policy, FMCSA also expands the category of investigations during which violations of acute and/or critical regulations discovered may be subject to assessment of section 222 maximum penalties to include rated and unrated compliance reviews, terminal reviews, shipper reviews, focused reviews, on- and off-site assessment investigations, and on- and off-site investigations arising under the Agency's Comprehensive Safety Analysis 2010 program or successor programs.

Settlement Policy

The Agency's December 28, 2004, policy clarification stated that in order to ensure uniformity in implementing section 222 of MCSIA, FMCSA Service Centers would not be permitted to settle section 222 cases for less than the maximum penalty assessed. The policy permitted settlement agreements establishing a payment plan and noted that the settlement limitation would be re-evaluated as the Agency gained more experience in applying the statutory requirement. The Agency has reviewed this settlement limitation in light of its experience since the issuance of its section 222 policy. The Agency now lifts this settlement restriction and will allow FMCSA Service Centers to evaluate on a case-by-case basis whether section 222 penalty matters are appropriate for approved settlement options. The Agency will continue to monitor its settlement policy on section 222 cases to ensure uniformity and appropriate use of settlement options.

Issued on: March 24, 2009.

Rose A. McMurray,

Acting Deputy Administrator.

[FR Doc. E9–7057 Filed 3–27–09; 8:45 am]

BILLING CODE 4910–EX–P

[3] Critical and acute regulations are listed in 49 CFR Part 385, Appendix B. ''Critical violations'' are violations of a critical regulation discovered at or above a 10% violation rate; they involve more than one discovered violation.

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009–0028]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel Stewardship.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0028 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 29, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0028. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140,

1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *Stewardship* is:

Intended Use: ''4 and 6 hour daysail cruises out of Cape Charles, Virginia with no more than 4 paying passengers.''

Geographic Region: ''Virginia''.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.).* You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: March 23, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E9–6914 Filed 3–27–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–511 (Sub–No. 4X)]

Central Railroad Company of Indianapolis—Abandonment Exemption—in Howard County, IN

Central Railroad Company of Indianapolis (CERA) [1] has filed a verified notice of exemption under 49 CFR 1152 Subpart F-*Exempt Abandonments* to abandon 5.18 miles of rail line, consisting of 2.38 miles between milepost 181.26 and milepost 183.64, on CERA's main line (West Kokomo line segment), and 2.8 miles between milepost 51.5 and milepost 54.3, on CERA's Tipton Industrial Lead (South Kokomo line segment), in Howard County, IN. The line traverses United States Postal Service Zip Codes 46901 and 46902.

CERA has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 29, 2009, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 9, 2009. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 20, 2009, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CERA's representative: Melanie B. Yasbin, Law offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204–4022.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CERA has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 3, 2009. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CERA shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CERA's filing of a notice of consummation by March 30, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: March 20, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–6841 Filed 3–27–09; 8:45 am]

BILLING CODE 4915–01–P

[1] CERA is a subsidiary of RailAmerica, Inc.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 23, 2009.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance

Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11020, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 29, 2009 to be assured of consideration.

Office of the Procurement Executive

OMB Number: 1505–0080.

Type of Review: Revision.

Title: Post-Contract Award Information.

Description: Information requested of contractors is specific to each contract and is required for Treasury to properly evaluate the progress made and/or management controls used by contractors providing supplies or services to the Government, and to determine contractors' compliance with the contracts, in order to protect the Government's interest.

Respondents: Businesses or other for-profit institutions, and not-for-profit institutions.

Estimated Total Reporting Burden: 171,912 hours (revised up from the currently approved 47,796).

OMB Number: 1505–0081.

Type of Review: Revision.

Title: Solicitation of Proposal Information for Award of Public Contracts.

Description: Information requested of offerors is specific to each procurement solicitation, and is required for Treasury to properly evaluate the capabilities and experience of potential contractors who desire to provide the supplies or services to be acquired. Evaluation will be used to determine which proposals most benefit the Government.

Respondents: Businesses or other for-profit institutions, and not-for-profit institutions.

Estimated Total Reporting Burden: 255,456 hours (revised down from the currently approved 410,988).

OMB Number: 1505–0107.

Type of Review: Revision.

Title: Regulation Agency Protests.

Description: Information is requested of contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file protests.

Respondents: Businesses or other for-profit institutions, and not-for-profit institutions.

Estimated Total Reporting Burden: 40 hours (revised down from the currently approved 46).

Clearance Officer: Jean Carter, (202) 622–5913, Office of the Procurement Executive, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: OIRA Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. *oira_submission@omb.eop.gov*.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E9–7017 Filed 3–27–09; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Resolution Authorizing Execution of Depositary, Financial Agency, and Collateral Agreement; and Depositary, Financial Agency, and Collateral Agreement

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and Request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning forms Resolution Authorizing Execution of Depositary, Financial Agency, FMS 5902 and Collateral Agreement; and Depositary, Financial Agency, and Collateral Agreement, FMS 5903.

DATES: Written comments should be received on or before May 29, 2009.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Program Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Bailey, Bank Policy and Oversight Division, 401 14th Street, SW., Room 317, Washington, DC 20227, (202) 874–7055.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Resolution Authorizing Execution of Depositary, Financial Agency, and Collateral Agreement; and Depositary, Financial Agency, and Collateral Agreement.

OMB Number: 1510–0067.

Form Number: EMS 5902; FMS 5903.

Abstract: These forms are used to give authority to financial institutions to become a depositary of the Federal Government. They also execute an agreement from the financial institutions that they are authorized to pledge collateral to secure public funds with Federal Reserve Banks or their designees.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 15 (2 forms each).

Estimated Time Per Respondent: 30 minutes (15 minutes each form).

Estimated Total Annual Burden Hours: 7.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: March 19, 2009.

Sheryl R. Morrow,

Assistant Commissioner, Federal Finance.

[FR Doc. E9–6860 Filed 3–27–09; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Minority Bank Deposit Program (MBDP) Certification Form for Admission

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning form FMS 3144 ''Minority Bank Deposit Program (MBDP) Certification Form for Admission''.

DATES: Written comments should be received on or before May 29, 2009.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Program Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Mary Bailey, Bank Policy and Oversight Division, 401 14th Street, SW., Room 317, Washington, DC 20227, (202) 874–7055.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Minority Bank Deposit Program (MBDP) Certification Form for Admission.

OMB Number: 1510–0048.

Form Number: FMS 3144.

Abstract: This form is used by financial institutions to apply for participation in Minority Bank Deposit Program. Institutions approved for acceptance in the program are included on a list of minority and women owned financial institutions. Federal agencies, State and local governments, and private sector organizations are encouraged to use minority bank participants as depositaries and financial agents.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 150.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 75.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: March 19, 2009.

Sheryl R. Morrow,

Assistant Commissioner, Federal Finance.

[FR Doc. E9–6861 Filed 3–27–09; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Pricing for United States Mint 2009 First Spouse Bronze Medal and 2009 First Spouse Bronze Medal Set

ACTION: Notification of Pricing for United States Mint 2009 First Spouse Bronze Medal and 2009 First Spouse Bronze Medal Set.

SUMMARY: The United States Mint is announcing prices for the 2009 First Spouse Bronze Medal and the 2009 First Spouse Bronze Medal Set.

2009 First Spouse Bronze Medals will be priced at $3.50 each. This year, the United States Mint is releasing five First Spouse Bronze Medals featuring Anna Harrison, Letitia Tyler, Julia Tyler, Sarah Polk, and Margaret Taylor. The 2009 First Spouse Bronze Medal Set will be priced at $15.95 and contains all five 2009 First Spouse Bronze Medals.

The first medal in the 2009 series, the Anna Harrison First Spouse Bronze Medal, will be available for sale on March 19, 2009.

FOR FURTHER INFORMATION CONTACT: B. B. Craig, Associate Director for Sales and Marketing, United States Mint, 801 9th Street, NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: March 23, 2009.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E9–6965 Filed 3–27–09; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0205]

Agency Information Collection (Applications and Appraisals for Employment for Title 38 Positions and Trainees) Activities Under OMB Review

AGENCY: Veterns Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 29, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0205'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0205.''

SUPPLEMENTARY INFORMATION:

Title: Applications and Appraisals for Employment for Title 38 Positions and Trainees, VA Forms 10–2850, 2850a through d, and VA Form Letters 10–341a and b.

OMB Control Number: 2900–0205.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Forms 10–2850, 2850a through d, and VA Form Letters 10–341a and b, will be used to evaluate an applicant's qualification for employment with the VA, as well as their training, educational, and professional experiences. The data is necessary to determine the applicant's suitability, grade level and clinical privileges.

Affected Public: Individuals or Households.

Estimated Annual Burden:

a. Application for Physicians, Dentists, Podiatrists and Optometrists, Chiropractors, VA Form 10–2850—7,450 hours.

b. Application for Nurses and Nurse Anesthetists, VA Form 10–2850a—29,799 hours.

c. Application for Residents, VA Form 10–2850b—17,001 hours.

d. Application for Associated Health Occupations, VA Form 10–2850c—9,933 hours.

e. Application for Health Professions Trainees, VA Form 10–2850d—33,670 hours.

f. Appraisal of Applicant, VA Form Letter 10–341a—25,410 hours.

g. Trainee Qualification and Credentials Verification Letter, VA Form Letter 10–341b—6,709 hours.

Estimated Average Burden per Respondent:

a. Application for Physicians, Dentists, Podiatrists and Optometrists, Chiropractors, VA Form 10–2850—30 minutes.

b. Application for Nurses and Nurse Anesthetists, VA Form 10–2850a—30 minutes.

c. Application for Residents, VA Form 10–2850b—30 minutes.

d. Application for Associated Health Occupations, VA Form 10–2850c—30 minutes.

e. Application for Health Professions Trainees, VA Form 10–2850d—30 minutes.

f. Appraisal of Applicant, VA Form FL 10–341a—30 minutes.

g. Trainee Qualification and Credentials Verification Letter, VA Form 10–341b—5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Application for Physicians, Dentists, Podiatrists and Optometrists, Chiropractors, VA Form 10–2850—14,900.

b. Application for Nurses and Nurse Anesthetists, VA Form 10–2850a—59,598.

c. Application for Residents, VA Form 10–2850b—34,003.

d. Application for Associated Health Occupations, VA Form 10–2850c—19,866.

e. Application for Health Professions Trainees, VA Form 10–2850d—67,341.

f. Appraisal of Applicant, VA Form 10–341a—50,820.

g. Trainee Qualification and Credentials Verification Letter, VA Form 10–341b—80,518.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–6967 Filed 3–27–09; 8:45 am]

BILLING CODE

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0678]

Agency Information Collection (Agreement to Train on the Job Disabled Veterans) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 29, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0678'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0678.''

SUPPLEMENTARY INFORMATION: *Title:* Agreement to Train On The Job Disabled Veterans, VA Form 28–1904.

OMB Control Number: 2900–0678.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1904 is a written agreement between an On the Job Training (OJT) establishments and VA. The agreement is necessary to ensure that OJT is providing claimants with the appropriate training and supervision, and VA's obligation to provide claimants with the necessary tools, supplies, and equipment for such training.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 21, 2009, at pages 3672–3673.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 150 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 600.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–6985 Filed 3–27–09; 8:45 am]

BILLING CODE

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 21–0820 series)]

Agency Information Collection (Report of General Information) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before April 29, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316.

Please refer to ''OMB Control No. 2900–New (VA Form 21–0820 series)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW/, Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–New (VA Form 21–0820 series).''

SUPPLEMENTARY INFORMATION:

Titles:

a. VA Form 21–0820, Report of General Information.

b. VA Form 21–0820a, Report of Death of Beneficiary.

c. VA Form 21–0820b, Report of Nursing Home Information.

d. VA Form 21–0820c, Report of Defense Finance and Accounting Service (DFAS).

e. VA Form 21–0820d, Report of Lost Check.

f. VA Form 21–0820e, Report of Incarceration.

g. VA Form 21–0820f, Month of Death Check.

OMB Control Number: 2900–New.

Type of Review: New collection.

Abstract: The forms will be used by VA personnel to document verbal information obtained telephonically from claimants or their beneficiary. The data collected will be used as part of the evidence needed to determine the claimant's or beneficiary's eligibility for benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 5, 2009, at pages 336–337.

Affected Public: Federal Government.

Estimated Annual Burden:

a. VA Form 21–0820, Report of General Information—19,667.

b. VA Form 21–0820a, Report of Death of Beneficiary—6,667.

c. VA Form 21–0820b, Report of Nursing Home Information—2,500

d. VA Form 21–0820c, Report of Defense Finance and Accounting Service (DFAS)—2,500.

e. VA Form 21–0820d, Report of Lost Check—2,500.

f. VA Form 21–0820e, Report of Incarceration—833.

g. VA Form 21–0820f, Month of Death Check.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Hourly.

Estimated Number of Respondents:

a. VA Form 21–0820, Report of General Information—2,360,000.

b. VA Form 21–0820a, Report of Death of Beneficiary—80,000.

c. VA Form 21–0820b, Report of Nursing Home Information—30,000.

d. VA Form 21–0820c, Report of Defense Finance and Accounting Service (DFAS)—30,000.

e. VA Form 21–0820d, Report of Lost Check—30,000.

f. VA Form 21–0820e, Report of Incarceration—10,000.

g. VA Form 21–0820f, Month of Death Check.

Dated: March 25, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–7004 Filed 3–27–09; 8:45 am]

BILLING CODE

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0564]

Proposed Information Collection (Direct Deposit Enrollment) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to enroll claimants receiving benefit payments into an electronic funds transfer program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 29, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0564'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Direct Deposit Enrollment, VA Form 24–0296.

b. Direct Deposit Enrollment (Australia), VA Form 24–0296a.

c. Direct Deposit Enrollment (Canada), VA Form 24–0596b.

d. Direct Deposit Enrollment (Germany), VA Form 24–2096c.

e. Direct Deposit Enrollment (Ireland), VA Form 24–0296d.

f. Direct Deposit Enrollement (United Kingdom), VA Form 24–0296e.

OMB Control Number: 2900–0564.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants who wish to have their benefit payments electronically deposited into their financial institution account must complete the appropriate direct deposit enrollment form.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 24–0296—750 hours.

b. VA Form 24–0296a (Australia)—100 hours.

c. VA Form 24–2096b (Canada)—100 hours.

d. VA Form 24–2096c (Germany)—100 hours.

e. VA Form 24–2096d (Ireland)—100 hours.

f. VA Form 24–2096e (United Kingdom)—100 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 24–0296—3,000.

b. VA Form 24–0296a (Australia)—400.

c. VA Form 24–2096b (Canada)—400.

d. VA Form 24–2096c (Germany)—400.

e. VA Form 24–0296d (Ireland)—400.

f. VA Form 24–0296e (United Kingdom)—400.

Dated: March 25, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–7005 Filed 3–27–09; 8:45 am]

BILLING CODE

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0677]

Agency Information Collection (Contract for Training and Employment) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 29, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0677'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0677.''

SUPPLEMENTARY INFORMATION:

Title: Contract for Training and Employment (Chapter 31, Title 38 U.S. Code), VA Form 28–1903.

OMB Control Number: 2900–0677.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1903 is used to standardize contracts agreements between VA and training facilities/vendors providing vocational rehabilitation training and employment to veterans. VA uses the data collected to ensure that veterans are receiving training and employment as agreed in the contract.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 21, 2009, at page 3672.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,200.

Dated: March 25, 2009.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–7006 Filed 3–27–09; 8:45 am]

BILLING CODE

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0673]

Proposed Information Collection (One-VA Identification Verification Card) Activity; Comment Request

AGENCY: Office of Operations, Security, and Preparedness, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Operations, Security, and Preparedness (OSP), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to issue a One-VA identification verification card.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 29, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Keith Frost, Office of Security and Law Enforcement (07B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *keith.frost@va.gov.* Please refer to ''OMB Control No. 2900–0673'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Keith Frost at (202) 461–5247 or FAX (202) 273–7094.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OSP invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OSP's functions, including whether the information will have practical utility; (2) the accuracy of OSP's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for One-VA Identification Card, VA Form 0711.

OMB Control Number: 2900–0673.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 0711 is used to collect pertinent information from employees, applicants seeking employment with VA, contractors, and affiliates prior to issuing a Department identification credential. VA uses the data collected to personalize, print, and issue a personal identify verification card.

Affected Public: Federal government, Individuals or households, and Business or other for-profits.

Estimated Annual Burden: 8,333 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 100,000.

Dated: March 25, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–7007 Filed 3–27–09; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0671]

Proposed Information Collection (Traumatic Injury Protection (TSGLI)) Activity; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine service members eligibility requirements for payment of traumatic injury protection benefits covered under Servicemembers' Group Life Insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 29, 2009.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0671 in any correspondence. During the comment period, comments may be viewed Online at FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Traumatic Injury Protection (TSGLI).

OMB Control Number: 2900–0671.

Type of Review: Extension of a currently approved collection.

Abstract: Service members who experienced a traumatic injury such as loss of limbs on or after October 7, 2001 through November 30, 2005 are eligible to receive Traumatic Injury Protection benefits if the loss was incurred during Operation Enduring Freedom or Operation Iraqi Freedom. TSGLI provides severely injured service members and the member's family with monetary assistance through an often long and difficult rehabilitation period. The service members must be insured under the Servicemembers' Group Life Insurance to be eligible for TSGLI. The service member, the attending physician, the branch of service must complete Prudential Form GL.2005.261, Certification of Traumatic Injury Protection in order for the service member to receive such benefits. VA uses the data collected to determine the member's eligibility for TSGLI benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,500.

Dated: March 25, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Record Service.

[FR Doc. E9–7008 Filed 3–27–09; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0682]

Proposed Information Collection (Advertising, Sales, and Enrollment Materials, and Candidate Handbooks) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to ensure that educational institutions or agents enrollment materials meet VA's guidelines for approval of courses.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 29, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0682'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct

or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Advertising, Sales, and Enrollment Materials, and Candidate Handbooks, 38 CFR 21.4252(h).

OMB Control Number: 2900–0682.

Type of Review: Extension of a currently approved collection.

Abstract: VA approved educational institutions offering courses approved for the enrollment of veterans, or eligible persons, and organizations or entities offering licensing or certification tests approved for payment of educational assistance as reimbursement to veterans or eligible persons who took such tests, must maintain a complete record of all advertising, sales materials, enrollment materials, or candidate handbooks that educational institutions or its agents used during the preceding 12-month period. The materials are examined by VA and State Approving Agency employees to ensure that educational institutions or its agents are following VA approval guidelines.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,498.

Dated: March 25, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–7009 Filed 3–27–09; 8:45 am]

BILLING CODE

Federal Register

Monday,
March 30, 2009

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 523, 531, 533, et al.

Average Fuel Economy Standards Passenger Cars and Light Trucks Model Year 2011; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 523, 531, 533, 534, 536 and 537

[Docket No. NHTSA–2009–0062]

RIN 2127–AK29

Average Fuel Economy Standards Passenger Cars and Light Trucks Model Year 2011

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; record of decision.

SUMMARY: The future of this country's economy, security, and environment are linked to one key challenge: energy. To reduce fuel consumption, NHTSA has been issuing Corporate Average Fuel Economy (CAFE) standards since the late 1970's under the Energy Policy and Conservation Act (EPCA). However, the principal effects of these standards are broader than their statutory purpose. Reducing fuel consumption conserves petroleum, a non-renewable energy source, saves consumers money, and promotes energy independence and security by reducing dependence on foreign oil. It also directly reduces the motor vehicle tailpipe emissions of carbon dioxide (CO_2), which is the principal greenhouse gas emitted by motor vehicles.

The Energy Independence and Security Act (EISA) amended EPCA by mandating that the model year (MY) 2011–2020 CAFE standards be set sufficiently high to ensure that the industry-wide average of all new passenger cars and light trucks, combined, is not less than 35 miles per gallon by MY 2020. This is a minimum requirement, as NHTSA must set standards at the maximum feasible level in each model year. NHTSA will determine, based on all of the relevant circumstances, whether that additional requirement calls for establishing standards that reach the 35 mpg goal earlier than MY 2020.

NHTSA published a proposal in May 2008 to begin implementing EISA by establishing CAFE standards for MYs 2011–2015. A draft final rule for those model years was completed, but not issued.

In the context of his calls for the development of new national policies to prompt sustained domestic and international actions to address the closely intertwined issues of energy independence, energy security and climate change, the President issued a memorandum on January 26, 2009, requesting NHTSA to divide its rulemaking into two parts. First, he requested the agency to issue a final rule adopting CAFE standards for MY 2011 only. Given the substantial time and analytical effort involved in developing CAFE standards and the limited amount of time before the statutory deadline of March 30, 2009 for establishing the MY 2011 standards, the agency has necessarily based this one year final rule almost wholly on the information available to it and the analysis performed by it in support of the draft final rule completed last fall.

Second, the President requested NHTSA to establish standards for MY 2012 and later after considering the appropriate legal factors, the comments filed in response to the May 2008 proposal, the relevant technological and scientific considerations, and, to the extent feasible, a forthcoming report by the National Academy of Sciences, mandated under section 107 of EISA, assessing existing and potential automotive technologies and costs that can practicably be used to improve fuel economy. The deferral of action on standards for the later model years provides the agency with an opportunity to review its approach to CAFE standard setting, including its methodologies, economic and technological inputs and decisionmaking criteria, so as to ensure that it will produce standards that contribute, to the maximum extent possible within the limits of EPCA/EISA, to meeting the energy and environmental challenges and goals outlined by the President.

NHTSA estimates that the MY 2011 standards will raise the industry-wide combined average to 27.3 mpg, save 887 million gallons of fuel over the lifetime of the MY 2011 cars and light trucks, and reduce CO_2 emissions by 8.3 million metric tons during that period.

DATES: This final rule is effective May 29, 2009.

Petitions for reconsideration must be received by May 14, 2009.

ADDRESSES: Petitions for reconsideration must be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For policy and technical issues: Ms. Julie Abraham or Mr. Peter Feather, Office of Rulemaking, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: Ms. Abraham (202) 366–1455; Mr. Feather (202) 366–0846.

For legal issues: Mr. Stephen Wood or Ms. Rebecca Yoon, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366–2992.

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I. Executive Overview

A. The President's January 26, 2009 Memorandum on CAFE Standards for Model Years 2011 and Beyond

1. Rulemaking Background

On May 2, 2008, NHTSA published a Notice of Proposed Rulemaking entitled Average Fuel Economy Standards, Passenger Cars and Light Trucks; Model Years 2011–2015, 73 FR 24352. In mid-October, the agency completed and released a final environmental impact statement in anticipation of issuing standards for those years. Based on its consideration of the public comments and other available information, including information on the financial condition of the automotive industry, the agency adjusted its analysis and the standards and prepared a final rule for MYs 2011–2015. On November 14, the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget cleared the rule as consistent with the Order.[1] However, issuance of the final rule was held in abeyance. On January 7, 2009,

[1] Record of OIRA's action can be found at *http://www.reginfo.gov/public/do/eoHistReviewSearch* (last visited March 8, 2009). To find the report on the clearance of the draft final rule, select ''Department of Transportation'' under ''Economically Significant Reviews Completed'' and select ''2008'' under ''Select Calendar Year.''

the Department of Transportation announced that the final rule would not be issued, saying:

> The Bush Administration will not finalize its rulemaking on Corporate Fuel Economy Standards. The recent financial difficulties of the automobile industry will require the next administration to conduct a thorough review of matters affecting the industry, including how to effectively implement the Energy Independence and Security Act of 2007 (EISA). The National Highway Traffic Safety Administration has done significant work that will position the next Transportation Secretary to finalize a rule before the April 1, 2009 deadline.[2]

2. Requests in the President's Memorandum

In light of the requirement to prescribe standards for MY 2011 by March 30, 2009 and in order to provide additional time to consider issues concerning the analysis used to determine the appropriate level of standards for MYs 2012 and beyond, the President issued a memorandum on January 26, 2009, requesting the Secretary of Transportation and Administrator[3] of the National Highway Traffic Safety Administration NHTSA to divide the rulemaking into two parts: (1) MY 2011 standards, and (2) standards for MY 2012 and beyond.

(a) CAFE Standards for Model Year 2011

The request that the final rule establishing CAFE standards for MY 2011 passenger cars and light trucks be prescribed by March 30, 2009 was based on several factors. One was the requirement that the final rule regarding fuel economy standards for a given model year must be adopted at least 18 months before the beginning of that model year (49 U.S.C. 32902(g)(2)). The other was that the beginning of MY 2011 is considered for the purposes of CAFE standard setting to be October 1, 2010. As part of that final rule, the President requested that NHTSA consider whether any provisions regarding preemption are consistent with the EISA, the Supreme Court's decision in Massachusetts v. EPA and other relevant provisions of law and the policies underlying them.

(b) CAFE Standards for Model Years 2012 and Beyond

The President requested that, before promulgating a final rule concerning the model years after model year 2011, NHTSA

> [C]onsider the appropriate legal factors under the EISA, the comments filed in response to the Notice of Proposed Rulemaking, the relevant technological and scientific considerations, and to the extent feasible, the forthcoming report by the National Academy of Sciences mandated under section 107 of EISA.

In addition, the President requested that NHTSA further consider whether any provisions regarding preemption are appropriate under applicable law and policy.

3. Implementing the President's Memorandum

In keeping with the President's remarks on January 26 for new national policies to address the closely intertwined issues of energy independence, energy security and climate change, and for the initiation of serious and sustained domestic and international action to address them, NHTSA will develop CAFE standards for MY 2012 and beyond only after collecting new information, conducting a careful review of technical and economic inputs and assumptions, and standard setting methodology, and completing new analyses.

For MY 2011, however, time limitations precluded the adoption of this approach. As noted above, EPCA requires that standards for that model year be established by the end of March of this year. Thus, immediate decisions had to be made about the establishment of the MY 2011 standards. There was insufficient time between the issuance of the President's memorandum in late January and the end of March to revisit and, if and as appropriate, revise the extensive and complex analysis in any substantively significant way. This is particularly so given the requirement under EPCA to consult with the Environmental Protection Agency and the Department of Energy on these complicated and important technical matters. Decisions regarding those matters potentially affect not just NHTSA's CAFE rulemaking, but also programs of other departments and agencies. Accordingly, the methodologies, economic and technological inputs and decisionmaking criteria used in this rule are necessarily largely those developed by NHTSA in the fall of 2008.

In looking ahead to the next CAFE rulemaking, the agency emphasizes that while the methodologies, economic and technological inputs and decisionmaking criteria used in this rule were well-supported choices for the purposes of the MY 2011 rulemaking, they were not the only reasonable choices that the agency could have made for that purpose. Many of the key aspects of this rulemaking reflect decisions among several reasonable alternatives. The choices made in the context of last fall may or may not be the choices that will be made in the context of the follow-on rulemaking.

The deferral of action on the CAFE standards for the years after MY 2011 provides the agency with an opportunity to review its approach to CAFE standard setting, including its methodologies, economic and technological inputs, and decisionmaking criteria. It is reasonable to anticipate that this process may lead to changes, given the further review and analysis that will be conducted pursuant to the President's request, and given the steady and potentially substantial evolution in technical and policy factors relevant to the next CAFE rulemaking. These factors include, but are not limited to, energy and climate change needs and policy choices regarding goals and approaches to achieving them, developments in domestic legislation and international negotiations regarding those goals and approaches, the financial health of the industry, technologies for reducing fuel consumption, fuel prices, and climate change science and damage valuation.

The goal of the review and re-evaluation will be to ensure that the approach used for MY 2012 and thereafter produces standards that contribute, to the maximum extent possible under EPCA/EISA, to meeting the energy and environmental challenges and goals outlined by the President. We will seek to craft our program with the goal of creating the maximum incentives for innovation, providing flexibility to the regulated parties, and meeting the goal of making substantial and continuing reductions in the consumption of fuel. To that end, we are committed to ensuring that the CAFE program for beyond MY 2011 is based on the best scientific, technical, and economic information available, and that such information is developed in close coordination with other federal agencies and our stakeholders, including the states and the vehicle manufacturers.

We will also re-examine EPCA, as amended by EISA, to consider whether additional opportunities exist for achieving the President's goals. For example, EPCA authorizes, within relatively narrow limits and subject to making specified findings, for increasing the amount of civil penalties

[2] The statement can be found at *http://www.dot.gov/affairs/dot0109.htm* (last accessed February 11, 2009).

[3] Currently, the National Highway Traffic Safety Administration does not have an Administrator. Ronald L. Medford is the Acting Deputy Administrator.

for violating the CAFE standards.[4] Further, while EPCA prohibits updating the test procedures used for measuring passenger car fuel economy, it places no such limitation on the test procedures for light trucks.[5] If the test procedures used for light trucks were revised to provide for the operation of air conditioning during fuel economy testing, vehicle manufacturers would have a regulatory incentive to increase the efficiency and reduce the weight of air conditioning systems, thereby reducing fuel consumption and tailpipe emissions of CO_2.

In response to the President's request that NHTSA consider whether any provisions regarding preemption are consistent with EISA, the Supreme Court's decision in *Massachusetts* v. *EPA* and other relevant provisions of law and the policies underlying them, NHTSA has decided not to include any provisions addressing preemption in the Code of Federal Regulations at this time. The agency will re-examine the issue of preemption in the content of its forthcoming rulemaking to establish Corporate Average Fuel Economy standards for 2012 and later model years.

B. Energy Independence and Security Act of 2007

The mandates in the Energy Independence and Security Act of 2007 (EISA)[6] for reducing fuel consumption by motor vehicles and expanding the production of renewable fuels represent major steps forward in promoting energy independence and security and in addressing climate change risks by reducing CO_2 emissions. EISA requires the first statutory increase in fuel economy standards for passenger automobiles (referred to below as ''passenger cars'') since those standards were originally mandated in 1975. It also includes an important reform—switching to ''attribute-based standards.'' This switch will help to ensure that increased fuel efficiency does not come at the expense of automotive safety.

More specifically, EISA made a number of important changes to EPCA. EISA:

- Establishes a statutory mandate to establish passenger car standards for each model year at the maximum feasible level and eliminates the old statutory default standard of 27.5 mpg for passenger cars and the provision giving us discretion to amend that default standard. Thus, given that there will no longer be a default standard, the agency must act affirmatively to establish a new passenger car standard for each model year.
- Retains the requirement to establish separate standards for passenger cars and light trucks and to set them at the maximum feasible level, but sets forth special requirements for the MY 2011–2020 standards.
- The standards must increase ratably each year and, at a minimum, be set sufficiently high to ensure that the average fuel economy of the combined industry-wide fleet of all new passenger cars and light trucks sold in the United States during MY 2020 is at least 35 mpg.[7]
- Mandates the reforming of CAFE standards for passenger cars by requiring that all CAFE standards be based on one or more vehicle attributes related to fuel economy (like size or weight). Fuel economy targets are set for individual vehicles and increase as the attribute decreases and vice versa. For example, size-based (i.e., size-indexed) standards assign higher fuel economy targets to smaller vehicles and lower ones to larger vehicles. Use of this approach helps to ensure that the improvements in fuel economy do not come at the expense of safety. NHTSA pioneered that approach in its last rulemaking on CAFE standards for light trucks.
- Requires that for each model year, beginning with MY 2011, each manufacturer's domestically-manufactured passenger car fleet must achieve a measured average fuel economy that is not less than 92 percent of the average fuel economy of the combined industry-wide fleet of domestic and non-domestic passenger cars sold in the United States in that model year.
- Limits to five the number of model years for which standards can be established in a single rulemaking.
- Provides greater flexibility for automobile manufacturers by (a) increasing from three to five the number of years that a manufacturer can carry forward the compliance credits it earns by exceeding CAFE standards, (b) allowing a manufacturer to transfer the credits it has earned from one of its compliance categories of automobiles to another class, and (c) authorizing the trading of credits between manufacturers.

C. Notice of Proposed Rulemaking for MYs 2011–2015 and Request for New Product Plans

1. Key Economic Values for Benefits Computations and Standard Setting

NHTSA's analysis of the proposed and alternative CAFE standards in the Notice of Proposed Rulemaking (NPRM)[8] relied on a range of information, economic estimates, and input parameters. These economic assumptions play a role in the determination of the level of the standards, with some having greater impacts than others. The cost of technologies, the price of gasoline, and discount rate used for discounting future benefits had the greatest influence over the level of the standards. In order of impact, the full list of the economic assumptions is as follows: (1) Technology cost; (2) fuel prices; (3) discount rate; (4) oil import externalities; (5) rebound effect; (6) criteria air pollutant damage costs; (7) carbon costs. The table below shows the NPRM assumptions on which the agency received the most extensive public comment.

TABLE I–1—NPRM KEY ECONOMIC VALUES FOR BENEFITS COMPUTATIONS (2006$)[9]

Fuel Prices (average retail gasoline price per gallon, 2011–30)	$2.34
Discount Rate Applied to Future Benefits	7%
Economic Costs of Oil Imports ($/gallon):	
''Monopsony'' Component	$0.182

[4] Under 49 U.S.C. 32904(c), EPA must ''use the same procedures for passenger automobiles the Administrator used for model year 1975 (weighted 55 percent urban cycle and 45 percent highway cycle), or procedures that give comparable results.''

[5] 49 U.S.C. 32912(c).

[6] Public Law 110–140, 121 Stat. 1492 (Dec. 18, 2007).

[7] Although NHTSA previously established an attribute-based standard for MY 2011 light trucks in its 2006 final rule, EISA mandates a new rulemaking, reflecting new statutory considerations and a new administrative record, and consistent with EPCA as amended by EISA, to establish the standard for those light trucks.

[8] 73 FR 24352, May 2, 2008. In a separate notice published on the same day, the agency requested automobile manufacturers to submit new product plans for MYs 2011–15. 73 FR 24190.

[9] Although Table V–3 Economic Values for Benefits Computations in the NPRM indicated that all of the values in that table were 2006$, several values were actually in 2005$. Thus, the monopsony component, which was shown in that table as $0.176, should have been shown as $0.182. Likewise, the price shock component should have been $0.113, instead of $0.109. The sum of those two values should have been $0.295, not $0.285.

TABLE I–1—NPRM KEY ECONOMIC VALUES FOR BENEFITS COMPUTATIONS (2006$) [9]—Continued

Price Shock Component	$0.113
Military Security Component	.....
Total Economic Costs	$0.295
Emission Damage Costs:	
Carbon Dioxide ($/metric ton)	$7.00
Annual Increase in CO_2 Damage Cost	2.4%

2. Standards

(a) Classification of Vehicles

In the NPRM, the agency classified the vehicles subject to the proposed standards as passenger cars or as light trucks in the same way that the vehicles had been traditionally classified under the CAFE program. In particular, sport utility vehicles (SUVs), mini-vans and pickup trucks were classified as light trucks. However, the agency raised the possibility of reclassifying many of the two-wheel drive SUVs as passenger cars for the purposes of the final rule.

(b) Stringency

We proposed setting separate attribute-based fuel economy standards for passenger cars and light trucks consistent with the size-based approach that NHTSA used in establishing the light truck standards for MY 2008–2011 light trucks.

Compared to the April 2006 final rule that established those attribute-based standards, the NPRM more thoroughly evaluated the value of the costs and benefits of setting CAFE standards. This was important because assumptions regarding projected gasoline prices, along with assumptions about the value of reducing the negative externalities (economic and environmental) from producing and consuming fuel, were based on changed economic, environmental, and energy security conditions. These environmental externalities include, among other things, an estimation of the value of reducing tailpipe emissions of CO_2.[10]

In light of EISA and the need to balance the statutory considerations in a way that reflects the current need of the nation to conserve energy, including the current assessment of climate change risks, the agency revisited the various assumptions used to determine the level of the standards. Specifically, the agency used higher gasoline prices and higher estimates for energy security values ($0.29 per gallon instead of $0.09 per gallon). The agency also monetized carbon dioxide (at $7.00/ton), which it did not do in the previous rulemaking, and expanded the list of technologies it used in assessing the capability of manufacturers to improve fuel economy. In addition, the agency used cost estimates that reflect economies of scale and estimated ''learning''-driven reductions in the cost of technologies as well as quicker penetration rates for advanced technologies.

The agency could not set out the exact level of CAFE that each manufacturer would be required to meet for each model year under the passenger car or light truck standards since the levels would depend on information that would not be available until the end of each of the model years, i.e., the final actual production figures for each of those years. The agency could, however, project what the industry-wide level of average fuel economy would be for passenger cars and for light trucks if each manufacturer produced its expected mix of automobiles and just met its obligations under the proposed ''optimized'' standards for each model year. Adjacent to each average fuel economy figure in the NPRM was the estimated associated level of tailpipe emissions of CO_2 that would be achieved.[11]

For passenger cars:

MY 2011: 31.2 mpg (285 g/mi of tailpipe emissions of CO_2)
MY 2012: 32.8 mpg (271 g/mi of tailpipe emissions of CO_2)
MY 2013: 34.0 mpg (261 g/mi of tailpipe emissions of CO_2)
MY 2014: 34.8 mpg (255 g/mi of tailpipe emissions of CO_2)
MY 2015: 35.7 mpg (249 g/mi of tailpipe emissions of CO_2)

For light trucks:

MY 2011: 25.0 mpg (355 g/mi of tailpipe emissions of CO_2)
MY 2012: 26.4 mpg (337 g/mi of tailpipe emissions of CO_2)
MY 2013: 27.8 mpg (320 g/mi of tailpipe emissions of CO_2)
MY 2014: 28.2 mpg (315 g/mi of tailpipe emissions of CO_2)
MY 2015: 28.6 mpg (310 g/mi of tailpipe emissions of CO_2)

The combined industry-wide average fuel economy (in miles per gallon, or mpg) levels (in grams per mile, or g/mi) for both cars and light trucks, if each manufacturer just met its obligations under the proposed ''optimized'' standards for each model year, would be as follows:

MY 2011: 27.8 mpg (2.5 mpg increase above MY 2010; 320 g/mi CO_2)
MY 2012: 29.2 mpg (1.4 mpg increase above MY 2011; 304 g/mi CO_2)
MY 2013: 30.5 mpg (1.3 mpg increase above MY 2012; 291 g/mi CO_2)
MY 2014: 31.0 mpg (0.5 mpg increase above MY 2013; 287 g/mi CO_2)
MY 2015: 31.6 mpg (0.6 mpg increase above MY 2014; 281 g/mi CO_2)

The annual average increase during this five year period was approximately

[10] The externalities included in our analysis do not, however, include those associated with the reduction of the other GHG emitted by automobiles, i.e., methane (CH_4), nitrous oxide (N_2O), and hydroflurocarbons (HFCs). Actual air conditioner operation is not included in the test procedures used to obtain both (1) emission rates for purposes of determining compliance with EPA criteria pollutant emission standards and (2) fuel economy values for purposes of determining compliance with NHTSA CAFE standards, although air conditioner operation is included in ''supplemental'' federal test procedures used to determine compliance with corresponding and separate EPA criteria pollutant emission standards. As noted above, EPCA precludes basing passenger car standards on those other test procedures, but places no such limit on the test procedures used as the basis for light truck standards.

[11] Given the contributions made by CAFE standards to addressing not only energy independence and security, but also to reducing tailpipe emissions of CO_2, fleet performance was stated in the above discussion both in terms of fuel economy and the associated reductions in tailpipe emissions of CO_2 since the CAFE standards would have the practical effect of limiting those emissions approximately to the indicated levels during the official CAFE test procedures established by EPA. The relationship between fuel consumption and carbon dioxide emissions is discussed ubiquitously, such as at *www.fueleconomy.gov,* a fuel economy-related web site managed by DOE and EPA (see *http://www.fueleconomy.gov/feg/contentIncludes/co2_inc.htm*, which provides a rounded value of 20 pounds of CO_2 per gallon of gasoline). (Last accessed March 8, 2009.) The CO_2 emission rates shown were based on gasoline characteristics. Because diesel fuel contains more carbon (per gallon) than gasoline, the presence of diesel engines in the fleet—which NHTSA expects to increase in response to the proposed CAFE standards—will cause the actual CO_2 emission rate corresponding to any given CAFE level to be slightly higher than shown here. (The agency projected that 4 percent of the MY 2015 passenger car fleet and 10 percent of the MY 2015 light truck fleet would have diesel engines.) Conversely (and hypothetically), applying the same CO_2 emission standard to both gasoline and diesel vehicles would discourage manufacturers from improving diesel engines, which show considerable promise as a means to improve fuel economy.

4.5 percent. Due to the uneven distribution of new model introductions during this period and to the fact that significant technological changes could be most readily made in conjunction with those introductions, the annual percentage increases were greater in the early years in this period.

(c) Benefits and Costs

(i) Benefits

We estimated that the proposed standards for the five-year period would save approximately 54.7 billion gallons of fuel (18.7 billion gallons for passenger cars and 36 billion gallons for light trucks) and reduce tailpipe CO_2 emissions by 521 million metric tons (178 million metric tons for passenger cars and 343 million metric tons for light trucks) over the lifetime of the vehicles sold during those model years, compared to the fuel use and emissions reductions that would occur if the standards remained at the adjusted baseline (i.e., the higher of manufacturer's plans and the manufacturer's required level of average fuel economy for MY 2010).

We estimated that the value of the total benefits of the proposed standards would be approximately $88 billion ($31 billion for passenger cars and $57 billion for light trucks) over the lifetime of the vehicles sold during those model years.

(ii) Costs

The total costs for manufacturers to comply with the standards for the five-year period would be approximately $47 billion ($16 billion for passenger cars and $31 for light trucks) compared to the costs they would incur if the standards remained at the adjusted baseline.

(d) Effect of Flexibilities on Benefits and Costs

The above benefit and cost estimates did not reflect the availability and use of flexibility mechanisms, such as compliance credits and credit trading, because EPCA prohibits NHTSA from considering the effects of those mechanisms in setting CAFE standards. However, the agency noted that, in reality, manufacturers were likely to rely to some extent on flexibility mechanisms provided by EPCA and would thereby reduce the cost of complying with the proposed standards to a meaningful extent.

3. Credits

NHTSA also proposed a new Part 536 on trading and transferring ''credits'' earned for exceeding applicable CAFE standards.[12] Under the proposed Part 536, credit holders (including, but not limited to, manufacturers) would have credit accounts with NHTSA, and would be able to hold credits, apply them to compliance with CAFE standards, transfer them to another ''compliance category'' for application to compliance there, or trade them. Traded credits would be subject to an ''adjustment factor'' to ensure total oil savings are preserved, as required by EISA. EISA also prohibits credits earned before MY 2011 from being transferred, so NHTSA developed several regulatory restrictions on trading and transferring to facilitate Congress' intent in this regard.

4. Preemption

In the proposal, the agency continued its discussion, conducted in a series of rulemaking proposals and final rules spanning a six-year period, of the issue of preemption of state regulations regulating tailpipe emissions of GHGs, especially carbon dioxide.

D. Brief Summary of Public Comments on the NPRM

Standard stringency: Automobile manufacturers argued that the standards, especially those for light trucks in the early years, should be lower. Environmental and consumer groups and states wanted higher standards throughout the five-year period.

Footprint attribute: Commenters generally supported the agency's choice of footprint as an attribute, although several urged consideration of additional attributes and a few argued for different attributes.

Setting standards at levels at which net benefits are projected to be maximized (optimized standards) vs. using other decision-making formulae: A consumer group urged setting standards at the optimized + 50% alternative level, while some environmental groups favored setting them at levels at which total benefits equal total costs. Manufacturers contended that the optimized approach does not assure economic practicability, especially for manufacturers needing to borrow at high interest rates to finance design changes. A manufacturer association and other commenters said agency did not assess the ability of the manufacturers to raise the capital necessary to develop and implement sufficient technologies.

Front-loading/ratable increase: Some commenters, especially the manufacturers, argued that the statutory requirement for ''ratable'' increases in standards means that the increases must be proportional or at least must not be disproportionately large or small in relation to one another. They did not discuss how that requirement is to be read together with either the statutory requirement to set standards for each model year at the level that is the maximum feasible level for that model year, or the separate statutory requirement for the overall fleet to achieve at least 35 mpg.

Key economic and other assumptions affecting stringency—

- *Technology costs and effectiveness*—The manufacturers said that NHTSA underestimated the costs. A manufacturer association submitted a study by Sierra Research challenging the cost and effectiveness estimates developed by NHTSA and EPA for the NPRM.
- *Fuel prices*—A manufacturer association and dealer associations said that Energy Information Administration's (EIA) reference case should be used. Environmental and consumer groups, states and some members of Congress said NHTSA should use at least the EIA high price case. The EIA Administrator stated at a June 2008 Congressional hearing that the then current prices were at or above EIA's high case and that he would use that case in the CAFE rulemaking.
- *Discount rate*—The manufacturers said the rate should be at least 7%, while environmental and consumer groups and states said it should not be greater than 3 percent.
- *Military costs*—Many commenters argued that NHTSA should place a value other than zero on military security externalities.
- *Social cost of carbon*—Some commenters said the domestic value of reducing CO_2 emissions should be lower than the NPRM value of $7; environmental and consumer groups and states said it should be much higher. The former tended to favor a value reflecting damage to the U.S. only, while the latter favored a global value.
- *Weight reduction*—States and environmental and consumer groups said that NHTSA should consider downweighting for vehicles under 5,000 lbs; an insurance safety research group supported the proposal not to consider that.

Rate of application of advanced technologies (diesels and hybrids):

[12] Congress required that DOT establish a credit ''transferring'' regulation, to allow individual manufacturers to move credits from one of their fleets to another (e.g., using a credit earned for exceeding the light truck standard for compliance in the domestic passenger car standard). Congress allowed DOT to establish a credit ''trading'' regulation, so that credits may be bought and sold between manufacturers and other parties.

Manufacturers argued that NHTSA was overly optimistic; environmental/consumer groups and states argued that NHTSA relied too much on manufacturer product plans and should require manufacturers to improve fuel economy more quickly.

Fitting of standard curve to data: A manufacturer association and two manufacturers questioned the empirical and technical bases for the shape of the curves.

Steepness of car standard curve: The two manufacturer associations and several environmental groups said that the proposed car curves were too steep: manufacturers did so because of impracticability; environmental groups, because of what they saw as an incentive to increase vehicle size.

Backstop standard: Environmental and consumer groups argued that NHTSA must establish absolute backstop standards for all vehicles. Manufacturers argued that anti-backsliding features of the attribute-based standards function as a backstop.

''*SUV loophole*'': In general, manufacturers agreed with the agency's decision to reclassify 2 WD SUVs from the light truck fleet to the passenger car fleet, as long as this change would take effect after MY 2010. Environmental and consumer groups argued that the classification system should be further revised to address ''gaming'' and did not address the agency's justification for the proposed revisions.

Credits: Manufacturers argued that earned carry forward/back credits, as long as they were not acquired by transfer or trade, should be available to meet the minimum standard for domestic cars. Manufacturers also requested flexibility to manage their own credit shortfalls, instead of having the agency automatically decide upon and implement plans for them. One manufacturer asked that the new statutory provision giving credits a 5 year life be applied to all existing credits, instead of only those credits earned in model year 2009 or thereafter.

Impact on small/limited-line manufacturers: Small/limited-line manufacturers argued that the proposed standards impact them more than full-line manufacturers, and requested either that the car standards be set based on the plans of all car manufacturers, instead of just the seven largest, or that some alternative form of standard be set for them.

Preemption: Manufacturers argued that the effects of state regulation of CO_2 emissions are ''related to'' the regulation of fuel economy within the meaning of section 32919(a) of EPCA; environmental and consumer groups and states argued that the purpose of regulating CO_2 emissions may overlap with, but is different from the purpose of regulating fuel economy

E. New Information Received or Developed by NHTSA Between the NPRM and Final Rule

There were a number of changes after the NPRM that made possible analytical improvements for the final rule. These changes also caused the CAFE levels, fuel savings, and CO_2 emissions that are attributable to each alternative and scenario examined for this final rule to differ from those presented in the NPRM.

1. New Manufacturer Product Plans

As discussed in the NPRM, the agency requested new product plans from manufacturers to aid in determining appropriate standards for the final rule. The product plans submitted in May 2007 naturally did not take into consideration the later passage of EISA and its minimum 35 mpg combined fleet requirement by 2020. In addition, during that time, the fuel prices rose substantially.

The new product plans submitted in the summer of 2008 in response to the NPRM reflect those new realities in a couple of ways. First, companies provided product plans that reflected the manufacturers' implementation of some of the cost-effective technologies that the agency had projected in the NPRM. This increased the baseline against which the fuel saving from the standards are calculated. As a result, some of the savings and CO_2 emission reductions that were attributed in the NPRM to the rulemaking action are now attributed to actions taken ''independently by the manufacturers, as reflected in the improved product plans. Second, the size of the overall fleet had declined from the time of the NPRM to the final rule, resulting in fewer vehicle miles traveled.

2. Revised Assessment of Technology Effectiveness and Costs

With the aid of an expert consulting firm, NHTSA revised the technology assumptions in the NPRM based on comments and new information received during the comment period and used those revised assumptions for analyzing alternatives and scenarios for the Final Environmental Impact Assessment (FEIS) and final rule. In several cases, the agency concluded on the basis of analysis of that additional information that the costs in the NPRM and Draft EIS were underestimated and benefits overestimated, and in most cases, these estimates were not well differentiated by vehicle class. The agency also revised its phase-in schedule of the technologies to account more fully for needed lead time.

3. Final Environmental Impact Statement

With the aid of an expert consulting firm, the agency completed a final environmental impact statement (FEIS), the first FEIS prepared by a federal agency to examine climate change issues comprehensively.[13] The FEIS examines the climate change and other environmental effects of the changes in emissions of greenhouse gases and criteria air pollutants resulting from a wide variety of alternative standards. For this purpose, the agency relied extensively on the 2007 reports of the Intergovernmental Panel on Climate Change and contracted with ICF International to perform climate modeling. That impact statement also carefully assesses the cumulative impacts of past, present and future CAFE rulemakings.

F. Final Rule for MY 2011

1. Introduction

As discussed above, and at length later in this rule, NHTSA's review and analysis of comments on its proposal have led the agency to make many changes to its methods for analyzing potential MY 2011 CAFE standards, as well as to the data and other information to which the agency has applied these methods. The following are some of the more prominent changes:

- After receiving, reviewing, and integrating updated product plans from vehicle manufacturers, NHTSA has revised its forecast of the future light vehicle market.
- NHTSA has changed the methods and inputs it uses to represent the applicability, availability, cost, and effectiveness of future fuel-saving technologies.
- NHTSA has based its fuel price forecast on the AEO 2008 High Case price scenario instead of the AEO 2008 Reference Case.
- NHTSA has reduced mileage accumulation estimates (i.e., vehicle miles traveled) to levels consistent with this increased fuel price forecast.
- NHTSA has applied increased estimates for the value of oil import externalities.
- NHTSA has now included all manufacturers—not just the largest

[13] The Final Environmental Impact Statement can be found on the NHTSA website at *http://www.nhtsa.gov/staticfiles/DOT/NHTSA/Rulemaking/Rules/Associated%20Files/CAFE%20FEIS.pdf* (last accessed March 8, 2009).

seven—in the process used to fit the curve and estimate the stringency at which societal net benefits are maximized.

- NHTSA has tightened its application of the definition of ''nonpassenger automobiles,'' causing a reassigning of over one million vehicles from the light truck fleet to the passenger car fleet.
- NHTSA has now fitted the shape of the curve based on ''exhaustion'' of available technologies instead of on manufacturer-level optimization of CAFE levels.

These changes affected both the shape and stringency of the attribute-based standards. Taken together, the last three of the above changes reduced the steepness of the curves defining fuel economy targets for passenger cars, and also less significantly reduced the steepness of the light truck curves.

NHTSA recognizes that, when considered in isolation, some of the above changes might, on an ''intuitive'' basis, be expected to result in higher average required fuel economy levels. For example, setting aside other changes, the increase in estimated fuel prices and oil import externalities might be expected to result in higher average fuel economy requirements. On the other hand, again setting aside other changes, the updated characterization of fuel-saving technologies, the reassignment of over one million vehicles to the passenger car fleet, the reduction in mileage accumulation, and the inclusion of all manufacturers in the standard setting process might intuitively be expected to result in lower average fuel economy requirements.

However, there are theoretical reasons for which even such isolated expectations might not be met. For example, if a change in inputs caused societal net benefits to increase equally at all stringencies, the level of stringency that maximized societal net benefits would remain unchanged, although it would produce greater net benefits after the change in inputs. Further, some of the changes listed above are interdependent, making it difficult, if not impossible, to isolate the effect attributable to every change. For example, NHTSA applied the reduced mileage accumulation, which reduces the benefits of adding technology, in conjunction with applying increased fuel prices, which increase the benefits of adding technology.

There is no obvious way to determine reliably the net effect of all these (and other) changes short of applying all of the revised values to the model and looking at the results. We devote a good deal of the preamble discussion to these changes and their net implications for the standards in this rule.

The final rule reflects the combined effect of all of these changes, as well as minor changes not listed above.

2. Key Economic Values for Benefits Computations

NHTSA's analysis of the final standards and alternative CAFE standards for MYs 2011 relied on an expanded range of information and revised economic estimates and input parameters. These economic assumptions played a role in the determination of the level of the standards, with some having greater impacts than others. The agency, following discussions with other agencies of the U.S. government, updated its estimate of the global value of the social cost of carbon (i.e., the value of reducing CO_2 emissions) and developed a domestic value, as well as updated its estimates for other externalities based on comments and updated information received during the comment period. Specifically, the final standards are based the following revised economic assumptions:

TABLE I–2—FINAL RULE KEY ECONOMIC VALUES FOR BENEFITS COMPUTATIONS (2007$)

Fuel Prices (average retail gasoline price per gallon, 2011–30)	$3.33
Discount Rates Applied to Future Benefits:	
Reductions in CO_2 Emissions	3%
Other Benefits	7%
Economic Costs of Oil Imports ($/gallon):	
"Monopsony" Component	$0.27
Price Shock Component	$0.12
Military Security Component	.....
Total Economic Costs	$0.39
Emission Damage Costs:	
Carbon Dioxide ($/metric ton):	
(U.S. domestic value)	[14] $2.00
(Mean global value from Tol (2008))	$33.00
(One standard deviation above mean global value)	$80.00
Annual Increase in CO_2 Damage Cost	2.4%

3. Standards

(a) Classification

In the NPRM, the two-wheel drive sport-utility vehicles (2WD SUVs) were classified in the same way they were classified by their manufacturers in their May 2007 product plans. For the purposes of this final rule, however, they were reclassified in accordance with the discussion in the NPRM of the proper classification of those vehicles. This resulted in the shifting of over one million two-wheel drive vehicles from the truck fleet to the car fleet. This shift had the effect of lowering the average fuel economy for cars due to the inclusion of vehicles previously categorized as trucks, and lowered average fuel economy for trucks because the truck category now has a larger proportion of heavier trucks. Following our careful consideration of the public comments on that discussion, we reaffirm the reasoning and conclusions of that discussion.

(b) Stringency

This final rule establishes footprint-based fuel economy standards for MY 2011 passenger cars and light trucks.

Each vehicle manufacturer's required level of CAFE is based on target levels of average fuel economy set for vehicles of different sizes and on the distribution of that manufacturer's vehicles among those sizes. Size is defined by vehicle footprint. The curves defining the performance target at each footprint reflect the technological and economic capabilities of the industry. The target for each footprint is the same for all

[14] Derived from NHTSA's $33 per metric ton estimate of the global value of reducing CO_2 emissions.

manufacturers, regardless of differences in their overall fleet mix. Compliance will be determined by comparing a manufacturer's harmonically averaged fleet fuel economy levels in a model year with a required fuel economy level calculated using the manufacturer's actual production levels and the targets for each footprint of the vehicles that it produces.

The standards were developed with the aid of a computer model (known as the ''Volpe Model''). NHTSA uses the Volpe model as a tool to inform its consideration of potential CAFE standards for MY 2011. The Volpe model requires the following types of information as inputs: (1) A forecast of the future vehicle market, (2) estimates of the availability, applicability, and incremental effectiveness and cost of fuel-saving technologies, (3) estimates of vehicle survival and mileage accumulation patterns, the rebound effect, future fuel prices, the social cost of carbon, and many other economic factors, (4) fuel characteristics and vehicular emissions rates, and (5) coefficients defining the shape and level of CAFE curves to be examined. These inputs are selected by the agency based on best available information and data.

The agency analyzed seven regulatory alternatives, one of which maximizes net benefits within the limits of available information and is known as the ''optimized standards.'' The optimized standards are set at levels, such that, considering all of the manufacturers together, no other alternative is estimated to produce greater net benefits to society. Those net benefits reflect the difference between (1) the present value of all monetized benefits of the standards, and (2) the total costs of all technologies applied in response to the standards. Many of the other alternative standards exceed the level at which the estimated net benefits are maximized, including one alternative in which standards are set at a level at which total costs equal total benefits and another alternative set at a level of maximum technology application without regard to cost. For each alternative, the model estimates the costs associated with additional technology utilization, as well as accompanying changes in travel demand, fuel consumption, fuel outlays, emissions, and economic externalities related to petroleum consumption and other factors. These comprehensive analyses, which also included scenarios with different economic input assumptions as presented in the Final Environmental Impact Statement (FEIS) and the Final Regulatory Impact Analysis (FRIA), informed and contributed to the agency's consideration of the ''need of the United States to conserve energy,'' as well as the other statutory factors in 49 U.S.C. 32902(f), and safety impacts. In addition, they informed the agency's consideration of environmental impacts under NEPA. The agency identified the optimized standards as its preferred alternative in the FEIS.

NHTSA considered the results of analyses conducted on alternative standards for MY 2011 by the Volpe model and analyses conducted outside of the Volpe model, including analysis of the impacts of emissions of carbon dioxide and criteria pollutants, and analysis of which technologies are available now and which will not be available until the longer term, and analysis of the extent to which changes in vehicle prices and fuel economy might affect vehicle production and sales. Further, NHTSA considered whether it could expedite the entry of any technologies into the market through these standards. Using all of this information, the agency considered the governing statutory factors, along with environmental issues and other relevant societal issues such as safety, and is promulgating the maximum feasible standards based on its best judgment on how to balance these factors.

Upon a considered analysis of all information available, including all information submitted to NHTSA in comments, the agency is adopting the ''optimized standard'' alternative as the final standards for MY 2011.[15] We note that we used the Volpe Model in the last two light truck rulemakings and that we adopted ''optimized standards'' in the last light truck rulemaking. We believe that use of the Volpe model is a valid and objective way to establish attribute-based standards under EPCA. Further, by limiting the standards to levels that can be achieved using technologies each of which are estimated to provide benefits that at least equal its costs, the net benefit maximization approach helps to assure the marketability of the manufacturers' vehicles and thus economic practicability of the standards.

Providing this assurance assumes increased importance in view of current and anticipated conditions in the industry in particular and the economy in general. As has been widely reported in the public domain throughout this rulemaking, and as shown in public comments, the national and global economies raise serious concerns. Even before those recent developments, the automobile manufacturers were already facing substantial difficulties. Together, these problems have made NHTSA's economic practicability analysis particularly important and challenging in this rulemaking.

The agency cannot set out the exact level of CAFE that each manufacturer will be required to meet for MY 2011 under the passenger car or light truck standards because the levels will depend on information that will not be available until the end of that model year, i.e., the final actual production figures for that year. The agency can, however, project what the industry-wide level of average fuel economy will be for passenger cars and for light trucks if each manufacturer produced its expected mix of automobiles and just met its obligations under the ''optimized'' standards. Adjacent to each average fuel economy figure is the estimated associated level of tailpipe emissions of CO_2 that will be achieved.[16]

MY 2011 passenger cars: 30.2 mpg (294 g/mi of tailpipe emissions of CO_2)

MY 2011 light trucks: 24.1 mpg (369 g/mi of tailpipe emissions of CO_2)

The combined industry-wide average fuel economy (in miles per gallon, or mpg) levels (in grams per mile, or g/mi) for both cars and light trucks, if each manufacturer just met its obligations under the ''optimized'' standards, will be as follows:

MY 2011: 27.3 mpg (2.0 mpg increase above MY 2010; 326 g/mi CO_2)

In addition, per EISA, each manufacturer's domestic passenger fleet is required in MY 2011 to achieve 27.5 mpg or 92 percent of the CAFE of the industry-wide combined fleet of domestic and non-domestic passenger cars[17] for that model year, whichever is higher. This requirement results in the following alternative minimum standard (not attribute-based) for domestic passenger cars:

MY 2011: 27.8 mpg (320 g/mi of tailpipe emissions of CO_2)

(c) Benefits and Costs

(i) Benefits

We estimate that the MY 2011 standards will save approximately 887 million gallons of fuel and reduce tailpipe emissions of CO_2 by 8.3 million metric tons.

[15] The agency notes, for NEPA purposes, that the ''optimized standard'' alternative adopted as the final standards corresponds to the ''Optimized Mid-2'' scenario described in Section 2.2.2 of the FEIS.

[16] *See supra* note 6.

[17] Those numbers set out several paragraphs above.

For passenger cars, the standards will save approximately 463 million gallons of fuel and reduce tailpipe CO_2 emissions by 4.3 million metric tons over the lifetime of the MY 2011 passenger cars, compared to the fuel savings and emissions reductions that would occur if the standards remained at the adjusted baseline (i.e., the higher of manufacturer's plans and the manufacturer's required level of average fuel economy for MY 2010). The value of the total benefits of the passenger car standards are estimated to be slight over $1 billion [18] over the lifetime of the MY 2011 cars. This estimate of societal benefits includes direct impacts from lower fuel consumption as well as externalities and also reflects offsetting societal costs resulting from the rebound effect.

We estimate that the standards for light trucks will save approximately 424 million gallons of fuel and prevent the tailpipe emission of 4.0 million metric tons of CO_2 over the lifetime of the light trucks sold during those model years, compared to the fuel savings and emissions reductions that would occur if the standards remained at the adjusted baseline. The value of the total benefits of the light truck standards will be approximately $921 million [19] over the lifetime of the MY 2011 light trucks. This estimate of societal benefits includes direct impacts from lower fuel consumption as well as externalities and also reflects offsetting societal costs resulting from the rebound effect.

(ii) Costs

NHTSA estimates that, as a result of the final standards for MY 2011, manufacturers will incur costs of approximately $1.460 billion for additional fuel-saving technologies, compared to the costs they would incur if the standards remained at MY 2010 levels.

For passenger cars, we estimate that manufacturers will incur costs of approximately $595 million for additional fuel-saving technologies, compared to the costs they would incur if the standards remained at MY 2010 levels. Our estimate is that the resulting vehicle price increases to buyers of MY 2011 passenger cars will be recovered or paid back [20] in additional fuel savings in an average of 4.4 years (53 months), assuming fuel prices ranging from $2.95 per gallon in 2011 to $3.62 per gallon in 2030.[21]

The agency further estimates that, in response to the final standards for MY 2011 light trucks, manufacturers will incur costs of approximately $865 million for additional fuel-saving technologies, compared to the costs they would incur if the standards remained at MY 2010 levels. We estimate that the resulting vehicle price increases to buyers of MY 2011 light trucks will be paid back in additional fuel savings in an average of 7.7 years (92 months), assuming the same fuel prices as mentioned above.

(d) Flexibilities

Manufacturers are likely to rely extensively on flexibility mechanisms provided by EPCA (as described in Section XII) and will thereby reduce the costs (and benefits) of complying with the standards to a meaningful extent. However, the benefit and compliance cost estimates used by the agency in determining the maximum feasible level of the CAFE standards and shown above assume that manufacturers will rely solely on the installation of fuel economy technology to achieve compliance with the standards. The estimates do not reflect the availability and use of flexibility mechanisms, such as compliance credits and credit trading. The reason for this is because EPCA prohibits NHTSA from considering the effects of those mechanisms in setting CAFE standards. EPCA has precluded consideration of the FFV adjustments ever since it was amended to provide for those adjustments. The prohibition against considering compliance credits was added by EISA.

4. Credits

NHTSA is also adopting a new Part 536 on use of ''credits'' earned for exceeding applicable CAFE standards. Part 536 will implement the provisions in EISA authorizing NHTSA to establish by regulation a credit trading program and directing it to establish by regulation a credit transfer program.[22] Since its enactment, EPCA has permitted manufacturers to earn credits for exceeding the standards and to apply those credits to compliance obligations in years other than the model year in which it was earned. EISA extended the ''carry-forward'' period to five model years, and left the ''carry-back'' period at three model years. Under Part 536, credit holders (including, but not limited to, manufacturers) will have credit accounts with NHTSA, and will be able to hold credits, apply them to compliance with CAFE standards, transfer them to another ''compliance category'' for application to compliance there, or trade them. A credit may also be cancelled before its expiry date, if the credit holder so chooses. Traded and transferred credits will be subject to an ''adjustment factor'' to ensure total oil savings are preserved, as required by EISA. EISA also prohibits credits earned before MY 2011 from being transferred, so NHTSA has developed several regulatory restrictions on trading and transferring to facilitate Congress' intent in this regard. Additional information on Part 536 is available in Section XII below.

5. Preemption

As noted above, NHTSA has decided not to include any preemption provisions in the regulatory text at this time and will re-examine the issue of preemption in the context of the rulemaking for MY 2012 and later years.

II. Background

A. Role of Fuel Economy Improvements in Promoting Energy Independence, Energy Security, and a Low Carbon Economy

Improving vehicle fuel economy has been long and widely recognized as one of the key ways of achieving energy independence, energy security, and a low carbon economy.[23] Most recently,

[18] The slightly over $1 billion estimate is based on a 7 percent discount rate for valuing future impacts.

[19] The $921 million estimate is based on a 7 percent discount rate for valuing future impacts.

[20] See Section V.B.5 below for discussion of payback period.

[21] The fuel prices (shown here in 2007 dollars) used to calculate the length of the payback period are those projected (Annual Energy Outlook 2008) by the Energy Information Administration over the life of the MY 2011 light trucks, not current fuel prices.

[22] Congress required that DOT establish a credit ''transferring'' regulation, to allow individual manufacturers to move credits from one of their fleets to another (*e.g.*, using a credit earned for exceeding the light truck standard for compliance with the domestic passenger car standard). Congress allowed DOT to establish a credit ''trading'' regulation, so that credits may be bought and sold between manufacturers and other parties.

[23] Among the reports and studies noting this point are the following:

John Podesta, Todd Stern and Kim Batten, ''Capturing the Energy Opportunity; Creating a Low-Carbon Economy,'' Center for American Progress (November 2007), pp. 2, 6, 8, and 24–29, *Available at: http://www.americanprogress.org/issues/2007/11/pdf/energy_chapter.pdf* (last accessed March 8, 2009).

Sarah Ladislaw, Kathryn Zyla, Jonathan Pershing, Frank Verrastro, Jenna Goodward, David Pumphrey, and Britt Staley, ''A Roadmap for a Secure, Low-Carbon Energy Economy; Balancing Energy Security and Climate Change,'' World Resources Institute and Center for Strategic and International Studies (January 2009), pp. 21–22; *Available at: http://pdf.wri.org/secure_low_carbon_energy_economy_roadmap.pdf.* (last accessed March 7, 2009).

Alliance to Save Energy et al., ''Reducing the Cost of Addressing Climate Change Through Energy Efficiency (2009). *Available at: http://Aceee.org/energy/climate/leg.htm.* (last accessed March 7, 2009).

the United Nations Environment Programme, International Energy Agency, International Transport Forum and FIA Foundation released a report [24] in March 2009 calling for a 50 percent increase in fuel economy in response to predictions by the IEA that fuel consumption and CO_2 emissions from the global light duty fleet will otherwise roughly double between 2000 and 2050.

The significance accorded improving fuel economy reflects several factors. The emission of CO_2 from the tailpipes of cars and light trucks is one of the largest sources of U.S. CO_2 emissions.[25]

Further, using vehicle technology to improve fuel economy, thereby reducing tailpipe emissions of CO_2, is one of the three main measures of reducing those tailpipe emissions of CO_2.[26] The two other measures for reducing the tailpipe emissions of CO_2 are switching to vehicle fuels with lower carbon content and changing driver behavior, i.e., inducing people to drive less.

In order to reduce the amount of tailpipe emissions of CO_2 per mile, either the amount of fuel consumed per mile must be reduced or lower carbon intensive fuels must be used. While there are emission control technologies that can capture or destroy the pollutants (e.g., carbon monoxide) that are produced by imperfect combustion of fuel, there is no current or anticipated control technology for CO_2. Thus, the technologies for reducing tailpipe emissions of CO_2 are the technologies that reduce fuel consumption and thereby reduce CO_2 emissions as well, as well as the technologies for accommodating the use of alternative fuels. Consequently, substantially reducing fuel use through using automotive technology to improve fuel economy is indispensable if automobile manufacturers are to make substantial and continuing progress in reducing those emissions.

The relationship between improving fuel economy and reducing CO_2 tailpipe emissions is a very direct and close one. CO_2 is the natural by-product of the combustion of fuel in motor vehicle engines. The more fuel efficient a vehicle is, the less fuel it burns to travel a given distance. The less fuel it burns, the less CO_2 it emits in traveling that distance.[27] Since the amount of CO_2 emissions is essentially constant per gallon combusted of a given type of fuel, the amount of fuel consumption per mile is directly related to the amount of CO_2 emissions per mile. Thus, requiring improvements in fuel economy necessarily has the effect of requiring reductions in tailpipe emissions of CO_2 emissions.

This can be seen in the graph [28] and table below. The graph shows how the amount of CO_2 emitted by a vehicle per year varies according to the vehicle's fuel economy. The table shows the limit that a CAFE standard would indirectly place on tailpipe CO_2 emissions. To take the first value of fuel economy from the table below as an example, a standard of 21.0 mpg would indirectly place substantially the same limit on tailpipe CO_2 emissions as a tailpipe CO_2 emission standard of 423.2 g/mi of CO_2, and vice versa.[29]

John DeCicco and Freda Fung, ''Global Warming on the Road; The Climate Impact of America's Automobiles,'' Environmental Defense (2006) pp. iv–vii; *available at: http://www.edf.org/documents/5301_Globalwarmingontheroad.pdf.* (last accessed March 7, 2009).

''Why is Fuel Economy Important?,'' a Web page maintained by the Department of Energy and Environmental Protection Agency, *Available at http://www.fueleconomy.gov/feg/why.shtml* (last accessed February 17, 2009);

Robert Socolow, Roberta Hotinski, Jeffery B. Greenblatt, and Stephen Pacala, ''Solving The Climate Problem: Technologies Available to Curb CO_2 Emissions,'' Environment, volume 46, no. 10, 2004. pages 8–19. *Available at: http://www.princeton.edu/~cmi/resources/CMI_Resources_new_files/Environ_08-21a.pdf.* (last accessed March 7, 2009).

[24] ''50BY50 Global Fuel Economy Initiative, Making Cars 50% More Fuel Efficient by 2050 Worldwide,'' *Available at: http://www.fiafoundation.org/50by50/Documents/50BY50_report.pdf* (last accessed March 7, 2009).

[25] EPA Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2006 (April 2008), pp. ES–4, ES–8, and 2–24.

[26] Podesta et al., p. 25; Ladislaw et al. p. 21; DeCicco et al. p. vii; ''Reduce Climate Change,'' a Web page maintained by the Department of Energy and Environmental Protection Agency at *http://www.fueleconomy.gov/feg/climate.shtml* (last accessed March 7, 2009).

[27] Panel on Policy Implications of Greenhouse Warming, National Academy of Sciences, National Academy of Engineering, Institute of Medicine, ''Policy Implications of Greenhouse Warming: Mitigation, Adaptation, and the Science Base,'' National Academies Press, 1992. p. 287.

[28] The graph is the same as the one shown on Reduce Climate Change, a Web page maintained by the Department of Energy and Environmental Protection Agency. *Available at: http://www.fueleconomy.gov/feg/climate.shtml* (last accessed March 8, 2009).

[29] To the extent that manufacturers comply with a CAFE standard with diesel automobiles instead of gasoline ones, the level of CO_2 tailpipe emissions would be higher. As noted above, the agency projects that 4 percent of the MY 2015 passenger car fleet and 10 percent of the MY 2015 light truck fleet will have diesel engines. The CO_2 tailpipe emissions of a diesel powered passenger car are 15 percent per mile higher than those of a comparable gasoline powered-passenger car achieving the same mpg.

Figure II-1

Relationship of Fuel Economy to the Amount of CO_2 Emitted Annually by Passenger Cars and Light Trucks

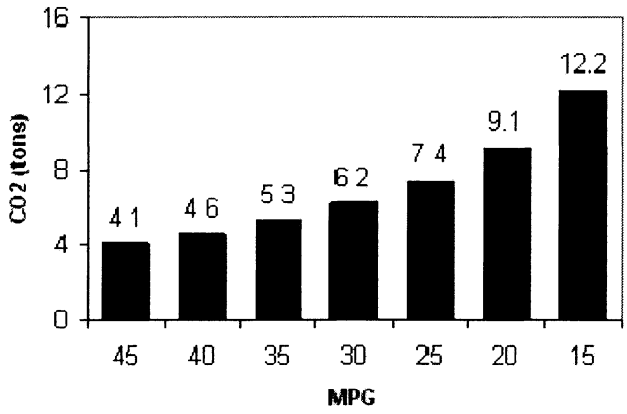

Table II-1

CAFE Standards (mpg) and the Limits They Indirectly Place on Tailpipe Emissions of CO_2 (g/mi)*											
CAFE Std	CO_2	CAFE Std	CO_2	CAFE Std	CO_2	CAFE Std	CO_2	CAFE Std	CO_2	CAFE Std	CO_2
21.0	423.2	**26.0**	341.8	**31.0**	286.7	**36.0**	246.9	**41.0**	216.8	**46.0**	193.2
22.0	404.0	**27.0**	329.1	**32.0**	277.7	**37.0**	240.2	**42.0**	211.6	**47.0**	189.1
23.0	386.4	**28.0**	317.4	**33.0**	269.3	**38.0**	233.9	**43.0**	206.7	**48.0**	185.1
24.0	370.3	**29.0**	306.4	**34.0**	261.4	**39.0**	227.9	**44.0**	202.0	**49.0**	181.4
25.0	355.5	**30.0**	296.2	**35.0**	253.9	**40.0**	222.2	**45.0**	197.5	**50.0**	177.7

* This table is based on calculations that use the figure of 8,887 grams of CO_2 per gallon of gasoline consumed, based on characteristics of gasoline vehicle certification fuel. To convert a mpg value into CO_2 g/mi, divide 8,887 by the mpg value.

The relationship between improving fuel economy and reducing tailpipe emissions of CO_2 is so strong that EPA determines fuel economy by the simple expedient of measuring the amount of CO_2 emitted from the tailpipe, not by attempting to measure directly the amount of fuel consumed during a vehicle test, a difficult task to accomplish with precision. EPA then uses the carbon content of the test fuel [30] to calculate the amount of fuel that had to be consumed per mile in order to produce that amount of CO_2. Finally, EPA converts that fuel figure into a miles-per-gallon figure.

[30] This is the method that EPA uses to determine compliance with NHTSA's CAFE standards.

B. Contribution of Fuel Economy Improvements to CO_2 Tailpipe Emission Reductions Since 1975

The need to take action to reduce GHG emissions, e.g., motor vehicle tailpipe emissions of CO_2, in order to forestall and even mitigate climate change is well recognized.[31] Less well recognized are two related facts.

First, improving fuel economy is the only method available to motor vehicle manufacturers for making substantial and continuing reductions in the CO_2 tailpipe emissions of motor vehicles and thus must be the core element of any effort to achieve those reductions.

Second, the significant improvements in fuel economy since 1975, due to the CAFE standards and other market conditions as well, have directly caused reductions in the rate of CO_2 tailpipe emissions per vehicle.

In 1975, passenger cars manufactured for sale in the U.S. averaged only 15.8 mpg (562.5 grams of CO_2 per mile or 562.5 g/mi of CO_2). By 2007, the average fuel economy of new passenger cars had increased to 31.3 mpg, causing the emission of CO_2 to fall to 283.9 g/mi.[32] Similarly, in 1975, light trucks produced for sale in the U.S. averaged 13.7 mpg (648.7 g/mi of CO_2). By 2007, the average fuel economy of new light trucks had risen to 23.1 mpg, causing emission of CO_2 to fall to 384.7 g/mi.

Table II-2

Improvements in MPG/Reductions in G/MI of CO_2
Passenger Cars
1975-2007

	MPG	G/MI of CO_2
1975	15.8	562.5
2007	31.3	283.9

Table II-3

Improvements in MPG/Reductions in G/MI of CO_2
Light Trucks
1975-2007

	MPG	G/MI of CO_2
1975	13.7	648.7
2007	23.1	384.7

[31] IPCC (2007): *Climate Change 2007: Mitigation of Climate Change. Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [B. Metz, O. Davidson, P. Bosch, R. Dave, and L. Meyer (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.

[32] These figures are not real world fuel economy figures. They are based on the laboratory figures fuel economy test procedures used for the CAFE program. Real world fuel economy figures would be less (and CO_2 emission figures higher).

If fuel economy had not increased above the 1975 level, cars and light trucks would have emitted an additional 11 billion metric tons of CO_2 into the atmosphere between 1975 and 2005. That is nearly the equivalent of emissions from all U.S. fossil fuel combustion for two years (2004 and 2005). The figure below shows the amount of CO_2 emissions avoided due to increases in fuel economy.

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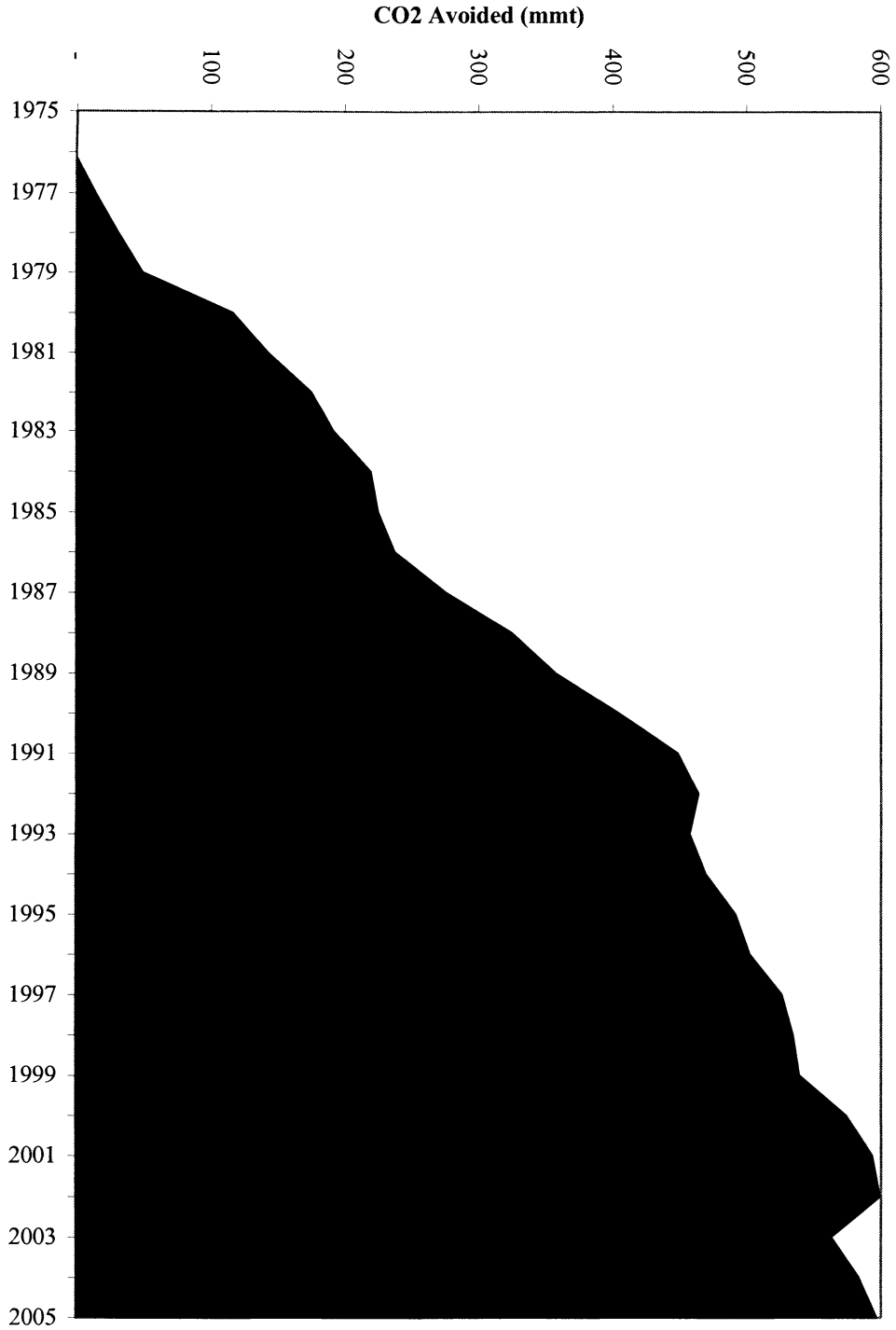
Figure II-2. CO_2 tailpipe emissions avoided due to increases in fuel economy

1975-2005



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Some commenters on the NPRM argued that some of improvements in fuel economy, and thus some of the reductions in CO_2, shown in that figure would have occurred in the absence of any CAFE standards. We agree. Similarly, and to the same extent, some of the improvements in fuel economy and accompanying reductions in CO_2 that would occur under a regulation directly regulating CO_2 would occur in the absence of any such regulation. We note that no published research has isolated the contribution of CAFE standards themselves to historical increases in fuel economy from those of the many other factors that can affect fuel economy.

C. Chronology of Events Since the National Academy of Sciences Called for Reforming and Increasing CAFE Standards

1. National Academy of Sciences Issues Report on Future of CAFE Program (February 2002)

(a) Significantly Increasing CAFE Standards Without Making Them Attribute-Based Would Adversely Affect Safety

In the 2002 congressionally-mandated report entitled ''Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards,'' [33] a committee of the National Academy of Sciences (NAS) (''2002 NAS Report'') concluded that the then-existing form of passenger car and light truck CAFE standards permitted vehicle manufacturers to comply in part by downweighting and even downsizing their vehicles and that these actions had led to additional fatalities. The committee explained that this safety problem arose because, at that time, the CAFE standards were not attributed-based and thus subjected all passenger cars to the same fuel economy target and all light trucks to the same target, regardless of their weight, size, or load-carrying capacity.[34] The committee said that this experience suggests that consideration should be given to developing a new system of fuel economy targets that reflects differences in such vehicle attributes.

Looking to the future, the committee made a critical distinction between possible ways of improving fuel economy and the ways likely to be chosen for doing so. It said that while it was technically feasible and potentially economically practicable for manufacturers to improve fuel economy without reducing vehicle weight or size and, therefore, without significantly affecting the safety of motor vehicle travel, the actual strategies chosen by manufacturers to improve fuel economy would depend on a variety of factors. In the committee's judgment, the extensive downweighting and downsizing that occurred after fuel economy requirements were established in the 1970s suggested that the likelihood of a similar response to further increases in fuel economy requirements must be considered seriously. Any reduction in vehicle size and weight would have safety implications.

The committee said, ''to the extent that the size and weight of the fleet have been constrained by CAFE requirements * * * those requirements have caused more injuries and fatalities on the road than would otherwise have occurred.'' [35] Specifically, it noted: ''the downweighting and downsizing that occurred in the late 1970s and early 1980s, some of which was due to CAFE standards, probably resulted in an additional 1300 to 2600 traffic fatalities in 1993.'' [36]

The committee cautioned that the safety effects of future downsizing and downweighting were likely to be hidden by the generally increasing safety of the light-duty vehicle fleet.[37] It said that some might argue that this improving safety picture means that there is room to improve fuel economy without adverse safety consequences; however, such an approach would not achieve the goal of avoiding the adverse safety consequences of fuel economy increases. Rather, the safety penalty imposed by increased fuel economy (if weight reduction were used as one of the fuel economy improving measures) would be more difficult to identify in light of the continuing improvement in vehicle safety. NAS said that although it anticipated that these safety innovations would improve the safety of vehicles of all sizes, that fact did not mean downsizing to achieve fuel economy improvements would not have any safety costs. If two vehicles of the same size were modified, one both by downsizing it and adding the safety innovations and the other solely by adding safety innovations, the latter vehicle would in all likelihood be safer.

The committee concluded that if an increase in fuel economy were implemented pursuant to standards that were structured so as to encourage either downsizing or the increased production of smaller vehicles, some additional traffic fatalities would be expected. It said that the larger and faster the required increases, the more likely adverse impacts. Without a thoughtful restructuring of the program, there would be the trade-offs that must be made if CAFE standards were increased by any significant amount.[38]

In response to these conclusions, NHTSA issued attribute-based CAFE standards for light trucks and sought legislative authority to issue attribute-based CAFE standards for passenger cars before undertaking to raise the car standards. Congress went a step further in enacting EISA, not only authorizing the issuance of attribute-based standards, but also mandating them.

(b) Climate Change and Other Externalities Justify Increasing the CAFE Standards

The 2002 NAS report also concluded that the CAFE standards have increased fuel economy, which in turn has reduced dependence on imported oil, improved the nation's terms of trade, and reduced emissions of carbon dioxide, (a principal GHG), relative to what they otherwise would have been. If fuel economy had not improved, gasoline consumption (and crude oil imports) in 2002 would have been about 2.8 million barrels per day (mmbd) greater than it was then.[39] As noted above, reducing fuel consumption in vehicles also reduces carbon dioxide emissions. If the nation were using 2.8 mmbd more gasoline in 2002, carbon emissions would have been more than 100 million metric tons of carbon (mmtc) higher. Thus, improvements in light-duty vehicle (4 wheeled motor vehicles under 10,000 pounds gross vehicle weight rating) fuel economy reduced overall U.S. emissions by about 7 percent as of 2002.[40]

The report concluded that technologies exist that could significantly reduce fuel consumption by passenger cars and light trucks further within 15 years (i.e., by about 2017), while maintaining vehicle size,

[33] National Research Council, ''Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards,'' National Academy Press, Washington, DC (2002). *Available at http://www.nap.edu/openbook.php?isbn=0309076013* (last accessed March 8, 2009). The conference committee report for the Department of Transportation and Related Agencies Appropriations Act for FY 2001 (Pub. L. 106–346) directed NHTSA to fund a study by NAS to evaluate the effectiveness and impacts of CAFE standards (H. Rep. No. 106–940, p. 117–118). In response to the direction from Congress, NAS published this lengthy report.

[34] NHTSA formerly used this approach for CAFE standards. EISA prohibits its use after MY 2010.

[35] NAS, p. 29.

[36] NAS, p. 3 (Finding 2).

[37] Two of the 12 members of the committee dissented from the majority's safety analysis and conclusions.

[38] NAS, p. 9.

[39] NAS, pp. 3 and 20.

[40] NAS, p. 20.

weight, utility and performance.[41] Given their lower fuel economy, light duty trucks were said to offer the greatest potential for reducing fuel consumption.[42] The report also noted that vehicle development cycles—as well as future economic, regulatory, safety and consumer preferences—would influence the extent to which these technologies could lead to increased fuel economy in the U.S. market.

To assess the economic trade-offs associated with the introduction of existing and emerging technologies to improve fuel economy, the NAS conducted what it called a ''cost-efficient analysis'' based on the direct benefits (value of saved fuel) to the consumer—''that is, the committee identified packages of existing and emerging technologies that could be introduced over the next 10 to 15 years that would improve fuel economy up to the point where further increases in fuel economy would not be reimbursed by fuel savings.'' [43]

The committee emphasized that it is critically important to be clear about the reasons for considering improved fuel economy. While it said that the dollar value of the saved fuel would be the largest portion of the potential benefits, the committee noted that there is theoretically insufficient reason for the government to issue higher standards just to obtain those direct benefits since consumers have a wide variety of opportunities to buy a fuel-efficient vehicle.[44]

The committee said that there are two compelling concerns that justify a government-mandated increase in fuel economy, both relating to externalities. The first and most important concern, it argued, is the accumulation in the atmosphere of greenhouse gases, principally carbon dioxide.[45]

A second concern is that petroleum imports have been steadily rising because of the nation's increasing demand for gasoline without a corresponding increase in domestic supply. The high cost of oil imports poses two risks: downward pressure on the strength of the dollar (which drives up the cost of goods that Americans import) and an increase in U.S. vulnerability to macroeconomic shocks that cost the economy considerable real output.

To determine how much the fuel economy standards should be increased, the committee urged that all social benefits be considered. That is, it urged not only that the dollar value of the saved fuel be considered, but also that the dollar value to society of the resulting reductions in greenhouse gas emissions and in dependence on imported oil should be calculated and considered. The committee said that if it is possible to assign dollar values to these favorable effects, it becomes possible to make at least crude comparisons between the socially beneficial effects of measures to improve fuel economy on the one hand, and the costs (both out-of-pocket and more subtle) on the other. The committee chose a value of about $0.30/gal of gasoline for the externalities associated with the combined impacts of fuel consumption on greenhouse gas emissions and on world oil market conditions.[46]

The report expressed concerns about increasing the standards under the CAFE program as currently structured. While raising CAFE standards under the existing structure would reduce fuel consumption, doing so under alternative structures ''could accomplish the same end at lower cost, provide more flexibility to manufacturers, or address inequities arising from the present'' structure.[47]

To address those structural problems, the report suggested various possible reforms. The report found that the ''CAFE program might be improved significantly by converting it to a system in which fuel targets depend on vehicle attributes.'' [48] The report noted further that under an attribute-based approach, the required CAFE levels could vary among the manufacturers based on the distribution of their product mix. NAS stated that targets could vary among passenger cars and among trucks, based on some attribute of these vehicles such as weight, size, or load-carrying capacity. The report explained that a particular manufacturer's average target for passenger cars or for trucks would depend upon the fractions of vehicles it sold with particular levels of these attributes.[49]

2. NHTSA Issues Final Rule Establishing Attribute-Based CAFE Standards for MY 2008–2011 Light Trucks (March 2006)

The 2006 final rule reformed the structure of the CAFE program for light trucks by introducing an attribute-based approach and using that approach to establish higher CAFE standards for MY 2008–2011 light trucks.[50] Reforming the CAFE program enables it to achieve larger fuel savings, while enhancing safety and preventing adverse economic consequences.

As noted above, under Reformed CAFE, fuel economy standards were restructured so that they are based on a vehicle attribute, a measure of vehicle size called ''footprint.'' It is the product of multiplying a vehicle's wheelbase by its track width. A target level of fuel economy was established for each increment in footprint (0.1 ft^2). Trucks with smaller footprints have higher fuel economy targets; conversely, larger ones have lower targets. A particular manufacturer's compliance obligation for a model year is calculated as the harmonic average of the fuel economy targets for the manufacturer's vehicles, weighted by the distribution of the manufacturer's production volumes among the footprint increments. Thus, each manufacturer is required to comply with a single overall average fuel economy level for each model year of production.

The approach for determining the fuel economy targets was to set them just below the level where the increased cost of technologies that could be adopted by manufacturers to improve fuel economy would first outweigh the added benefits that would result from those technologies. These targets translate into required levels of average fuel economy that are technologically feasible because manufacturers can achieve them using technologies that are or will become available. Those levels also reflect the need of the nation to reduce energy consumption because they reflect the economic value of the savings in resources, as well as of the reductions in economic and environmental externalities that result from producing and using less fuel.

We carefully balanced the estimates costs of the rule with the estimated benefits of reducing energy consumption. Compared to Unreformed (non-attributed-based) CAFE, Reformed CAFE enhances overall fuel savings while providing vehicle manufacturers with the flexibility they need to respond to changing market conditions. Reformed CAFE also provides a more equitable regulatory framework by creating a level playing field for manufacturers, regardless of whether they are full-line or limited-line manufacturers. We were particularly encouraged that Reformed CAFE will confer no compliance advantage if vehicle makers choose to downsize

[41] NAS, p. 3 (Finding 5).
[42] NAS, p. 4 (Finding 5).
[43] NAS, pp. 4 (Finding 6) and 64).
[44] NAS, pp. 8–9.
[45] NAS, pp. 2, 13, and 83.
[46] NAS, pp. 4 and 85–86.
[47] NAS, pp. 4–5 (Finding 10).
[48] NAS, p. 5 (Finding 12).
[49] NAS, p. 87.
[50] 71 FR 17566; April 6, 2006.

some of their fleet as a CAFE compliance strategy, thereby reducing the adverse safety risks associated with the Unreformed CAFE program.

3. Supreme Court Issues Decision in *Massachusetts* v. *EPA* (April 2007)

On April 2, 2007, the U.S. Supreme Court issued its opinion in *Massachusetts* v. *EPA*,[51] a case involving a 2003 order of the Environmental Protection Agency (EPA) denying a petition for rulemaking to regulate greenhouse gas emissions from motor vehicles under the Clean Air Act.[52] The Court ruled that the state of Massachusetts had standing to sue EPA because it had already lost an amount of land and stood to lose more due to global warming-induced increases in sea level; that some portion of this harm was traceable to the absence of a regulation issued by EPA requiring reductions in GHG emissions (CO_2 emissions, most notably) by motor vehicles; and that EPA's issuance of such a regulation would reduce the risk of further harm to Massachusetts.[53] On the merits, the Court ruled that greenhouse gases are ''pollutants'' under the Clean Air Act and that the Act therefore authorizes EPA to regulate greenhouse gas emissions from motor vehicles if that agency makes the necessary findings and determinations under section 202 of the Act.

The Court considered EPCA briefly, stating

> [T]hat DOT sets mileage standards in no way licenses EPA to shirk its environmental responsibilities. EPA has been charged with protecting the public's ''health'' and ''welfare,'' 42 U.S.C. 7521(a)(1), a statutory obligation wholly independent of DOT's mandate to promote energy efficiency. See Energy Policy and Conservation Act, § 2(5), 89 Stat. 874, 42 U.S.C. 6201(5). The two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency.

127 S.Ct. at 1462.

The Supreme Court did not address or define the nature or extent of the overlap or explore the types of benefits considered in establishing the levels of the CAFE standards. Further, the Court did not address the express preemption provision in EPCA.

4. NHTSA and EPA Coordinate on Development of Rulemaking Proposals (Summer–Fall 2007)

In the wake of the Supreme Court's decision, on May 14, 2007, President Bush responded to the Supreme Court's opinion, stating

> * * * I'm directing the EPA and the Departments of Transportation, Energy, and Agriculture to take the first steps toward regulations that would cut gasoline consumption and greenhouse gas emissions from motor vehicles * * *

On May 14, 2007, President Bush issued Executive Order 13432, which announces

> [i]t is the policy of the United States to ensure the coordinated and effective exercise of the authorities of the President and the heads of the Department of Transportation, the Department of Energy, and the Environmental Protection Agency to protect the environment with respect to greenhouse gas emissions from motor vehicles, nonroad vehicles, and nonroad engines, in a manner consistent with sound science, analysis of benefits and costs, public safety, and economic growth.

The Executive Order goes on to require coordination among the agencies when taking action to directly regulate (or substantially and predictably affect) greenhouse gas emissions from motor vehicles, nonroad vehicles, and use of motor vehicle fuels. Such action is to be undertaken jointly ''to the maximum extent permitted by law and determined by the head of the agency to be practicable.''

Consistent with these directives, NHTSA and EPA took the first steps toward regulations that would cut gasoline consumption and greenhouse gas emissions from motor vehicles pursuant to Presidential directive. NHTSA and EPA staff jointly assessed which technologies would be available and their effectiveness and cost. They also jointly assessed the key economic and other assumptions affecting the stringency of future standards. Finally, they worked together in updating and further improving the Volpe model that had been used to help determine the stringency of the MY 2008–2011 light truck CAFE standards. Much of the work between NHTSA and EPA staff was reflected in rulemaking proposals being developed by NHTSA prior to the enactment of EISA and was substantially retained when NHTSA revised its proposals to be consistent with that legislation. Ultimately, the NPRM published by the agency in May and today's final rule are based on NHTSA's assessments of how they meet EPCA, as amended by EISA.

5. Ninth Circuit Issues Decision Re Final Rule for MY 2008–2011 Light Trucks (November 2007)

On November 15, 2007, the United States Court of Appeals for the Ninth Circuit issued its decision in *Center for Biological Diversity* v. *NHTSA*,[54] the challenge to the MY 2008–11 light truck CAFE rule. The Court rejected the petitioners' argument that EPCA precludes the use of a marginal cost-benefit analysis that attempted to weigh all of the social benefits (i.e., externalities as well as direct benefits to consumers) of improved fuel savings in determining the stringency of the CAFE standards.

The Court found that NHTSA had been arbitrary and capricious in the following respects:

- NHTSA's decision that it could not monetize the benefit of reducing CO_2 emissions for the purpose of conducting its marginal benefit-cost analysis based on its view that the value of the benefit of CO_2 emission reductions resulting from fuel consumption reductions was too uncertain to permit the agency to determine a value for those emission reductions;[55]
- NHTSA's lack, in the Court's view, of a reasoned explanation for its decision not to establish a ''backstop'' (i.e., a fixed minimum CAFE standard applicable to manufacturers);[56]
- NHTSA's lack, again in the Court's view, of a reasoned explanation for its decision not to revise the regulatory definitions for the passenger car and light truck categories of automobiles so that some vehicles currently classified as light trucks are instead classified as passenger cars;[57]
- NHTSA's decision not to subject most medium- and heavy-duty pickups and most medium- and heavy-duty cargo vans (i.e., those between 8,500 and 10,000 pounds gross vehicle weight

[51] 127 S.Ct. 1438 (2007).

[52] 68 FR 52922, September 8, 2003.

[53] As noted above, a CAFE standard and its mathematically equivalent CO_2 tailpipe emission standard would each have the same effect on those emissions and thus on the risk of further harm except to the extent, as noted in a footnote above, diesel engines are used to comply with the CAFE standards.

[54] 508 F.3d 508.

[55] As noted above in the preamble, the agency has developed a value for those reductions and used it in the analyses underlying the standards adopted in this final rule. For further discussion, see Section V of this preamble.

[56] EISA's requirement that standards be based on one or more vehicle attributes appears to preclude the specification of such a backstop standard for the latter two categories of automobiles. For further discussion, see Section VI of this preamble.

[57] In this final rule, NHTSA has moved 1.4 million 2 wheel drive SUVs from the light truck class to the passenger car class. It re-examined the legislative history of the statutory definitions of ''automobile'' and ''passenger automobile'' and the term ''nonpassenger automobile'' and analyzed the impact of that moving any vehicles out of the nonpassenger automobile (light truck) category into the passenger automobile (passenger car) category would have the level of standards for both groups of automobiles. For further discussion, see Section XI of this preamble.

rating (GVWR,) to the CAFE standards; [58]

• NHTSA's decision to prepare and publish an Environmental Assessment (EA) and making a finding of no significant impact notwithstanding what the Court found to be an insufficiently broad range of alternatives, insufficient analysis of the climate change effects of the CO_2 emissions, and limited assessment of cumulative impacts in its EA under the National Environmental Policy Act (NEPA).[59]

The Court did not vacate the standards, but instead said it would remand the rule to NHTSA to promulgate new standards consistent with its opinion ''as expeditiously as possible and for the earliest model year practicable.[60] Under the decision, the standards established by the April 2006 final rule would remain in effect unless and until amended by NHTSA. In addition, it directed the agency to prepare an Environmental Impact Statement.

As of the date of the issuance of this final rule, the Court has not yet issued its mandate in this case.

6. Congress Enacts Energy Security and Independence Act of 2007 (December 2007)

As noted above in Section I.B., EISA significantly changed the provisions of EPCA governing the establishment of future CAFE standards. These changes made it necessary for NHTSA to pause in its efforts so that it could assess the implications of the amendments made by EISA and then, as required, revise some aspects of the proposals it had been developing (e.g., the model years covered and credit issues).

7. NHTSA Proposes CAFE Standards for MYs 2011–2015 and Requests New Product Plans for Those Years (April 2008) [61]

8. NHTSA Contracts With ICF International To Conduct Climate Modeling and Other Analyses in Support of Draft and Final Environmental Impact Statements (May 2008)

NHTSA contracted with ICF International (ICF) to support it in conducting its environmental analyses and preparing the draft and final environmental impact statements. ICF provides consulting services and technology solutions in energy, climate change, environment, transportation, social programs, health, defense, and emergency management.

9. Manufacturers Submit New Product Plans (June 2008)

These product plans identify which vehicle models manufacturers intend to build and which technologies the manufacturers intend to apply and when to their vehicles. NHTSA began its analysis of the MY 2011 CAFE standards with the product plans and used them to establish a baseline, which is then used to evaluate different potential levels of future CAFE stringency.

10. NHTSA Contracts With Ricardo To Aid in Assessing Public Comments on Cost and Effectiveness of Fuel Saving Technologies (June 2008)

NHTSA received numerous public comments on the types of potential fuel saving technologies that we discussed in the NPRM, their costs and effectiveness in improving fuel economy, and in which model year and to which vehicles they may be applied. To aid the agency in analyzing and responding to these comments, and to ensure that the analysis for the final rule is thorough and robust, NHTSA contracted with Ricardo, a highly reputable and neutral source of outside expertise in the areas of powertrain and vehicle technologies. NHTSA chose Ricardo because of its extensive experience and expertise in working with both government and industry on fuel economy-improving technology issues.

11. Ninth Circuit Revises Its Decision Re Final Rule for MY 2008–2011 Light Trucks (August 2008)

In response to the Government petition for rehearing, the Ninth Circuit modified its decision by replacing its direction to prepare an EIS with a direction to prepare either a new EA or, if necessary, an EIS.[62]

12. NHTSA Releases Final Environmental Impact Statement (October 2008)

On October 17, 2008, EPA published a notice announcing the availability of NHTSA's final environmental impact statement (FEIS) for this rulemaking.[63] Throughout the FEIS, NHTSA relied extensively on findings of the United Nations Intergovernmental Panel on Climate Change (IPCC) and the U.S. Climate Change Science Program (USCCSP). In particular, the agency relied heavily on the most recent, thoroughly peer-reviewed, and credible assessments of global climate change and its impact on the United States: the IPCC Fourth Assessment Report Working Group I4 and II5 Reports, and reports by the USCCSP that include *Scientific Assessments of the Effects of Global Climate Change on the United States* and Synthesis and Assessment Products.

In the FEIS, NHTSA compared the environmental impacts of its preferred alternative and those of reasonable alternatives. It considered direct, indirect, and cumulative impacts and describes these impacts to inform the decisionmaker and the public of the environmental impacts of the various alternatives.

Among other potential impacts, NHTSA analyzed the direct and indirect impacts related to fuel and energy use, emissions, including carbon dioxide and its effects on temperature and climate change, air quality, natural resources, and the human environment. Specifically, the FEIS used a climate model to estimate and report on four direct and indirect effects of climate change, driven by alternative scenarios of GHG emissions, including:

1. Changes in CO_2 concentrations;
2. Changes in global mean surface temperature;
3. Changes in regional temperature and precipitation; and
4. Changes in sea level.

NHTSA also considered the cumulative impacts of the proposed standards for MY 2011–2015 passenger cars and light trucks, together with

[58] EISA removed these vehicles from the statutory definition of ''automobile'' and mandated the establishment of CAFE standards for them following the completion of reports by the National Academy of Sciences and NHTSA.

[59] On February 6, 2008, the Government petitioned for en banc rehearing by the 9th Circuit on the limited issue of whether it was appropriate for the panel, having held that the agency insufficiently explored the environmental implications of the MY 2008–11 rulemaking in its EA, to order the agency to prepare an EIS rather than simply remanding the matter to the agency for further analysis. The Court subsequently modified its order as described below.

[60] The deadline in EPCA for issuing a final rule establishing, for the first time, a CAFE standard for a model year is 18 months before the beginning of that model year. 49 U.S.C. 32902(g)(2). The same deadline applies to issuing a final rule amending an existing CAFE standard so as to increase its stringency. Given that the agency has long regarded October 1 as the beginning of a model year, the statutory deadline for increasing the MY 2009 standard was March 30, 2007, and the deadline for increasing the MY 2010 standard is March 30, 2008. Thus, the only model year for which there was sufficient time at the time of the Court's decision to gather all of the necessary information, conduct the necessary analyses and complete a rulemaking was MY 2011. As noted earlier in this notice, however, EISA requires that a new standard be established for that model year. This rulemaking was conducted pursuant to that requirement.

[61] A description of the NPRM appears in section I.C of this preamble.

[62] *See CBD* v. *NHTSA*, 538 F.3d 1172 (9th Cir. 2008).

[63] 73 FR 61859.

estimated impacts of NHTSA's implementation of the CAFE program through MY 2010 and NHTSA's future CAFE rulemaking for MYs 2016–2020.

NHTSA intends to review all analyses for model years after MY 2011 in connection with the rulemaking for MY 2012 and thereafter, consistent with the President's Memorandum of January 26, 2009.

13. Office of Information and Regulatory Affairs Completes Review of a Draft MY 2011–2015 Final Rule (November 2008)

The Office of Information and Regulatory Affairs of the Office of Management and Budget completed review of the rule under Executive Order 12866, Regulatory Planning and Review, on November 14, 2008.[64]

14. Department of Treasury Extends Loans to General Motors and Chrysler (December 2008)

The Department of the Treasury established the Automotive Industry Financing Program ''to prevent a significant disruption of the American automotive industry that poses a systemic risk to financial market stability and will have a negative effect on the real economy of the United States.'' [65] Under that program, initial loans were made to General Motors and Chrysler.

15. Department of Transportation Decides Not To Issue MY 2011–2015 Final Rule (January 2009)

On January 7, 2009, the Department of Transportation announced that the Bush Administration would not issue the final rule.

16. The President Requests NHTSA To Issue Final Rule for MY 2011 Only (January 2009)

As explained above, in his memorandum of January 26, 2009, the President requested the agency to issue a final rule adopting CAFE standards for MY 2011 only. Further, the President requested NHTSA to establish standards for MY 2012 and later after considering the appropriate legal factors, the comments filed in response to the May 2008 proposal, the relevant technological and scientific considerations, and, to the extent feasible, a forthcoming report by the National Academy of Sciences assessing automotive technologies that can practicably be used to improve fuel economy.

17. General Motors and Chrysler Submit Restructuring Reports to Department of the Treasury (February 2009)

The reports were required under the terms of the loans made available to these companies in December to assist the domestic auto industry in becoming financially viable.

D. Energy Policy and Conservation Act, as Amended

EPCA, which was enacted in 1975, mandates a motor vehicle fuel economy regulatory program to meet the various facets of the need to conserve energy, including ones having environmental and foreign policy implications. EPCA allocates the responsibility for implementing the program between NHTSA and EPA as follows: NHTSA sets CAFE standards for passenger cars and light trucks; EPA establishes the procedures for testing, test vehicles, collects and analyzes manufacturers' data, and calculates the average fuel economy of each manufacturer's passenger cars and light trucks; and NHTSA enforces the standards based on EPA's calculations.

We have summarized below EPCA, as amended by EISA.

1. Vehicles Subject to Standards for Automobiles

With two exceptions specified in EPCA, all four-wheeled motor vehicles with a gross vehicle weight rating of 10,000 pounds or less will be subject to the CAFE standards, beginning with MY 2011. The exceptions will be work trucks [66] and multi-stage vehicles. Work trucks are defined as vehicles that are:

—Rated at between 8,500 and 10,000 pounds gross vehicle weight; and
—Are not a medium-duty passenger vehicle (as defined in section 86.1803–01 of title 40, Code of Federal Regulations, as in effect on the date of the enactment of the Ten-in-Ten Fuel Economy Act).[67]

Medium-duty passenger vehicles (MDPV) include 8,500 to 10,000 lb. GVWR sport utility vehicles (SUVs), short bed pick-up trucks, and passenger vans, but exclude pickup trucks with longer beds and cargo vans rated at between 8,500 and 10,000 lb. GVWR. It is those excluded pickup trucks and cargo vans that are work trucks. ''Multi-stage vehicle'' includes any vehicle manufactured in different stages by 2 or more manufacturers, if no intermediate or final-stage manufacturer of that vehicle manufactures more than 10,000 multi-stage vehicles per year.[68]

Under EPCA, as it existed before EISA, the agency had discretion whether to regulate vehicles with a GVWR between 6,000 lb and 10,000 GVWR. It could regulate the fuel economy of vehicles with a GVWR within that range under CAFE if it determined that (1) standards were feasible for these vehicles, and (2) either (a) that these vehicles were used for the same purpose as vehicles rated at not more than 6,000 lbs. GVWR, or (b) that their regulation would result in significant energy conservation.

EISA eliminated the need for administrative determinations in order to subject vehicles between 6,000 and 10,000 lb. GVWR to the CAFE standards for automobiles. Congress did so by making the determination itself that all vehicles within that GVWR range should be included, with the exceptions noted above.

2. Mandate To Set Standards for Automobiles

For each future model year, EPCA requires that the agency establish standards for all new automobiles at the maximum feasible levels for that model year. EISA made no change in this requirement. A manufacturer's individual passenger cars and light trucks are not required to meet a particular fuel economy level. Instead, EPCA requires that the average fuel economy of a manufacturer's fleet of passenger cars (or light trucks) in a particular model year must meet the standard for those automobiles for that model year.

For MYs 2011–2020 and for MYs 2021–2030, EPCA specifies additional requirements regarding standard setting. Each of those requirements and the maximum feasible requirement must be interpreted in the context of the other requirements. For MYs 2011–2020, separate standards for passenger cars and for light trucks must be set at high enough levels to ensure that the CAFE of the industry-wide combined fleet of new passenger cars and light trucks for MY 2020 is not less than 35 mpg.

[64] *http://www.reginfo.gov/public/do/eoHistReviewSearch* (last visited March 8, 2009). To find the report on the clearance of the draft final rule, select ''Department of Transportation'' under ''Economically Significant Reviews Completed'' and select ''2008'' under ''Select Calendar Year.''

[65] *http://www.treasury.gov/initiatives/eesa/program-descriptions/aifp.shtml* (last visited March 8, 2009).

[66] While EISA excluded work trucks from ''automobiles,'' it did not exclude them from regulation under EPCA. As amended by EISA, EPCA requires that work trucks be subjected to average fuel economy standards (49 U.S.C. 32902(b)(1)(C)), but only after first the National Academy of Sciences completes a study and then NHTSA completes a follow-on study. Congress thus recognized and made allowances for the practical difficulties that led NHTSA to decline to include work trucks in its final rule for MY 2008–11 light trucks.

[67] 49 U.S.C. 32902(a)(19).

[68] 49 U.S.C. 32902(a)(3).

In light of the evident confusion of some commenters about the 35 mpg requirement, we want to emphasize that that figure is not the CAFE level that any individual manufacturer's combined CAFE will be required to meet. The 35 mpg requirement applies solely to the agency's standard setting and concerns the required combined effect that the separate MY 2020 standards for passenger cars and light trucks must achieve with respect to the single fleet containing the MY 2020 passenger cars and light trucks of all manufacturers. That single industry-wide fleet must have a CAFE of at least 35 mpg. If that requirement were exactly met, we anticipate that manufacturers with relatively larger proportions of smaller automobiles would be required to achieve combined CAFEs greater than 35 mpg, while manufacturers with relatively largely proportions of larger automobiles would be required to achieve combined CAFEs that might in that year be somewhat below 35 mpg. EISA does not specify precisely how compliance with this minimum requirement is to be ensured or how or when the CAFE of the industry-wide combined fleet for MY 2020 is to be calculated for purposes of determining the agency's compliance.

If the current gap between passenger car CAFE and light truck CAFE persists, the standard for MY 2020 passenger cars would likely, as a practical matter, need to be set high enough to ensure that the industry-wide level of average fuel economy for passenger cars is not less than 40 mpg in order for the CAFE of the combined industry-wide fleet to reach 35 mpg,. The standard for MY 2020 light trucks could be somewhat below 35 mpg. Again, these are the levels of stringency necessary to meet the minimum requirement of an industry-wide combined average of at least 35 mpg in MY 2020. Reaching 35 mpg earlier than MY 2020 would require even higher car and light truck standards in MY 2020. In addition, the CAFE of each manufacturer's fleet of domestic passenger cars must meet a sliding, absolute minimum level in each model year: 27.5 mpg or 92 percent of the projected CAFE of the industry-wide fleet of new domestic and non-domestic passenger cars for that model year.

The standards for passenger cars and those for light trucks must increase ratably each year. We interpret this requirement, in combination with the requirement to set the standards for each model year at the level determined to be the maximum feasible level for that model year, to mean that the annual increases should not be disproportionately large or small in relation to each other.

EPCA, as it existed before EISA, required that light truck standards be set at the maximum feasible level for each model year, but simply specified a default standard of 27.5 mpg for passenger cars for MY 1985 and thereafter. It permitted, but did not require that NHTSA establish a higher or lower standard for passenger cars if the agency found that the maximum feasible level of fuel economy is higher or lower than 27.5 mpg. Henceforth, the agency must establish a standard for each model year at the maximum feasible level.

3. Attribute-Based Standards

The standards for passenger cars and light trucks must be based on one or more vehicle attributes, like size or weight, that correlate with fuel economy and must be expressed in terms of a mathematical function. Fuel economy targets are set for individual vehicles and increase as the attribute decreases and vice versa. For example, size-based (i.e., size-indexed) standards assign higher fuel economy targets to smaller (and generally, but not necessarily lighter) vehicles and lower ones to larger (and generally, but not necessarily heavier) vehicles. The fleet wide average fuel economy that a particular manufacturer must achieve depends on the size mix of its fleet, i.e., the proportion of the fleet that is small-, medium- or large-sized.

This approach can be used to require virtually all manufacturers to increase significantly the fuel economy of a broad range of both passenger cars and light trucks. Further, this approach can do so without creating an incentive for manufacturers to make small vehicles smaller or large vehicles larger, with attendant implications for safety.

4. Factors Considered in the Setting of Standards

In determining the maximum feasible level of average fuel economy for a model year, EPCA requires that the agency consider four factors: Technological feasibility, economic practicability, the effect of other standards of the Government on fuel economy, and the need of the nation to conserve energy. EPCA does not define these terms or specify what weight to give each concern in balancing them; thus, NHTSA defines them and determines the appropriate weighting based on the circumstances in each CAFE standard rulemaking.

(a) Factors That Must Be Considered

(i) Technological Feasibility

''Technological feasibility'' refers to whether a particular method of improving fuel economy can be available for commercial application in the model year for which a standard is being established. Thus, the agency is not limited in a CAFE rulemaking to technology that is already being commercially applied at that time.

(ii) Economic Practicability

''Economic practicability'' refers to whether a standard is one ''within the financial capability of the industry, but not so stringent as to'' lead to ''adverse economic consequences, such as a significant loss of jobs or the unreasonable elimination of consumer choice.'' [69] In an attempt to ensure the economic practicability of attribute based standards, the agency considers a variety of factors, including the annual rate at which manufacturers can increase the percentage of its fleet that has a particular type of fuel saving technology, and cost to consumers. Since consumer acceptability is an element of economic practicability, the agency, in this rule, has limited its consideration of fuel saving technologies to be added to vehicles to those that provide benefits that match their costs. The agency believes this approach is reasonable for the MY 2011 standards in view of the facts before it at this time. The agency is aware, however, that facts relating to a variety of key issues in CAFE rulemaking are steadily evolving and will review its balancing of these factors in light of the facts before it in the next rulemaking proceeding.

At the same time, the law does not preclude a CAFE standard that poses considerable challenges to any individual manufacturer. The Conference Report for EPCA, as enacted in 1975, makes clear, and the case law affirms, ''(A) determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy.'' [70] Instead, the agency is compelled ''to weigh the benefits to the nation of a higher fuel economy standard against the difficulties of individual automobile manufacturers.'' *Id.* The law permits CAFE standards exceeding the projected capability of any particular manufacturer as long as the standard is economically practicable for the industry as a whole. Thus, while

[69] 67 FR 77015, 77021; December 16, 2002.

[70] *CEI–I*, 793 F.2d 1322, 1352 (D.C. Cir. 1986).

a particular CAFE standard may pose difficulties for one manufacturer, it may also present opportunities for another. The CAFE program is not necessarily intended to maintain the competitive positioning of each particular company. Rather, it is intended to enhance fuel economy of the vehicle fleet on American roads, while protecting motor vehicle safety and being mindful of the risk of harm to the overall United States economy.

(iii) The Effect of Other Motor Vehicle Standards of the Government on Fuel Economy

''The effect of other motor vehicle standards of the Government on fuel economy'' means, according to the agency's longstanding view, ''the unavoidable *adverse* effects on fuel economy of compliance with emission, safety, noise, or damageability standards.'' [71] The purpose of this provision was to ensure that any adverse effects of other standards on fuel economy were taken into consideration in connection with the fuel economy standards. The concern about adverse effects is evident in a 1974 report, entitled ''Potential for Motor Vehicle Fuel Economy Improvement,'' prepared and submitted to Congress by the Department of Transportation and Environmental Protection Agency.[72] That report noted that the weight added by safety standards would reduce, and one set of emissions standards might temporarily reduce, the level of achievable fuel economy.[73] The same concern can also be found in the congressional committee reports on the bills that became EPCA.[74]

In the case of emission standards, this includes standards adopted by the Federal government and can include standards adopted by the States as well, since in certain circumstances the Clean Air Act allows States to adopt and enforce State standards different from the Federal ones.

(iv) The Need of the United States To Conserve Energy

''The need of the United States to conserve energy'' means ''the consumer cost, national balance of payments, environmental, and foreign policy implications of our need for large quantities of petroleum, especially imported petroleum.'' [75] Environmental implications principally include reductions in emissions of criteria pollutants and carbon dioxide. A prime example of foreign policy implications are energy independence and security concerns.

1. Fuel Prices and the Value of Saving Fuel

Projected future fuel prices are a critical input into the preliminary economic analysis of alternative CAFE standards, because they determine the value of fuel savings both to new vehicle buyers and to society. In this rule, NHTSA relies on fuel price projections from the U.S. Energy Information Administration's (EIA) Annual Energy Outlook (AEO) for this analysis.

2. Petroleum Consumption and Import Externalities

U.S. consumption and imports of petroleum products impose costs on the domestic economy that are not reflected in the market price for crude petroleum, or in the prices paid by consumers of petroleum products such as gasoline. These costs include (1) higher prices for petroleum products resulting from the effect of U.S. oil import demand on the world oil price; (2) the risk of disruptions to the U.S. economy caused by sudden reductions in the supply of imported oil to the U.S.; and (3) expenses for maintaining a U.S. military presence to secure imported oil supplies from unstable regions, and for maintaining the strategic petroleum reserve (SPR) to cushion against resulting price increases. Higher U.S. imports of crude oil or refined petroleum products increase the magnitude of these external economic costs, thus increasing the true economic cost of supplying transportation fuels above the resource costs of producing them. Conversely, reducing U.S. imports of crude petroleum or refined fuels or reducing fuel consumption can reduce these external costs.

3. Air Pollutant Emissions

While reductions in domestic fuel refining and distribution that result from lower fuel consumption will reduce U.S. emissions of various pollutants, additional vehicle use associated with the rebound effect from higher fuel economy will increase emissions of these pollutants. Thus, the net effect of stricter CAFE standards on emissions of each pollutant depends on the relative magnitudes of its reduced emissions in fuel refining and distribution, and increases in its emissions from vehicle use.

Fuel savings from stricter CAFE standards also result in lower emissions of CO_2, the main greenhouse gas emitted as a result of refining, distribution, and use of transportation fuels. Lower fuel consumption reduces carbon dioxide emissions directly, because the primary source of transportation-related CO_2 emissions is fuel combustion in internal combustion engines.

The agency has considered environmental issues, both within the context of EPCA and the National Environmental Policy Act, in making decisions about the setting of standards from the earliest days of the CAFE program. As courts of appeal have noted in three decisions stretching over the last 20 years,[76] the agency defined the ''need of the Nation to conserve energy'' in the late 1970s as including ''the consumer cost, national balance of payments, environmental, and foreign policy implications of our need for large quantities of petroleum, especially imported petroleum.'' [77] Pursuant to that view, the agency declined in the past to include diesel engines in determining the maximum feasible level of average fuel economy for passenger cars and for light trucks because particulate emissions from diesels were then both a source of concern and unregulated.[78]

In the late 1980s, NHTSA cited concerns about climate change as one of its reasons for limiting the extent of its reduction of the CAFE standard for MY 1989 passenger cars [79] and for declining to reduce the standard for MY 1990 passenger cars.[80]

Since then, DOT has considered the indirect benefits of reducing tailpipe carbon dioxide emissions in its fuel economy rulemakings pursuant to the statutory requirement to consider the nation's need to conserve energy by reducing consumption. In this rulemaking, consistent with the Ninth Circuit's decision and its observations about the potential effect of changing information about climate change on the

[71] 42 FR 63184, 63188; Dec. 15, 1977. See also 42 FR 33534, 33537; June 30, 1977.

[72] This report was prepared in compliance with Section 10 of the Energy Supply and Environmental Coordination Act of 1974, Public Law 93–319.

[73] See pages 6–8 and 91–93.

[74] See page 22 of Senate Report 94–179, pages 88 and 90 of House Report 94–340, and pages 155–7 of the Conference Report, Senate Report 94–516.

[75] 42 FR 63184, 63188 (1977).

[76] *Center for Auto Safety* v. *NHTSA*, 793 F.2d 1322, 1325 n. 12 (D.C. Cir. 1986); *Public Citizen* v. *NHTSA*, 848 F.2d 256, 262–3 n. 27 (D.C. Cir. 1988) (noting that ''NHTSA itself has interpreted the factors it must consider in setting CAFE standards as including environmental effects''); and *Center for Biological Diversity* v. *NHTSA*, 508 F.3d 508, 529 (9th Cir. 2007).

[77] 42 FR 63,184, 63,188 (Dec. 15, 1977) (emphasis added).

[78] For example, the final rules establishing CAFE standards for MY 1981–84 passenger cars, 42 FR 33533, 33540–1 and 33551; June 30, 1977, and for MY 1983–85 light trucks, 45 FR 81593, 81597; December 11, 1980.

[79] 53 FR 39275, 39302; October 6, 1988.

[80] 54 FR 21985,

balancing of the EPCA factors and aided by the 2007 reports of the United Nations Intergovernmental Panel on Climate Change [81] and other information, NHTSA has monetized the reductions in tailpipe emissions of CO_2 that will result from the CAFE standards and is adopting CAFE standards for MY 2011 at levels that reflect an estimated value of those reductions in CO_2 as well as the value of other benefits of those standards. In setting these CAFE standards, NHTSA also considered environmental impacts under NEPA, 42 U.S.C. 4321–4347.

(v) Other Factors—Safety

In addition, the agency historically has considered the potential for adverse safety consequences when deciding upon a maximum feasible level. This practice is recognized approvingly in case law.[82]

(b) Factors That Cannot be Considered

EPCA provides that in determining the level at which it should set CAFE standards for a particular model year, NHTSA may not consider the ability of manufacturers to take advantage of several EPCA provisions that facilitate compliance with the CAFE standards and thereby reduce the costs of compliance.[83] As noted below in Section XII, manufacturers can earn compliance credits by exceeding the CAFE standards and then use those credits to achieve compliance in years in which their measured average fuel economy falls below the standards. Manufacturers can also increase their CAFE levels through MY 2019 by producing alternative fuel vehicles. EPCA provides an incentive for producing these vehicles by specifying that their fuel economy is to be determined using a special calculation procedure that results in those vehicles being assigned a high fuel economy level.

(c) Weighing and Balancing of Factors

EPCA did not define the factors or specify the relative weight to be given the factors in weighing and balancing them. Instead, EPCA gave broad guidelines within which the agency is to exercise discretion in determining what level of stringency is the maximum feasible level of stringency. Thus, the agency has substantial discretion in defining and weighing the terms and accommodating conflicting priorities consistent with the purposes of EPCA.

5. Consultation in Setting Standards

EPCA provides that NHTSA is to consult with the Department of Energy (DOE) and Environmental Protection Agency prior to prescribing CAFE standards. It specifies further that NHTSA is to provide DOE with an opportunity to provide written comments on draft proposed and final CAFE standards.[84]

6. Test Procedures for Measuring Fuel Economy

EPA's fuel economy test procedures specify equations for calculating fuel economy. These equations are based on the carbon balance technique which allows fuel economy to be determined from measurement of exhaust emissions. As noted above, this technique relies upon the premise that the quantity of carbon in a vehicle's exhaust gas is equal to the quantity of carbon consumed by the engine as fuel.

After measuring the amount of CO_2 emitted from the tailpipe of a test vehicle, as well as the amount of carbon in hydrocarbon (HC) and carbon monoxide (CO), EPA then uses the carbon content of the test fuel to calculate the amount of fuel that had to be consumed per mile in order for the vehicle to produce that amount of carbon containing emissions.[85] Finally, EPA converts that fuel figure into a miles-per-gallon figure.

7. Enforcement and Compliance Flexibility

EPA is responsible for measuring automobile manufacturers' CAFE so that NHTSA can determine compliance with the CAFE standards. In making these measurements for passenger cars, EPA is required by EPCA [86] to use the EPA test procedures in place as of 1975 (or procedures that give comparable results), which are the city and highway tests of today, with adjustments for procedural changes that have occurred since 1975. EPA uses similar procedures for light trucks, although, as noted above, EPCA does not require it to do so.

When NHTSA finds that a manufacturer is not in compliance, it notifies the manufacturer. Surplus credits generated from the five previous years can be used to make up the deficit. The amount of credit earned is determined by multiplying the number of tenths of a mpg by which a manufacturer exceeds a standard for a particular category of automobiles by the total volume of automobiles of that category manufactured by the manufacturer for a given model year. If there are no (or not enough) credits available, then the manufacturer can either pay the fine, or submit a carry back plan to the agency. A carry back plan describes what the manufacturer plans to do in the following three model years to earn enough credits to make up for the deficit. NHTSA must examine and determine whether to approve the plan.

In the event that a manufacturer does not comply with a CAFE standard, even after the consideration of credits, EPCA provides for the assessing of civil penalties, unless, as provided below, the manufacturer has earned credits for exceeding a standard in an earlier year or expects to earn credits in a later year. The Act specifies a precise formula for determining the amount of civil penalties for such a noncompliance. The penalty, as adjusted for inflation by law, is $5.50 for each tenth of a mpg that a manufacturer's average fuel economy falls short of the standard for a given model year multiplied by the total volume of those vehicles in the affected fleet (i.e., import or domestic passenger car, or light truck), manufactured for that model year. The amount of the penalty may not be reduced except under the unusual or extreme circumstances specified in the statute.

[81] The IPCC 2007 reports can be found at *http://www.ipcc.ch/*. (Last accessed March 8, 2009.)

[82] See, *e.g., Center for Auto Safety* v. *NHTSA* (CAS), 793 F. 2d 1322 (D.C. Cir. 1986) (Administrator's consideration of market demand as component of economic practicability found to be reasonable); Public Citizen 848 F.2d 256 (Congress established broad guidelines in the fuel economy statute; agency's decision to set lower standard was a reasonable accommodation of conflicting policies). As the United Staets Court of Appeals pointed out in upholding NHTSA's exercise of judgment in setting the 1987–1989 passenger car standards, ''NHTSA has always examined the safety consequences of the CAFE standards in its overall consideration of relevant factors since its earliest rulemaking under the CAFE program.'' *Competitive Enterprise Institute* v. *NHTSA* (CEI I), 901 F.2d 107, 120 at n.11 (D.C. Cir. 1990).

[83] 49 U.S.C. 32902(h).

[84] In addition, Executive Order No. 13432 provides that a Federal agency undertaking a regulatory action that can reasonably be expected to regulate emissions directly, or to substantially and predictably affect emissions, of greenhouse gases from motor vehicles, shall act jointly and consistently with other agencies to the extent possible and to consider the views of other agencies regarding such action.

[85] Under the procedures established by EPA, compliance with the CAFE standards is based on the rates of emission of CO_2, CO, and hydrocarbons from covered vehicles, but primarily on the emission rates of CO_2. In the measurement and calculation of a given vehicle model's fuel economy for purposes of determining a manufacturer's compliance with federal fuel economy standards, the role of CO_2 is approximately 100 times greater than the combined role of the other two relevant carbon exhaust gases. Given that the amount of CO_2, CO, and hydrocarbons emitted by a vehicle varies directly with the amount of fuel it consumes, EPA can reliably and accurately convert the amount of those gases emitted by that vehicle into the miles per gallon achieved by that vehicle.

[86] 49 U.S.C. 32904(c).

Unlike the National Traffic and Motor Vehicle Safety Act, EPCA does not provide for recall and remedy in the event of a noncompliance. The presence of recall and remedy provisions [87] in the Safety Act and their absence in EPCA is believed to arise from the difference in the application of the safety standards and CAFE standards. A safety standard applies to individual vehicles; that is, each vehicle must possess the requisite equipment or feature which must provide the requisite type and level of performance. If a vehicle does not, it is noncompliant. Typically, a vehicle does not entirely lack an item or equipment or feature. Instead, the equipment or features fails to perform adequately. Recalling the vehicle to repair or replace the noncompliant equipment or feature can usually be readily accomplished.

In contrast, a CAFE standard applies to a manufacturer's entire fleet for a model year. It does not require that a particular individual vehicle be equipped with any particular equipment or feature or meet a particular level of fuel economy. It does require that the manufacturer's fleet, as a whole, comply. Further, although under the attribute-based approach to setting CAFE standards fuel economy targets are established for individual vehicles based on their footprints, the vehicles are not required to comply with those targets. However, as a practical matter, if a manufacturer chooses to design some vehicles so that fall below their target levels of fuel economy, it will need to design other vehicles so that exceed their targets if the manufacturer's overall fleet average is to meet the applicable standard.

Thus, under EPCA, there is no such thing as a noncompliant vehicle, only a noncompliant fleet. No particular vehicle in a noncompliant fleet is any more, or less, noncompliant than any other vehicle in the fleet.

III. The Anticipated Vehicles in the MY 2011 Fleets and NHTSA's Baseline Market Forecast

NHTSA has a long-standing practice of analyzing regulatory options in fuel economy rulemakings based on the best available information, including information regarding the future vehicle market and future fuel economy technologies. The passenger cars and light trucks currently sold in the United States, and which are anticipated to be sold in MY 2011, are highly varied and satisfy a wide range of consumer needs. From the two-seater Mercedes Benz Smart (produced by Daimler) to the Ford F–150 pickup truck, from the Honda CR–V to the Chrysler Town and Country to the GMC Savana, American consumers have a great number of vehicle options to accommodate their needs and preferences.

Automobile manufacturers generally attempt to plan their motor vehicle production several years in advance. When a new vehicle is introduced, it is the product of several years of design, testing, product-specific tooling investment, and regulatory certification. In order to minimize costs, manufacturers generally attempt to place large automotive parts supply contracts years in advance. Manufacturers must therefore attempt to predict the types, characteristics, and quantities of vehicles that consumers will wish to purchase a few years hence. These plans include what is currently known about the salability and marketability of these future vehicles, and hence consider the future state of prices facing the consumer, including that of gasoline. These plans also contain not only the specific vehicle models which manufacturers intend to build and their planned annual production, but also information about specific design features and configurations as well as the fuel-efficient technologies they are planning to incorporate in these vehicles. Manufacturer's plans rapidly become embodied in special tooling and production configurations in factories and advance orders for component parts. NHTSA requests, and manufacturers provide, product plan information to the agency during rulemaking. NHTSA begins its analysis with the submitted product plans and uses them to establish a baseline, which is used to analyze varying levels of future CAFE standards.

In anticipation of the analysis to support today's final rule, NHTSA issued a request in May 2008 that manufacturers provide the agency with updated product plans, as well as estimates of the availability, effectiveness, and cost of fuel-saving technologies.[88] Considering its past experiences integrating manufacturers' product plans, reviewing the content of those plans, and seeking clarification and appropriate correction of those plans, the agency provided manufacturers with updated tools to facilitate manufacturers' quality control efforts. NHTSA also tripled the number of agency engineers assigned to reviewing manufacturers' plans.

A. Why does NHTSA establish a baseline market forecast?

NHTSA begins its analysis by establishing the baseline market forecast. This forecast represents the fleet that the agency believes would exist in the absence of fuel economy standards for MY 2011. A forecast is necessary because the standards will apply to a future fleet which does not yet exist and therefore must be predicted in order to estimate the costs and benefits of CAFE standards, as well as regulatory alternatives as required by OMB and DOT.

B. How does NHTSA develop the baseline market forecast?

1. NHTSA First Asks Manufacturers for Updated Product Plan Data

NHTSA relies on product plans from manufacturers to help the agency determine the composition of the future fleets. The product plan information is provided in response to NHTSA's request for information from the manufacturers, and responds to very detailed questions about vehicle model characteristics that influence fuel economy.[89] The baseline market forecast that NHTSA uses in its analysis is based significantly on this confidential product plan information. Individual manufacturers are better able than any other entity to anticipate what mix of products they are likely to sell in the future. In this rulemaking as in prior rulemakings, some commenters requested that NHTSA make product plan information public to allow members of the public to comment more fully on the baseline developed by the agency. For example, the Attorneys General commented that ''the agency should provide sufficient summaries or aggregations of this information or make special arrangements so that interested parties such as the state Attorneys General can view this confidential information under a confidentiality agreement.''

NHTSA cannot make public the entire contents of the product plans. The submitted product plans contain confidential business information, which the agency is prohibited by federal law from disclosing; [90] making

[87] 49 U.S.C. 30120, Remedies for defects and noncompliance.

[88] *See* 73 FR 24910 (May 2, 2008) for NHTSA's most recent request for comments, which accompanied the NPRM.

[89] *Id.*

[90] NHTSA grants confidentiality to manufacturers' future specific product plans under 49 CFR Part 512. Once NHTSA has granted a manufacturer's claim of confidentiality, NHTSA may not release the covered information except in certain circumstances listed in § 512.23, none of which include increasing the ability of the public

Continued

this information publicly available would cause competitive harm to manufacturers. *See* 5 U.S.C. 552(b)(4); 18 U.S.C. 1905; 49 U.S.C. 30167(a); 49 CFR part 512; *Critical Mass Energy Project* v. *Nuclear Regulatory Comm'n*, 975 F.2d 871 (D.C. Cir. 1992). In its publicly available rulemaking documents the agency does, however, provide aggregated information compiled from individual manufacturer submissions regarding its forecasts of the future vehicle market in such a way that confidential business information is not disclosed. This aggregated information, such as appears below and in the accompanying Regulatory Impact Analysis (RIA), includes vehicle fleet size and composition (passenger cars versus light trucks), overall fuel economy baseline and major technology applications and design trends.

(a) Why does NHTSA use manufacturer product plans to develop the baseline?

In order to analyze potential new CAFE standards in a way that tries to simulate how manufacturers could comply with them, NHTSA develops a forecast of the future vehicle market on a model-by-model, engine-by-engine, and transmission-by-transmission basis, such that each defined vehicle model refers to a separately-defined engine and a separately-defined transmission. For the 2011 model year covered by this final rule, the light vehicle (passenger car and light truck) market forecast included almost 1,400 vehicle models, 400 specific engines, and 300 specific transmissions. NHTSA believes that this level of detail in the representation of the vehicle market is important both to an accurate analysis of manufacturer-specific costs and to the analysis of attribute-based CAFE standards. Because CAFE standards apply to the average fuel economy performance of each manufacturer's fleets of cars and light trucks, the impact of potential standards on individual manufacturers is effectively estimated through analysis of manufacturers' planned fleets. NHTSA has used this level of detail in CAFE analysis throughout the history of the program. Furthermore, because required CAFE levels under an attribute-based CAFE standard depend on manufacturers' fleet composition, the stringency of an attribute-based standard is effectively predicted by performing analysis at this level of detail.

EPCA does not require NHTSA to use manufacturers' product plans in order to develop a baseline for purposes of analyzing potential new CAFE standards. The agency could use exclusively non-confidential information to develop a market forecast at the same level of detail as mentioned above, and has done exactly so for purposes of analytical development and testing, and to represent manufacturers that have not provided product plans to NHTSA. However, as discussed above, the agency believes that one of the most valuable sources of information about future product mix projections is the product plan information provided by individual manufacturers, because individual manufacturers are in a unique position to anticipate what mix of products they are likely to sell in the future.

Manufacturers generally support NHTSA's use of product plan data in developing the baseline. Other commenters such as CFA and Public Citizen, in contrast, stated that the product plans relied upon in the NPRM are outdated because they were developed before EISA was enacted, and that the agency should develop its own projections of the vehicle fleets, which could be made public, instead of relying on confidential industry plans, which could bias the standards in favor of the industry. CFA suggested that NHTSA's analysis was based on only ''a very thin body of knowledge about the veracity, relevance and predictive value of auto manufacturer product plans, recent changes in fuel economy and the practices of automakers in adopting fuel economy technologies.'' Public Citizen stated that because the product plans are confidential, ''This significantly biases the standards in favor of industry by shutting the public out of the process,'' and that ''Consumers must essentially trust that NHTSA has set standards in their interest using information provided by industry.'' Public Citizen argued that ''In the past, * * * NHTSA has done its own research and evaluation of these factors which was more transparent.''

NHTSA's analysis of product plan data is much more rigorous than commenters suggest. NHTSA engineers carefully examine the information submitted by manufacturers, and upon discovering what appear to be errors or inconsistencies, request and receive manufacturers' explanations and, as appropriate, corrections. For example, the agency's analysis in preparation for the final rule revealed systematic errors in plans submitted by two major manufacturers, both of which resubmitted their plans with corrections.[91] In addition, the agency found that two manufacturers inappropriately planned to have some 2-wheel drive sport-utility vehicles (2WD SUVs) classified as light trucks, even though the agency explained in the NPRM that, for enforcement purposes, it planned to classify such vehicles as passenger cars, and other manufacturers submitted product plans consistent with the agency's intentions. As discussed below and in Section IX, NHTSA performed its analysis with these vehicles reassigned to the passenger car fleet.

NHTSA also disagrees with Public Citizen's suggestion that the agency's use of product plans precludes public participation in the rulemaking process. As discussed, analysis of confidential product plans has long been a core feature of developing the CAFE standards, and the agency is fully transparent in providing aggregated information about the plans as well as detailed information about the agency's technology and economic assumptions and the process the agency undertakes to evaluate and set the standards.

NHTSA could potentially conduct rulemaking analysis as Public Citizen suggests using exclusively public information, (including commercially available information). Indeed, the agency has done exactly so for purposes of development and testing, and to develop forecasts of fleets likely to be produced by manufacturers that have not responded to the agency's request for product plans. However, the agency currently believes that an analysis based exclusively on publicly- and commercially-available information would be less accurate—in terms of its representation of the future light vehicle market—than an analysis based in large measure on product plan data. Most publicly available information about vehicles and vehicle technologies concerns the current fleet, not potential future fleets. In many cases, manufacturers are prepared to provide far more detail in confidential submissions then they are prepared to provide in public. This detail may include the manufacturer's expectation of sales for particular future models; which technologies are being applied to particular vehicles; and the manufacturer's expectation of fuel

to comment on rulemakings employing the confidential information, unless the manufacturers consent to the disclosure.

[91] Specifically, one manufacturer had submitted data with a structure that had inadvertently been misaligned, such that many vehicle models were incorrectly identified as using engines applicable to other vehicle models (e.g., a vehicle known to use an inline 4-cylinder engine might have been identified as using a V–8 engines). Another manufacturer had submitted vehicle dimensional estimates based on an incorrect SAE measurement procedure.

economy for future vehicles. This information is typically considered business confidential by the manufacturer, but is helpful in more accurately ascertaining both the baseline technology level and fuel economy of manufacturer's future sales as well as the extent of opportunities for improving fuel economy.

NHTSA notes that manufacturers' public statements about future vehicles have been very optimistic recently with regard to fuel economy-enhancing technologies, and NHTSA takes these statements into account when evaluating the submitted product plans. When manufacturer statements about future vehicles differ substantially from the submitted product plans, NHTSA generally contacts the manufacturer to determine the reason for the discrepancy. However, manufacturers frequently make announcements regarding vehicles or technologies they hope to produce in the future. Often, they are conditional statements and plans, and whether they reach the point of commercialization depends greatly on how circumstances, including public acceptance, evolve. Thus, for purposes of analyzing the MY 2011 CAFE standards, the agency currently concludes that information manufacturers provide confidentially to NHTSA is more reliable than the information appearing in public sources such as press reports and speeches by manufacturers' employees, especially given the short time period between the submission of this information in 2008 and when manufacturers will begin building their MY 2011 vehicles.

Nevertheless, EPCA does not require NHTSA to use manufacturers' confidential business information when evaluating the maximum feasible levels for new CAFE standards. The agency will base its analysis for future rulemakings on information—public, commercially-available, or confidential—it considers most accurate.

NHTSA recognizes that automobile manufacturers are facing a period of uncertainty with respect to demand for their products that is without parallel. Recent swings in prices for fuel have altered demand patterns, while commodity prices have impacted costs of production. Concurrently, turmoil in the credit markets and recent upswings in unemployment also affect the vehicle market. The short and long term implications of such volatility for future sales will not be known for some time. In light of such conditions, reliance on product plans in this rulemaking helps to align the analysis with the best available information.

NHTSA further recognizes that, in connection with their recent requests for federal assistance, some manufacturers made statements in December 2008 regarding future technologies and fuel economy levels, and that some of these statements indicated plans to achieve CAFE levels considerably higher than reflected in the product plans submitted to NHTSA in mid-2008.[92] The information provided in these submissions to Congress reflects a level of detail much less than NHTSA typically receives in the confidential product plan submissions, so it is difficult for NHTSA to determine whether these manufacturer statements and submissions reflect the same underlying assumptions as manufacturers' mid-2008 product plans.

More recently, in mid-February, Chrysler and General Motors submitted restructuring plans to the U.S. Department of the Treasury to support those companies' requests for federal loans. Like the information these companies provided in December, these plans do not contain complete and detailed forecasts of the volume and characteristics of specific vehicle models Chrysler and General Motors plan to produce. However, the restructuring plans do contain specific information regarding the CAFE levels that these manufacturers expect to achieve.

Chrysler's plan shows that, during MYs 2008–2015, Chrysler plans to exceed required CAFE levels in some model years and to apply credits it earns in doing so toward shortfalls in other model years.[93] The charts in Chrysler's plans specifically reference the ''Dec 2008 Draft Rule'' (presumably, the final standards NHTSA submitted to OMB in November 2008), and indicate that Chrysler appears to believe that attribute-based CAFE standards for those model years will result in required CAFE levels for Chrysler similar to those originally estimated by NHTSA for MYs 2011–2015 based on the product plan information that Chrysler submitted to NHTSA in July 2008.

GM's plan states that GM ''is committed to meeting or exceeding all Federal fuel economy standards in the 2010–2015 model years'', and shows the CAFE levels that GM plans to achieve in those model years, assuming ''full usage of all credit flexibilities under the CAFE program.'' [94] However, GM's plan does not show the CAFE levels expected to be required of GM under new attribute-based CAFE standards, and it is unclear from GM's plan how specific changes (since July 2008) in the company's plans relate to its planned CAFE levels. For example, while GM's restructuring plan refers to plans to increase hybrid vehicle offerings, the plan does not include production forecasts needed to understand how those offerings affect GM's planned CAFE levels.

Considering the context for and generality of the Chrysler and GM restructuring plans, and the lack of such plans from other manufacturers, and notwithstanding the considerable uncertainties currently surrounding the future market for light vehicles, NHTSA believes that its market forecast for MY 2011, as informed by product plans submitted to the agency in mid-2008, remains the most useful available point of reference for the establishment of MY 2011 standards, and the evaluation of the costs and benefits of these new standards.

(b) What product plan data did NHTSA use in the NPRM?

For the NPRM, NHTSA received product plan information from Chrysler, Ford, GM, Honda, Nissan, Mitsubishi, Porsche and Toyota covering multiple model years. The agency did not receive any product plan information from BMW, Ferrari, Hyundai, Mercedes (Daimler) or VW. However, only Chrysler and Mitsubishi provided us with product plans that showed differing production quantities, vehicle introductions, vehicle redesign/refresh changes, without any carryover production quantities through MY 2015. For the other companies that provided data, the agency carried over production quantities for their vehicles, allowing for growth, starting with the year after their product plan data showed changes in production quantities or showed the introduction or redesign/refresh of vehicles.

Product plan information was provided through MY 2013 by Ford and Toyota, thus the first year that the agency carried over production quantities for those companies was MY 2014. Product plan information was provided through MY 2012 for GM and Nissan, thus the first year that the agency carried over production quantities for those companies was MY 2013. Product plan information was

[92] Available on the Internet at *http://financialservices.house.gov/autostabilization.html* (last accessed February 15, 2009).

[93] Chrysler's submission to the Treasury Department, p. 117. *Available at http://www.treasury.gov/initiatives/eesa/agreements/auto-reports/ChryslerRestructuringPlan.pdf,* (last accessed Feb. 19, 2009).

[94] GM's submission to the Treasury Department, p. 21. *Available at, http://www.treasury.gov/initiatives/eesa/agreements/auto-reports/GMRestructuringPlan.pdf* (last accessed Feb. 19, 2009).

provided by Honda through MY 2008. Honda asked the agency to carry over those plans and also provided data for the last redesign of a vehicle and asked the agency to carry them forward. Product plan information was provided through MY 2008 for Porsche, thus the first year that the agency carried over production quantities for Porsche was MY 2009.

Because Hyundai was one of the seven largest vehicle manufacturers, and thus factored explicitly into the optimization process, and NHTSA desired to conduct this process using the best and most complete forecast of the future vehicle market, NHTSA used Hyundai's mid-year 2007 data contained in the agency's CAFE database to establish the baseline models and production quantities for their vehicles.[95] For the other manufacturers that did not submit product plans, NHTSA used the 2005 information from the database, the latest complete data set that NHTSA had available for use.

As mentioned above, NHTSA received comments that the product plans it relied upon in the NPRM were out of date and not reflective of recent announcements from manufacturers regarding new products. CFA referred to NHTSA's discussion in the NPRM of the relative completion of various manufacturers' product plans to argue that the product plans were incomplete and inaccurate. Public Citizen argued that the product plans were out of date. The Attorneys General and NRDC argued that NHTSA should update the product plans, the baseline, and the technology inputs to the Volpe model in light of recent manufacturer statements about their intent to introduce advanced technologies, such as plug-in hybrid vehicles, in the near future.

In response, as noted above, NHTSA published a request for comments seeking updated information from manufacturers regarding their future product plans in a companion notice to the NPRM. In examining the updated product plans received in response to the request for information, and as discussed more fully below, NHTSA has determined that the product plans for MY 2011 provided incorporate these announcements and reflect changes to planned product introduction by manufacturers in response to the recent market shift towards more fuel-efficient vehicles, particularly the shift towards increased production of smaller cars.

(c) What product plan data did NHTSA receive for the final rule?

For the final rule, NHTSA received product plan information from Chrysler, Ford (Ford's product plans included separate plans for Jaguar and Land Rover vehicles, both of which are now owned by Tata Motors and are thus attributed to that company in the final rule), GM, Honda, Hyundai, Mitsubishi, Nissan, Porsche, Subaru, and Toyota, covering multiple model years. The agency did not receive product plan information from BMW, Daimler (Mercedes), Ferrari, Suzuki or VW. Chrysler, Ford, Hyundai and Mitsubishi provided us with product plans that showed changes in production quantities, vehicle introductions, and vehicle redesigns/refreshes changes, without any carryover production quantities through MY 2015. For the other companies that provided data, the agency was careful to carry over production quantities for their vehicles, allowing for growth, starting with the year after their product plan data showed changes in production quantities or showed the introduction or redesign/refresh of vehicles.

Further, NHTSA used the pre-model year 2008 CAFE reports as the basis for the future MY 2011 product plans and filled in gaps in the data (e.g., engine specifications, wheelbase, track width, etc.) for those manufacturers with information gathered from the Web sites of the individual manufacturers and from general automotive Web sites such as Edmunds.com, Cars.com, and Wards.com.

(d) How is the product plan data received for the final rule different from what the agency used in the NPRM analysis, and how does it impact the baseline?

Informed by the overall fleet size and market share estimates applied by the agency (and discussed below), manufacturers' plans changed considerably between 2007 and 2008. NHTSA's forecast, based on the Energy Information Administration's (EIA's) Annual Energy Outlook (AEO) 2008, of the total number of light vehicles likely to be sold during MY 2011 through MY 2015 dropped from 85 to 83 million vehicles—about 16.5 million vehicles annually.[96] Also, due in part to the reclassification of roughly 1.4 million 2WD SUVs, the share of MY 2011 vehicles expected to be classified as light trucks fell from 49 percent in NHTSA's 2007 market forecast to 42 percent in the agency's current forecast.

The latter of the above changes is reflected in the baseline distribution of vehicle models with respect to fuel economy and footprint. Figures III–1 and III–2 show passenger car and light truck 2011 models, respectively, in the 2007 plans. Figures III–3 and III–4 show passenger car and light truck models, respectively, in the 2008 plans. A comparison of Figures III–1 and III–3 shows that the number of passenger cars models with footprints between roughly 41 and 52 square feet has increased considerably, and that the number of passenger car models with relatively high fuel economy levels (e.g., above 35 mpg) has increased. Conversely, a comparison of Figures III–2 and III–3 shows less pronounced differences between the 2007 and 2008 plans, although the number of small light truck models decreased (due to reclassification).

[95] Manufacturers must submit pre- and mid-model year CAFE reports to the agency as part of the CAFE compliance process under 49 CFR part 537.

[96] NHTSA recognizes that domestic vehicle sales are currently well below this rate. However, as discussed below, the agency considers this an aspect (like gasoline prices near $2 per gallon) of the current economy, and not an indicator of the longer-term prospect for light vehicle sales in the U.S. Just as the agency currently expects fuel prices to return to high levels, it expects vehicle sales to rise well above today's rate.

Figure III-1. Planned Fuel Economy vs. Footprint, Passenger Cars in 2007 Plans

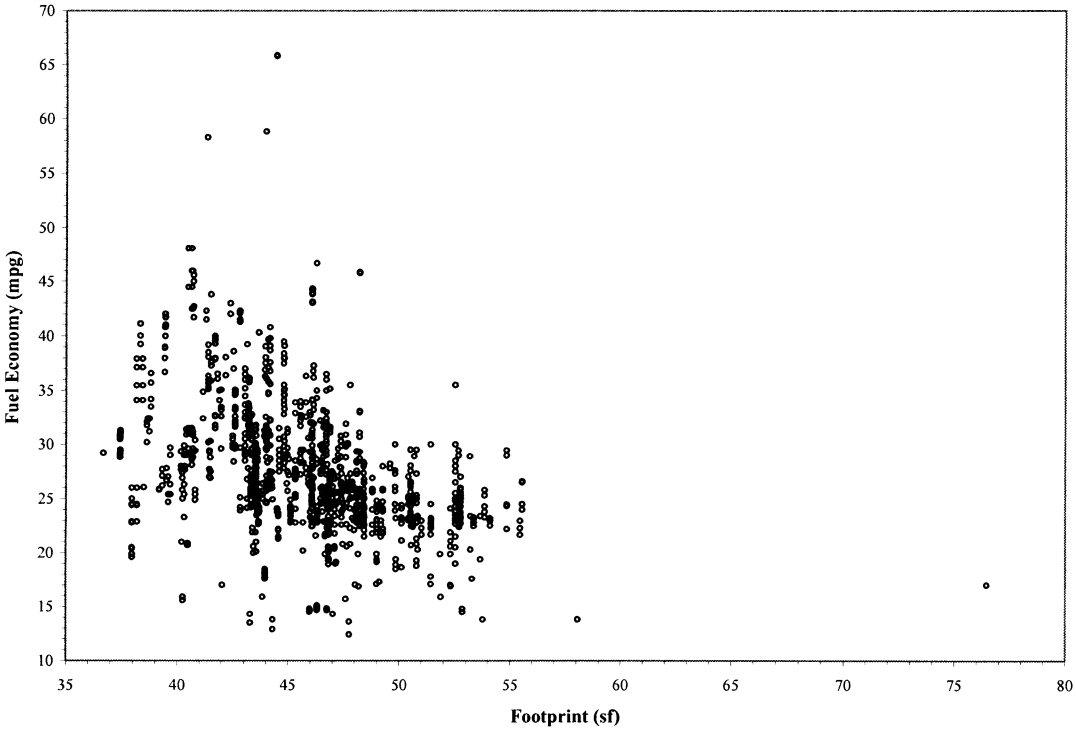


Figure III-2. Planned Fuel Economy vs. Footprint, Light Trucks in 2007 Plans

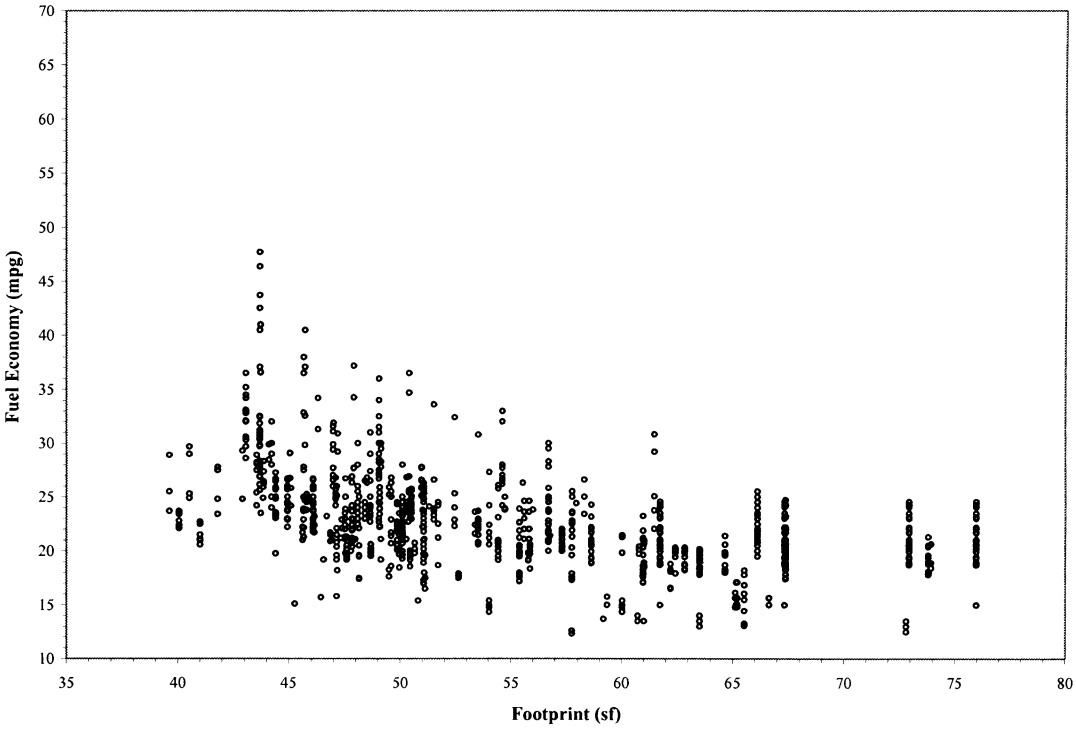


Figure III-3. Planned Fuel Economy vs. Footprint, Passenger Cars in 2008 Plans

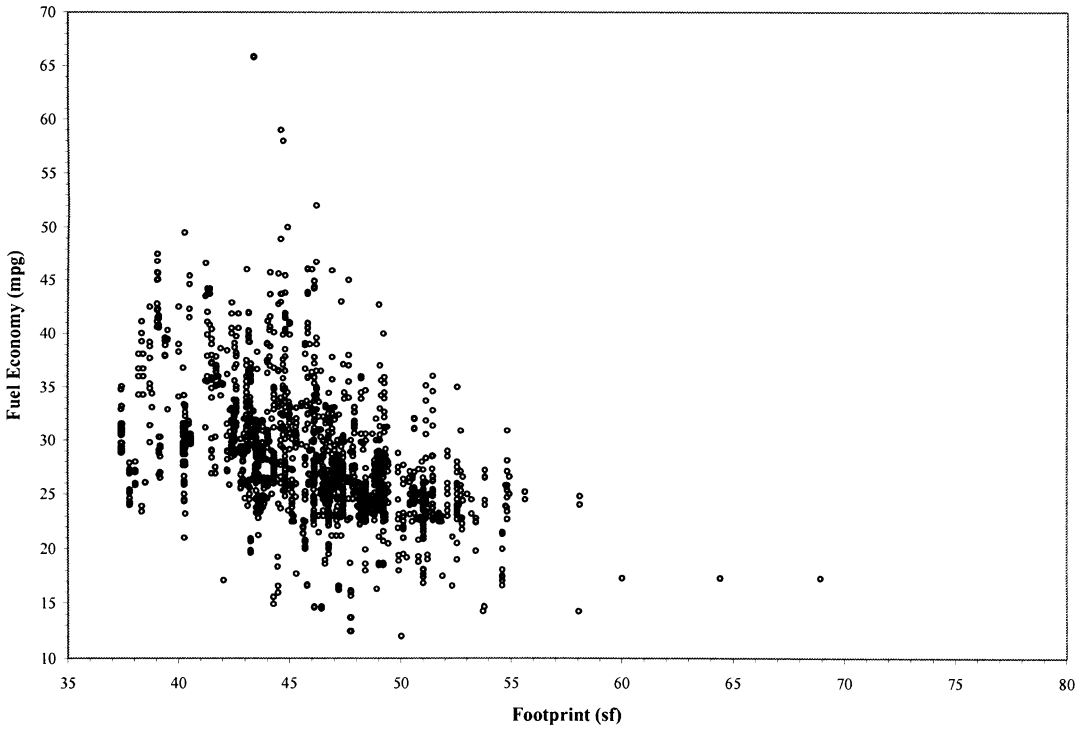
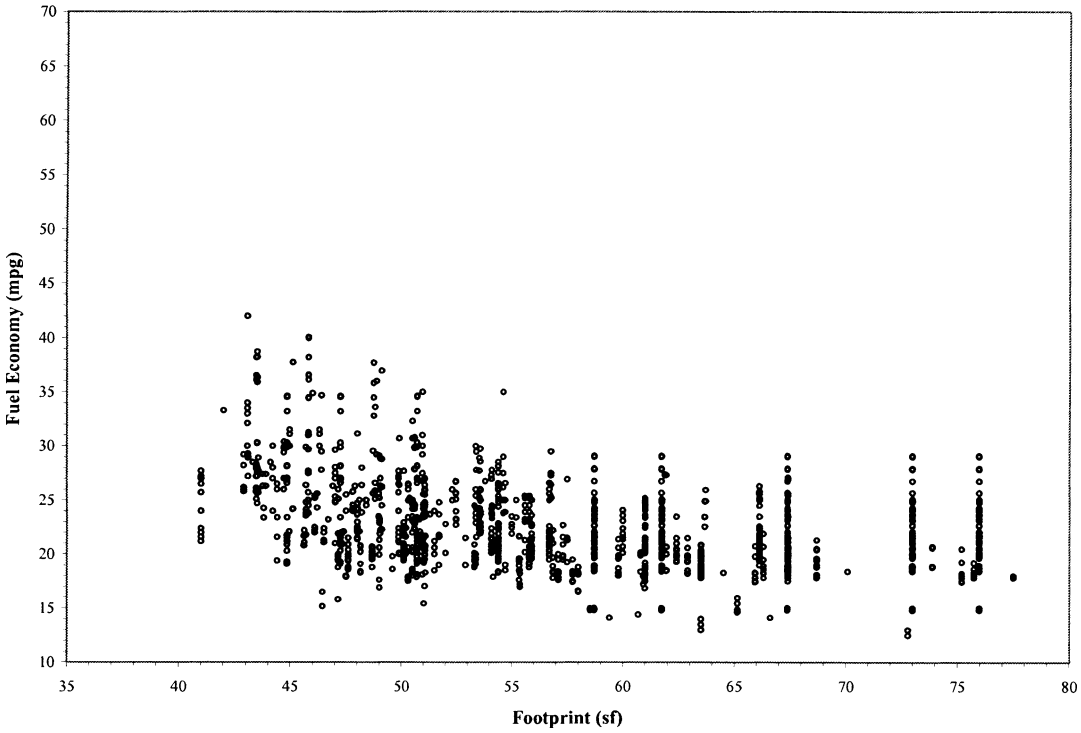


Figure III-4. Planned Fuel Economy vs. Footprint, Light Trucks in 2008 Plans



NHTSA's expectations regarding manufacturers' market shares (the basis for which is discussed below) have also changed since 2007. These changes are reflected below in Table III–1, which shows the agency's 2007 and 2008 sales forecasts for passenger cars and light trucks.[97]

Table III-1. 2007-2008 Sales Forecasts (Production for U.S. Sale in MY 2011, Thousand Units)

	2007 Forecast		2008 Forecast	
Manufacturer	Passenger	Nonpassenger	Passenger	Nonpassenger
Chrysler	587	1,659	707	1,216
Ford	1,299	1,564	1,615	1,144
General Motors	1,825	2,037	1,700	1,844
Honda	924	731	1,250	470
Hyundai	533	263	655	221
Nissan	707	469	789	479
Toyota	1,360	1,183	1,405	1,094
Other Asian	327	193	441	191
European	975	164	724	190
Total	8,537	8,264	9,287	6,850

Additionally, for some advanced technologies, the updated product plans submitted by manufacturers for the final rule include higher quantities in MY 2011 and beyond than the older product plans used for the NPRM had indicated. These changes are consistent with most manufacturers' indications that their product planning was informed by expectations that fuel prices considerably higher than those in EIA's AEO 2008 reference case forecast would prevail during the first half of the next decade. Most recently, the restructuring plans submitted by General Motors and Chrysler offer additional information on changes to product plans, albeit at an aggregate level, that are deemed necessary to achieve ''operational and functional viability.''

Manufacturers' most recently submitted detailed plans (i.e., those submitted to NHTSA in July 2008) show significant application of the following engine technologies in MY 2011 (percent of the entire fleet having that technology is shown in the parentheses): Intake cam phasing (34 percent), dual cam phasing (35 percent), stoichiometric gasoline direction injection (11 percent), and turbocharging and engine downsizing (6 percent). Regarding transmission technologies, manufacturers' plans show significant application of the following technologies by MY 2011: 6-, 7-, or 8-speed automatic transmissions (27 percent), and strong hybrids (4 percent). Manufacturers' plans also show significant application of electric power steering (3 percent) and integrated starter/generators (34 percent) by MY 2011.

Though not applicable to today's rulemaking, and while updated product plans may reflect different rates of technology application, manufacturers' July 2008 plans also indicated expectations that the use of some of these and other technologies would continue to increase after MY 2011. For example, manufacturers' product plans indicated at the time that use of stoichiometric gasoline direction injection would increase from 11 percent of the fleet in MY 2011 to 15 percent of the fleet in MY 2015, and that use of turbocharging and engine downsizing would increase from 6 percent of the fleet in MY 2011 to 13 percent of the fleet in MY 2015. These plans further indicated that use of dual cam phasing, combustion restart, and integrated starter/generators would increase to 49 percent, 10 percent, and 49 percent, respectively, by MY 2015.

The restructuring plans Chrysler and GM submitted to the Department of the Treasury in February 2009 both indicate intentions to increase the rate of technology adoption and alter the mix towards higher numbers of flexible fuel, alternative fuel and electric vehicles. Chrysler's restructuring plan shows plans to introduce three new electric or hybrid-electric vehicle models in MYs 2010–2011, and an additional seven such models during MYs 2012–2015.[98] As mentioned above, Chrysler's restructuring plan is clearly informed by and responsive to NHTSA's 2008 draft final standards for MYs 2011–2015. Though less clear in terms of specific requirements to the company, GM's restructuring plan also appears to be responsive to those MYs 2011–2015 standards. GM's restructuring plan indicates that in MY 2012, the company plans greater deployment of 2-step variable valve timing, new 4-cylinder gasoline engines, dry dual clutch transmissions, ''Gen 2'' strong hybrids, extended range electric vehicles, and possibly compressed natural gas.[99] The plan further indicates that in MY 2015, GM expects to introduce ''Gen 3'' hybrids, lean-burn homogeneous charge compression ignition (HCCI) gasoline engines, and fuel cell vehicles.

Manufacturers' July 2008 product plans also show increasing numbers of mid-size ladder-frame SUVs being planned for redesign as unibody SUVs/crossover vehicles. Additionally, some ladder-frame SUVs and mid-size pickup

[97] As explained below, although NHTSA normalized each manufacturer's overall market share to produce a realistically-sized fleet, the product mix for each manufacturer that submitted product plans was preserved. The agency has reviewed manufacturers' product plans in detail, and understands that manufacturers do not sell the same mix of vehicles in every model year.

[98] Chrysler, p. 135.

[99] GM, p. 21.

trucks are planned to be discontinued altogether and replaced with totally new products that have unibody construction. Some of the trend for mid-size SUVs being replaced by unibody vehicles is already visible in the marketplace and reflected in NHTSA's forecast of the MY 2011 light vehicle market.

Concerning engine trends, the manufacturers' plans show a significant amount of engine downsizing. This downsizing is of two major types: first, replacing existing engines with smaller displacement engines while keeping the same number of cylinders per engine; second, replacing existing engines with engines having a smaller number of cylinders (e.g., 6-cylinder engines instead of 8-cylinder engines and 4-cylinder engines instead of 6-cylinder engines). The plans indicate that for many of the engines being downsized, the replacement engines have some form of advanced valve actuation (e.g., variable valve lift) combined with other technologies, such as engine friction reduction or direct injection. When such changes occur the replacement engines appear to provide higher fuel economy, with maximum power and torque similar to the engines they are replacing. It is not clear from manufacturers' product plans whether and, if so, how vehicle prices and other performance measures (e.g., launch, gradeability) will be affected.

When engines are planned to be replaced with fewer-cylinder engines (e.g., smaller V6 engines instead of large V8 engines), the plans show some of these engines having some form of advanced valve actuation, combined with direct injection and turbocharging. Some of these engines also have combustion restart. These engines also provide maximum power and torque similar to the engines they are replacing while delivering higher fuel economy, although impacts on price and performance measures are also uncertain.

For some selected technologies, Table III–2 compares MY 2011 penetration rates in manufacturers' product plans from the 2007 plans to those from the 2008 plans. This comparison reveals both increases and decreases in planned technology application for MY 2011, including a doubling in the planned production of hybrid electric vehicles (here, including only ''strong'' hybrids such as power-split hybrids and plug-in hybrids). Because this comparison is limited to MY 2011, it does not evidence manufacturers' plans—discussed above—to redesign many vehicles in MY 2012 (and later years) and, in doing so, to increase further the use of some fuel-saving technologies. This also holds true for the GM and Chrysler restructuring plans, which describe limits to attaining anticipated MY 2011 targets, in particular for GM trucks in that year, but at the same time differ markedly in terms of the estimates of the total number of vehicles sold. Information on the impact of penetration rates is of course conditioned on sales volumes, which vary for MY 2011 from 11.1 million for Chrysler to 14.3 million for GM. While information regarding these later technology improvements was provided to NHTSA, it did not form the basis for the establishment of the MY 2011 CAFE standards.

Table III-2. Average MY 2011 Penetration Rates in Product Plans

	2007	2008
Variable Valve Timing	79%	82%
6-, 7-, or 8-Speed Transmissions	36%	27%
Stoich. Gasoline Direct Injection	11%	11%
Turbocharging & Downsizing	8%	6%
Diesel Engine	2%	1%
Hybrid Electric Vehicles	2%	4%

Manufacturers have also, in 2008, indicated plans to sell more dual-fuel or flexible-fuel vehicles (FFVs) than indicated in the plans they submitted to NHTSA in 2007. FFVs create a potential market for alternatives to petroleum-based gasoline and diesel fuel. For purposes of determining compliance with CAFE standards, the fuel economy of a FFV is, subject to limitations, adjusted upward to account for this potential.[100] However, NHTSA is precluded from ''taking credit'' for the compliance flexibility by accounting for manufacturers' ability to earn and use credits in determining what standards would be ''maximum feasible.''[101] Some manufacturers plan to produce a considerably greater share of FFVs than can earn full credit under EPCA. The projected average FFV share of the market in MY 2011 is 14 percent for the NPRM and 17 percent for the final rule.

Consistent with these expected trends toward wider application of fuel-saving technologies, the product plan data indicates that almost all manufacturers expect to produce a more efficient fleet than they had planned to produce in 2007. However, because manufacturers' product plans also reflect simultaneous changes in fleet mix and other vehicle characteristics, the relationship between increased technology utilization and

[100] *See* 49 U.S.C. 32905 and 32906.

[101] 49 U.S.C. 32902(h).

increased fuel economy cannot be isolated with any certainty. To do so would require an apples-to-apples ''counterfactual'' fleet of vehicles that are, except for technology and fuel economy, identical—for example, in terms of fleet mix and vehicle performance and utility. As a result, NHTSA's baseline market forecast shows industry-wide average fuel economy levels somewhat higher than shown in the NPRM. Average fuel economy for MY 2011 is 26.0 mpg in the NPRM baseline forecast, and 26.5 mpg in the final rule.

These changes are shown in greater detail below in Table III–3a, which shows manufacturer-specific CAFE levels (not counting CAFE credits that some manufacturers expect to earn by producing flexible fuel vehicles) planned in 2007 for passenger cars and light trucks. Table III–3b shows the combined averages of these planned CAFE levels. Tables III–4a and III–4b show corresponding information from manufacturers' 2008 plans. These tables demonstrate that, with very few exceptions, manufacturers are planning to increase overall average fuel economy beyond the levels shown in the plans they submitted in 2007. In addition, according to the restructuring plans submitted to the Treasury Department, GM states that it will reach average fleet fuel economy of 32.5 mpg for passenger vehicles and 23.6 mpg for trucks in MY 2011, compared to the 30.3 and 21.4 reported in Table III–4a, below.[102] Also, Chrysler's restructuring plan states that the company plans to accelerate its utilization of more fuel-efficient power trains, for example, to improve fuel efficiency on a remixed product line. In addition, Chrysler plans, according to the restructuring, to offer flexible fuel capability in half of its light trucks by 2012.

Table III-3a. 2007 Planned MY 2011 CAFE Levels (Passenger and Nonpassenger)

Manufacturer	Passenger	Nonpassenger
BMW	26.9	21.3
Chrsler	28.2	23.5
Ferrari	14.6	
Ford	28.2	23.6
Fuji (Subaru)	27.1	27.1
General Motors	28.2	21.6
Honda	34.8	25.0
Hyundai	32.7	24.5
Lotus	29.2	
Maserati	15.9	
Mercedes	25.1	18.7
Mitsubishi	29.8	24.9
Nissan	30.6	20.9
Porsche	24.5	17.3
Suzuki	29.6	22.8
Toyota	34.3	23.3
Volkswagen	28.8	20.1
Total/Average	30.0	22.9

[102] Unlike the values shown in Table III–4a, the average fuel economy levels shown in GM's restructuring plan reflect ''full usage of all credit flexibilities under the CAFE program.'' It is not clear how much of the difference between Table III–4a and GM's February 2009 estimates is accounted for by such flexibilities.

Table III-3b. 2007 Planned MY 2011 CAFE Levels (Combined)

Manufacturer	MY2011
BMW	25.8
Chrsler	24.6
Ferrari	14.6
Ford	25.5
Fuji (Subaru)	27.1
General Motors	24.3
Honda	29.6
Hyundai	29.4
Lotus	29.2
Maserati	15.9
Mercedes	23.0
Mitsubishi	28.5
Nissan	25.8
Porsche	22.6
Suzuki	26.5
Toyota	28.1
Volkswagen	28.4
Total/Average	26.0

Table III-4a. 2008 Planned MY 2011 CAFE Levels (Passenger and Nonpassenger)

Manufacturer	Passenger	Nonpassenger
BMW	27.0	23.0
Chrysler	28.2	23.1
Daimler	25.2	20.6
Ferrari	16.2	
Ford	29.3	22.5
General Motors	30.3	21.4
Honda	32.3	25.2
Hyundai	31.7	26.0
Maserati	18.2	
Mitsubishi	29.3	26.7
Nissan	31.3	21.4
Porsche	27.2	20.0
Subaru	28.6	28.6
Suzuki	28.7	24.0
Tata	24.7	23.9
Toyota	33.2	22.7
Volkswagen	28.5	20.1
Total/Average	30.4	22.6

Table III-4b. 2008 Planned MY 2011 CAFE Levels (Combined)

Manufacturer	MY2011
BMW	26.0
Chrysler	24.7
Daimler	23.6
Ferrari	16.2
Ford	26.0
General Motors	24.9
Honda	30.0
Hyundai	30.0
Maserati	18.2
Mitsubishi	29.1
Nissan	26.6
Porsche	22.0
Subaru	28.6
Suzuki	27.8
Tata	24.4
Toyota	27.6
Volkswagen	27.1
Total/Average	26.5

Tables III–5 through III–7 summarize other changes in manufacturers' product plans between those submitted to NHTSA in 2007 (for the NPRM) and 2008 (for the final rule). These tables present average vehicle footprint, curb weight, and power-to-weight ratios for each of the seven largest manufacturers, and for the overall industry. The tables do not identify manufacturers by name, and do not present them in the same sequence.

Table III–5 shows that manufacturers' latest plans reflect a very slight (less than 0.1 square feet) increase in overall average passenger vehicle size, and suggests that manufacturers currently plan to sell larger trucks than they reported previously. However, these planned increases are, in the aggregate, attributable to the reassignment of vehicles from the light truck to the passenger car fleet. The average planned footprint among all planned passenger cars and light trucks remained unchanged.

Table III-5. Average Planned MY 2011 Vehicle Footprint (Square Feet)

	NPRM			Final		
	PC	LT	Ave.	PC	LT	Ave.
Manufacturer 1	46.8	56.6	51.9	46.7	58.5	52.8
Manufacturer 2	43.7	47.8	45.1	46.0	50.4	47.1
Manufacturer 3	46.6	54.8	50.4	44.9	52.8	48.4
Manufacturer 4	45.5	53.9	48.8	45.4	55.8	49.3
Manufacturer 5	45.7	55.6	51.1	45.2	57.5	50.3
Manufacturer 6	48.5	53.0	51.8	48.5	54.7	52.4
Manufacturer 7	44.7	50.1	47.1	45.1	49.9	46.4
Industry Average	45.6	53.9	49.7	45.6	55.1	49.7

Table III–6 shows that manufacturers' latest plans reflect a small increase in overall average vehicle weight. However, for both the passenger car and light truck fleets, the reassignment of some light trucks to the passenger car fleet caused the average curb weight for both fleets to increase, even though doing so did not (and, of course, could not) change the overall average curb weight. Without these reassignments, the average curb weights of the passenger car and light truck fleets would have dropped by about 5 and 35 pounds, respectively.[103]

[103] Notwithstanding the reassignment of some vehicles to the passenger car fleet, manufacturers' July 2008 product plans also indicated shifts in the mix of passenger cars and light trucks, such that overall average curb weight increased despite these small decreases in average passenger car and average light truck curb weight.

Table III-6. Average Planned MY 2011 Vehicle Curb Weight (Pounds)

	NPRM			Final		
	PC	LT	Ave.	PC	LT	Ave.
Manufacturer 1	3,116	4,235	3,636	3,197	4,329	3,692
Manufacturer 2	3,602	4,581	4,325	3,691	4,754	4,363
Manufacturer 3	3,071	4,025	3,387	3,293	4,038	3,481
Manufacturer 4	3,124	4,209	3,603	3,254	4,191	3,510
Manufacturer 5	3,479	5,065	4,315	3,547	5,188	4,401
Manufacturer 6	3,268	4,450	3,739	3,314	4,641	3,815
Manufacturer 7	3,349	4,560	4,010	3,345	4,599	3,865
Industry Average	3,309	4,564	3,926	3,380	4,687	3,935

Table III–7 shows that manufacturers' latest plans reflect a small increase (about 1.7 percent) in overall average performance, and suggests that increases will mostly occur in the light truck fleet. Considering that this 3.5 percent increase in light truck performance is accompanied by a 2.7 percent increase in light truck curb weight, this suggests that (1) the vehicles being reassigned to the passenger car fleet are among the less powerful (per pound) of the vehicles previously assigned to the light truck fleet and (2) manufacturers are planning to install somewhat more powerful engines in many light trucks than previously reported to NHTSA. This trend is detectable by analysis of the detailed product plans, and is appears to be corroborated by the reported change in intended product mix that GM and Chrysler state in their restructuring plans.

Table III-7. Average Planned MY 2011 Vehicle Power-to-Weight Ratio (hp/lb)

	NPRM			Final		
	PC	LT	Ave.	PC	LT	Ave.
Manufacturer 1	0.061	0.057	0.058	0.065	0.058	0.060
Manufacturer 2	0.055	0.052	0.054	0.061	0.065	0.062
Manufacturer 3	0.052	0.056	0.054	0.053	0.059	0.056
Manufacturer 4	0.066	0.058	0.062	0.060	0.058	0.059
Manufacturer 5	0.062	0.056	0.060	0.060	0.057	0.059
Manufacturer 6	0.067	0.061	0.064	0.063	0.062	0.063
Manufacturer 7	0.052	0.053	0.052	0.053	0.055	0.053
Industry Average	0.060	0.057	0.059	0.060	0.059	0.060

These overall trends mask the fact that manufacturers' plans did not all change in the same ways. In terms of planned average footprint, changes in manufacturers' plans ranged from a 4 percent decrease to a 5 percent increase. In terms of planned average curb weight and power-to-weight ratio, these ranges covered -4 percent to 3 percent and -5 percent to 15 percent, respectively.

NHTSA recognizes that some manufacturers' plans to increase vehicle performance reflect an intention to apply some fuel-saving technologies in ways that do not hold performance and utility constant, and therefore do not achieve the same fuel economy increases that NHTSA would assume when estimating the effect of adding these technologies for the sole purpose of complying with CAFE standards. This continues what has long been standard practice in the industry. Vehicle performance, amenities, and utility have been generally increasing for more than a century, in response to consumer demand. Manufacturers have applied innumerable technological advances during that time, and although they have achieved significant fuel economy gains, they have not applied these technological advances for the sole purpose of increasing fuel economy. When applying a given technology to a given vehicle, a manufacturer does so in a way that balances multiple vehicle characteristics, including fuel economy. For example, while a manufacturer might make both a gasoline and diesel version of a given sedan, the diesel version might offer more weight-increasing amenities (e.g., luxury seating) and significantly better performance (e.g., torque). In this case, the diesel version would have greater value to the consumer, and would thus command a higher price.

The Union of Concerned Scientists (UCS) and some other commenters suggested that manufacturers' product plans, and NHTSA's use of these plans, may have at least the appearance of wrongdoing.[104] Such comments cite a ''lack of transparency'' ultimately traceable to the fact that the submitted product plans contain confidential business information, which the agency is prohibited by federal law from disclosing, as discussed above. However, NHTSA believes these perceptions may also arise because UCS and others realize that manufacturers often use technology to increase performance (and other vehicle characteristics), not just to increase fuel economy, and thus may assign a fuel economy ''effectiveness'' to a technology in their product plans that is lower than if the technology was used solely to increase fuel economy. If so, NHTSA rejects the notion that for manufacturers to do so constitutes any

[104] *See, e.g.*, UCS, p. 14.

form of ''wrongdoing.'' Manufacturers compete in a marketplace that reflects the values that consumers place on vehicle amenities, performance, and utility, as well as fuel economy.

When NHTSA estimates the cost and effect of adding technologies in response to CAFE standards, the agency is treating these technologies as being applied *solely* for that purpose; therefore, the agency's analysis reflects an attempt to hold amenities, performance, and utility constant. Thus, NHTSA's analysis estimates means by which manufacturers *could* comply with CAFE standards. Manufacturers, however, determine how they actually *will* comply. As an example, if a manufacturer plans to apply technologies in ways that increase vehicle performance in addition to increasing fuel economy, NHTSA would have to find a way of accounting for the value that those performance increases represent. While the manufacturers seeking federal funds have reported plans to alter their product mix in favor of smaller, more fuel-efficient vehicles, it is too soon to tell to what extent consumers will adapt to such a product mix for MY 2011 (which may, to a large extent, depend on fuel prices), or whether the rest of the industry will follow or instead decide to serve the market for larger performance vehicles left behind by GM and Chrysler.

Expected model years in which each vehicle model will be redesigned or freshened constitute another important aspect of NHTSA's market forecast. As discussed in Section IV, NHTSA's analysis supporting today's rulemaking times the addition of most technologies to coincide with either a vehicle redesign or a vehicle freshening. Product plans submitted to NHTSA preceding both the NPRM and the final rule contained manufacturers' estimates of vehicle redesign and freshening schedules. However, as discussed in Section IV, NHTSA estimated that in the future, most vehicles would be redesigned on a five-year schedule, with vehicle freshening (i.e., refresh) occurring every two to three years after a redesign. After applying these estimates, the shares of manufacturers' passenger car and light truck estimated to be redesigned in MY 2011 were as summarized below for the seven largest manufacturers. Table III–8 shows the percentages of each manufacturer's fleets expected to be redesigned in MY 2011 from the market forecast used by NHTSA in the analysis documented in the NPRM. To protect confidential information, manufacturers are not identified by name. Table III–9 presents corresponding estimates from the analysis supporting today's final rule. To further protect confidential information, the numbering of individual manufacturers is different from that shown in Table III–8.

Table III-8. Share of Fleet Redesigned in MY 2011 (NPRM)

	PC	LT	Ave.
Company 1	62%	14%	46%
Company 2	20%	19%	19%
Company 3	9%	9%	9%
Company 4	10%	19%	15%
Company 5	11%	23%	16%
Company 6	22%	14%	18%
Company 7	38%	0%	21%
Overall	19%	14%	17%

Table III-9. Share of Fleet Redesigned in MY 2011 (Final)

	PC	LT	Ave.
Company 1	19%	0%	11%
Company 2	34%	27%	29%
Company 3	5%	0%	3%
Company 4	7%	0%	5%
Company 5	19%	0%	11%
Company 6	34%	28%	33%
Company 7	27%	28%	28%
Overall	20%	9%	15%

We continue, therefore, to estimate that manufacturers' redesigns will not be uniformly distributed across model years. This is in keeping with standard industry practices, and reflects what manufacturers actually do–NHTSA has observed that manufacturers in fact do redesign more vehicles in some years than in others. NHTSA staff have closely examined manufacturers' planned redesign schedules, contacting some manufacturers for clarification of some plans, and confirmed that these plans remain unevenly distributed over time. For example, although Table 9 shows that NHTSA expects Company 2 to redesign 34 percent of its passenger car models in MY 2011, current information indicates that this company will then redesign only (a different) 10 percent of its passenger cars in MY 2012. Similarly, although Table 9 shows that NHTSA expects four of the largest seven light truck manufacturers to redesign virtually no light truck models in MY 2011, current information also indicates that these four manufacturers will redesign 21–49 percent of their light trucks in MY 2012. GM and Chrysler's recent restructuring plans lend support to these observations. Chrysler described its planned entries of new vehicles (its ''launch cadence'') in

its plan, and there is clear phasing, with MY 2011 experiencing many new introductions and some later years having none.[105]

NHTSA understands that a manufacturer may choose to time the application of technologies to coincide with planned redesigns, and elect in one model year to apply more technology than needed to meet its required CAFE level in that year. However, NHTSA has decided not to attempt to represent this type of manufacturer response to the MY 2011 CAFE standards because it is not relevant for the current rulemaking.[106] NHTSA will consider this issue further in future rulemaking analyses.

2. Once NHTSA has the product plans, how does it develop the baseline?

In all cases, manufacturers' sales volumes were normalized to produce passenger car and light truck fleets which reflected each manufacturers' MY 2008 market shares within the aggregate vehicle sales volume forecast in EIA's 2008 Annual Energy Outlook. NHTSA does this in order to develop a market forecast that is realistic in terms of both its overall size as well as manufacturers' relative market shares. The product mix for each manufacturer that submitted product plans was preserved and, in the case of those than did not submit plans, the product mix used was the same as indicated in their pre-model year 2008 CAFE data. As was discussed earlier, the manufacturers themselves are uncertain about future aggregate sales volumes. Although the market is facing a downturn of unprecedented magnitude, NHTSA currently expects that pent-up demand (driven, for example, by the continued use and eventual scrappage of existing vehicles) and an eventual economic recovery will, over time, bring sales back to more historic levels.

CBD commented that this method of establishing the baseline fleet ''has illegally constrained [NHTSA's] analysis by locking [NHTSA] into the assumption that a manufacturer's fleet mix need not, and will not, change in response to'' increasing consumer demand for vehicles with improved fuel economy. Whether NHTSA should incorporate market shifts in its modeling has been a theme in comments for the past several CAFE rulemakings. Comments with regard to market shift tend to address two different issues. First, commenters request that NHTSA assume a higher fuel economy baseline than manufacturer product plans indicate, due to market shifts occurring because consumers demand higher fuel economy even without CAFE standards. The Mercatus Center, for example, raised this point in comments to the NPRM. Second, commenters suggest that NHTSA should incorporate the market shifts that result *due to* CAFE regulation, as manufacturers adjust vehicle prices and fuel economy levels, and consumers respond to those changes. The Alliance recommended that NHTSA use NERA's nested logit model, for example, since it attempts to account for ''actual consumer demand behavior'' to address this issue.

NHTSA agrees in principle that some kind of ''market shift'' model could provide useful information regarding the possible effects of potential new CAFE standards, and has researched how to integrate such a model into its stringency analysis. NHTSA recognizes that the product plans on which the agency relies to determine CAFE stringency represent a snapshot, and are subject to change in response to consumer demand, whether driven by CAFE or by extrinsic factors. Although NHTSA has now spent several years considering how to incorporate market shifts into its analysis of potential CAFE standards, the agency has still not been able to develop credible coefficients specifying such a model, and we have therefore continued to refrain in the final rule from integrating a market share model into the Volpe model.[107] However, manufacturer product plans for MY 2011 do already, at a minimum, reflect whatever market shifts the manufacturers believe will occur in the absence of regulations. Additionally, the agency conducts a separate analysis of potential changes in manufacturers' overall sales volumes. NHTSA will continue to consider ways in which to incorporate market shift modeling into its analysis for future rulemakings. Recent upheavals in the economy, including historically quick run-ups in gasoline prices followed by as dramatic declines, greatly affect consumer demand for vehicles. Econometric models such as nested logit are necessarily calibrated on historic data and thus, while offering a consistent method for describing the future, are constrained to reflect behavior based on past reactions to events. The release of the restructuring plans for GM and Chrysler are cases in point. They show considerable alterations in product plans, including reduction of planned sales volumes and nameplates, along with introduction of new models and accelerated adoption of technology, that appear to reflect a break with historical trends.

Thus, the baseline fleet for MY 2011, or the baseline market forecast, consists of the vehicles present in the normalized and completed product plans, before NHTSA applies technologies to them. Manufacturers typically provide product plans not only for the years covered by a CAFE rulemaking, but also for prior years—so, for purposes of this rulemaking, NHTSA has product plans from many manufacturers beginning with MY 2008. As discussed above, NHTSA uses the baseline market forecast as a way of gauging what manufacturer fuel economy levels would exist in the absence of new CAFE standards. In order to provide a point of reference for estimating the costs and benefits of new standards, NHTSA assumes that, without new standards, the fuel economy standards would remain at the level of the MY 2010 standards.[108] However, the baseline market forecast, which again, is based on the product plans, does not show all manufacturers in compliance with the MY 2010 standards. This results from manufacturers' ability to use compliance flexibilities, like credits (AMFA and otherwise) and fines, to meet the standards, which NHTSA is statutorily prohibited from considering in setting the standards.

In order to ensure that our analysis does not incorporate such flexibilities and thus result in double-counting of costs that were evaluated in the previous rulemaking, NHTSA must adjust the baseline market forecast upwards. For manufacturers whose

[105] Chrysler plan, p. 135.

[106] Additionally, although the agency will reconsider this issue in future rulemakings, at this time the agency is not confident that it has the statutory authority to base its determination of the maximum feasible CAFE standard in a given model year on manufacturers' ability to over-comply during prior model years in which more vehicles were redesigned.

[107] NHTSA is aware that Resources for the Future (RFF) has drafted a report regarding its examination of consumer behavior modeling. Although a market share model, as currently envisioned by NHTSA, would also need to address manufacturer behavior (in particular, regarding pricing), NHTSA will consider RFF's work in evaluating future changes to NHTSA's analytical methods. NHTSA has met with EPA and RFF staff to discuss the status of RFF's efforts, and will consider any results RFF is able to develop.

[108] As a point of reference for analysis, we note that assuming that CAFE standards remain at 2010 levels is different from assuming that manufacturer fuel economy levels remains at their 2010 levels. As a legal matter under EISA, after MY 2011, if NHTSA does not set standards for a model year, there are no standards for that model year. However, as a practical matter, it is reasonable to assume that manufacturers would proceed as if the previous year's standard carried over, rather than changing their vehicles and allowing fuel economy to fall without limit.

product plans show fuel economy levels below the MY 2010 standards, NHTSA adjusts them upwards by adding technology to the manufacturer's fleet in order to get the manufacturer into compliance without use of credits or payment of fines. For manufacturers whose product plans meet or exceed the MY 2010 standards, NHTSA incorporates them as-is. NHTSA develops an adjusted baseline because the costs and benefits of reaching the MY 2010 standards were already accounted for in prior rulemakings, just as the costs and benefits of reaching the MY 2011 standards are accounted for in the current rulemaking. To avoid double-counting the costs to manufacturers or the benefits to society required to meet the MY 2010 standards, NHTSA develops this adjusted baseline, which the agency then uses in analyzing the MY 2011 standards.

The Alliance commented that NHTSA should use an ''actual'' baseline instead of a ''projected'' baseline. The Alliance stated that ''NHTSA assumes that manufacturers were going to increase fuel economy significantly in numerous ways apart from a congressional or agency mandate to do so,'' and argued that ''by failing to consider the price increases needed to reach its 'projected baseline,' NHTSA underestimates the increase in vehicle prices by about $260 per vehicle for cars and $920 per vehicle for trucks on average.''

As explained, NHTSA would be double-counting to incorporate the costs of meeting the MY 2010 standards in the cost/benefit analysis for the current rulemaking. NHTSA discusses these costs, however, in the FRIA in Chapter I.

3. How does NHTSA's market forecast reflect current market conditions?

NHTSA's market forecast for MY 2011, which is based significantly on confidential product plans provided to the agency by vehicle manufacturers, reflects the agency's best judgment at the time it was developed. Manufacturers submitted plans during the summer of 2008. In preceding months, the industry had begun to show signs of stress, and the agency believes manufacturers' revised plans submitted after the NPRM were informed by this. NHTSA is well aware that market conditions have deteriorated since late summer, just as the agency is aware that gasoline prices have fallen considerably in recent months.

The agency notes, as mentioned above, that manufacturers' product plans were submitted along with manufacturers' indications that these plans were generally informed by expectations that relatively high fuel prices would prevail in the future. Although NHTSA did not request that manufacturers provide comprehensive and detailed forecasts of the world economy, including markets for credit and petroleum, the agency believes that manufacturers anticipated that, at least from MY 2011 forward, the economic environment would look much less dire than more recent events would suggest. The agency believes these expectations were consistent with those embodied in the high price scenario in EIA's AEO 2008, upon which the agency has based the fuel prices and total light vehicle market size used in the analysis supporting today's final rule.

NHTSA is cautiously hopeful that market conditions will rebound, and our market forecast remains consistent with that expectation. The recent restructuring plans submitted by Chrysler and GM, while diverging in absolute terms with respect to sales volumes, also anticipate significant sales growth by the middle part of the decade. In any event, were NHTSA to adopt more pessimistic expectations, those expectations would need to be reflected in other economic forecasts—in particular of petroleum prices. Were NHTSA to apply economic estimates that assume credit markets remain very constricted during MY 2011, it should, for internal consistency, apply considerably reduced estimates of the overall number of light vehicles sold in the U.S., and potentially lower estimates of gasoline and diesel fuel prices during the lifetimes of the vehicles covered by the standards.

NHTSA has concluded that the forecasts it has applied in its current rulemaking for MY 2011 reflect the best internally consistent information available. The agency will, of course, update these forecasts in future rulemakings, and will base its analysis in those rulemakings on information—public, commercially-available, or confidential—that it considers most indicative of the fleets that manufacturers are likely to produce in future model years

IV. Fuel Economy-Improving Technologies

As explained above, pursuant to the President's January 26, 2009 memorandum, this final rule establishes passenger car and light truck CAFE standards for one year, MY 2011. Although this final rule establishes standards for that year alone, the agency undertook a comprehensive analysis of fuel economy-improving technologies with a time horizon similar to the one considered in the 2002 National Academy of Sciences (NAS) CAFE report. Like NAS, the agency considered technologies that are readily available, well known and could be incorporated into vehicles once production decisions are made (these are referred to as ''production intent'' technologies). Other technologies considered, called ''emerging'', are beyond the research phase and under development, but are not widely used at this time. The agency did not consider technologies in the research stage because their costs and/or performance are not presently well known.

The agency has elected to include the full analysis in this final rule for several reasons. First, it supplements the analysis of fuel saving technology released by the 2002 NAS study. Second, it places in meaningful context the portion of the analysis that relates directly to MY 2011, showing which technologies are not available for that year and why. The agency typically evaluates technologies within a time context spanning more than a single model year, even if the rulemaking itself addresses only a single year as in the current rulemaking, because when manufacturers add technologies to vehicle models in order to meet CAFE standards, they tend to phase them in over several model years, consistent with vehicle redesign and refresh schedules, supplier contract procedures, the need for testing and validation of new technologies, and so forth. Consequently, although the final rule establishes standards for MY 2011 only, NHTSA believes that including the entire technology analysis will increase public understanding of the agency's estimates for MY 2011 of technology costs, effectiveness, and availability, as well as manufacturer vehicle freshening and redesign cycles.

With that in mind, the following section details the cost and effectiveness estimates completed for technologies in the production intent or emerging technology phase timeline. The estimates are drawn from an analysis conducted in the summer of 2008. It relied as much as possible on published studies and confidential product plan data submitted by manufacturers on July 1, 2008 in response to the agency's NPRM request for comments published May 2, 2008. The analysis was conducted by engineers from DOT and Ricardo, an international consulting firm that specializes in automotive engineering consulting (discussed below). The engineering team used all data available at that time, along with their expert opinion to derive cost and effectiveness estimates for technologies

either in production or in the emerging stage of production for purposes of this rulemaking.

The agency believes that the resulting estimates are the best available for MY 2011, given the information that existed at the time. NHTSA recognizes, however, that the analysis of and public debate over the cost and effectiveness of the various fuel saving technologies is an ongoing one. It recognizes too that aspects of its technology analysis will likely require updating or otherwise merit revision for the next CAFE rulemaking. As time progresses, new research occurs, new studies become available and product plan information changes. As with all CAFE rulemakings and pursuant to the President's memorandum, the agency will take a fresh look at all of its technology-related assumptions for the purpose of future rulemakings.

A. NHTSA Analyzes What Technologies Can Be Applied Beyond Those in the Manufacturers' Product Plans

One of the key statutory factors that NHTSA must consider in setting maximum feasible CAFE standards for each model year is the availability and feasibility of fuel saving technologies. When manufacturers submit their product plans to NHTSA, they identify the technologies they are planning for each vehicle model in each model year. They also provide their assessments of the costs and effectiveness of those fuel saving technologies. The agency uses the manufacturers' product plan data to ascertain the ''baseline'' capabilities and average fuel economy of each manufacturer. Given the agency's need to consider economic practicability in determining how quickly additional fuel saving technologies can be added to the manufacturers' vehicle planned fleets, the agency researches and develops, based on the best available information and data, its own list of technologies that it believes will be ready for implementation during the model years covered by the rulemaking. This includes developing estimates of the costs and effectiveness of each technology and lead time needs. The resultant technology assumptions form an input into the Volpe model. The model simulates how manufacturers can comply with a given CAFE level by adding technologies beyond those they planned in a systematic, efficient and reproducible manner. The following sections describe NHTSA's fuel-saving technology assumptions and methodology for estimating them, and their applicability to MY 2011 vehicles.

B. How NHTSA Decides Which Technologies to Include

1. How NHTSA Did This Historically, and How for the NPRM

In the agency's last two CAFE rulemakings, which established light truck CAFE standards for MYs 2005–2007 and MYs 2008–2011, NHTSA relied on the 2002 National Academy of Sciences' report, ''Effectiveness and Impact of Corporate Average Fuel Economy Standards'' [109] (''the 2002 NAS Report'') for estimating potential fuel economy effectiveness values and associated retail costs of applying combinations of technologies in 10 classes of production vehicles. The NAS study was commissioned by the agency, at the direction of Congress, in order to provide independent and peer reviewed estimates of cost and effectiveness numbers. The NAS list was determined by a panel of experts formed by the National Academy of Sciences, and was then peer-reviewed by individuals chosen for their diverse perspectives and technical expertise in accordance with procedures approved by the Report Review Committee of the National Research.

In the NPRM for the MY 2011–2015 CAFE standards, NHTSA explained that there has been substantial advancement in fuel-saving automotive technologies since the publication of the 2002 NAS Report. New technologies, i.e., ones that were not assessed in the NAS report, have appeared in the market place or are expected to appear in the timeframe of the proposed rulemaking. Also, new studies have been conducted and reports issued by several other organizations providing new or different information regarding the fuel economy technologies that will be available and their costs and effectiveness values. To aid the agency in assessing these developments, NHTSA contracted with the NAS to update the fuel economy section, Chapter 3, of the 2002 NAS Report. However, as NHTSA explained, the NAS update was not available in time for this rulemaking.

Accordingly, NHTSA worked with EPA staff to update the technology assumptions, and used the results as a basis for its NPRM. EPA staff published a related report and submitted it to the NAS committee.[110]

2. NHTSA's Contract with Ricardo for the Final Rule

NHTSA specifically sought comment on the estimates, which it had developed jointly with EPA, of the availability, applicability, cost, and effectiveness of fuel-saving technologies, and the order in which the technologies were applied. *See* 73 FR 24352, 24367. To aid the agency in analyzing those comments and increasing the accuracy, clarity and transparency of its technology assumptions and methodologies employed in developing them, it hired an international consulting firm, Ricardo, which specializes in automotive engineering consulting. Ricardo, which describes itself as an eco-innovation technology company, is a leading independent provider of technology, product innovation, engineering solutions, software and strategic consulting. Its skill base includes the state-of-the-art in low emissions and fuel-efficient powertrain and vehicle technology. Its customers include government agencies here and abroad and the world's automotive, transport and new-energy industries.[111] For example, it has provided technical consulting on low CO_2 strategies to the UK Department for Transport (DfT).[112] Additionally, in December 2007, Ricardo completed an important study for EPA titled ''A Study of Potential Effectiveness of Carbon Dioxide Reducing Vehicle Technologies.'' [113]

Ricardo's role was as a technical advisor to NHTSA staff. In this capacity, Ricardo helped NHTSA undertake a comprehensive review of the NPRM technology assumptions and all comments received on those assumptions, based on both old and new public and confidential manufacturer information. NHTSA and Ricardo staff reviewed and compared comments on the availability and applicability of technologies, and the logical progression between them. NHTSA also reviewed and compared the methodologies used for determining

[109] National Research Council, ''Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards,'' National Academy Press, Washington, DC (2002). *Available at http://www.nap.edu/openbook.php?isbn=0309076013* (last accessed October 11, 2008).

[110] EPA Staff Technical Report: Cost and Effectiveness Estimates of Technologies Used to Reduce Light-Duty Vehicle Carbon Dioxide Emissions, EPA 420–R–08–008, March 2008.

[111] More information about Ricardo's work is available at their Web site, *http://www.ricardo.com* (last accessed September 20, 2008). Its 2007 Annual Report provides a comprehensive view of some of its current work. *See http://www.ricardo.com/investors/download/annualreport2007.pdf* (last accessed September 22, 2008).

[112] Ricardo UK Ltd., ''Understanding manufacturers' responses to policy measures to incentivise fuel efficiency,'' Oct. 5, 2007. *Available at http://www.dft.gov.uk/consultations/closed/co2emissions/ricardoreport.pdf* (last accessed Oct. 4, 2008).

[113] A slightly updated (June 2008) version of Ricardo's study for EPA is available on EPA's Web site, at *http://www.epa.gov/otaq/technology/420r08004a.pdf* (last accessed September 20, 2008).

the costs and effectiveness of the technologies as well as the specific estimates provided. Relying on the technical expertise of Ricardo and taking into consideration all the information available, NHTSA revised its estimates of the availability and applicability of many technologies, and revised its estimate of the order in which the technologies were applied and how they are differentiated by vehicle class, as well as the costs and effectiveness estimates and used the revised numbers in analyzing alternative levels of stringency.

While NHTSA sought Ricardo's expertise and relied significantly on their assistance as a neutral expert in developing its technical assumptions, it retained responsibility for the final estimates. The agency believes that the representation of technologies for MY 2011—that is, estimates of the availability, applicability, cost, and effectiveness of fuel-saving technologies, and the order in which the technologies were applied—used in this rulemaking is more accurate than that used in the NPRM, and is the best available for purposes of this rulemaking.

C. What Technology Assumptions has NHTSA Used for the Final Rule?

1. How do NHTSA's technology assumptions in the final rule differ from those used in the NPRM?

This final rule uses the same basic framework as the NPRM. However, NHTSA made several changes to its technology assumptions based on comments and information received during the rulemaking. As in the NPRM and the MY 2008–2011 light truck rule, the agency relied on the Volpe model CAFE Compliance and Effects Modeling System which was developed by the Department of Transportation's Volpe National Transportation Systems Center (Volpe Center) to apply technologies. The model, known as the Volpe model, is the primary tool the agency has used in conducting a ''compliance analysis'' of various CAFE stringencies. The Volpe model relied on the same types of technology related inputs as in previous rules, including market data files, technology cost and effectiveness estimates by vehicle classification, technology synergies, phase-in rates, learning curve adjustments, and technology decision trees.

Regarding the decision trees, both the structure of the trees and ordering of the technologies were revised. The decision trees have been expanded so that NHTSA is better able to track the incremental and net/cumulative cost and effectiveness of each technology, which substantially improves the ''accounting'' of costs and effectiveness for the final rule.[114] The revised decision trees also have improved integration, accuracy, and technology representations.

In revising the decision trees, NHTSA updated, combined, split and/or renamed technologies. Several technologies were added, while others were deleted. The three technologies that were deleted because they do not appear in either public or confidential data and are primarily in the research phase of development are: Camless Valve Actuation, Lean-Burn Gasoline Direct-Injection and Homogenous Charge Compression Ignition.[115] NHTSA also added three advanced technologies based on confidential manufacturer submissions which showed these technologies as being emerging and currently under development. These technologies are: Combustion Restart, Exhaust Gas Recirculation Boost, and Plug-in Hybrids.

The Volpe model was modified to allow a non-linear phase-in rate across the five model years, rather than a constant phase-in rate as was used in the NPRM and in previous rules. Most technology applications have tighter phase-in caps in the early years to provide for additional lead time.

In the NPRM, NHTSA applied volume-based learning factors to technology costs for the first time. These learning factors were developed using the parameters of learning threshold, learning rate (decremented over two cycles), and the initial (unlearned) cost. In the NPRM, NHTSA applied a learning rate discount of 20 percent each time a technology was projected for use on 25,000 vehicles per manufacturer, which was the threshold volume for learning rate discounts. The discounts were only taken twice, at 25,000 and 50,000 vehicles. A technology was viewed as being fully learned out at 100,000 units.

The agency also reconsidered volume-based learning factors and made significant revisions. First, the volume learning is now applied on an industry basis as opposed to a manufacturer basis. This takes into account the fact that the automobile industry shares best practices and that manufacturers learn from that sharing to produce their vehicles at lower costs. For the final rule, the revised learning threshold is set to 300,000 vehicles per year by the automobile industry. This number was developed based on comments indicating that many of the publicly available technology cost estimates are based on production quantities of 900,000 to 1.5 million vehicles by at least 3 manufacturers. The agency notes, however, that none of the technologies applied in MY 2011 receive volume-based learning, due to the time frame applicable.

For the technologies applied in the final rule, a time-based learning factor was used in response to public comments from Ford and others. This learning factor was not applied in the NPRM. Time-based learning is applied to widely available, high volume, stable and mature technologies typically purchased under negotiated multi-year contractual agreement with suppliers. This type of an agreement is typical of most supplier-provided fuel saving technologies. With time-based learning, the initial cost of a technology is reduced by a fixed amount in its second and subsequent year of availability. A fixed rate 3 percent year-over-year cost reduction is applied up to a maximum of 12 percent cost reduction.

In the NPRM NHTSA divided vehicles into ten subclasses based on technology applicability: four for cars and six for trucks. NHTSA assigned passenger cars into one of the following subclasses: Subcompact, Compact, Midsize, or Large Car. NHTSA assigned light trucks into one of the following subclasses: Minivan, Small SUV, Medium SUV, Large SUV, Small Pickup

[114] In addition to the (simplified) decision trees, as published in this document, NHTSA also utilized ''expanded'' decision trees in the final rule analysis. Expanded decision trees graphically represent each unique path, considering the branch points available to the Volpe model, which can be utilized for applying fuel saving technologies. For instance, the engine decision tree shown in this document has 20 boxes representing engine technologies, whereas the expanded engine decision tree requires a total of 45 boxes to accurately represent all available application variants. Expanded decision trees presented a significant improvement, compared to the NPRM analysis, in the overall assessment and tracking of applied technologies since they allowed NHTSA staff to accurately view and assess both the incremental and the accumulated, or net cost and effectiveness at any stage of technology application in a decision tree. Because of the large format of the expanded decision trees, they could not be included in the Federal Register, so NHTSA refers the reader to Docket No. NHTSA–2008–0177. Expanded decision trees for the engine, electrification/transmission/hybridization, and the vehicle technologies (three separate decision trees) were developed for each of the 12 vehicle technology application classes (the vehicle subclasses discussed in Section IV.D.4) and the three expanded decision trees for the Large Car subclass have been placed in the docket as an example for the reader's information.

[115] We note that GM included lean burn HCCI in its restructuring plans submitted to Congress, but the restructuring plans were submitted too late for the agency to consider them in its technology analysis, among other reasons. GM Restructuring Plan, p. 22.

Truck, or Large Pickup Truck. In its 2008 NPRM for MY 2011–2015, NHTSA included some differentiation in cost and effectiveness numbers between the various classes to account for differences in technology costs and effectiveness that are observed when technologies are applied on to different classes and subclasses of vehicles.

For the final rule, NHTSA, working with Ricardo, increased the accuracy of its technology assumptions by reexamining the subclasses developed for the purpose of modeling technology application. For passenger cars, NHTSA divided vehicles into eight subclasses based on technology applicability by creating a performance class under each of the four subclasses. For trucks, NHTSA established four subclasses, including a minivan subclass, and small, midsize and large SUV/Pickup/Van subclasses. NHTSA also provided more differentiation in the costs and effectiveness values by vehicle subclass. The agency found it important to make that differentiation because the agency estimated that some technologies would have different implications for large vehicles than for smaller vehicles.

In summary, the revisions to NHTSA's methodology for technology application and cost and effectiveness estimates are designed to respond to comments, many of which focused on various inaccuracies and lack of clarity in the NPRM. NHTSA believes that the methodology for the final rule, as compared to the NPRM methodology, is much clearer, more accurate, and more representative of likely manufacturer behavior, although, of course, manufacturers are free to respond to the CAFE standards with whatever application of technology they choose. The revised technology related assumptions help substantially ensure the technological feasibility and economic practicability of the MY 2011 CAFE standards promulgated in this final rule.

2. How are the technologies applied in the model?

For the final rule, as in the NPRM, NHTSA made significant use of the CAFE Volpe model as discussed above. The NPRM contained a detailed discussion of the Volpe model and specifically stated its two primary objectives as (1) identifying technologies that manufacturers could apply in order to comply with a specified CAFE standard, and (2) calculating the cost and effects of manufacturers' technology applications. The NPRM also discussed other modeling systems and approaches that NHTSA considered to accomplish these same objectives, and also discusses why ultimately the agency chose to use the Volpe model (see 79 FR 24352, 24391). However, having done so for this final rule does not limit the agency's ability to use another approach for future CAFE rulemakings, and NHTSA will continue to consider other methods for estimating the costs and effects of adding technologies to manufacturers' future fleets.

The Volpe model relies on several inputs and data files to conduct the compliance analysis, and each of these are discussed in detail in the NPRM. Many of these inputs contain economic and environmental data required for the full CAFE analysis. However, for the purposes of applying technologies, the subject of this section, the Volpe model primarily uses three data files, one that contains data on the vehicles being manufactured, one that identifies the appropriate stage within the vehicle's life-cycle for the technology to be applied, and one that contains data/parameters regarding the available technologies the model can apply. These inputs are discussed below.

The Volpe model begins with an ''initial state'' of the domestic vehicle market, which in this case is the market for passenger cars and light trucks to be sold during the period covered by the final rule. The vehicle market is defined on a model, engine, and transmission basis, such that each defined vehicle model refers to a separately-defined engine and a separately-defined transmission. For the final rule, this represented roughly 5,500 cars and trucks, 700 engines, and 600 transmissions. The information, which is stored in a file called the ''vehicle market forecast,'' is informed significantly by product plans provided to NHTSA by vehicle manufacturers.[116] However, the Volpe model does not require that the market forecast be based on confidential product plans, and the model is often tested using input files developed using only publicly- and commercially-available information. Also, as discussed in Section III above, EPCA does not require NHTSA to use manufacturers' confidential product plans as a basis for setting future CAFE standards, and the agency will continue to base its market forecasts on whatever it determines is the best available information, whether from public, commercially-available, or confidential sources.

In addition to containing data about each vehicle, engine, and transmission, this file contains information for each technology under consideration as it pertains to the specific vehicle (whether the vehicle is equipped with it or not), the model year the vehicle is undergoing redesign, and information about the vehicle's subclass for purposes of technology application.

The market forecast file provides NHTSA the ability to identify, on a technology by technology basis, which technologies may already be present (manufactured) on a particular vehicle, engine, or transmission, or which technologies are not applicable (due to technical considerations) to a particular vehicle, engine, or transmission. These identifications are made on a model-by-model, engine-by-engine, and transmission-by-transmission basis. For example, if Manufacturer X advises NHTSA that Vehicle Y will be manufactured with Technology Z, then for this vehicle Technology Z will be shown as used. Or alternatively, NHTSA might conclude based on its own assessment that for a given four cylinder engine, Manufacturer A cannot utilize a particular Technology C due to an engineering issue that prohibits it. In this case, NHTSA would, in the market forecast file, indicate that Technology C should not be applied to this particular engine (i.e., is unavailable). Since multiple vehicle models may be equipped with this engine, this may affect multiple models. In using this aspect of the market forecast file, NHTSA ensures the Volpe model only applies technologies in an appropriate manner, since before any application of a technology can occur, the model checks the market forecast to see if it is either already present or unavailable.

Manufacturers typically plan vehicle changes to coincide with certain stages of a vehicle's life cycle that are appropriate for the change, or in this case the technology being applied. For instance, some technologies (e.g., those that require significant revision) are nearly always applied only when the vehicle is expected to be redesigned. Other technologies can be applied only when the vehicle is expected to be refreshed or redesigned and some others can be applied at any time, regardless of whether a refresh or redesign event is conducted. Accordingly, the model will only apply a technology at the particular point deemed suitable. These constraints are intended to produce results consistent with manufacturers' product planning practices. For each technology under consideration,

[116] The market forecast is developed by NHTSA using the product plan information provided to the agency by individual vehicle manufacturers in response to NHTSA's requests. The submitted product plans contain confidential business information (CBI), which the agency is prohibited by federal law from disclosing.

NHTSA stipulates whether it can be applied any time, at refresh/redesign, or only at redesign. The data forms another input to the Volpe model, as discussed in detail below, called the Technology Refresh and Redesign Application table (Table IV–6). Each manufacturer identifies its planned redesign model year for each of its vehicles, and this data is also stored in the market forecast file. Vehicle redesign/refresh assumptions are discussed in Section IV.C.9 below.

As discussed in Section IV.C.4 on vehicle subclasses below, NHTSA assigns one of 12 subclasses to each vehicle manufactured in the rulemaking period. The vehicle subclass data is used for the purposes of technology application. Each vehicle's class is stored in the market forecast file. When conducting a compliance analysis, if the Volpe model seeks to apply technology to a particular vehicle, it checks the market forecast to see if the technology is available and if the refresh/redesign criteria are met. If these conditions are satisfied, the model determines the vehicle's subclass, which it then uses to reference another input called the technology input file.

In the technology input file, NHTSA has developed a separate set of technology data variables for each of the twelve vehicle subclasses. Each set of variables is referred to as an ''input sheet,'' so for example, the subcompact input sheet holds the technology data that is appropriate for the subcompact subclass. Each input sheet contains a list of technologies available for members of the particular vehicle subclass. The following items are provided for each technology: a brief description, its abbreviation, the decision tree with which it is associated, the (first) year in which it is available, the upper and lower cost and effectiveness (fuel consumption reduction) estimates, the learning type and rate, the cost basis, its applicability, and the phase-in values.

The input sheets are another method NHTSA uses to determine how to properly apply, or in some cases constrain, a technology's application, as well as to establish the costs and fuel consumption changes that occur as it is applied. Examples of how technologies are applied (or constrained) include the ''Applicability'' variable: if it is set to ''TRUE,'' then the technology can be applied to all members of the vehicle subclass (a value of ''FALSE'' would prevent the Volpe model from applying the technology to any member). Another example would be the ''Year Available'' variable, which if set to ''2012'' means the model can apply it to MY 2012 and later members, but cannot apply the technology to MY 2011 models. The ''Learning Type'' and ''Learning Rate'' define reductions in technology costs, if any are appropriate, that the Volpe model may apply under certain conditions, as discussed in the Learning Curve section below. ''Phase-in Values'' are intended to address the various constraints that limit a manufacturer's ability to apply technologies within a short period of time. For phase-ins, once the model applies a given technology to a percentage of a given manufacturers' fleet up to a specified phase-in cap, the model then ceases to apply it further instead applying other technologies. Phase-in caps are also discussed below in Section IV.C.10.

Perhaps the most important data contained in the input sheets are the cost and effectiveness information associated with each technology. One important concept to understand about the cost and effectiveness values is that they are ''incremental'' in nature, meaning that the estimates are ''referenced'' to some prior technology state in the decision tree in which the applied technology is represented, typically the preceding technology. Therefore, when considering values shown in the input sheet, the reader must understand that in all but a few cases they cannot fully deduce the accumulated or ''NET'' cost and effectiveness, referenced back to the base condition (i.e., start of the decision tree), without performing a more detailed analysis. The method for conducting this analysis, and a brief example of how it is done, is discussed in the Decision Tree section below. For the final rule, to help readers better understand Volpe model net or accumulated costs and fuel consumption reductions, NHTSA has published net values to key technology locations on the decision trees (e.g., to diesel engine conversion, or a strong hybrid). See the Tables showing Approximate Net Technology Costs and Approximate Net Technology Effectiveness, located in Section IV.E below. The tables have been produced for each of the four vehicle subclasses in the passenger car, performance passenger car, and light truck vehicle groups.

The incremental costs of some technologies are dependent on certain factors specific to the vehicle to which they are applied. For instance, when the Material Substitution technology is applied, the cost of application is based on a cost per unit weight reduction, in dollars per pound, since the weight removed is a percentage of the curb weight of the vehicle (which differs from one vehicle to the next). Similarly, some engine technologies need to be calculated on a cost per cylinder basis, or a cost per configuration basis (i.e., a cost per bank basis, so that a V-configured engine would cost twice as much as an in-line, single bank engine). For each technology, the input sheet also contains a Cost Basis variable which indicates whether the costs need to be adjusted in this manner. This functionality, some of which is new for the final rule, allows NHTSA to estimate more accurately the costs of technology application, since in the NPRM the vehicles in a subclass were assumed to have common cylinder counts and configurations (thus the costs were underestimated for some vehicles and overestimated for others).

Lastly for the technology input file, the term ''synergy'' as it applies to the Volpe modeling process refers to the condition that occurs when two or more technologies are applied to a vehicle and their effects interact with each other, resulting in a different net effect than the combination of the individual technologies. The term synergy usually connotes a positive interaction (e.g., 1 + 1 is more than 2), but as used here it also includes negative interactions (e.g., 1 + 1 is less than 2). Synergies are discussed in greater detail below in Section IV.C.7, and the values for the synergy factors NHTSA used in the final rule are stored in the technology input file.

In some cases more than one decision tree path can lead to a subsequently applied technology. For example, the power split hybrid technology can be reached from one of two prior transmission technologies (CVT or DCTAM). Accordingly the incremental cost and effectiveness for applying the technology may vary depending on the path and the modifications made in the prior technology. To ensure accurate tracking of net costs and effectiveness, the Volpe model utilizes path correction factors, as discussed further in the decision tree discussion below. This functionality is an improvement to the final rule, and the specific factors used are stored in the technology input sheets. A copy of the final rule input sheets, titled ''2011–2015_LV_CAFE_FinalRuleInputSheets20081019.pdf,'' can be obtained from the final rule docket.

One additional concept to understand about how the Volpe model functions is called an ''engineering constraint,'' a programmatic method of controlling technology application that is independent of those discussed above. NHTSA has determined that some technologies are only suitable or

unsuitable when certain vehicle, engine, or transmission conditions exist. For example, secondary axle disconnect is only suitable for 4WD vehicles, and cylinder deactivation is unsuitable for any engine with fewer than 6 cylinders, while material substitution is only available for vehicles with curb weights greater than 5,000 pounds. Additionally, in response to comments received, an engineering constraint was added for purposes of the final rule to prevent the cylinder deactivation technology from being applied to vehicles equipped with manual transmissions, due primarily to driveability and NVH concerns documented by the commenter. Where appropriate and required, NHTSA has utilized engineering constraints to ensure accurate application of the fuel saving technologies.

3. Technology Application Decision Trees

Several changes were made to the Volpe model between the analysis reported in the NPRM and the final rule. This section will discuss two of those changes: First, the updates to the set of technologies; and second, the updates to the logical sequence for progressing through these technologies, which NHTSA describes as ''decision trees.''

As discussed above, the set of technologies considered by the agency has evolved since the NPRM. The set of technologies now included in the Volpe model is shown below in Table IV–1, with abbreviations used by the model to refer to each technology in the interest of brevity. Section IV.D below explains each technology in much greater detail, including definitions and cost and effectiveness values.

Table IV-1. Revised Final Rule Technology Set for Volpe Model

Technology	Abbreviation
Low Friction Lubricants	LUB
Engine Friction Reduction	EFR
VVT - Coupled Cam Phasing (CCP) on SOHC	CCPS
Discrete Variable Valve Lift (DVVL) on SOHC	DVVLS
Cylinder Deactivation on SOHC	DEACS
VVT - Intake Cam Phasing (ICP)	ICP
VVT – Dual Cam Phasing (DCP)	DCP
Discrete Variable Valve Lift (DVVL) on DOHC	DVVLD
Continuously Variable Valve Lift (CVVL)	CVVL
Cylinder Deactivation on DOHC	DEACD
Cylinder Deactivation on OHV	DEACO
VVT - Coupled Cam Phasing (CCP) on OHV	CCPO
Discrete Variable Valve Lift (DVVL) on OHV	DVVLO
Conversion to DOHC with DCP	CDOHC
Stoichiometric Gasoline Direct Injection (GDI)	SGDI
Combustion Restart	CBRST
Turbocharging and Downsizing	TRBDS
Exhaust Gas Recirculation (EGR) Boost	EGRB
Conversion to Diesel (from CBRST)	DSLC
Conversion to Diesel (from TRBDS)	DSLT
Electric Power Steering	EPS
Improved Accessories	IACC
12V Micro-Hybrid	MHEV
Higher Voltage/Improved Alternator	HVIA
Integrated Starter Generator	ISG
6-Speed Manual/Improved Internals	6MAN
Improved Auto. Trans. Controls/Externals	IATC
Continuously Variable Transmission	CVT
6/7/8-Speed Auto. Trans with Improved Internals	NAUTO
Dual Clutch or Automated Manual Transmission	DCTAM
Power Split Hybrid	PSHEV
2-Mode Hybrid	2MHEV
Plug-in Hybrid	PHEV
Material Substitution (1%)	MS1
Material Substitution (2%)	MS2
Material Substitution (5%)	MS5
Low Rolling Resistance Tires	ROLL
Low Drag Brakes	LDB
Secondary Axle Disconnect	SAX
Aero Drag Reduction (10%)	AERO

As in the NPRM, each technology is assigned to one of the five following categories based on the system it affects or impacts: engine, transmission, electrification/accessory, hybrid or vehicle. Each of these categories has its own decision tree that the Volpe model uses to apply technologies sequentially during the compliance analysis. The decision trees were designed and configured to allow the Volpe model to apply technologies in a cost-effective, logical order that also considers ease of implementation. For example, effective software or control logic changes are implemented before replacing a component or system with a completely redesigned one, which is typically a much more expensive option.

Each technology within the decision trees has an incremental cost and an incremental effectiveness estimate associated with it, and the estimates are specific to a particular vehicle subclass (see the tables provided below in Section IV.D). Each technology's

incremental estimate takes into account its position in the decision tree path. If a technology is located further down the decision tree, the estimates for the costs and effectiveness values attributed to that technology are influenced by the incremental estimates of costs and effectiveness values for prior technology applications. In essence, this approach accounts for ''in-path'' effectiveness synergies and cost effects that occur between the technologies in the same path. When comparing cost and effectiveness estimates from various sources and those provided by commenters, it is vital that the estimates are evaluated in the proper context, especially as concerns their likely position in the decision trees and other technologies that may be present or missing. Not all estimates provided by commenters can be considered an ''apples-to-apples'' comparison with those used by the Volpe model, since in some cases the order of application, or included technology content, is inconsistent with that assumed in the decision tree.

For the final rule, significant revisions have been made to the sequence of technology applications within the decision trees, and in some cases the paths themselves have been modified and additional paths have been added. The additional paths allow for a more accurate application of technology, insofar as the model now considers the existing configuration of the vehicle when applying technology. In this analysis, single overhead camshaft (SOHC), dual overhead camshaft (DOHC) and overhead valve (OHV) configured engines now have separate paths that allow for unique path-dependent versions of certain engine technologies. Thus, the cylinder deactivation technology (DEAC) now consists of three unique versions that depend on whether the engine being evaluated is an SOHC, DOHC or OHV design; these technologies are designated by the abbreviations DEACS, DEACD and DEACO, respectively, to designate which engine path they are located on. Similarly the last letter for the Coupled Cam Phasing (CCP) and Discrete Variable Valve Lift (DVVL) abbreviations are used to identify which path the technology is applicable to.

Use of separate valvetrain paths and unique path-dependent technology variations also ensures that the incremental cost and effectiveness estimates properly account for technology effects so as not to ''double-count.'' For example, in the SOHC path, the incremental effectiveness estimate for DVVLS assumes that some pumping loss reductions have already been accomplished by the preceding technology, CCPS, which reduces or diminishes the effectiveness estimate for DVVLS because part of the efficiency gain associated with the reduction of the pumping loss mechanism has already occurred. Commenters pointed out several instances in the NPRM where double-counting appeared to have occurred, and the accounting approach used in the final rule resolves these concerns.

In reviewing NPRM comments, NHTSA noted several questions regarding the retention of previously applied technologies when more advanced technologies (i.e., those further down the decision tree) were applied. In response, NHTSA has clarified the final rule discussions on this issue. In both the NPRM and final rule, as appropriate and feasible, previously-applied technologies are retained in combination with the new technology being applied, but this is not always the case. For instance, one exception to this would be the application of diesel technology, where the entire engine is assumed to be replaced, so gasoline engine technologies cannot carry over. This exception for diesels, along with a few other technologies, is documented below in the detailed discussion of changes to each decision tree and corresponding technologies.

As the Volpe model steps through the decision trees and applies technologies, it accumulates total or ''NET'' cost and effectiveness values. Net costs are accumulated using an additive approach while net effectiveness estimates are accumulated multiplicatively. To help readers better understand the accumulation process, and in response to comments expressing confusion on this subject, the following examples demonstrate how the Volpe model calculates net values.

Accumulation of net cost is explained first as this is the simpler process. This example uses the Electrification/Accessory decision tree sequentially applying the EPS, IACC, MHEV, HVIA and ISG technologies to a subcompact vehicle using the cost and effectiveness estimates from its input sheet. As seen in Table IV–2 below, the input sheet cost estimates have a lower and upper value which may be the same or a different value (i.e., a single value or a range) as shown in columns two and three. The Volpe model first averages the values (column 4), and then sums the average values to calculate the net cost of applying each technology (column 5). Accordingly, the net cost to apply the MHEV technology for example would be ($112.50 + $192.00 + $372.00 = $676.50). Net costs are calculated in a similar manner for all the decision trees.

Table IV-2. Sample Volpe Model Net Cost Calculation

Example Net Cost Calculation: Elect./Acc. Path, Subcompact Vehicle Subclass				
Tech. Abrev.	**Lower INCR Cost**	**Upper INCR Cost**	**Avg. INCR Cost**	**NET Cost**
EPS	$ 105.00	$ 120.00	$ 112.50	**$ 112.50**
IACC	$ 173.00	$ 211.00	$ 192.00	**$ 304.50**
MHEV	$ 372.00	$ 372.00	$ 372.00	**$ 676.50**
HVIA	$ 84.00	$ 84.00	$ 84.00	**$ 760.50**
ISG	$ 1,713.00	$ 1,713.00	$ 1,713.00	***$ 2,473.50***

The same decision tree, technologies, and vehicle are used for the example demonstrating the model's net effectiveness calculation. Table IV–3 below shows average incremental effectiveness estimates in column two; this value is calculated in the same manner as the cost estimates above (average of lower and upper value taken from the input sheet). To calculate the change in fuel consumption due to application of the EPS technology with incremental effectiveness of 1.5 percent (or 0.015 in decimal form, column 3), when applied multiplicatively, means that the vehicle's current fuel consumption 'X' would be reduced by a factor of (1 − 0.015) = 0.985,[117] or mathematically 0.985*X. To represent the changed fuel consumption in the normal fashion (as a percentage change), this value is subtracted from 1 (or 100%) to show the net effectiveness in column 5.

As the IACC technology is applied, the vehicle's fuel consumption is already reduced to 0.985 of its original value. Therefore the reduction for an additional incremental 1.5 percent results in a new fuel consumption value of 0.9702, or a net 2.98 percent effectiveness, as shown in the table. Net effectiveness is calculated in a similar manner for the all decision trees. It should be noted that all incremental effectiveness estimates were derived with this multiplicative approach in mind; calculating the net effectiveness using an additive approach will yield a different and incorrect net effectiveness.

Table IV-3. Sample Volpe Model Net Effectiveness Calculation

Example Net Effectiveness Calculation: Elect./Acc. Path, Subcompact Vehicle Subclass				
Tech. Abrev.	**Avg. INCR Eff. %**	**Avg. INCR Eff. (decimal)**	**Multiplicative FC Reduction Current FC * (1-Avg INCR)**	**Net Effect. (1 - Red)**
EPS	1.50%	0.0150	1 * (1 - 0.015) = 0.985	1.50%
IACC	1.50%	0.0150	0.985 * (1 - 0.015) = 0.9702	2.98%
MHEV	1.95%	0.0195	0.9702 * (1 - 0.0195) = 0.9513	4.87%
HVIA	0.55%	0.0055	0.9513 * (1 - 0.0055) = 0.9461	5.39%
ISG	6.10%	0.0610	0.9461 * (1 - 0.061) = 0.8884	11.16%

To improve the accuracy of accumulating net cost and effectiveness estimates for the final rule, ''path-dependent corrections'' were employed. The NPRM analysis had the potential to either overestimate or underestimate net cost and effectiveness depending on which decision tree path the Volpe model followed when applying the technologies. For example, if in the NPRM analysis a diesel technology was applied to a vehicle that followed the OHV path, the net cost and effectiveness could be different from the net estimates for a vehicle that followed the OHC path even though the intention was to have the same net cost and effectiveness. In order to correct this issue, the final rule analysis has added path-dependent correction tables to the input sheets. The model uses these tables to correct net cost and effectiveness estimate differences that occur when multiple paths lead into a single technology that is intended to have the same net cost and effectiveness no matter which path was followed.[118] Path-dependent corrections were used when applying cylinder deactivation (on the DOHC path), turbocharging and downsizing, diesel and strong hybrids. This is essentially an accounting issue and the path-dependent corrections are meant to remedy the accuracy issues reported in the NPRM comment responses.

The following paragraphs explain, in greater detail, the revisions to the decision trees and technologies from the NPRM to the final rule. Revisions were made in response to comments received and pursuant to NHTSA's analysis, and were made to improve the accuracy of the Volpe compliance analysis, or to correct other concerns from the NPRM analysis.

Engine Technology Decision Tree

Figure IV–1 below shows the final rule decision tree for the engine technology category. For the final rule, NHTSA removed camless valve actuation (CVA), lean-burn GDI (LBDI), and homogenous charge compression ignition (HCCI) from the decision trees because these technologies were determined to be still in the research phase of development. NHTSA did not receive any new information or comments that suggested these technologies are under development, so NHTSA removed them from the decision trees. At the top of the engine decision tree Low Friction Lubricants (LUB) and Engine Friction Reduction (EFR) technologies are retained as utilized in the NPRM.

As stated above, SOHC, DOHC and OHV engines have separate paths, whereas as the NPRM only made the distinction between OHC and OHV engines. The separation of SOHC and DOHC engines allowed the model to more accurately apply unique path-dependent valvetrain technologies including variations of Variable Valve Timing (VVT), Variable Valve Lift (VVL) and cylinder deactivation that are tailored to either SOHC or DOHC engines. This separation also allowed for a more accurate method of accounting for net cost and effectiveness

[117] A decrease in fuel consumption (FC) means the fuel economy (FE) will be increased since fuel consumption and economy are related by the equation $FC = 1/FE$.

[118] The correction tables are used for path deviations within the same decision tree. However, there is one exception to this rule, specifically that the tables are used to keep the model from double-counting cost and effectiveness estimates when both the CBRST and MHEV are applied to the same vehicle. Both technologies try to accomplish the same goal of reducing fuel consumption, by limiting idle time, but through different means. If either of these technologies exists on a vehicle and the Volpe model applies the other, the correction tables are used to remove the cost and effectiveness estimates for CBRST, thus ensuring that double-counting does not occur.

compared to the NPRM. For both the SOHC and DOHC paths, VVL technologies were moved upstream of cylinder deactivation in response to comments from the Alliance, additional confidential manufacturer comments and submitted product plan trends, and NHTSA's analysis. Confidential comments stated that applying cylinder deactivation to an OHC engine is more complex and expensive than applying it to an OHV engine. The Alliance additionally stated that cylinder deactivation is very application-dependent, and is more effective when applied to vehicles with high power-to-weight ratios. Taking in account the application-specific nature of cylinder deactivation and the fact the VVL technologies are more suitable to a broader range of applications, NHTSA moved VVL technologies ''upstream'' of cylinder deactivation on the SOHC and DOHC to more accurately represent how a manufacturer might apply these technologies.

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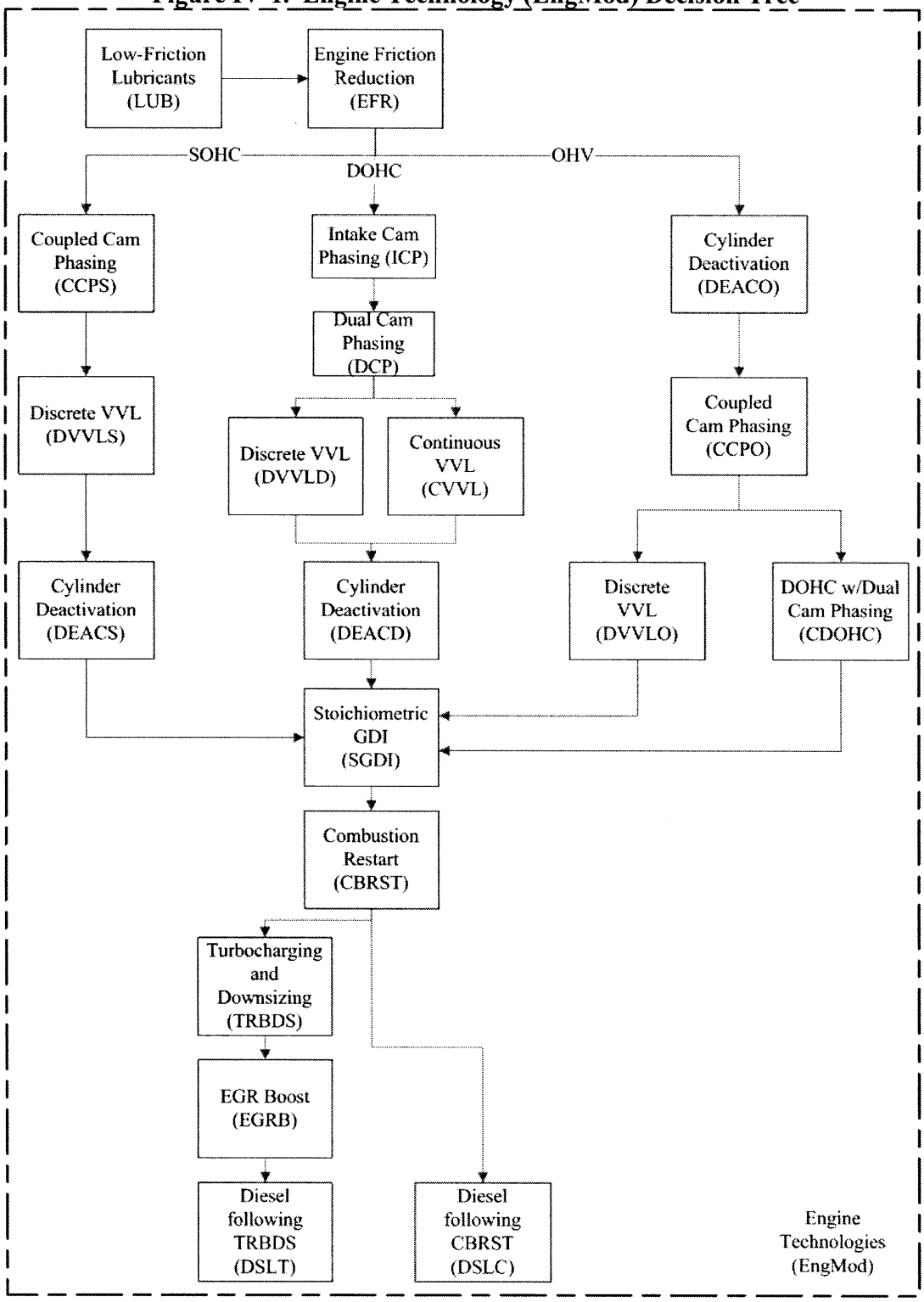
Figure IV-1. Engine Technology (EngMod) Decision Tree



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On the OHV path, the ordering of cylinder deactivation (DEACO) then Coupled Cam Phasing (CCPO), which is opposite the order of the SOHC and DOHC paths, was retained as defined in the NPRM. This ordering depicts most accurately how manufacturers would actually implement these technologies and was reflected in the submitted product plans for OHV engines, which are largely used on trucks with high power-to-weight ratios. After the application of CCPO on the OHV decision tree, the model chooses between Discrete Variable Valve Lift (DVVLO) and the conversion to a dual overhead camshaft engine (CDOHC). This conversion now includes Dual Cam Phasing (DCP) instead of Continuously Variable Valve Lift (CVVL) because it is assumed that DCP, with its higher application rates, would more likely be

applied than CVVL, with its lower application rates.

At this stage, and similar to the NPRM, the decision tree paths all converge into Stoichiometric Gasoline Direct Injection (SGDI). All previously applied technologies are retained with the assumption that SGDI is applied in addition to the pre-existing engine technologies. After SGDI, a newly defined technology, Combustion Restart (CBRST), has been added.

The ''branch point'' after CBRST has been limited to two paths instead of the three paths in NPRM. This is due to the removal of HCCI from the final rule decision trees. The final rule engine decision tree allowed the model to apply either Turbocharging and Downsizing (TRBDS) or the conversion to diesel (DSLC). TRBDS is considered to be a completely new engine that has been converted to DOHC, if not already converted, with only LUB, EFR, DCP, SGDI and CBRST applied.

The conversion to diesel is also considered to be a completely new engine that replaces the gasoline engine (although it carries over the LUB and EFR technologies). If the model chooses to follow the TRBDS path, the next technology that can be applied is another newly-added technology, EGR Boost (EGRB). After EGRB, the model is allowed to then convert the engine to diesel (DSLT). It should be noted that the path-dependent variations of diesel, (DSLC) and (DSLT), result in the exact same technology. The net cost and effectiveness estimates are the same for both but DSLT's incremental cost and effectiveness estimates are slightly lower to account for the TRBDS and EGRB technologies that have already been applied.

Electrification/Accessory Technology Decision Tree

This path, shown in Figure IV–2, was named simply ''Accessory Technology'' in the NPRM. Electric Power Steering (EPS) is now the first technology in this decision tree, since it is a primary enabler for both mild and strong hybrids. Improved Accessories (IACC) has been redefined to include only an intelligent cooling system and follows EPS (in the NPRM, IACC was the first technology in the tree). The 42-volt Electrical System (42V) technology has been removed because it is no longer viewed as the voltage of choice by manufactures and is being replaced by higher voltage systems. Micro-Hybrid (MHEV), which follows IACC, has been added as a 12-volt stop/start system to replace Integrated Starter/Generator with Idle-Off (ISGO), which was on the ''Transmission/Hybrid Technology'' decision tree in the NPRM. Higher Voltage/Improved Alternator (HVIA), a higher efficiency alternator that can incorporate higher voltages (greater than 42V) follows MHEV. Integrated Starter Generator Hybrid (ISG) replaced IMA/ISAD/BSG Hybrid (which was also on the Transmission/Hybrid Technology decision tree in the NPRM) as a higher voltage hybrid system with limited regenerative capability. ISG takes into account all the previously applied Electrification/Accessory technologies and is the final step necessary in order to convert the vehicle to a (full) strong hybrid. All Electrification/Accessory technologies can be applied to both automatic and manual transmission vehicles.

Transmission Technology Decision Tree

This decision tree, shown in Figure IV–2, contains two paths: one for automatic transmissions and one for manual transmissions. On the automatic path, the Aggressive Shift Logic (ASL) and Early Torque Converter Lockup (TORQ) technologies from the NPRM have been combined into an Improved Auto Trans Controls/Externals (IATC) technology, as both these technologies typically include only software or calibration-related transmission modifications. This technology was moved to the top of the decision tree since it was deemed to be easier and less expensive to implement than a major redesign of the existing transmission. The 5-Speed Automatic Transmission (5SP) technology from the NPRM has been deleted due to several factors. First, the updated decision tree logic seeks to optimize the current hardware as an initial step, instead of applying an expensive redesign technology. Second, NHTSA determined an industry trend of 4-speed automatics going directly to 6-speed automatics, as reflected in the submitted product plans. And finally, confidential manufacturer comments indicated that in some cases 5-speed transmissions offered little or no fuel economy improvement over 4-speed transmissions (primarily due to higher internal mechanical and hydraulic losses, and increased rotating mass), making the technology less attractive from a cost and effectiveness perspective. In the final rule, both 4-speed and 5-speed automatic transmissions get the IATC technology applied first, before progressing through the rest of the transmission decision tree.

After IATC the decision tree splits into a ''Unibody only'' and ''Unibody or Ladder Frame'' paths, which is identical to the NRPM version of the decision tree. Both of these paths represent a conversion to new and fully optimized designs. The Unibody only path contains the Continuously Variable Transmission (CVT) technology, while the Unibody or Ladder Frame path has the 6-Speed Automatic Transmission (6SP) technology being replaced by 6/7/8-Speed Automatic Transmission with Improved Internals (NAUTO). The NAUTO technology represents a new generation of automatics with lower internal losses from gears and hydraulic systems.

The NPRM technology ''Automated Manual Transmission (AMT)'' has been renamed Dual Clutch Transmission/Automated Manual Transmission (DCTAM) to more accurately reflect the true intent of this technology to be a Dual Clutch Transmission (DCT). The NPRM's use of the abbreviation ''AMT'' was confusing to many commenters, including the Alliance, BorgWarner, Chrysler, Ford and General Motors, and appeared to indicate that the NPRM analysis applied true automated manual transmissions, which exhibit a torque interrupt characteristic that many in the industry feel will not be customer acceptable. DCT does not have the torque interrupt concern. The technology DCTAM for the final rule assumes the use of a DCT type transmission only.

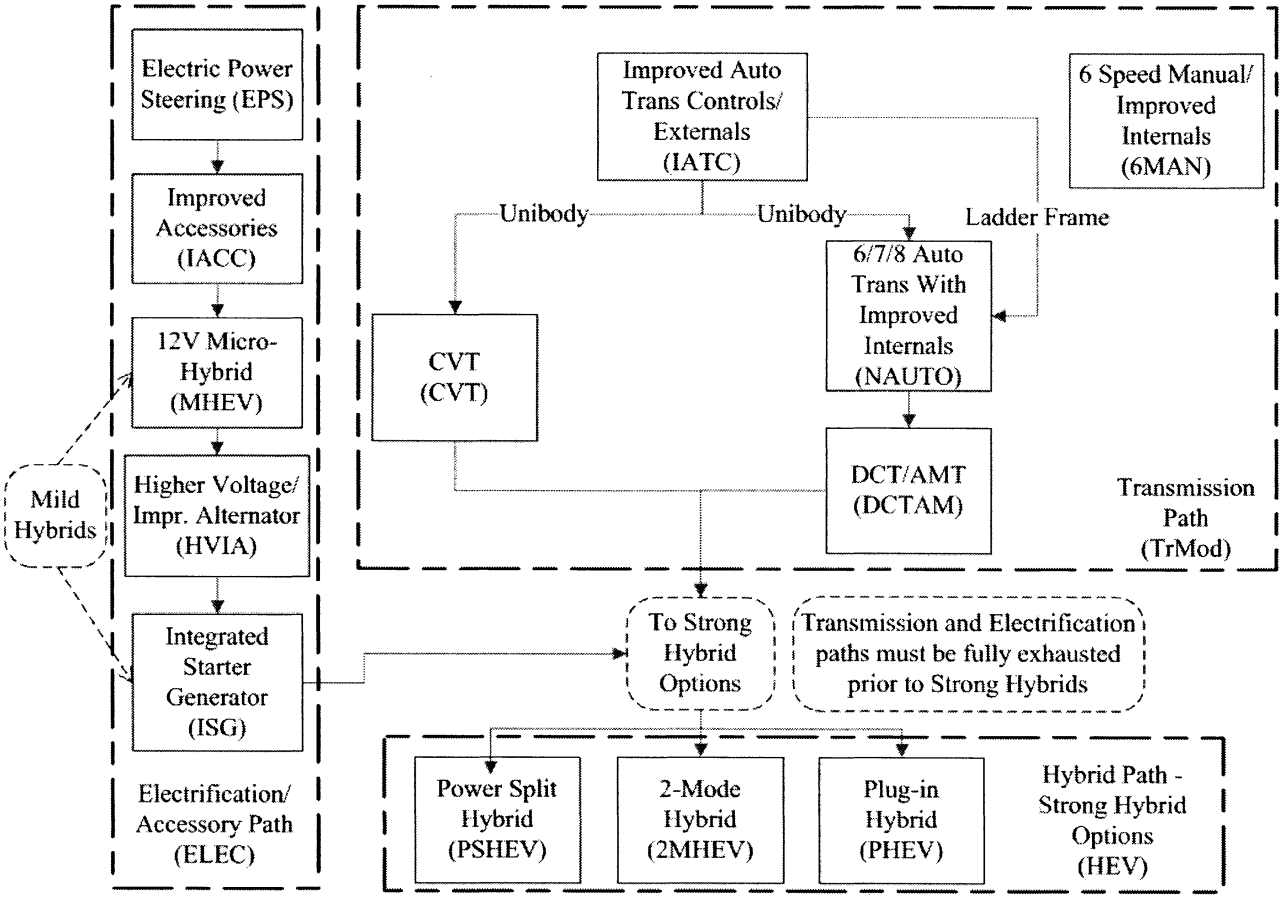
The manual transmission path only has one technology application, like the NPRM. However, the technology being applied has been defined as conversion to a 6-Speed Manual with Improved Internals (6MAN) instead of a conversion to a 6/7/8-Speed Manual Transmission as defined in the NRPM. Extremely limited use of manual transmissions with more than 6 speeds is indicated in the updated product plans, so NHTSA believes this is a more accurate option for replacing a 4 or 5-speed manual transmission.

Hybrid Technology Decision Tree

The strong hybrid options, 2-Mode (2MHEV) and Power Split (PSHEV), are no longer sequential as defined in the NPRM's Transmission/Hybrid decision tree. For the final rule, the model only applies strong hybrid technologies when both the Electrification/Accessory and Transmission (automatic transmissions only) technologies have been fully added to the vehicle, as seen in Figure IV–2. The final rule analysis and logic ensures that the model does not double-count the cost and effectiveness estimates for previously applied technologies that are included (e.g., EPS) or replaced (e.g., transmission) by strong hybrid systems, which is responsive to General Motors' comment

stating that the NPRM analysis had the potential to double-count effectiveness estimates when applying strong hybrids. For the final rule analysis, when the Volpe model applies strong hybrids it now takes into account that some of the fuel consumption reductions have already been accounted for when technologies like EPS or IACC have been previously applied. Once all the Electrification/Accessory and Transmission technologies have been applied, the model is allowed to choose between the application of 2MHEV, PSHEV and the newly added Plug-in Hybrid Vehicle (PHEV). The NPRM decision tree required the Volpe model to step through 2MHEV in order to apply PSHEV. This updated final rule decision tree is a more realistic representation of how manufacturers might apply strong hybrids, and allows the Volpe model to choose the strong hybrid that is most appropriate for each vehicle based on its vehicle subclass or the most cost-effective technology application. The PHEV technology was added to the decision tree in the final rule based upon information in the public domain and submitted product plans showing that limited quantities of these vehicles will be available from some manufacturers in this timeframe.

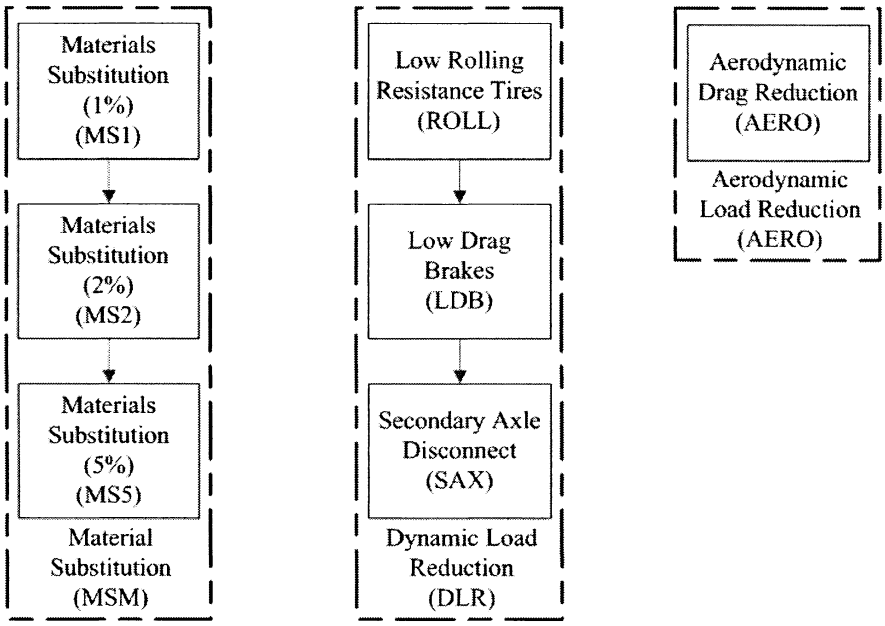
Figure IV-2. Electrification/Accessory, Transmission and Hybrid Technology Decision Tree



Vehicle Technology Decision Tree

Material Substitution (MS1), (MS2), and (MS5) are now located on dedicated material substitution path in the Vehicle Technology Decision Tree, shown in Figure IV–3. Low Rolling Resistance Tires (ROLL), Low Drag Brakes (LDB) and Secondary Axle Disconnect (SAX) now reside as a separate path, due to the relocation of material substitution technologies. Secondary Axle Disconnect has been redefined for the final rule to apply to 4WD vehicles only to more accurately reflect feasible applications of this technology. Aerodynamic Drag Reduction (AERO) remains a separate tree, and is now a 10 percent reduction for both car and truck classes (excluding performance cars, which are exempt).

Figure IV-3. Vehicle Technology Decision Tree



4. Division of Vehicles Into Subclasses Based on Technology Applicability, Cost and Effectiveness

In assessing the feasibility of technologies under consideration, the agency evaluated whether each of these technologies could be implemented on all types and sizes of vehicles and whether some differentiation is necessary with respect to the potential to apply certain technologies to certain types and sizes of vehicles, and with respect to the cost incurred and fuel consumption achieved when doing so. The 2002 NAS Report differentiated technology application using ten vehicle classes (4 cars classes and 6 truck classes, including subcompact cars, compact cars, midsize cars, large cars, small SUVs, midsize SUVs, large SUVs, small pickups, large pickups, and minivans), but did not determine how cost and effectiveness values differ from ''class'' to ''class.'' NAS's purpose in separating vehicles into these ''classes'' was to create groups of ''like'' vehicles, i.e., vehicles similar in size, powertrain configuration, weight, and consumer use, and for which similar technologies are applicable. This vehicle differentiation is done solely for the purpose of applying technologies to vehicles and assessing their incremental costs and effectiveness, and should not be confused with, the regulatory classifications pursuant to 49 CFR part 523 discussed in Chapter XI.

The Volpe model, which NHTSA has used to perform analysis supporting today's notice, divides the vehicle fleet into subclasses based on model inputs, and applies subclass-specific estimates, also from model inputs, of the applicability, cost, and effectiveness of each fuel-saving technology. Therefore, the model's estimates of the cost to improve the fuel economy of each vehicle model depend upon the subclass to which the vehicle model is assigned.

In its MY 2005–2007 and MY 2008–2011 light truck CAFE standards as well as NPRM, NHTSA performed analysis using the same vehicle classes defined by NAS in its 2002 Report. In its 2008 NPRM for MY 2011–2015, NHTSA included some differentiation in cost and effectiveness numbers between the various classes to account for differences in technology costs and effectiveness that are observed when technologies are applied on to different classes and subclasses of vehicles. The agency found it important to make that differentiation because the agency estimated that, for example, engine turbocharging and downsizing would have different implications for large vehicles than for smaller vehicles. For the final rule, NHTSA, working with Ricardo, increased the accuracy of its technology assumptions by reexaming the subclasses developed for the purpose of modeling technology application and by providing more differentiation in the costs and effectiveness values by vehicle subclass.

In the request for comments accompanying the NPRM, NHTSA asked manufacturers to identify the style of each vehicles model they submit in their product plans from eight possible groupings (convertible, coupe, hatchback, pickup, sedan, sport utility, van, or wagon) or sixteen possible market segments (cargo van, compact car, large car, large pickup, large station wagon, midsize car, midsize station wagon, mini-compact, minivan, passenger van, small pickup, small station wagon, special purpose, sport utility truck, subcompact car, and two-seat car). NHTSA also requested that manufacturers identify many specific characteristics relevant to each vehicle model, such as the number of cylinders of the vehicle's engine and other engine, transmission and vehicle characteristics. This information was evaluated by NHTSA staff, entered in NHTSA's market data file, and used by NHTSA to assess how to divide the vehicles into subclasses for purposes of differentiating the applicability, effectiveness, and cost of available technologies.

In response to the NPRM, the Alliance commented that NHTSA's classification approach is not robust enough. With regard to subclasses of cars, the Alliance stated that NHTSA did not distinguish high-performance and sports cars which cannot accommodate certain technologies without changing the purpose and configuration of the vehicle. With regard to subclasses of trucks, the Alliance argued that SUVs were not adequately distinguished by size. The Alliance further stated the classification used by Sierra Research in

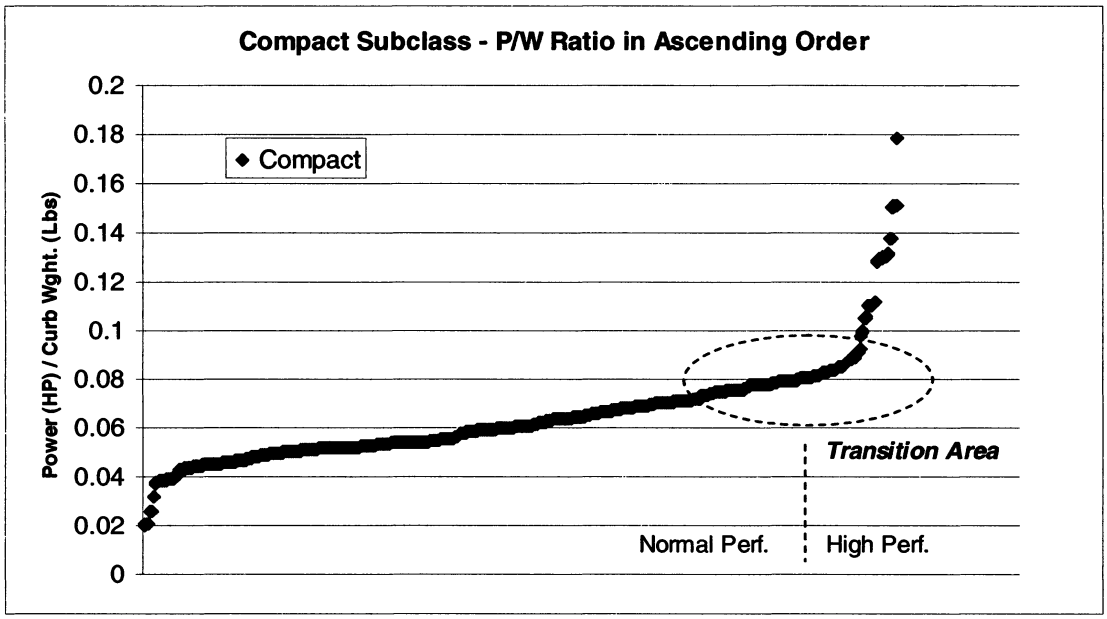
its report to distinguish groups of like vehicles for technology application purposes was more realistic and representative of differences in market segments than NHTSA's classification. The Alliance suggested that NHTSA consider the classes identified by Sierra Research in the final rule.

NHTSA is not adopting Sierra's approach to classification for the following reasons. First, Sierra's classification scheme is too dependent on vehicle characteristics for which NHTSA often did not receive complete information from manufacturers. For example, although NHTSA requested that manufacturers provide estimates of the aerodynamic drag coefficient of each vehicle model planned for MY2011–2015, the agency received no estimates for many vehicles. NHTSA believes manufacturers are too far from production on many vehicles to confidently provide such estimates. Second, Sierra's classification scheme is, for NHTSA's purposes, excessively fine-grained. Sierra's analysis relied on 25 subclasses in total, 13 for cars and 12 for trucks. While their report provided tables comparing their classes to those of NHTSA's and cited product examples for each class, it did not provide a reason for why this detailed differentiation would significantly improve the outcome. NHTSA's review of the Sierra report did not reveal many differences in technology-application between these subclasses. In addition, the agency does not believe that the effort required by the agency to create a more detailed yet more complex modeling structure based on 25 subclasses would result in significant improvement in the accuracy of the results. Sierra may have found this additional differentiation important for the full vehicle simulation approach that the Alliance claimed should be used throughout NHTSA's analysis. However, as discussed below, NHTSA has concluded that this approach is neither necessary nor practical for CAFE analysis.

The agency agrees with the Alliance, however, that some refinement in the classification approach used by NHTSA in the NPRM is merited in order to ensure the practicability of technologies being added. The agency also believes that the limited differentiation in costs and effectiveness values by vehicle class needs to be expanded in order to better account for fuel savings and costs.

For the final rule, NHTSA first reexamined the Volpe model technology output files from the NPRM to identify where and why technologies may have been inappropriately applied by the model. Where this reexamination revealed logical errors, the Volpe model was revised accordingly. However, the review revealed that most of the observed inaccuracies resulted from the manner in which vehicles were assigned to subclasses for the purpose of technology applications. NHTSA also reviewed the confidential vehicle level information received from manufacturers, how manufacturers classified their vehicles by style or market segment groupings requested by NHTSA and the specific engine, transmission and other vehicle characteristics identified by the manufacturers for each vehicle model. This conclusion was among those that led NHTSA to assign more staff to perform quality control when reviewing and integrating manufacturers' product plans.

In order to improve the accuracy of technology application modeling, NHTSA examined at the car and truck segments separately. First, for the car segment, NHTSA plotted the footprint distribution of vehicles in the product plans and divided that distribution into four equivalent footprint range segments. The footprint ranges were named Subcompact, Compact, Midsize, and Large classes in ascending order. Cars were then assigned to one of these classes based on their specific footprint size. Vehicles in each range were then manually reviewed by NHTSA staff to evaluate and confirm that they represented a fairly reasonable homogeneity of size, weight, powertrains, consumer use, etc. However, as the Alliance pointed out, some vehicles in each group were sports or high-performance models. Since different technologies and cost and effectiveness estimates are appropriate for these vehicles, NHTSA created a performance subclass within each car class to maximize the accuracy of technology application. To determine which cars would be assigned to the performance subclasses, NHTSA graphed (in ascending rank order) the power-to-weight ratio for each vehicle in a class. An example of the Compact subclass plot is shown below. The subpopulation was then manually reviewed by NHTSA staff to determine an appropriate transition point between ''performance'' and ''non-performance'' models within each class.



A total of eight classes (including performance subclasses) were identified for the car segment: Subcompact, Subcompact Performance, Compact, Compact Performance, Midsize, Midsize Performance, Large, Large Performance. In total, the number of cars that were ultimately assigned to a performance subclass was less than 10 percent. The table below shows the difference in the classification between the NPRM and Final Rule and provides examples of the types of vehicles assigned to each.

NPRM Car Subclasses

Class	Example vehicles
Subcompact	Chevy Aveo, Chevy Corvette, Ford Mustang (V8), Honda Civic, Mazda Miata, Saturn Sky
Compact	Audi S4 Quattro, Chevy Camaro (V6), Chevy Cobalt, Daimler CL600, Mazda RX8, Nissan Sentra
Midsize	Bentley Arnage, Cadillac CTS, Honda Accord, Nissan Altima & G37 Coupe, Toyota Camry
Large	Audi A8, Cadillac DTS, Hyundai Azera

Final Rule Car Subclasses

Class	Example vehicles
Subcompact	Chevy Aveo, Honda Civic
Subcompact Performance	Mazda Miata, Saturn Sky
Compact	Chevy Cobalt, Nissan Sentra and Altima
Compact Performance	Audi S4 Quattro, Mazda RX8
Midsize	Chevy Camaro (V6), Toyota Camry, Honda Accord, Hyundai Azera
Midsize Performance	Chevy Corvette, Ford Mustang (V8), Nissan G37 Coupe
Large	Audi A8, Cadillac CTS and DTS
Large Performance	Bentley Arnage, Daimler CL600

For light trucks, in reviewing the updated manufacturer product plans and in reconsidering how to divide trucks into classes and subclasses based on technology applicability, NHTSA found less of a distinction between SUVs and pickup trucks than appeared to exist in earlier rulemakings. Manufacturers appear to be planning fewer ladder-frame and more unibody pickups, and many pickups will share common powertrains with SUVs. Consequently, NHTSA condensed the classes available to trucks, such that SUVs and pickups are no longer divided. Recognizing structural differences between various types of ''Vans,'' NHTSA revisited how it assigned the different types of ''Vans.'' Instead of merging minivans, cargo vans, utility and multi-passenger type vans under the same class, as it did for the NPRM and in previous rules, NHTSA formed a separate minivan class, because minivans (e.g., the Honda Odyssey) are expected to remain closer in terms of structural and other engineering characteristics than vans (e.g., Ford's E–Series—also known as Econoline—vans) intended for more passengers and/or heavier cargo.

The remaining vehicles (other vans, pickups, and SUVs) were then segregated into three footprint ranges and assigned a class of Small Truck/SUV, Midsize Truck/SUV, and Large Truck/SUV based on their footprints. NHTSA staff then manually reviewed each population for inconsistent vehicles based on engine cylinder count, weight (curb and/or gross), or intended usage, since these are important considerations for technology application, and reassigned vehicles to classes as appropriate. This system produced four truck segment classes—minivans and small, medium, and large SUVs/Pickups/Vans. The table below shows the difference in the classification between the NPRM and Final Rule.

NPRM Truck Subclasses

Class	Example vehicles
Minivans	Dodge Caravan, Ford Econoline, Toyota Sienna
Small Truck	Chevy Colorado, Toyota Tacoma, Ford Ranger
Large Truck	Chevy Silverado
Small SUV	Ford Escape, Nissan Rouge
Midsize SUV	Jeep Wrangler 4-door, Volvo XC70
Large SUV	Toyota Sequoia

Final Rule Truck Subclasses

Class	Example vehicles
Minivans	Dodge Caravan, Toyota Sienna
Small SUV/Pickup/Van	Ford Escape & Ranger, Nissan Rogue,
Midsize SUV/Pickup/Van	Chevy Colorado, Jeep Wrangler 4-door, Volvo XC70, Toyota Tacoma
Large SUV/Pickup/Van	Chevy Silverado, Ford Econoline, Toyota Sequoia

Based on a close review of detailed output from the Volpe model, NHTSA has concluded that its revised classification for purposes of technology applicability substantially improves the overall accuracy of the results as compared to the system employed in the NPRM. The new method uses footprint as a first indicator for both the car and truck segments, and all are then manually reviewed for the types of technologies applicable to them and revised by NHTSA to ensure that they have been properly assigned. The addition of the performance subclasses in the car segment and the condensing of classes in the truck segment further refine the system. The new method increases the accuracy of technology application without overly complicating the Volpe modeling process, and the revisions address comments received in response to the NPRM.

5. How did NHTSA develop technology cost and effectiveness estimates for the final rule?

In the NPRM, NHTSA employed technology cost and effectiveness estimates developed in consultation with EPA. They represented NHTSA and EPA staff's best assessment of the costs for each technology considered based on the available public and confidential information and data sources that the agencies had back in 2007 when the rulemaking was initiated. EPA also published a report and submitted it to the NRC committee on fuel economy of light-duty vehicles.[119]

Public comments on the NPRM's technology cost estimates generally fell into four categories: (1) That costs are underestimated because NHTSA did not account for all changes/costs required to apply a technology or because although NHTSA correctly identified all the changes required, it did not cost those changes appropriately; (2) that costs are underestimated because the Retail Price Equivalent (RPE) factors have been applied incorrectly to technologies; (3) that costs are either over- or underestimated because learning curves have been applied incorrectly to technologies; and (4) that cost assumptions are overly simplified as applied to the full range of fleet vehicles and do not properly account for the differences in cost impacts across vehicle and engine types (e.g., technologies applied to a sub-compact car will be unique to those same technologies applied to a large SUV). Many commenters also stated that they found it difficult to understand how NHTSA and EPA had derived the cost estimates. In addition to commenting on NHTSA's methodology, many commenters, particularly manufacturers, also submitted their own cost estimates for each technology and requested that NHTSA consider them for the final rule.

As explained above, NHTSA contracted with Ricardo to aid the agency in analyzing the comments on the technology assumptions used in the NPRM, and relied considerably on Ricardo's expertise in developing the final technology cost and effectiveness estimates based on that analysis. For every technology included in NHTSA's analysis of technology costs and effectiveness, Ricardo and NHTSA engineers reviewed the comments thoroughly and exercised their expertise in assessing the merits of the comments, and in resolving the differences and determining which estimates should be used for the final rule.

For each technology, NHTSA relied on Ricardo's experience with ''bill of materials'' (BOM) costing. Some commenters criticized NHTSA for not using a BOM as the basis for its cost analysis. The 2008 Martec report,[120] which updated the Martec report on which the 2004 NESCCAF study was based, was submitted by auto industry commenters to NHTSA's NPRM docket for the agency's consideration. This report provides cost estimates developed on a ''bill of materials'' basis and methodology. NHTSA, with Ricardo's assistance, reviewed the ''bill of materials'' methodology in the Martec report and found it to be, compared to the methodology used in the NPRM, a more defensible and transparent basis for evaluating the costs of applicable technologies.

A bill of materials in a general sense is a list of components that make up a system—in this case, an item of fuel economy-improving technology. In

[119] EPA Staff Technical Report: Cost and Effectiveness Estimates of Technologies Used to Reduce Light-Duty Vehicle Carbon Dioxide Emissions. EPA420–R–08–008, March 2008.

[120] Martec, ''Variable Costs of Fuel Economy Technologies,'' June 1, 2008.

order to determine what a system costs, one of the first steps is to determine its components and what they cost. In cases in which it was not practicable for the agency and Ricardo to estimate the cost of each component on a BOM basis because there was a shift to a more advanced technology and or because of difficulty in accounting for the sum of costs of all added components less the sum of costs of all deleted components (e.g., in the transition from a gas engine to a diesel engine), incremental costs were estimated to be those of the entire new technology platform (in this example, the diesel engine) less those of the entire old technology platform (in this example, the gas engine). This ''net difference'' process was only used where developing a ground-up description of all component changes necessitated by the incremental technology was deemed to be impracticable.

With that framework in mind, Ricardo and NHTSA engineers proceeded with reviewing cost information for each major component of each technology. They compared the multiple sources available in the docket and assessed their validity. While NHTSA and Ricardo engineers relied considerably on the 2008 Martec Report for costing contents of some technologies, they did not do so for all. When relevant publicly available information and data sets, including the 2008 Martec report, were determined to be incomplete or non-existent, NHTSA looked to prior published data, including the NPRM, or to values provided to NHTSA by commenters familiar with the material costs of the described technologies.

Generally, whenever cost information for a technology component existed in a non-confidential and publicly available report submitted to the NPRM docket and that information agreed with Ricardo's independent review of cost estimates based on Ricardo's historical institutional knowledge, Ricardo and NHTSA cited that information. Ricardo and NHTSA were able to take that approach frequently, as is evident in the explanation of the cost figures of each technology. When that approach was not possible, but there was confidential manufacturer data that had been submitted to NHTSA in response to the NPRM, and those costs were consistent with Ricardo's independently-reviewed cost estimates, NHTSA and Ricardo cited those data. When multiple confidential data sources differed greatly and conflicted with the Martec valuation or when the technical assumptions described by NHTSA for purposes of this rulemaking did not match exactly with the content costed by either Martec or other commenters, NHTSA and Ricardo engineers used component-level data to build up a partial cost, substituting Ricardo's institutional knowledge for the remaining gaps in component level data.

Occasionally, NHTSA and Ricardo found that some cost information submitted by the public was either not very clearly described or revealed a lack of knowledge on the part of the commenter about NHTSA's methodology. In those cases, and in cases for which no cost data (either public or confidential) was available, NHTSA worked with Ricardo either to confirm the estimates it used in the NPRM, or to revise and update them.

In several cases, values described in the NPRM were simply adjusted from 2006 dollars to 2007 dollars, using a ratio of GDP values for the associated calendar years.[121] In many instances, an RPE factor of 1.5 was determined to have been omitted from the cost estimates provided in the NPRM, so NHTSA applied the multiplier where necessary to calculate the price to the consumer.

Finally, in response to comments stating that cost estimates for individual technologies should be varied, based on the type and size of vehicle to which they are applied, NHTSA worked with Ricardo to account for that. Additionally, application of some technologies might be more or less expensive, depending on content (e.g., with or without a noise attenuation package), for particular vehicles. In these cases, NHTSA and Ricardo described a range of costs for this technology, and referred to sources that indicate the appropriate boundaries of that range.

The agency notes that several technologies considered in the final rule have been updated with substantially different cost estimates relative to those costs described in the NPRM. For example, RPE estimates for turbocharging and downsizing (TRBDS), diesel technologies (DSLT) and hybrid technologies (like ISG) are much higher than the costs cited in the NPRM for those technologies. This is due in large part to the updated cost estimates of the 2008 Martec Report and others, referenced in the final rule, which reflect the dramatic rise of global costs for raw materials associated with the above technologies since the 2004 Martec report and other prior referenced cost estimates were conducted. The NPRM costs were not updated to reflect that rise in commodities prices. As described in the 2008 Martec Report, advanced battery technologies with substantial copper, nickel or lithium content, and engine technologies employing high temperature steels or catalysts with considerable platinum group metals usage, have experienced tremendous inflation of raw material prices since the cost studies referenced in the NPRM were conducted. As of the time the sources were developed, prices of nickel, platinum, lithium, copper, dysprosium and rhodium had demonstrated cost inflation amounting to between 300 and 750 percent of global prices at the time of the original NESCCAF study[122] and this is reflected in the higher costs described in the 2008 Martec report, and thus in the final rule. NHTSA is aware that commodity prices, like those for steel and platinum group metals described above, have dropped over the last several months. However, there is little information in the record to determine how prices of components used in MY 2011 could be impacted by the prices of metals and other commodities over the last few years. It is not clear whether the prices of components built and used in MY 2011 are more likely to reflect the high price of commodities in the years prior to 2008, the current low prices of commodities, the prices of commodities closer to MY 2011, or some mixture of these. The agency notes, though, as mentioned above, that manufacturers' product plans were submitted along with manufacturers' indications that these plans were generally informed by expectations that relatively high commodity prices would prevail in the future. Therefore, in the expectation that economic conditions will improve by MY 2011, the agency relies on the commodity prices reflected in, for example, the 2008 Martec report. However, the agency further notes that these decisions are limited to the MY 2011 rulemaking. We intend to monitor commodity prices carefully and will adjust affected technology costs as appropriate in future rulemakings.

Some commenters referenced the price differential between vehicles with advanced technologies and more standard versions as evidence of those advanced technologies' costs, and argued that NHTSA should consider these price differentials in its cost estimation process. In response, NHTSA believes that the ''bottom-up, material cost based'' cost estimation methodology employed for the final rule is preferable to estimating costs based

[121] NHTSA examined the use of the CPI multiplier instead of GDP for adjusting these dollar values, but found the difference to be exceedingly small—only $0.14 over $100.

[122] 2008 Martec report, at 13–20.

on manufacturer price differentials between versions of vehicle models. Wherever possible, technologies were costed based on the estimation of variable material cost impacts to vehicle manufacturers at a fixed point in time (in 2007 dollar terms) for a prescribed set of component changes anticipated to be required in implementing the technology on a particular platform (*e.g.*, wastegate turbo, increased high nickel alloyed exhaust manifolds, air charge cooler, etc. for TRBDS). The content assumptions are modified or scaled to account for differences across the range of vehicle sizes and functional requirements and associated material cost impacts are adjusted to account for the revised content. The material cost impacts to the vehicle manufacturers are then summed and converted to retail price equivalent impacts by multiplying by 1.5 to account for fixed costs and other overheads incurred in the implementation of new vehicle technologies but not contained in the variable material price impacts to the manufacturers.

In employing this methodology, NHTSA relied on information provided to NHTSA by the suppliers and vehicle manufacturers themselves. Though this estimation process relies on often confidential data and employs a simplifying assumption in relating all variable material costs to retail impacts through the use of a consistent 1.5 RPE, the methodology is preferable to a ''top-down, retail price based'' methodology as might be used by comparing retail price differences of vehicles with different technologies. The ''bottom-up'' approach offers the benefits of providing a consistent and reasonable assessment of true, total costs for all technologies independent of geographic, or strategic pricing policies by vehicle manufacturers that could result in selling products at sub-standard or even negative margins. For many vehicle manufacturers, contribution to corporate profit varies dramatically across vehicle segment. Given that vehicle pricing is often decoupled from true costs and will vary with sales cycle, product maturity, geography, vehicle class, and marque, a ''top-down'' approach, while offering improved data transparency, is inherently limited in providing a consistent means of cost estimation. As such, NHTSA has adopted the described ''bottom-up'' cost estimation approach and has attempted to mitigate transparency issues with a reliance on Martec 2008 (where in agreement with other provided cost data), because it provides a detailed description of the costed content. Fundamentally, NHTSA believes that a ''bottom-up'' cost estimation methodology with a common RPE adjustment factor offers an intuitive, consistent process across all technologies, whether mature or otherwise, that avoids the pitfalls of reliance on significantly more variable and volatile pricing policies.

Regarding estimates for technology effectiveness, NHTSA, working with Ricardo, also reexamined its NPRM estimates and those in the EPA Staff Technical Report,[123] which largely mirrored NHTSA's NPRM estimates. We compared these estimates to estimates provided in comments, reports and confidential data received in response to our NPRM. Comments on the NPRM's effectiveness estimates generally fell into three categories: (1) That NHTSA did not account sufficiently for fuel economy or performance impacts because it used the Volpe model approach rather than full vehicle simulation; (2) that the synergy values used did not properly account for technology interactions; and (3) that NHTSA made errors when using estimates provided by manufacturers. In addition to commenting on NHTSA's methodology, many commenters, particularly manufacturers, also submitted their own fuel consumption reduction estimates for each technology and requested that NHTSA consider them for the final rule. NHTSA addresses comments relating to vehicle simulation in Section IV.C.8 and synergies in Section IV.C.7, but the section below describes NHTSA's process for developing effectiveness estimates for the final rule, which addresses the comments regarding NHTSA's use of estimates submitted by manufacturers.

For each technology, NHTSA also relied on Ricardo's experience with ''bill of materials'' (BOM) technology descriptions. Some commenters argued that the same BOM used as the basis for the cost analysis could and should be used to define the technologies being studied for effectiveness. In fact, Ricardo's methodology for cost and effectiveness estimates for this rule was to define a vehicle class-specific BOM or BOMs, depending upon the number of variants possible within a class and within a decision tree. These BOMs were defined for the baseline configuration for each class and then for each incremental step in the decision tree. Use of a consistently-defined BOM is very important to estimating the impacts of technologies accurately, as it helps to ensure that technologies are not applied to baseline vehicles that already contain the technology (with the exception of items that are not well-defined such as aerodynamic drag reduction, reduced rolling resistance tires, weight reduction, and engine friction reduction.)

In defining these BOMs, Ricardo relied on its experience working with industry over many years and its recent experience preparing the December 2007 study for EPA. Ricardo built on its vehicle simulation work for EPA to help NHTSA evaluate appropriate effectiveness values for individual fuel-saving technologies. In considering the comments, NHTSA and Ricardo evaluated the 10 ''vehicle subclasses'' used in the NPRM for applicability of technologies and determined that the cost and effectiveness estimates could be more accurate by revising the ''vehicle subclasses'' as described above so that they better represented the parameters of the vehicles they included. This, in turn, enabled NHTSA and Ricardo to distinguish more clearly the differences in fuel consumption reduction occurring when a technology is added to different vehicles.

Then, with the BOM framework applied to more precisely-defined vehicle subclasses, NHTSA and Ricardo engineers reviewed effectiveness information from multiple sources for each technology. Together, they compared the multiple sources available in the docket and assessed their validity, taking care to ensure that common BOM definitions and other vehicle attributes such as performance, refinement, and drivability were not compromised.

Generally, whenever relevant effectiveness information for a technology component existed in a non-confidential and publicly-available report submitted to the NPRM docket, and that information agreed with Ricardo's independent review of estimates based on Ricardo's historical institutional knowledge, NHTSA and Ricardo cited that information. NHTSA and Ricardo were able to take that approach frequently, as is evident in the explanation of the effectiveness for each technology. When that approach was not possible, but there was confidential manufacturer data that had been submitted to NHTSA in response to the NPRM, and those values were consistent with Ricardo's independently-reviewed estimates, NHTSA and Ricardo cited those data. When multiple confidential data sources differed greatly or when the technical assumptions described by NHTSA for purposes of this rulemaking

[123] EPA Staff Technical Report: Cost and Effectiveness Estimates of Technologies Used to Reduce Light-Duty Vehicle Carbon Dioxide Emissions. EPA420–R–08–008, March 2008.

did not match the content included in Ricardo's study for EPA or in other comments, NHTSA and Ricardo engineers relied on Ricardo's experience and an understanding of the maximum theoretical losses that could be eliminated by particular technologies to build up an effectiveness estimate, substituting Ricardo's institutional knowledge for the remaining gaps in data.

Occasionally, NHTSA and Ricardo found that some fuel consumption reduction information submitted by the public was either not very clearly described or revealed a lack of knowledge on the part of the commenter about NHTSA's methodology. In those cases, and in cases for which no effectiveness data (either public or confidential) was available, NHTSA worked with Ricardo either to confirm the estimates it used in the NPRM, or to revise and enhance them. In other cases, the commenters appeared unsure how to evaluate the data from the NPRM, and so NHTSA and Ricardo provided more detailed explanations on the process used or the components involved.

In response to comments stating that estimates for individual technologies should be varied based on the type and size of vehicle to which they are applied, NHTSA worked with Ricardo to account for those differences mostly through the refined vehicle subclass definitions. However, even after making these adjustments, there are still some classes that require spanning different engine architectures and performance thresholds. Just as the application of some technologies might be more or less expensive, depending on content (e.g., with or without a noise attenuation package), particular vehicle technologies may have more or less impact between classes where maintaining equivalent performance led to a reduced effectiveness. In these cases, NHTSA and Ricardo described a range of effectiveness values for this technology, and referred to sources that indicate the appropriate boundaries of that range.

With Ricardo's assistance, the technology cost and effectiveness estimates for the final rule were developed consistently, using this systematic approach. While NHTSA still believes that the ideal estimates for the final rule would be those that have been through a peer-reviewed process such as that used for the 2002 NAS Report, and will continue to work with NAS, as required by EISA, to update the technology cost and effectiveness estimates for subsequent CAFE rulemakings, this approach, combined with the BOM methodology for cost and effectiveness, expanded number and types of vehicle subclasses and the changes to the synergistic effects described below, not only help to address the concerns raised by commenters, but also represent a considerable improvement in terms of accuracy and transparency over the approach used to develop the cost and effectiveness estimates in the NPRM.

6. Learning Curves

As explained in the NPRM, historically NHTSA did not explicitly account for the cost reductions a manufacturer might realize through learning achieved from experience in actually applying a technology. However, based on its work with EPA, in the NPRM NHTSA employed a learning factor for certain newer, emerging technologies. The ''learning curve'' describes the reduction in unit incremental production costs as a function of accumulated production volume and small redesigns that reduce costs. The NPRM implemented technology learning curves by using three parameters: (1) The initial production volume that must be reached before cost reductions begin to be realized (referred to as ''threshold volume''); (2) the percent reduction in average unit cost that results from each successive doubling of cumulative production volume (usually referred to as the ''learning rate''); and (3) the initial cost of the technology. The majority of technologies considered in the NPRM did not have learning cost reductions applied to them.

NHTSA assumed that learning-based reductions in technology costs occur at the point that a manufacturer applies the given technology to the first 25,000 cars or trucks, and are repeated a second time as it produces another 25,000 cars or trucks for the second learning step.[124] NHTSA explained that the volumes chosen represented the agency's best estimate for where learning would occur, and that they were better suited to NHTSA's analysis than using a single number for the learning curve factor, because each manufacturer would implement technologies at its own pace in the rule, rather than assuming that all manufacturers implement identical technology at the same time.

NHTSA further assumed that after having produced 25,000 cars or trucks with a specific part or system, sufficient learning will have taken place such that costs will be lower by 20 percent for some technologies and 10 percent for others. For those technologies, NHTSA additionally assumed that another cost reduction would be realized after another 25,000 units. If a technology was already in widespread use (e.g., on the order of several million units per year) or expected to be so by the MY 2011–2012 time frame, NHTSA assumed that the technology was ''learned out,'' and that no more cost reductions were available for additional volume increases. If a technology was not estimated to be available until later in the rulemaking period at that time, like MY 2014–2015, NHTSA did not apply learning for those technologies until those model years. Most of the technologies for which learning was applied after MY 2014 were adopted from the 2004 NESCCAF study, which was completed by Martec. Whenever source data, like the 2004 NESCCAF study, indicated that manufacturer cost reduction from future learning would occur, NHTSA took that information into account.

Comments received regarding NHTSA's approach to technology cost reductions due to manufacturer learning generally disagreed with the agency's method. The Alliance, AIAM, Honda, GM, and Chrysler all commented that NHTSA had substantially overestimated, and essentially ''double-counted,'' learning effects by applying learning reductions to component costs, specifically Martec estimates, which were already at high volume. The Alliance submitted the 2008 Martec Report, which stated that NHTSA had ''misstated'' Martec's approach to cost reductions due to learning in the NPRM. As Martec explained,

> Martec did not ask suppliers to quote prices that would be valid for three years, and Martec did not receive cost reductions from suppliers for some components in years two and three. Rather, industry respondents were asked to establish mature component pricing on a forward basis given the following conditions: At least three (3) manufacturers demanding 500,000 units per year and at least three (3) globally-capable suppliers available to supply the needs of each manufacturer.
>
> In no case did Martec ask industry respondents to provide low volume, launch or transition costs for fuel consumption/CO_2 reducing technologies. Martec specifically designed the economic parameters in order to capture the effects of learning which is a reality in the low margin, high capital cost, high volume, highly competitive global automotive industry. Applying additional reductions attributable to ''learning'' based on 25,000 unit improvements in cumulative volume after production launch (as described on pages 118–125 of the NHTSA NPRM) on top of Martec's mature costs is an error. Martec's costs are based on 1.5–2.0 equivalent modules of powertrain capacity (500,000 units/year) so 25,000 unit

[124] NHTSA treated car and truck volumes separately for determining those sales volumes.

incremental changes in cumulative production, as defined by NHTSA, will have no effect on costs.

The 2008 Martec Report also stated that current industry practice consists of using competitive bidding based on long-term, high-volume contracts that are negotiated before technology implementation decisions are made. Martec stated that this practice considers the effects of volume, learning, and capital depreciation. Martec also indicated that most of the technologies evaluated in the study are in high volume production in the global automotive industry today, and thus this forms a solid basis from which to estimate future costs.

Honda also commented on NHTSA's 25,000 unit (per manufacturer per year) volume threshold stating that, in their experience, costs were only likely to decrease due to learning at volumes exceeding about 300,000 units per year per manufacturer. GM agreed, stating that suppliers do not respond to, change processes, or change contract terms for relatively small volume changes like NHTSA's 25,000 unit increment, thus volume changes of this magnitude have no effect on component pricing. GM also commented that its learning cycles are based on time, not volume, and agreed with Martec's assessment that contracts with suppliers typically specify volumes and costs over a period, which are usually equal to a product life cycle, a 4- to 5-year period.

Ford commented that base costs in the automotive industry are determined by a target setting process, where manufacturers develop pricing with suppliers for a set period, and manufacturers receive cost reductions from the suppliers due to learning as time passes, apparently at a set amount year over year for several years. Ford also commented that NHTSA's approach to learning curves had not accounted for current economic factors, like increases in commodity and energy prices, and cited the example of costs of batteries for hybrids and PHEVs which Ford stated ''are not likely to depend solely on experience learned, but, to a large extent, on the additional energy and material costs they incur relative to the vehicles without the new technology.'' Ford commented that NHTSA should account for these costs, and the factor of declining vehicle sales, in its learning curve approach.

BorgWarner, a components supplier, commented that learning-related costs savings are valid for technologies that ''*start at low* volume'' (commenter's emphasis). BorgWarner argued, however, that NHTSA's assumed learning curve would not apply to the technologies it supplies to manufacturers,[125] since these components are well-developed and in high volume use already, and are thus already ''learned out.'' BorgWarner further commented that an increase in demand could in fact lead to higher prices if demand for raw materials exceeded supply.

UCS, in contrast, commented that NHTSA had not accounted for enough cost reductions due to learning. UCS stated that NHTSA should have provided ''source data'' for manufacturer-specific learning curves, and argued that NHTSA's approach was ''fundamentally flawed'' for two primary reasons: First, because NHTSA had not considered the fact that manufacturers engage in joint ventures to develop new technologies, and second, because manufacturers may also learn from one another ''through the standard practice of tearing down competitors' products.'' UCS argued that NHTSA's learning-based cost reductions should account for these methods of learning. UCS further stated that NHTSA should not ''treat[] car and truck sales volumes separately when estimating learning curves'' because there may be much overlap in terms of technology application, especially for vehicles like crossovers which may be either cars or trucks. UCS concluded that NHTSA should use EPA's suggested learning factor of 20 percent, citing EPA's Staff Technical Report.

Public Citizen agreed that NHTSA should account for economies of scale, but argued that NHTSA should not have relied on initial cost estimates from industry, which the commenter stated were ''often overestimated.'' Public Citizen cited a 1997 briefing paper by the Economic Policy Institute in support of this point, and argued that compliance cost estimates were often much lower than actual costs. Public Citizen concluded that NHTSA's use of learning curve factors ''impedes transparency'' in NHTSA's analysis.

Agency response: Based on the comments received and on its work with Ricardo, NHTSA has revised its approach to accounting for technology cost reductions due to manufacturer learning. The method of learning used in the NPRM has been retained, but the threshold volume has been revised and is now calculated on an industry-wide production basis. However, learning of this type, which NHTSA now refers to as ''volume-based'' learning, is not applicable to any technologies for MY 2011. Additionally, NHTSA has adopted a fixed rate, year-over-year (YOY) cost reduction for widely-available, high-volume, mature technologies, in response to comments from Ford and others. NHTSA refers to this type cost reduction as ''time-based'' learning. For each technology, if learning is applicable, only one type of learning would be applied, either volume-based or time-based (i.e., the types are independent of each other). These revisions are discussed below.

For volume-based learning, NHTSA considered comments from UCS and decided to revise the method used to calculate the threshold volume from a per-manufacturer to an industry-wide production volume basis. NHTSA agreed with UCS' comment that cars and trucks may share common components—this is true across many makes and models which share common engines, transmissions, accessory systems, and mild or strong hybrid systems, all of which can potentially utilize the technologies under consideration. These systems are often manufactured by suppliers who contract with multiple OEMs, all of whom benefit (in the form of cost reductions for the technology) from the supplier's learning. The 2008 Martec Report and the BorgWarner comments additionally both indicated that when manufacturers demand components in high volumes, suppliers are able to pass on learning-based savings to all manufacturers with whom they contract. Thus, it made sense to NHTSA to revise its method of determining whether the threshold volume has been achieved from an annual per-manufacturer to an annual industry-wide production volume basis.

NHTSA also changed the threshold volume for volume-based learning from 25,000 to 300,000 units. The 2008 Martec Report and comments from multiple manufacturers indicated that 25,000 units was far too small a production volume to affect component costs. In response, NHTSA began with the Martec estimate that technologies were fully learned-out at 1.5 million units of production (which met the production needs of three manufacturers, according to that report). NHTSA then applied two cycles of learning in a reverse direction to determine what the proper threshold volume would be for these conditions. One cycle would be applied at 750,000 units (1.5 million divided by 2, which would represent the second volume doubling) and one at 375,000 units (750,000 divided by 2, which would represent the first volume doubling).

[125] BorgWarner manufacturers and supplies turbochargers, dual clutch transmissions, variable valve timing systems, diesel engine components (EGR and starting), aggressive shift logic and early torque convertor lockup systems.

NHTSA thus estimated that the Martec analysis would suggest a threshold volume of 375,000 units. However, the agency notes that Martec stated that it chose the 1.5 million units number specifically because Martec knew it was well beyond the point where learning is a factor, which means that 1.5 million was beyond the cusp of the learning threshold. NHTSA therefore concluded that 375,000 units should represent the upper bound for the threshold volume for Martec's analysis.

Having determined this, NHTSA sought to establish a lower bound for the threshold volume. The 2008 Martec report indicated that production efficiencies are maximized at 250,000–350,000 units (which averages to 300,000 units), and that manufacturers consequently target this range when planning and developing manufacturing operations. Honda also cited this production volume. Thus, for three manufacturers, the annual volume requirement would be 900,000 units.[126] NHTSA concluded this could also represent high volume where learned costs could be available, and considered it as a lower bound estimate. With the upper and lower values established, and given that Martec specifically indicated that 1.5 million did not represent the cusp of the learning threshold, NHTSA chose the mid-point of 1.2 million units as the best estimate of annual industry volumes where learned costs would be experienced. For proper forward learning, this would mean the first learning cycle would occur at 300,000 and the second at 600,000. Accordingly NHTSA has established the threshold volume for the final rule at 300,000 industry units per year.

Having established the threshold volume, NHTSA next considered which technologies to apply volume learning to. Comments confirmed that NHTSA had been correct in the NPRM to assume that learning would be applicable to low-volume, emerging technologies that could benefit from economies of scale, so NHTSA consulted confidential product plans to determine the volumes of technologies to be applied by manufacturers during the rulemaking period. If the product plans indicated that the technologies would be in high-volume use (i.e., above 600,000 units produced annually for cars and trucks by all manufacturers) at the beginning of its first year of availability, then volume-based learning was not considered applicable, since at this volume the technology would be available at learned cost. If the volume was below 600,000 units annually, then NHTSA also looked at the Volpe model's application of the technology. If the model applied more than 600,000 units within the first year of availability, NHTSA did not apply volume-based learning. If neither manufacturers nor the model applied more than 600,000 units within the first year, then volume learning was applied to the technology.

Based on this analysis, NHTSA determined that volume-based learning would be applicable to three technologies for purposes of the final rule: integrated starter generator, 2-mode hybrid, and plug-in hybrid. For these three technologies, and where the agency's initial cost estimates reflected full learning, NHTSA reverse-learned the cost by dividing the estimate by the learning rate twice to properly offset the learned cost estimate. NHTSA used a 20 percent learning rate in the NPRM for these technologies, and concluded that that rate was still applicable for the final rule. This learning rate was validated using manufacturer-submitted current and forecast cost data for advanced-battery hybrid vehicle technology, and accepted industry forecasts for U.S. sales volumes of these same vehicles. This limited study indicated that cost efficiencies were approximately 20 percent for a doubling of U.S. market annual sales of a particular advanced battery technology, and the learning rate was thus used as a proxy for other advanced vehicle technologies.

Commenters also indicated that learning-related cost reductions could occur not only as a result of production volume changes, but also as a function of time. For example, Ford stated that technology cost reductions were negotiated as part of the contractual agreement to purchase components from suppliers, a target-setting process which Ford described as common in the automotive industry. In this arrangement suppliers agree to reduce costs on a fixed percentage year over year according to negotiated terms. GM described a cost reduction process that occurs over the course of a product life cycle, typically no less than 4–5 years, where costs are reduced as production experience increases. GM stated that its cost reductions included engineering, manufacturing, investment, and material costs, and were also defined through supplier contracts that anticipate volume and costs over the whole period. The components involved are assumed to be high volume, mature technologies being used in current vehicle production. These are the types of components that would typically be subject to ''cost-down''[127] efforts that target savings through small, incremental design, manufacturing, assembly, and material changes on a recurring or periodic basis.

In response to these comments, NHTSA has adopted this approach as an additional type of learning related cost reduction, referring to it as ''time-based'' learning. For purposes of the final rule, time-based learning is applied to high-volume, mature technologies likely to be purchased by OEMs on a long-term contractual basis. This would include most of the fuel-saving technologies under consideration, except those where volume-based learning is applied, or those where components might consist of commodity materials, such as oil or rubber, where pricing fluctuations prevent long-term or fixed value contracts. NHTSA has used a 3 percent reduction rate for time-based learning, based on confidential manufacturer information and NHTSA's understanding of current industry practice. Thus, if time-based learning is deemed applicable, then in year two of a technology's application, and in each subsequent year (if any), the initial cost is reduced by 3 percent. This approach is responsive to comments about compliance costs estimation, and improves the accuracy of projecting future costs compared to the NPRM.

With regard to the comments from UCS, NHTSA recognizes that joint-venture collaboration and competitor tear-downs are methods used by manufacturers for designing and developing new products and components, but notes that these methods are used prior to the manufacturing stage, and thus are not considered manufacturing costs. NHTSA has received no specific manufacturer learning curve-related data, and thus has no ''source data'' to disclose. NHTSA continues to use a 20 percent learning factor for volume-based learning, which is consistent with EPA's learning factor recommended by UCS for NHTSA's use.

With regard to the comments from Public Citizen, although NHTSA reviewed the paper cited by the commenter, the agency found its analysis largely irrelevant to NHTSA's estimation of cost reduction factors due to automobile manufacturer learning, and thus declines to adopt its findings.

Table IV–4 below shows the applicability and type of learning applied in the final rule.

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[126] An industry volume of 900,000 would imply a threshold volume of 225,000 units according to NHTSA's analysis. This is still nine times the value used at the NPRM.

[127] Cost-down efforts are a common practice in competitive manufacturing environments like the automotive industry.

Table IV-4—Application of learning-related cost reductions for technologies

Technology	Abbr.	Learning Type	Learning Rate
Low Friction Lubricants	LUB		
Engine Friction Reduction	EFR		
VVT - Coupled Cam Phasing (CCP) on SOHC	CCPS	TIME	3%
Discrete Variable Valve Lift (DVVL) on SOHC	DVVLS	TIME	3%
Cylinder Deactivation on SOHC	DEACS	TIME	3%
VVT - Intake Cam Phasing (ICP)	ICP	TIME	3%
VVT - Dual Cam Phasing (DCP)	DCP	TIME	3%
Discrete Variable Valve Lift (DVVL) on DOHC	DVVLD	TIME	3%
Continuously Variable Valve Lift (CVVL)	CVVL	TIME	3%
Cylinder Deactivation on DOHC	DEACD	TIME	3%
Cylinder Deactivation on OHV	DEACO	TIME	3%
VVT - Coupled Cam Phasing (CCP) on OHV	CCPO	TIME	3%
Discrete Variable Valve Lift (DVVL) on OHV	DVVLO	TIME	3%
Conversion to DOHC with DCP	CDOHC	TIME	3%
Stoichiometric Gasoline Direct Injection (GDI)	SGDI	TIME	3%
Combustion Restart	CBRST	TIME	3%
Turbocharging and Downsizing	TRBDS	TIME	3%
Exhaust Gas Recirculation (EGR) Boost	EGRB	TIME	3%
Conversion to Diesel following CBRST	DSLC	TIME	3%
Conversion to Diesel following TRBDS	DSLT	TIME	3%
Electric Power Steering	EPS	TIME	3%
Improved Accessories	IACC	TIME	3%
12V Micro-Hybrid	MHEV	TIME	3%
Higher Voltage/Improved Alternator	HVIA	TIME	3%
Integrated Starter Generator	ISG	VOLUME	20%
6-Speed Manual/Improved Internals	6MAN	TIME	3%
Improved Auto. Trans. Controls/Externals	IATC	TIME	3%
Continuously Variable Transmission	CVT	TIME	3%
6/7/8-Speed Auto. Trans with Improved Internals	NAUTO	TIME	3%
Dual Clutch or Automated Manual Transmission	DCTAM	TIME	3%
Power Split Hybrid	PSHEV	TIME	3%
2-Mode Hybrid	2MHEV	VOLUME	20%
Plug-in Hybrid	PHEV	VOLUME	20%
Material Substitution (1%)	MS1		
Material Substitution (2%)	MS2		
Material Substitution (5%)	MS5		
Low Rolling Resistance Tires	ROLL		
Low Drag Brakes	LDB	TIME	3%
Secondary Axle Disconnect – 4WD	SAX	TIME	3%
Aero Drag Reduction	AERO	TIME	3%

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7. Technology Synergies

When two or more technologies are added to a particular vehicle model to improve its fuel efficiency, the resultant fuel consumption reduction may sometimes be higher or lower than the product of the individual effectiveness values for those items.[128] This may

[128] More specifically, the products of the differences between one and the technology-specific levels of effectiveness in reducing fuel consumption. For example, not accounting for

Continued

occur because one or more technologies applied to the same vehicle partially address the same source or sources of engine, drivetrain or vehicle losses. Alternately, this effect may be seen when one technology shifts the engine operating points, and therefore increases or reduces the fuel consumption reduction achieved by another technology or set of technologies. The difference between the observed fuel consumption reduction associated with a set of technologies and the product of the individual effectiveness values in that set is referred to for purposes of this rulemaking as a ''synergy.'' Synergies may be positive (increased fuel consumption reduction compared to the product of the individual effects) or negative (decreased fuel consumption reduction).

For the NPRM, the Volpe model was modified to estimate the interactions of technologies using estimates of incremental synergies associated with a number of technology pairs identified by NHTSA. The use of discrete technology pair incremental synergies is similar to that in DOE's National Energy Modeling System (NEMS).[129] Inputs to the Volpe model incorporate NEMS-identified pairs, as well as additional pairs for the final rule from the set of technologies considered in the Volpe model. However, to maintain an approach that was consistent with the technology sequencing developed by NHTSA, new incremental synergy estimates for all pairs were obtained from a first-order ''lumped parameter'' analysis tool created by EPA.[130]

The lumped parameter tool is a spreadsheet model that represents energy consumption in terms of average performance over the fuel economy test procedure, rather than explicitly analyzing specific drive cycles. The tool begins with an apportionment of fuel consumption across several loss mechanisms and accounts for the average extent to which different technologies affect these loss mechanisms using estimates of engine, drivetrain and vehicle characteristics that are averaged over the EPA fuel economy drive cycle. Results of this analysis were generally consistent with those of full-scale vehicle simulation modeling performed by Ricardo, Inc. However, regardless of a generally consistent set of results for the vehicle class and set of technologies studied, the lumped parameter tool is not a full vehicle simulation and cannot replicate the physics of such a simulation.

Many comments were received that stated this and pointed to errors in the synergies listed in the NPRM being in some cases inaccurate or even directionally incorrect. NHTSA recognizes that the estimated synergies applied for the NPRM were not all correct, and has reevaluated all estimated synergies applied in the analysis supporting today's final rule. In response to commenters calling for NHTSA to use full vehicle simulation, either in the first instance or as a check on the synergy factors that NHTSA developed, the agency has concluded that the vehicle simulation analyses conducted previously by Ricardo provide a sufficient point of reference, especially considering the time constraints for establishing the final rule. NHTSA did, however, improve the predictive capability of the lumped parameter tool.

The lumped parameter tool was first updated with the new list of technologies and their associated effectiveness values. Second, NHTSA conducted a more rigorous qualitative analysis of the technologies for which a competition for losses would be expected, which led to a much larger list of synergy pairings than was present in the NRPM. The types of losses that were analyzed were tractive effort, transmission/drivetrain, engine mechanical friction, engine pumping, engine indicated (combustion) efficiency and accessory (see Table IV–5). As can be seen from Table IV–5, engine mechanical friction, pumping and accessory losses are improved by various technologies from engine, transmission, electrification and hybrid decision trees and must be accounted for within the model with a synergy value. The updated lumped parameter model was then re-run to develop new synergy estimates for the expanded list of pairings. That list is shown in Tables IV–6a–d. The agency notes that synergies that occur within a decision tree are already addressed within the incremental values assigned and therefore do not require a synergy pair to address. For example, all engine technologies take into account incremental synergy factors of preceding engine technologies, and all transmission technologies take into account incremental synergy factors of preceding transmission technologies. These factors are expressed in the fuel consumption improvement factors in the input files used by the Volpe model.

For applying incremental synergy factors in separate path technologies, the Volpe model uses an input table (see Tables IV–6a–d) which lists technology pairings and incremental synergy factors associated with those pairings, most of which are between engine technologies and transmission/electrification/hybrid technologies. When a technology is applied to a vehicle by the Volpe model, all instances of that technology in the incremental synergy table which match technologies already applied to the vehicle (either pre-existing or previously applied by the Volpe model) are summed and applied to the fuel consumption improvement factor of the technology being applied. Synergies for the strong hybrid technology fuel consumption reductions are included in the incremental value for the specific hybrid technology block since the model applies technologies in the order of the most effectiveness for least cost and also applies all available electrification and transmission technologies before applying strong hybrid technologies.

As another possible alternative to using synergy factors, NHTSA has also considered modifying the Volpe model to apply inputs—for each vehicle model—specifying the share of total fuel consumption attributable to each of several energy loss mechanisms. The agency has determined that this approach, discussed in greater detail below, cannot be implemented at this time because the requisite information is not available.

interactions, if technologies *A* and *B* are estimated to reduce fuel consumption by 10% (i.e., 0.1) and 20% (i.e., 0.2) respectively, the ''product of the individual effectiveness values'' would be $1-0.1$ times $1-0.2$, or 0.9 times 0.8, which equals 0.72, corresponding to a combined effectiveness of 28% rather than the 30% obtained by adding 10% to 20%. The ''synergy factors'' discussed in this section further adjust these multiplicatively combined effectiveness values.

[129] U.S. Department of Energy, Energy Information Administration, *Transportation Sector Module of the National Energy Modeling System: Model Documentation 2007,* May 2007, Washington, DC, DOE/EIAM070(2007), at 29–30. *Available at http://tonto.eia.doe.gov/ftproot/modeldoc/m070(2007).pdf* (last accessed Oct. 24, 2008).

[130] EPA Staff Technical Report: Cost and Effectiveness Estimates of Technologies Used to Reduce Light-duty Vehicle Carbon Dioxide Emissions; EPA420–R–08–008, March 2008.

Table IV-5. Loss Factors Considered in Synergy Analysis

Lumped Parameter Synergy Analysis	VEHICLE Tractive Effort	TRANS Drivetrain Losses	ENGINE Mechanical Friction	ENGINE Pumping Losses	ENGINE Accessory Losses	ENGINE Indicated Efficiency
ENGINE						
Low Friction Lubricants			+			
Engine Friction Reduction			+			
VVT - Coupled Cam Phasing (CCP) on SOHC			-	+		+
Discrete Variable Valve Lift (DVVL) on SOHC			-	+		
Cylinder Deactivation on SOHC			+	+		
VVT - Intake Cam Phasing (ICP)			-	+		+
VVT - Dual Cam Phasing (DCP)			-	+		+
Discrete Variable Valve Lift (DVVL) on DOHC			-	+		
Continuously Variable Valve Lift (CVVL)			-	+		
Cylinder Deactivation on DOHC			+	+		
Cylinder Deactivation on OHV			+	+		
VVT - Coupled Cam Phasing (CCP) on OHV			-	+		+
Discrete Variable Valve Lift (DVVL) on OHV			-	+		
Conversion to DOHC with DCP			-	+		+
Stoichiometric Gasoline Direct Injection (GDI)						+
Combustion Restart			+	+	+	
Turbocharging and Downsizing			-	+		
Exhaust Gas Recirculation (EGR) Boost						+
Conversion to Diesel				+		+
ELECTRIFICATION/ACCESSORY						
Electric Power Steering					+	
Improved Accessories					+	
12V Micro-Hybrid			+	+	+	
Higher Voltage/Improved Alternator					+	
Integrated Starter Generator			+	+	+	
TRANSMISSION (MANUAL)						
6-Speed Manual/Improved Internals		+		+		
TRANSMISSION (AUTOMATIC)						
Improved Auto. Trans. Controls/Externals		+		+		
Continuously Variable Transmission		-		+		
6/7/8-Speed Auto. Trans with Impr. Internals		+		+		
Dual Clutch/Automated Manual Transmission		+				
(STRONG) HYBRID						
Power Split Hybrid		+	+	+	+	
2-Mode Hybrid		+	+	+	+	
Plug-in Hybrid		+	+	+	+	
VEHICLE						
Material Substitution (1%)	+					
Material Substitution (2%)	+					
Material Substitution (5%)	+					
Low Rolling Resistance Tires	+					
Low Drag Brakes	+					
Secondary Axle Disconnect - 4WD		+				
Aero Drag Reduction	+					

+ Technology has a positive effect on fuel consumption

- Technology has a negative effect on fuel consumption

Table IV-6a. Synergy pairings and values

Synergies		Fuel Consumption Improvement Synergy values by Vehicle Subclass Positive values are positive synergies, negative values are dissynergies.					
Technology A	Technology B	Subcompact PC	Subcompact Perf. PC	Compact PC	Compact Perf. PC	Midsize PC	Midsize Perf. PC
CCPS	6MAN	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%
CCPS	IATC	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
CCPS	CVT	-0.8%	-0.8%	-0 8%	-0.8%	-0.8%	-0.8%
CCPS	NAUTO	-0.4%	-0.4%	-0.4%	-0.4%	-0.4%	-0.4%
CCPS	MHEV	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%
CCPS	ISG	-0.9%	-0.9%	-0.9%	-0.9%	-0.9%	-0.9%
DVVLS	6MAN	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%
DVVLS	IATC	-0.5%	-0.5%	-0.5%	-0.5%	-0.5%	-0.5%
DVVLS	CVT	-1.4%	-1.4%	-1.4%	-1.4%	-1.4%	-1.4%
DVVLS	NAUTO	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%
DVVLS	MHEV	-0.8%	-0.8%	-0.8%	-0.8%	-0.8%	-0.8%
DVVLS	ISG	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%
DEACS	6MAN	n.a.	n.a.	n.a.	-0.2%	n.a.	-0.2%
DEACS	IATC	n.a.	n.a.	n.a.	-0.6%	n.a.	-0.6%
DEACS	CVT	n.a.	n.a.	n.a.	-1.7%	n.a.	-1.7%
DEACS	NAUTO	n.a.	n.a.	n.a.	-0.9%	n.a.	-0.9%
DEACS	MHEV	n.a.	n.a.	n.a.	-0.9%	n.a.	-0.9%
DEACS	ISG	n.a.	n.a.	n.a.	-1.1%	n.a.	-1.1%
ICP	6MAN	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%
ICP	IATC	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
ICP	CVT	-0.8%	-0.8%	-0.8%	-0.8%	-0.8%	-0.8%
ICP	NAUTO	-0.4%	-0.4%	-0.4%	-0.4%	-0.4%	-0.4%
ICP	MHEV	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%
ICP	ISG	-0.9%	-0.9%	-0.9%	-0.9%	-0.9%	-0.9%
DCP	6MAN	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%
DCP	IATC	-0.4%	-0.4%	-0.4%	-0.4%	-0.4%	-0.4%
DCP	CVT	-1.3%	-1.3%	-1.3%	-1.3%	-1.3%	-1.3%
DCP	NAUTO	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%
DCP	MHEV	-0.8%	-0.8%	-0.8%	-0.8%	-0.8%	-0.8%
DCP	ISG	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%
DVVLD	6MAN	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
DVVLD	IATC	-0.6%	-0.6%	-0.6%	-0.6%	-0.6%	-0.6%
DVVLD	CVT	-1.8%	-1.8%	-1.8%	-1.8%	-1.8%	-1.8%
DVVLD	NAUTO	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%
DVVLD	MHEV	-0.9%	-0.9%	-0.9%	-0.9%	-0.9%	-0.9%
DVVLD	ISG	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%
DEACD	6MAN	n.a.	n.a.	n.a.	-0.2%	n.a.	-0.2%
DEACD	IATC	n.a.	n.a.	n.a.	-0.6%	n.a.	-0.6%
DEACD	CVT	n.a.	n.a.	n.a.	-1.8%	n.a.	-1.8%
DEACD	NAUTO	n.a.	n.a.	n.a.	-1.0%	n.a.	-1.0%
DEACD	MHEV	n.a.	n.a.	n.a.	-0.9%	n.a.	-0.9%
DEACD	ISG	n.a.	n.a.	n.a.	-1.1%	n.a.	-1.1%
CVVL	6MAN	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
CVVL	IATC	-0.6%	-0.6%	-0.6%	-0.6%	-0.6%	-0.6%
CVVL	CVT	-1.8%	-1.8%	-1.8%	-1.8%	-1.8%	-1.8%
CVVL	NAUTO	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%
CVVL	MHEV	-0.9%	-0.9%	-0.9%	-0.9%	-0.9%	-0.9%
CVVL	ISG	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%

Table IV-6b. Synergy pairings and values

Synergies		Fuel Consumption Improvement Synergy values by Vehicle Subclass Positive values are positive synergies, negative values are dissynergies.					
Technology A	Technology B	Subcompact PC	Subcompact Perf. PC	Compact PC	Compact Perf. PC	Midsize PC	Midsize Perf. PC
DEACO	6MAN	n.a.	n.a.	n.a.	-0.1%	n.a.	-0.1%
DEACO	IATC	n.a.	n.a.	n.a.	-0.5%	n.a.	-0.5%
DEACO	CVT	n.a.	n.a.	n.a.	-1.4%	n.a.	-1.4%
DEACO	NAUTO	n.a.	n.a.	n.a.	-0.8%	n.a.	-0.8%
DEACO	MHEV	n.a.	n.a.	n.a.	-0.9%	n.a.	-0.9%
DEACO	ISG	n.a.	n.a.	n.a.	-1.2%	n.a.	-1.2%
CCPO	6MAN	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
CCPO	IATC	-0.6%	-0.6%	-0.6%	-0.6%	-0.6%	-0.6%
CCPO	CVT	-1.7%	-1.7%	-1.7%	-1.7%	-1.7%	-1.7%
CCPO	NAUTO	-0.9%	-0.9%	-0.9%	-0.9%	-0.9%	-0.9%
CCPO	MHEV	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%
CCPO	ISG	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%
DVVLO	6MAN	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
DVVLO	IATC	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%
DVVLO	CVT	-2.0%	-2.0%	-2.0%	-2.0%	-2.0%	-2.0%
DVVLO	NAUTO	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%
DVVLO	MHEV	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%
DVVLO	ISG	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%
CDOHC	6MAN	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
CDOHC	IATC	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%
CDOHC	CVT	-2.0%	-2.0%	-2.0%	-2.0%	-2.0%	-2.0%
CDOHC	NAUTO	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%
CDOHC	MHEV	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%
CDOHC	ISG	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%
CBRST	6MAN	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
CBRST	IATC	-0.6%	-0.6%	-0.6%	-0.6%	-0.6%	-0.6%
CBRST	CVT	-1.8%	-1.8%	-1.8%	-1.8%	-1.8%	-1.8%
CBRST	NAUTO	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%
CBRST	MHEV	-2.1%	-2.1%	-2.1%	-2.1%	-2.1%	-2.1%
CBRST	ISG	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%
CBRST	EPS	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
CBRST	IACC	-0.4%	-0.4%	-0.4%	-0.4%	-0.4%	-0.4%
CBRST	HVIA	-0.3%	-0.3%	-0.3%	-0.3%	-0.3%	-0.3%
TRBDS	6MAN	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
TRBDS	IATC	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%
TRBDS	CVT	-2.4%	-2.4%	-2.4%	-2.4%	-2.4%	-2.4%
TRBDS	NAUTO	-1.3%	-1.3%	-1.3%	-1.3%	-1.3%	-1.3%
TRBDS	MHEV	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%
TRBDS	ISG	-1.3%	-1.3%	-1.3%	-1.3%	-1.3%	-1.3%
DSLC	6MAN	-0.3%	-0.3%	-0.3%	-0.3%	-0.3%	-0.3%
DSLC	IATC	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
DSLC	CVT	-2.9%	-2.9%	-2.9%	-2.9%	-2.9%	-2.9%
DSLC	NAUTO	-1.7%	-1.7%	-1.7%	-1.7%	-1.7%	-1.7%
DSLC	MHEV	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%
DSLC	ISG	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%
DSLT	6MAN	-0.3%	-0.3%	-0.3%	-0.3%	-0.3%	-0.3%
DSLT	IATC	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
DSLT	CVT	-2.9%	-2.9%	-2.9%	-2.9%	-2.9%	-2.9%
DSLT	NAUTO	-1.7%	-1.7%	-1.7%	-1.7%	-1.7%	-1.7%
DSLT	MHEV	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%
DSLT	ISG	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%

Table IV-6c. Synergy pairings and values

Synergies		Fuel Consumption Improvement Synergy values by Vehicle Subclass Positive values are positive synergies, negative values are dissynergies.					
Technology A	Technology B	Large PC	Large Perf. PC	Minivan LT	Small LT	Midsize LT	Large LT
CCPS	6MAN	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%
CCPS	IATC	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
CCPS	CVT	-0.8%	n.a.	-0.8%	-0.8%	-0.8%	n.a.
CCPS	NAUTO	-0.4%	-0.4%	-0.4%	-0.4%	-0.4%	-0.4%
CCPS	MHEV	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%	n.a.
CCPS	ISG	-0.9%	-0.9%	-0.9%	-0.9%	-0.9%	n.a.
DVVLS	6MAN	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%
DVVLS	IATC	-0.5%	-0.5%	-0.5%	-0.5%	-0.5%	-0.5%
DVVLS	CVT	-1.4%	n.a.	-1.4%	-1.4%	-1.4%	n.a.
DVVLS	NAUTO	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%
DVVLS	MHEV	-0.8%	-0.8%	-0.8%	-0.8%	-0.8%	n.a.
DVVLS	ISG	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%	n.a.
DEACS	6MAN	-0.2%	-0.2%	-0.2%	n.a.	-0.2%	-0.2%
DEACS	IATC	-0.6%	-0.6%	-0.6%	n.a.	-0.6%	-0.6%
DEACS	CVT	-1.7%	n.a.	-1.7%	n.a.	-1.7%	n.a.
DEACS	NAUTO	-0.9%	-0.9%	-0.9%	n.a.	-0.9%	-0.9%
DEACS	MHEV	-0.9%	-0.9%	-0.9%	n.a.	-0.9%	n.a.
DEACS	ISG	-1.1%	-1.1%	-1.1%	n.a.	-1.1%	n.a.
ICP	6MAN	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%
ICP	IATC	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
ICP	CVT	-0.8%	n.a.	-0.8%	-0.8%	-0.8%	n.a.
ICP	NAUTO	-0.4%	-0.4%	-0.4%	-0.4%	-0.4%	-0.4%
ICP	MHEV	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%	n.a.
ICP	ISG	-0.9%	-0.9%	-0.9%	-0.9%	-0.9%	n.a.
DCP	6MAN	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%
DCP	IATC	-0.4%	-0.4%	-0.4%	-0.4%	-0.4%	-0.4%
DCP	CVT	-1.3%	n.a.	-1.3%	-1.3%	-1.3%	n.a.
DCP	NAUTO	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%
DCP	MHEV	-0.8%	-0.8%	-0.8%	-0.8%	-0.8%	n.a.
DCP	ISG	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%	n.a.
DVVLD	6MAN	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
DVVLD	IATC	-0.6%	-0.6%	-0.6%	-0.6%	-0.6%	-0.6%
DVVLD	CVT	-1.8%	n.a.	-1.8%	-1.8%	-1.8%	n.a.
DVVLD	NAUTO	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%
DVVLD	MHEV	-0.9%	-0.9%	-0.9%	-0.9%	-0.9%	n.a.
DVVLD	ISG	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	n.a.
DEACD	6MAN	-0.2%	-0.2%	-0.2%	n.a.	-0.2%	-0.2%
DEACD	IATC	-0.6%	-0.6%	-0.6%	n.a.	-0.6%	-0.6%
DEACD	CVT	-1.8%	n.a.	-1.8%	n.a.	-1.8%	n.a.
DEACD	NAUTO	-1.0%	-1.0%	-1.0%	n.a.	-1.0%	-1.0%
DEACD	MHEV	-0.9%	-0.9%	-0.9%	n.a.	-0.9%	n.a.
DEACD	ISG	-1.1%	-1.1%	-1.1%	n.a.	-1.1%	n.a.
CVVL	6MAN	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
CVVL	IATC	-0.6%	-0.6%	-0.6%	-0.6%	-0.6%	-0.6%
CVVL	CVT	-1.8%	n.a.	-1.8%	-1.8%	-1.8%	n.a.
CVVL	NAUTO	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%
CVVL	MHEV	-0.9%	-0.9%	-0.9%	-0.9%	-0.9%	n.a.
CVVL	ISG	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	n.a.

Table IV-6d. Synergy pairings and values

Synergies		Fuel Consumption Improvement Synergy values by Vehicle Subclass Positive values are positive synergies, negative values are dissynergies.					
Technology A	Technology B	Large PC	Large Perf. PC	Minivan LT	Small LT	Midsize LT	Large LT
DEACO	6MAN	-0.1%	-0.1%	-0.1%	n.a.	-0.1%	-0.1%
DEACO	IATC	-0.5%	-0.5%	-0.5%	n.a.	-0.5%	-0.5%
DEACO	CVT	-1.4%	n.a.	-1.4%	n.a.	-1.4%	n.a.
DEACO	NAUTO	-0.8%	-0.8%	-0.8%	n.a.	-0.8%	-0.8%
DEACO	MHEV	-0.9%	-0.9%	-0.9%	n.a.	-0.9%	n.a.
DEACO	ISG	-1.2%	-1.2%	-1.2%	n.a.	-1.2%	n.a.
CCPO	6MAN	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
CCPO	IATC	-0.6%	-0.6%	-0.6%	-0.6%	-0.6%	-0.6%
CCPO	CVT	-1.7%	n.a.	-1.7%	-1.7%	-1.7%	n.a.
CCPO	NAUTO	-0.9%	-0.9%	-0.9%	-0.9%	-0.9%	-0.9%
CCPO	MHEV	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%	n.a.
CCPO	ISG	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	n.a.
DVVLO	6MAN	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
DVVLO	IATC	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%
DVVLO	CVT	-2.0%	n.a.	-2.0%	-2.0%	-2.0%	n.a.
DVVLO	NAUTO	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%
DVVLO	MHEV	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%	n.a.
DVVLO	ISG	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	n.a.
CDOHC	6MAN	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
CDOHC	IATC	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%
CDOHC	CVT	-2.0%	n.a.	-2.0%	-2.0%	-2.0%	n.a.
CDOHC	NAUTO	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%
CDOHC	MHEV	-1.0%	-1.0%	-1.0%	-1.0%	-1.0%	n.a.
CDOHC	ISG	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	n.a.
CBRST	6MAN	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
CBRST	IATC	-0.6%	-0.6%	-0.6%	-0.6%	-0.6%	-0.6%
CBRST	CVT	-1.8%	n.a.	-1.8%	-1.8%	-1.8%	n.a.
CBRST	NAUTO	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%
CBRST	MHEV	-2.1%	-2.1%	-2.1%	-2.1%	-2.1%	n.a.
CBRST	ISG	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	n.a.
CBRST	EPS	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	n.a.
CBRST	IACC	-0.4%	-0.4%	-0.4%	-0.4%	n.a.	n.a.
CBRST	HVIA	-0.3%	-0.3%	-0.3%	-0.3%	-0.3%	n.a.
TRBDS	6MAN	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%	-0.2%
TRBDS	IATC	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%	-0.7%
TRBDS	CVT	-2.4%	n.a.	-2.4%	-2.4%	-2.4%	n.a.
TRBDS	NAUTO	-1.3%	-1.3%	-1.3%	-1.3%	-1.3%	-1.3%
TRBDS	MHEV	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	n.a.
TRBDS	ISG	-1.3%	-1.3%	-1.3%	-1.3%	-1.3%	n.a.
DSLC	6MAN	-0.3%	-0.3%	-0.3%	-0.3%	-0.3%	-0.3%
DSLC	IATC	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
DSLC	CVT	-2.9%	n.a.	-2.9%	-2.9%	-2.9%	n.a.
DSLC	NAUTO	-1.7%	-1.7%	-1.7%	-1.7%	-1.7%	-1.7%
DSLC	MHEV	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	n.a.
DSLC	ISG	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	n.a.
DSLT	6MAN	-0.3%	-0.3%	-0.3%	-0.3%	-0.3%	-0.3%
DSLT	IATC	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
DSLT	CVT	-2.9%	n.a.	-2.9%	-2.9%	-2.9%	n.a.
DSLT	NAUTO	-1.7%	-1.7%	-1.7%	-1.7%	-1.7%	-1.7%
DSLT	MHEV	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	n.a.
DSLT	ISG	-1.1%	-1.1%	-1.1%	-1.1%	-1.1%	n.a.

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8. How does NHTSA use full vehicle simulation?

For regulatory purposes, the fuel economy of any given vehicle is determined by placing the vehicle on a chassis dynamometer (akin to a large treadmill that puts the vehicle's wheels in contact with one or more rollers, rather than with a belt stretched between rollers) in a controlled

environment, driving the vehicle over a specific driving cycle (in which driving speed is specified for each second of operation), measuring the amount of carbon dioxide emitted from the vehicle's tailpipe, and calculating fuel consumption based on the density and carbon content of the fuel.

One means of determining the effectiveness of a given technology as applied to a given vehicle model would be to measure the vehicle's fuel economy on a chassis dynamometer, install the new technology, and then re-measure the vehicle's fuel economy. However, most technologies cannot simply be ''swapped out,'' and even for those that can, simply doing so without additional engineering work may change other vehicle characteristics (e.g., ride, handling, performance, etc.), producing an ''apples to oranges'' comparison.

Some technologies can also be more narrowly characterized through bench or engine dynamometer (i.e., in which the engine drives a generator that is, in turn, used to apply a controlled load to the engine) testing. For example, engine dynamometer testing could be used to evaluate the brake-specific fuel consumption (e.g., grams per kilowatt-hour) of a given engine before and after replacing the engine oil with a less viscous oil. However, such testing does not provide a direct measure of overall vehicle fuel economy or changes in overall vehicle fuel economy.

For a vehicle that does not yet exist, as in NHTSA's analysis of CAFE standards applicable to future model years, even physical testing can provide only an estimate of the vehicle's eventual fuel economy. Among the alternatives to physical testing, automotive engineers involved in vehicle design make use of computer-based analysis tools, including a powerful class of tools commonly referred to as ''full vehicle simulation.'' Given highly detailed inputs regarding vehicle engineering characteristics, full vehicle simulation provides a means of estimating vehicle fuel consumption over a given drive cycle, based on the explicit representation of the physical laws governing vehicle propulsion and dynamics. Some vehicle simulation tools also incorporate combustion simulation tools that represent the combustion cycle in terms of governing physical and chemical processes. Although these tools are computationally intensive and required a great deal of input data, they provide engineers involved in vehicle development and design with an alternative that can be considerably faster and less expensive than physical experimentation and testing.

Properly executed, methods such as physical testing and full vehicle simulation can provide reasonably (though not absolutely) certain estimates of the vehicle fuel economy of specific vehicles to be produced in the future. However, when analyzing potential CAFE standards, NHTSA is not actually designing specific vehicles. The agency is considering implications of new standards that will apply to the average performance of manufacturers' entire production lines. For this type of analysis, precision in the estimation of the fuel economy of individual vehicle models is not essential; although it is important that the agency avoid systematic upward or downward bias, uncertainty at the level of individual models is mitigated by the fact that compliance with CAFE standards is based on average fleet performance.

As discussed above, the Volpe Model, which the agency has used to perform the analysis supporting today's final rule, applies an incrementally multiplicative approach to estimating the fuel savings achieved through the progressive addition of fuel-saving technologies. NAS' use of the same approach in its 2002 report was, at the time and henceforth, criticized by a small number of observers as being prone to systematic overestimation of available fuel savings. This assertion was based on the fact that, among the technologies present on any given vehicle, more than one may address the same energy loss mechanism (notably, pumping losses on throttled engines). Once all energy losses of a given type are eliminated, even theoretical improvements attributable to that loss mechanism are no longer available.

The most direct critique of NAS' methods appeared in a 2002 SAE paper by four General Motors researchers (Patton, et al.), who compared some of NAS' calculations to fuel consumption estimates obtained through vehicle testing and simulation, and concluded that, as increasing numbers of technologies were applied, NAS' estimates became increasingly subject to overestimation of available fuel consumption reductions.[131]

In response to such concerns, which had also been raised as the NAS committee performed its analysis, the NAS report concluded that vehicle simulation performed for the committee indicated that the report's incremental fuel savings estimates were ''quite reasonable'' for the less aggressive two of the three product development paths it evaluated. The report did, however, conclude that uncertainty increased with consideration of more technologies, especially under the more aggressive ''path 3'' evaluated by the committee. The report did not, however, mention any directional bias to this uncertainty.[132]

Notwithstanding this prior response to concerns about the possible overestimation of available fuel savings, and considering that analyses supporting the development of the NPRM, the Volpe model applies ''synergy factors'' that adjust fuel savings calculations when some pairs of technologies are applied to the same vehicle, as discussed above in Section IV.C.7. These factors reduce uncertainty and the potential for positive or negative biases in the Volpe model's estimates of the effects of technologies.

As an alternative to estimating fuel consumption through incremental multiplication and the application of ''synergy'' factors to address technology interactions, NHTSA considered basing its analysis of fuel economy standards on full vehicle simulation at every step. However, considering the nature of CAFE analysis (in particular, the analysis of fleets projected to be sold in the future by each manufacturer), as well as the quantity and availability of information required to perform vehicle simulation, the agency explained that it believed detailed simulation when analyzing the entire fleet of future vehicles is neither necessary nor feasible. Still, when estimating synergies between technologies, the agency did make use of vehicle simulation studies, as discussed above. The agency has also done so when re-estimating synergies before performing the analysis supporting today's final rule.

NHTSA also considered estimating changes in fuel consumption by explicitly accounting for each of several energy loss mechanisms—that is, physical mechanisms to which the consumption of (chemical) energy in fuel may be attributed. This approach would be similar to that proposed in 2002 by Patton et al. The agency invited comment on this approach, requested that manufacturers submit product plans disaggregating fuel consumption into each of nine loss mechanisms, and sought estimates of the extent to which fuel-saving technologies affect each of these loss mechanisms.

[131] Patton, K.J., et al., General Motors Corporation, ''*Aggregating Technologies for Reduced Fuel Consumption: A Review of the Technical Content in the 2002 National Research Council Report on CAFE*'', 2002–01–0628, Society of Automotive Engineers, Inc., 2002.

[132] NRC (2002), *op. cit.*, p. 151.

In response to the NPRM, the Alliance presented a detailed analysis by Sierra Research, which used a modified version of VEHSIM (a vehicle simulation tool) to estimate the fuel consumption resulting from the application of various vehicle technologies to 25 vehicle categories intended to represent the fleet. The Alliance commented that this simulation-based approach is more accurate than that applied by NHTSA, and indicated that Sierra's ability to perform this analysis demonstrates that NHTSA should be able to do the same.

General Motors also raised questions regarding the multiplicative approach to fuel consumption estimation NHTSA has implemented using the Volpe model. GM indicated that the Volpe model should be enhanced with modifications to ''take into account the basic physics of vehicles.'' [133] Although GM's comments did not explicitly mention vehicle simulation, GM did express full support for the Alliance's comments.

The California Air Resources Board (CARB) presented comparisons of different simulation studies, commenting that these demonstrate that the VEHSIM model used by Sierra Research ''cannot accurately simulate vehicles that use advanced technologies such as variable valve timing and lift and advanced transmissions.'' [134] CARB also questioned Sierra Research's simulation capabilities and suggested that, in support of actual product development, manufacturers neither contract with Sierra Research for such services nor make use of VEHSIM. CARB further commented that both AVL (which performed simulation studies for CARB's evaluation of potential greenhouse gas standards) and Ricardo (which has recently performed simulation studies and related analysis for both EPA and NHTSA) provide such services to manufacturers.[135]

However, the Alliance and GM have criticized technical aspects of the AVL and Ricardo vehicle simulation studies mentioned by CARB. Regarding the AVL vehicle simulations CARB utilized, GM raised concerns that, among other things, some of AVL's simulations assumed the use of premium-grade gasoline, and some effectively assume vehicle performance and utility would be compromised.[136] Similarly, the Alliance raised concerns that some of the simulations performed by Ricardo for EPA assumed the use of premium fuel, and that many of the simulations assumed vehicle performance would be reduced.[137] The Alliance also indicated that the five vehicles analyzed by Ricardo for EPA were not representative of all vehicles in the fleet, leading to overstatement of the degree of improvement potentially available to vehicles that already use technologies not present in the vehicles examined by EPA. The Alliance further argued that the report did not reveal sufficient detail regarding important simulation details (related, e.g., to cylinder deactivation), that it failed to account for some parasitic and accessory loads, and that EPA directed Ricardo to unrealistically assume universal improvements in aerodynamics, tire efficiency, and powertrain friction.[138]

Although submitted after the close of the comment period specified in the NPRM, comments by several state Attorneys General and other state and local official questioned the need and merits of full vehicle simulation within the context of CAFE analysis, stating that

> Computer simulation models such as VEHSIM are not practical except perhaps during vehicle development to determine the performance of specific vehicle models where all vehicle engineering parameters are known and can be accounted for in the inputs to the model. Such an exercise is extremely data intensive, and extending it to the entire fleet makes it subject to multiple errors unless the specific parameters for each vehicle model are known and accounted for in the model inputs.[139]

Considering the comments summarized above, the analyses to which they refer, and the nature of the analysis the agency performs when evaluating potential CAFE standards, NHTSA has concluded that full vehicle simulation, though useful to manufacturers' own product development efforts, remains neither necessary nor feasible for the MY 2011 CAFE analysis. NHTSA's basis for this conclusion is as follows:

Full vehicle simulation involves estimating the fuel consumption (and, typically, emissions) of a specific vehicle over a specific driving cycle. Many engineering characteristics of the vehicle must be specified, including, but not limited to weight, rolling resistance, tire radius, aerodynamic drag coefficient, frontal area, engine maps[140] and detailed transmission characteristics (gear ratios, shift logic, etc.), other drivetrain characteristics, and accessory loads. Additional engine test data would also be required in order to update engine maps when evaluating the application of advanced engine technologies. Driving cycles—vehicle speeds over time—are specified on a second-by-second (or more finely-grained) basis. Using full vehicle simulation to estimate average fuel consumption under the test procedures relevant to CAFE involves many simulations to capture all the potential combinations of technologies that could be used.

Given all of the requisite data representing a specific vehicle, full vehicle simulation can provide a powerful means of estimating vehicle performance while accounting for interactions between various vehicle components and systems. Full simulation can also provide a means of estimating vehicle performance under driving conditions not represented by the fuel economy test procedures. For

[133] GM comments at 2, Docket No. NHTSA–2008–0089–0162.

[134] CARB comments at 5, Docket No. NHTSA–2008–0089–0173. In developing potential greenhouse gas (GHG) emissions standards for light vehicles, CARB made significant use of vehicle simulation results presented in *''Reducing Greenhouse Gas Emissions from Light-Duty Motor Vehicles''*, which was published in 2004 by the Northeast States Center for a Clean Air Future (NESCCAF). As NHTSA discussed in the NPRM, CARB's and NESCCAF's approach, which effectively reduces each manufacturer's fleet to five ''representative'' vehicles and two average vehicle weights, is too limited for purposes of CAFE analysis.

[135] California Air Resources Board, *''Air Resources Board Staff Comments on Sierra and Martec NRC Presentations''*, p. 2.

[136] Testimony of Kenneth Patton (GM); Testimony of Kevin McMahon (Martec); Plaintiffs' Proposed Findings of Fact, June 15, 2007, pp. 103 –113.

[137] Alliance of Automobile Manufacturers, *''Detailed Technical Comments on Ricardo 'Study of Potential Effectiveness of Carbon Dioxide Reducing Vehicle Technologies' Report''*, March 6, 2008.

[138] For the reader's reference, Ricardo's study for EPA was based on specific EPA-defined requirements, such as performing full vehicle simulations of 26 different technology packages on the EPA-specified 5 baseline vehicles. Thus, to the extent that Ricardo's numbers do not reflect specific differences in technology effectiveness by vehicle model, in conducting the analysis for NHTSA's final rule, NHTSA and Ricardo drew on Ricardo's knowledge to develop incremental benefits based in part on Ricardo's simulation work. Ricardo also noted differences between its report for EPA and the EPA Staff Technical Report in terms of the incremental benefits for individual technologies developed by EPA based on Ricardo's simulation.

[139] Attorneys General of the States of California, Arizona, Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New Mexico, Oregon, and Vermont, the Executive Officer of the California Air Resources Board, the Commissioner of the New Jersey Department of Environmental Protection, the Secretary of the New Mexico Environment Department, the Secretary of the Commonwealth of Pennsylvania Department of Environmental Protection, and the Corporation Counsel of the City of New York, *Supplemental Comments Regarding Alliance of Automobile Manufacturers Comments*, Docket No. NHTSA–2008–0089–0495, October 8, 2008, p. 3.

[140] An engine map specifies the engine's efficiency under many different operating conditions, each of which is defined in terms of rotational speed (i.e., revolutions per minute, or RPM) and load (i.e., torque).

an engineer involved in the design of a specific vehicle or vehicle component or system, or a manufacturer making specific decisions regarding the fleet of vehicles it will produce, vehicle simulation can be a powerful tool. However, even the most detailed simulation involving full combustion cycle simulation is not the ''gold standard'' for product design. Chrysler, for example, has portrayed simulation as one of several tools in its CAFE planning process, which also involves physical testing (i.e., bench testing, chassis dynamometer testing) of actual components and assembled vehicles.[141]

In purpose and corresponding requirements, NHTSA's evaluation of regulatory options is fundamentally different from the type of product planning and development that a manufacturer conducts. A manufacturer must make specific decisions regarding every component that will be installed in every vehicle it plans to produce, and it must ultimately decide how many of each vehicle it will produce. Although manufacturers have some ability to make ''mid-course adjustments,'' that ability is limited by a range of factors, such as contracts and tooling investments. By comparison, NHTSA attempts only to estimate how a given manufacturer *might* attempt to comply with a potential CAFE standard; given the range of options available to each manufacturer, NHTSA has little hope of predicting specifically what a given manufacturer *will* do. CAFE standards require average levels of performance, not specific technology outcomes. Therefore, while it is important that NHTSA avoid systematic bias when estimating the potential to increase the fuel economy of specific vehicle models, it is not important that the agency's estimates precisely forecast results for every future vehicle.

Furthermore, NHTSA evaluates the impact of CAFE standards on all manufacturers, based on a forecast of specific vehicle models each manufacturer will produce for sale in the U.S. in the future. An analysis for MY 2011 can involve thousands of unique vehicle models, hundreds of unique engines, and hundreds of unique transmissions. Model-by-model representation, as used in the analysis for this final rule, allows the agency to, among other things, account for technologies expected to be present on each vehicle under ''business as usual'' conditions, thereby avoiding errors regarding the potential to add further technologies.

Because of the intense informational and computational requirements, industry-wide studies that rely on vehicle simulation reduce the fleet to a limited number of ''representative'' vehicles. This reduction limits the ability to account for technological and other heterogeneity of the fleet, virtually ensuring the overestimation of improvements available to some vehicles (e.g., vehicles that begin with a great deal of technology) and some manufacturers (e.g., manufacturers that sell many high-technology vehicles). AVL's analysis for NESCCAF and Ricardo's analysis for EPA, each of which considered only five vehicle models, are both, therefore, of severely limited use for the kind of fleetwide analysis used in this final rule, although both provide useful information regarding the range of fuel savings achieved by specific technologies and ''packages'' of technologies.

The analysis conducted by Sierra Research for the Alliance considers a significantly greater number (25) of ''representative'' vehicles, drawing important distinctions between similarly-sized cars based on performance. Sierra was able to do so in part because it analyzed historical vehicles. For example, Sierra indicates that model year 1998 engines were used to supply VEHSIM with baseline, ''blended'' engine maps applied universally (rather than specific maps for each manufacturer and vehicle model) for vehicle model years out to 2020. Considering that, even without increases in CAFE standards, many vehicles produced for sale in the U.S. during the time period considered in a CAFE rulemaking are likely to have technologies such as VVLT and cylinder deactivation, NHTSA doubts ''blended'' 1998 engines are as representative as implied by Sierra's analysis.

Although NHTSA could, in principle, integrate full vehicle simulation of every vehicle model into its analysis of the future fleet, the agency expects that manufacturers would be unable to provide much of the required information for future vehicles. Even if manufacturers were to provide such information, using full vehicle simulation to estimate the effect of further technological improvements to future vehicles would involve uncertain detailed estimates, such as valve timing, cylinder deactivation operating conditions, transmission shift points, and hybrid vehicle energy management strategies for each specific vehicle, engine, and transmission combination. Even setting aside the vast increases in computational demands that would accompany the use of full vehicle simulation in model-by-model analysis of the entire fleet, the agency remains convinced that the availability of underlying information and data would be too limited for this approach to be practical.

As a third alternative, one that might be more explicitly ''physics-based'' than the use of synergy factors and vastly more practical than full vehicle simulation, NHTSA requested comment on the use of partitioned fuel consumption accounting. Aside from GM's nonspecific recommendation that the Volpe model be modified to account for the ''basic physics of vehicles,'' NHTSA did not receive comments regarding the relative merits of partitioning fuel consumption into several energy loss mechanisms for purposes of estimating the effects of fuel-saving technologies, even though the concept is similar to that proposed by Patton, et al. in 2002.[142] Some manufacturers provided some of the information that would have been necessary for the implementation of this approach. However, as a group, manufacturers that submitted product plan information to the agency provided far too little disaggregated fuel consumption information to support the development of this approach. Although NHTSA continues to believe that partitioning fuel consumption into various loss mechanisms could provide a practical and sound basis for future analysis, the information required to support this approach is not available at this time.

In conclusion, NHTSA observes that with respect to the CAFE analysis prepared for this final rule, full vehicle simulation could theoretically be used at three different levels. First, full vehicle simulation could be used only to provide specific estimates, that, combined with other data (e.g., from bench testing) would provide a basis for estimates of the effectiveness of specific individual technologies. While NHTSA will continue considering this type of analysis, the agency anticipates that it will continue to be feasible and informative to make somewhat greater use of full vehicle simulation. Second, full vehicle simulation could be fully integrated into NHTSA's model-by-model analysis of the entire fleet to be

[141] Fodale, F., Chrysler LLC, *''Fuel Economy/Fuels—Presented to NRC Committee on Fuel Economy of Light-Duty Vehicles''*, November 27, 2007.

[142] Patton, et al., present an energy balance calculation that disaggregates fuel consumption into six energy loss categories, indicating that ''an accounting of the effects of individual technologies on energy losses within these categories provides a practical, physically-based means to evaluate and compare the fuel consumption effects of the various technologies.'' (Patton, et al., (2002), op. cit., p. 11.)

projected to be produced in future model years. NHTSA expects, however, that this level of integration will remain infeasible considering the size and complexity of the fleet. Also, considering the forward-looking nature of NHTSA's analysis, and the amount of information required to perform full vehicle simulation, NHTSA anticipates that this level of integration would involve misleadingly precise estimates of fuel consumption, even for MY 2011. Finally, full vehicle simulation can be used to develop less complex representations of interactions between technologies (such as was done using the lumped parameter model to develop the synergies for the final rule), and to perform reference points to which vehicle-specific estimates may be compared. NHTSA views this as a practical and productive potential use of full vehicle simulation, and will consider following this approach in the future. NHTSA has contracted with NAS to, among other things, evaluate the potential use of full vehicle simulation and other fuel consumption estimation methodologies. Nevertheless, in addition to considering further modifications to the Volpe model, NHTSA will continue to consider other methods for evaluating the cost and effect of adding technology to manufacturers' fleets.

9. Refresh and Redesign Schedule

In addition to, and as discussed below, developing analytical methods that address limitations on overall rates at which new technologies can be expected to feasibly penetrate manufacturers' fleets, the agency has also developed methods to address the feasible scheduling of changes to specific vehicle models. In the Volpe model, which the agency has used to support the current rulemaking, these scheduling-related methods were first applied in 2003, in response to concerns that an early version of the model would sometimes add and then subsequently remove some technologies.[143] By 2006, these methods were integrated into a new version of the model, one which explicitly ''carried forward'' technologies added to one vehicle model to succeeding vehicle models in the next model year, and which timed the application of many technologies to coincide with the redesign or freshening of any given vehicle model.[144]

Even within the context of the phase-in caps discussed below, NHTSA considers these model-by-model scheduling constraints necessary in order to produce an analysis that reasonably accounts for the need for a period of stability following the redesign of any given vehicle model. If engineering, tooling, testing, and other redesign-related resources were free, every vehicle model could be redesigned every year. In reality, however, every vehicle redesign consumes resources simply to address the redesign. Phase-in caps, which are applied at the level of manufacturer's entire fleet, do not constrain the scheduling of changes to any particular vehicle model. Conversely, scheduling constraints to address vehicle freshening and redesign do not necessarily yield realistic overall penetration rates (e.g., for strong hybrids).

In the automobile industry there are two terms that describe when changes to vehicles occur: redesign and refresh (i.e., freshening). Vehicle redesign usually encompasses changes to a vehicle's appearance, shape, dimensions, and powertrain, and is traditionally associated with the introduction of ''new'' vehicles into the market, which is often characterized as the next generation of a vehicle. In contrast, vehicle refresh usually encompasses only changes to a vehicle's appearance, and may include an upgraded powertrain. Refresh is traditionally associated with mid-cycle cosmetic changes to a vehicle, within its current generation, to make it appear ''fresh.'' Vehicle refresh traditionally occurs no earlier than two years after a vehicle redesign or at least two years before a scheduled redesign. In the NPRM, NHTSA tied the application of the majority of the technologies to a vehicle's refresh/redesign cycle, because their application was significant enough that it could involve substantial engineering, testing, and calibration work.

NHTSA based the redesign and refresh schedules used in the NPRM as inputs to the Volpe model on a combination of manufacturers' confidential product plans and NHTSA's engineering judgment. In most instances, NHTSA reviewed manufacturers' planned redesign and refresh schedules and used them in the same manner it did in past rulemakings. However, in NHTSA's judgment, manufacturers' planned redesign and refresh schedules for some vehicle models were unrealistically slow considering overall market trends. In these cases, the agency re-estimated redesign and refresh schedules more consistent with the agency's expectations, as discussed below. Also, if companies did not provide product plan data, NHTSA used publicly available data about vehicle redesigns to project the redesign and refresh schedules for the vehicles produced by these companies.[145]

Unless a manufacturer submitted plans for a more rapid redesign and refresh schedule, NHTSA assumed that passenger cars would normally be redesigned every 5 years, based on the trend over the last 10–15 years showing that passenger cars are typically redesigned every 5 years. These trends were reflected in the manufacturer product plans that NHTSA used in the NPRM analysis, and were also confirmed by many automakers in meetings held with NHTSA to discuss various general issues regarding the rulemaking.

NHTSA explained that it believes that the vehicle design process has progressed and improved rapidly over the last decade and that these improvements have made it possible for some manufacturers to shorten the design process for some vehicles in order to introduce vehicles more frequently in response to competitive market forces. Although manufacturers have likely already taken advantage of most available improvements, according to public and confidential data available to NHTSA, almost all passenger cars will be on a 5-year redesign cycle by the end of the decade, with the exception being some high performance vehicles and vehicles with specific market niches.

NHTSA also stated in the NPRM that light trucks are currently redesigned every 5 to 7 years, with some vehicles (like full-size vans) having longer redesign periods. In the most competitive SUV and crossover vehicle segments, the redesign cycle currently averages slightly above 5 years. NHTSA explained that it is expected that the light truck redesign schedule will be shortened in the future due to competitive market forces Thus, for almost all light trucks scheduled for a redesign in model year 2014 and later, NHTSA projected a 5-year redesign cycle. Exceptions were made for high performance vehicles and other vehicles that traditionally had longer than average design cycles. For those vehicles, NHTSA attempted to preserve their historical redesign cycle rates.

NHTSA discussed these assumptions with several manufacturers at the NPRM stage, before the current economic crisis. Two manufacturers indicated at

[143] 68 FR 16874 (Apr. 7, 2003).

[144] 71 FR 17582 (Apr. 6, 2006).

[145] Sources included, but were not limited to manufacturers' web sites, industry trade publications (e.g., Automotive News), and commercial data sources (e.g., Wards Automotive, etc.).

that time that their vehicle redesign cycles take at least five years for cars and 6 years and longer for trucks because they rely on those later years to earn a profit on the vehicles. They argued that they would not be able to sustain their business if forced by CAFE standards to a shorter redesign cycle. The agency recognizes that some manufacturers are severely stressed in the current economic environment, and that some manufacturers may be hoping to delay planned vehicle redesigns in order to conserve financial resources. However, consistent with its forecast of the overall size of the light vehicle market from MY 2011 on, the agency currently expects that the industry's status will improve, and that manufacturers will typically redesign both car and truck models every 5 years in order to compete in that market.

NHTSA received relatively few comments regarding its refresh/redesign schedule assumptions. UCS commented that redesign schedules should be shortened to 3 years, based on recent public statements by Ford that they intended to move to that cycle, and based on other recent manufacturer behavior.

Although NHTSA agrees with UCS that remarks by one Ford official at a January 2008 conference suggest that that company was then hoping to accelerate its vehicle ''cycle time'' to 3 years, the agency questions the context, intended meaning and scope, and representation of those remarks.[146] Further, the agency notes that the article referenced by UCS also indicates that ''most manufacturers make changes to their vehicle lines every four years or more, depending on the segment of the market, with mid-cycle freshenings every two years or so.'' [147] Although some manufacturers have, in their product plans, indicated that they plan to redesign some vehicle models more frequently than has been the industry norm, all manufacturers have also indicated that they expect to redesign some other vehicle models considerably less frequently. The CAR report submitted by the Alliance, prepared by the Center for Automotive Research and EDF, states that ''For a given vehicle line, the time from conception to first production may span two and one-half to five years,'' but that ''The time from first production (''Job #1'') to the last vehicle off the line (''Balance Out'') may span from four to five years to eight to ten years or more, depending on the dynamics of the market segment.'' The CAR report then states that ''At the point of final production of the current vehicle line, a new model with the same badge and similar characteristics may be ready to take its place, continuing the cycle, or the old model may be dropped in favor of a different product.'' [148]

NHTSA believes that this description, which states that a vehicle model will be redesigned or dropped after 4–10 years, is consistent with other characterizations of the redesign and freshening process, and supports its 5-year redesign assumption and its 2–3 year refresh cycle assumptions.[149] Thus, for purposes of the final rule, NHTSA is retaining the 5-year redesign/2–3 year refresh assumptions employed in the NPRM. However, NHTSA will continue to monitor manufacturing trends and will reconsider these assumptions in subsequent rulemakings if warranted.

For purposes of the final rule, NHTSA has also considered confidential product plans where applicable and industry trends on refresh and redesign timing as discussed above, to apply specific technologies at redesign, refresh, or any model years as shown in Table IV–7 below.

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[146] Zoia, D.E. 2008. Ford to cut cycle times to three years. Online at *http://www.wardsauto.com*. January 24.

[147] *Id.*

[148] *See* NHTSA–2008–0089–0170.1, Attachment 16, at 8 (393 of pdf).

[149] *See* id., at 9 (394 of pdf).

Table IV-7. Technology Refresh and Redesign Application

Technology	Redesign only	Redesign or Refresh	Anytime
Low Friction Lubricants			X
Engine Friction Reduction		X	
VVT - Coupled Cam Phasing (CCP) on SOHC		X	
Discrete Variable Valve Lift (DVVL) on SOHC	X		
Cylinder Deactivation on SOHC		X	
VVT - Intake Cam Phasing (ICP)		X	
VVT – Dual Cam Phasing (DCP)		X	
Discrete Variable Valve Lift (DVVL) on DOHC	X		
Continuously Variable Valve Lift (CVVL)	X		
Cylinder Deactivation on DOHC		X	
Cylinder Deactivation on OHV		X	
VVT - Coupled Cam Phasing (CCP) on OHV		X	
Discrete Variable Valve Lift (DVVL) on OHV	X		
Conversion to DOHC with DCP	X		
Stoichiometric Gasoline Direct Injection (GDI)	X		
Combustion Restart		X	
Turbocharging and Downsizing	X		
Exhaust Gas Recirculation (EGR) Boost	X		
Conversion to Diesel following CBRST	X		
Conversion to Diesel following TRBDS	X		
Electric Power Steering		X	
Improved Accessories		X	
12V Micro-Hybrid	X		
Higher Voltage/Improved Alternator		X	
Integrated Starter Generator	X		
6-Speed Manual/Improved Internals	X		
Improved Auto. Trans. Controls/Externals		X	
Continuously Variable Transmission	X		
6/7/8-Speed Auto. Trans with Improved Internals	X		
Dual Clutch or Automated Manual Transmission	X		
Power Split Hybrid	X		
2-Mode Hybrid	X		
Plug-in Hybrid	X		
Material Substitution (1%)		X	
Material Substitution (2%)	X		
Material Substitution (5%)	X		
Low Rolling Resistance Tires		X	
Low Drag Brakes		X	
Secondary Axle Disconnect		X	
Aero Drag Reduction		X	

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As the table shows, most technologies are applied by the Volpe model when a specific vehicle is due for a redesign or refresh. However, for low friction lubricants, the model is not restricted to applying it during a refresh/redesign year and thus it was made available for application at any time. Low friction lubricants are very cost-effective, can apply to multiple vehicle models/platforms and can be applied across multiple vehicle models/platforms in one year. Although they can also be applied during a refresh/redesign year, they are not restricted to that timeframe because their application is not viewed as necessitating a major engineering redesign and associated testing/calibration.

For several technologies estimated in the NPRM to be available for application during any model year, NHTSA now estimates that these technologies will be available only at refresh or redesign. Those technologies include aggressive shift logic, improved accessories, low rolling resistance tires and low drag

brakes. Aggressive shift logic is now one of the technologies included under improved automatic transmission controls. This technology requires a recalibration specific to each vehicle, such that it can therefore be applied only at refresh or redesign model years. The ''improved accessories'' technology has been redefined to include intelligent engine cooling systems, which require a considerable change to the vehicle and engine cooling system; therefore, improved accessories also can be applied only at refresh or redesign model years. Also, NHTSA concurs with manufacturers' confidential statements that indicating that low drag brakes and low rolling resistance tires can be applied only at refresh or redesign model years due to the need for vehicle testing and calibration (e.g., to ensure safe handling and braking) when these technologies are applied.

10. Phase-In Caps

In 2002, NHTSA proposed the first increases in CAFE standards in six years due to a previous statutorily-imposed prohibition on setting new standards. That proposal, for MY 2005–2007 light truck standards, relied, in part, on a precursor to the current Volpe model. This earlier model used a ''technology application algorithm'' to estimate the technologies that manufacturers could apply in order to comply with new CAFE standards.

NHTSA received more than 65,000 comments on that proposal. Among those were many manufacturer comments concerning lead time and the potential for rapid widespread use of new technologies. The agency noted that DaimlerChrysler and Ford ''argued that the agency had underestimated the lead time necessary to incorporate fuel economy improvements in vehicles, as well as the difficulties of introducing new technologies across a high volume fleet.'' Specific to Volpe's technology application algorithm, the agency noted that General Motors took issue with the algorithm's ''application of technologies to all truck lines in a single model year.'' [150]

In response to those concerns, Volpe's algorithm was modified ''to recognize that capital costs require employment of technologies for several years, rather than in a single year.'' [151] Those changes moderated the rates at which technologies were estimated to penetrate manufacturers' fleets in response to the new (MY 2005–MY 2007) CAFE standards. These changes produced more realistic estimates of the technologies manufacturers could apply in response to the new standards, and thereby produced more realistic estimates of the costs of those standards.

Prior to the next rulemaking, the Volpe model underwent significant integration and improvement, including the accommodation of explicit ''phase-in caps'' to constrain the rates at which each technology would be estimated to penetrate each manufacturer's fleet in response to new CAFE standards.[152] As documented in 2006, the agency's final standards for light trucks sold in MY 2008–MY 2011 were based on phase-in caps ranging from 17 percent to 25 percent (corresponding to full penetration of the fleet within 4 to 6 years) for most technologies, and from 3 percent to 10 percent (full penetration within 10 to 33 years) for more advanced technologies such as hybrid electric vehicles.[153] The agency based these rates on consideration of comments and on the 2002 NAS Committee's findings that ''widespread penetration of even existing technologies will probably require 4 to 8 years'' and that for emerging technologies ''that require additional research and development, this time lag can be considerably longer''.[154]

In its 2008 NPRM proposing new CAFE standards for passenger cars and light trucks sold during MY 2011–MY 2015, NHTSA considered manufacturers' planned product offerings and estimates of technology availability, cost, and effectiveness, as well as broader market conditions and technology developments. The agency concluded that many technologies could be deployed more rapidly than it had estimated during the prior rulemaking.[155] For most engine technologies, the agency increased these caps from 17 percent to 20 percent, equivalent to reducing the estimated time for potential fleet penetration from 6 years to 5 years. For stoichiometric gasoline direct injection (GDI) engines, the agency increased the phase-in cap from 3 percent to 20 percent, equivalent to estimating that such engines could potentially penetrate a given manufacturer's fleet in 5 years rather than the previously-estimated 33 years. However, as in its earlier CAFE rulemakings, the agency continued to recognize that myriad constraints prohibit most technologies from being applied across an entire fleet of vehicles within a year, even if those technologies are available in the market.

In addition to requesting further explanation of NHTSA's use of phase-in caps, commenters addressing phase-in caps generally asserted one of three themes: (1) That hybrid phase-in caps were much lower than market trends or manufacturer announcements would otherwise suggest; (2) that the phase-in caps proposed in the NPRM were too high in the early years of the rulemaking and did not reflect the very small (from a manufacturing perspective) amount of lead-time between the final rule and the MY 2011 standards, and/or were too low in the later years of the rulemaking given the relatively-increased amount of lead-time for those model years; (3) that there are insufficient resources (either in terms of capital or engineering) to implement the number of technologies implied by the phase-in caps simultaneously.

Agency response: NHTSA continues to recognize that many factors constrain the rates at which manufacturers will be able to feasibly add fuel-saving technologies to the fleets they will sell in the United States. For a given technology, examples of these factors may include, but would not be limited to the following:

- Is the technology ready for commercial use? For example, can it operate safely and reliably under real-world driving conditions for several years and many miles?
- If the technology requires special infrastructure (e.g., new electrical generation and charging facilities), how quickly will that be put in place?
- How quickly can suppliers ramp up to produce the technology in mass quantities? For example, how quickly can they obtain the materials, tooling, and engineering resources they will need?
- Are original equipment manufacturers (OEMs) ready to integrate the technology into vehicles? For example, how quickly can they obtain the necessary tooling (e.g., retool factories), engineering, and financial resources?
- How long will it take to establish failure and warranty data, and to make sure dealers and maintenance and repair businesses have any new training and tooling required in order to work with the new technology?

[150] 68 FR 16874 (Apr. 7, 2003).

[151] *Id.*, at 16885.

[152] These caps constrain the extent to which additional technology is applied by the model, beyond the levels projected in each manufacturer's baseline fleet. Also, because manufacturers' fleets are comprised of vehicles, engines, and transmissions sold in discrete volumes, phase-in caps cannot be applied as precise limits. In some cases (when a phase-in cap is small or a manufacturer has a limited product line), doing so would prevent the technology from being applied at all. Therefore, the Volpe model enforces each phase-in cap constraint as soon as it has been exceeded by application of technologies to manufacturers.

[153] 71 FR 17572, 17679 (Apr. 6, 2006).

[154] *Id.* at 17572. See also 2002 NAS Report, at 5.

[155] 73 FR 24387–88 (May 2, 2008).

• Will OEMs be able to reasonably recoup prior investments for tooling and other capital?

• To what extent are suppliers and OEMs constrained by preexisting contracts?

NHTSA cannot explicitly and quantitatively evaluate every one of these and other factors with respect to each manufacturer's potential deployment of each technology available during the production intent or emerging technology framework. Attempting to do so would require an extraordinary effort by the agency, and would likely be subject to tremendous uncertainties. For example, in the current economic and market environment, the agency expects that it would be impossible to reliably predict specific characteristics of future supply chains. Therefore, the agency has concluded that it is appropriate to continue using phase-in caps to apply the agency's best judgment of the extent to which such factors combine to constrain the rates at which technologies may feasibly be deployed. We note, however, that many of the assumptions about phase-in caps made in this final rule apply to years beyond MY 2011, because as the NAS Committee and commenters indicated, technologies are phased in over several years, so the agency evaluated the phasing-in of technologies over the five-year period proposed in the NPRM. NHTSA provides these assumptions both in response to comments and to provide context for the agency's decisions regarding MY 2011 phase-in caps. We emphasize that all assumptions for years other than MY 2011 will be reconsidered for future rulemakings and may be subject to change at that time.

Considering the above-mentioned comments, NHTSA has concluded that the phase-in caps it applied during its analysis documented in the 2008 NPRM resulted in technology penetration rates that were unrealistically high in the earlier model years covered by its proposal, particularly for MY 2011. This was a significant basis for the proposed standards' ''front loading'' about which manufacturers expressed serious concerns. In response, and based on this conclusion, the Volpe model was modified for purposes of the final rule analysis to use phase-in caps for each technology that vary from one year to the next, and that in many cases would have increased more rapidly in the later years of the agency's analysis than in earlier years. In making these changes, particularly to the MY 2011 phase-in caps, the agency has been mindful of the need to provide manufacturers sufficient lead time to add technologies to their fleets. In the agency's judgment, its revised approach more realistically represents manufacturers' capabilities and therefore produces more realistic estimates of the costs of new CAFE standards.

For some technologies, NHTSA also concluded that slower overall rates of fleet penetration are more likely than the rates shown in the NPRM. The agency estimates that cylinder deactivation, stoichiometric GDI, and turbocharging with downsizing would be able to potentially be added to 12–14 percent of the fleet per year on average, rather than the 20 percent phase-in caps used in the NPRM for these technologies. Considering manufacturers' comments and some aspects of its reevaluation of the incremental benefits of available engine technologies, the agency has concluded that these technologies will, for some engines, require more significant hardware changes and certification burden than previously recognized, such that feasible deployment is likely to be somewhat slower than estimated in the NPRM.

NHTSA has also concluded, considering the complexities involved in deploying strongly hybridized vehicles (i.e., power split, two mode, and plug-in hybrids), it is unrealistic to expect that, in response to new CAFE standards, manufacturers can produce more of such vehicles in MY 2011 than they are already planning. Therefore, NHTSA has set the MY 2011 phase-in cap for strong hybrids to zero in that model year. Based on new information regarding engineering resources entailed in developing new power split and two-mode hybrid vehicles, the agency estimated in its analysis that these technologies could be added to up to 11 percent and 8 percent, respectively, of a given manufacturer's long run fleet, rather than the 15 percent the agency estimated for the NPRM. The agency also considered a less aggressive 1 percent longer run phase-in cap for plug-in hybrids, in part because although the agency expects that plug-in hybrids will rely on lithium-ion batteries, it is not clear whether and, if so, how the supply chain for large and robust lithium-ion batteries will develop.

On the other hand, NHTSA has also concluded that some technologies can potentially be deployed more widely than estimated in the NPRM. For example, the agency estimates that 6/7/8-speed transmissions, dual clutch or automated manual transmissions, secondary axle disconnect, and aerodynamic improvements can potentially (notwithstanding engineering constraints that, for example, preclude the application of aerodynamic improvements to some performance vehicles) be added at an average rate of 20 percent per year of a given manufacturer's fleet rather than the 14–17 percent average annual phase-in caps used in the NPRM for these technologies. In the agency's judgment, increased phase-in caps are appropriate for these transmission technologies, in part because the agency's review of confidential product plans which indicated a higher than anticipated application rate of these technologies than existed at the time of the NPRM. Additionally, several manufacturers indicated a high likelihood of significant usage of dual clutch transmissions across their fleet of vehicles. The secondary axle disconnect technology was redefined for the final rule to consist of a somewhat basic, existing technology applicable only to 4 wheel-drive vehicles (a smaller population) rather than the NPRM-defined technology (which was applicable to both 4 and all wheel drive vehicles). The agency has also concluded that, because it has identified performance vehicles as such, and has estimated that aerodynamic improvements are not applicable to these vehicles, aerodynamic dynamic improvements can be applied more widely as long as they are applied consistent with vehicle redesign schedules. Furthermore, considering changes in manufacturers' stated expectations regarding prospects for diesel engines, the agency estimates that diesel engines could be added to as much as 4 percent of a manufacturer's light truck fleet each year on average, rather than the 3 percent estimated in the NPRM. These changes in NHTSA's estimates stem from the agency's reevaluation of the status of these technologies, as revealed by manufacturers' plans and confidential statements, as well as other related comments submitted in response to the NPRM.

Regarding comments that manufacturers' public statements reflect the ability to deploy technology more rapidly than reflected in the phase-in caps NHTSA applied in the NPRM, NHTSA notes that it did consider such statements. Combined with other information, these led the agency to conclude that, as mentioned above, some technologies could, particularly in later years, be applied more widely than the agency had previously estimated. However, in their confidential statements to NHTSA, manufacturers

are typically more candid about factors—both positive and negative—that affects their ability to deploy new technologies than they are in public statements available to their competitors. Therefore, NHTSA places greater weight on manufacturers' confidential statements, especially when they are consistent with statements made by other manufacturers and/or suppliers. NHTSA also observes that some organizations have exhibited a tendency to take manufacturers' statements out of context, or overlook important caveats included in such statements, which are largely used for marketing purposes.

Table IV–8 below outlines the phase-in caps for each discrete technology for MY 2011. These phase-in caps, along with the expanded number and types of vehicle subclasses, address the concerns raised by commenters and represent a substantial improvement in terms of consideration of the factors affecting technology penetration rates over those used in the NPRM. Additional considerations regarding specific phase-in caps, including nonlinear increases in these caps, are presented in the more detailed technology-by-technology analysis summarized below.

For some of the technologies applied in the final rule, primarily the valvetrain and diesel engine technologies, NHTSA has utilized combined phase-ins caps since the technologies are effectively the same from the standpoints of engineering and implementation. The final rule represented diesel engines as two technologies that both result in the conversion of gasoline engine vehicles. The annual phase-in caps for these two technologies, which are both set to a maximum of 3 percent for passenger cars (4 percent for light trucks) have been combined so that the maximum total application of either or both technologies to any manufacturers' passenger car fleet is limited to 3 percent (not 6 percent). For example, if 3 percent of a manufacturers' passenger car fleet has received diesel following combustion restart in a given year, diesel following turbocharging and downsizing will not be applied because the phase-in cap for diesels would have been reached. These combined phase-in caps are discussed below where applicable to each technology.

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Table IV-8a. Phase in caps from 2006 rule, 2008 NPRM, and current rule

Technology	2006 Rule*	2008 NPRM*	Final Rule MY2011
Low Friction Lubricants	25%	50%	50%
Engine Friction Reduction	17%	20%	20%
VVT - Coupled Cam Phasing (CCP) on SOHC	17%	20%	15%
Discrete Variable Valve Lift (DVVL) on SOHC	17%	20%	15%
Cylinder Deactivation on SOHC	17%	20%	9%
VVT - Intake Cam Phasing (ICP)	17%	20%	15%
VVT - Dual Cam Phasing (DCP)	17%	20%	15%
Discrete Variable Valve Lift (DVVL) on DOHC	17%	20%	15%
Continuously Variable Valve Lift (CVVL)	17%	20%	15%
Cylinder Deactivation on DOHC	17%	20%	9%
Cylinder Deactivation on OHV	17%	20%	9%
VVT - Coupled Cam Phasing (CCP) on OHV	17%	20%	15%
Discrete Variable Valve Lift (DVVL) on OHV	10%	20%	15%
Conversion to DOHC with DCP	n.a	n.a	9%
Stoichiometric Gasoline Direct Injection (GDI)	3%	20%	3%
Combustion Restart	n.a	n.a.	0%
Turbocharging and Downsizing	17%	20%	9%
Exhaust Gas Recirculation (EGR) Boost	n.a	n.a.	0%
Conversion to Diesel following CBRST	3%	3%	3%
Conversion to Diesel following TRBDS	3%	3%	3%

* Increased annually (in a linear manner) at the rate indicated

Table IV-8b. Phase in caps from 2006 rule, 2008 NPRM, and current rule

Technology	2006 Rule*	2008 NPRM*	Final Rule MY2011
Electric Power Steering	17%	25%	10%
Improved Accessories	25%	25%	10%
12V Micro-Hybrid	n.a.	n.a.	3%
Higher Voltage/Improved Alternator	17%	25%	10%
Integrated Starter Generator	5%	3%	3%
6-Speed Manual/Improved Internals	n.a.	17%	33%
Improved Auto. Trans. Controls/Externals	n.a.	25%	33%
Continuously Variable Transmission	17%	17%	5%
6/7/8-Speed Auto. Trans with Improved Internals	17%	17%	50%
Dual Clutch or Automated Manual Transmission	17%	17%	20%
Power Split Hybrid	5%	3%	0%
2-Mode Hybrid	5%	3%	0%
Plug-in Hybrid	n.a.	3%	0%
Material Substitution (1%)	17%	17%	5%
Material Substitution (2%)	17%	17%	5%
Material Substitution (5%)	17%	17%	5%
Low Rolling Resistance Tires	25%	25%	20%
Low Drag Brakes	17%	25%	20%
Secondary Axle Disconnect	17%	17%	17%
Aero Drag Reduction	17%	17%	17%

* Increased annually (in a linear manner) at the rate indicated

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D. Specific Technologies Considered for Application and NHTSA's Estimates of Their Incremental Costs and Effectiveness

1. What data sources did NHTSA evaluate?

In developing the technology assumptions in the final rule, NHTSA, working with Ricardo, examined a wide range of data sources and comments. We reexamined the sources we relied on for the NPRM such as the 2002 NAS Report, the 2004 NESCCAF report developed for CARB by AVL and Martec, the 2006 EEA report and the EPA certification data. We also considered more recent and updated sources of information and reports submitted to the NPRM docket, including the (1) Sierra Research report submitted by the Alliance as an attachment to its comments as another set of estimates for fuel economy cost and effectiveness,[156] (2) CARB's response to aspects of that report, which was filed as supplemental comment on October 14, 2008, (3) the 2008 Martec Report,[157] which updated the Martec report on which the 2004 NESCCAF study was based, and the EPA Staff Technical Report,[158] which largely mirrored NHTSA's NPRM estimates.

The agency also evaluated confidential data from a number of vehicle manufacturers and technology component suppliers.[159] We note that vehicle manufacturers updated their product plans in response to NHTSA's May 2008 Request for Comment.[160]

2. Individual technology descriptions and cost/effectiveness estimates

(a) Gasoline Engine Technologies

(i) Overview

Most passenger cars and light trucks in the U.S. have gasoline-fueled spark ignition internal combustion engines. These engines move the vehicle by converting the chemical energy in gasoline fuel to useful mechanical work output as shaft torque and power delivered to the transmission and to the vehicle's driving wheels. Vehicle fuel economy is directly proportional to the efficiency of the engine. Two common terms are used to define the efficiency of an engine are (1) Brake Specific Fuel Consumption (BSFC), which is the ratio of the mass of fuel used to the output mechanical energy; and (2) Brake Thermal Efficiency (BTE), which is the ratio of the fuel chemical energy, known

[156] Sierra Research, ''Attachment to Comment Regarding the NHTSA Proposal for Average Fuel Economy Standards Passenger Cars and light Trucks Model Years 2011–2015,'' June 27, 2008. *Available at* Docket No. NHTSA–2008–0089–0179.1.

[157] Martec, ''Variable Costs of Fuel Economy Technologies,'' June 1, 2008. *Available at* Docket No. NHTSA–2008–0089–0169.1.

[158] EPA Staff Technical Report: Cost and Effectiveness Estimates of Technologies Used to Reduce Light-Duty Vehicle Carbon Dioxide Emissions. EPA420–R–08–008, March 2008.

[159] The major suppliers that provided NHTSA with fuel economy cost and effectiveness estimates in response to our request for comments included Borg-Warner, Cummins, and Delphi, while Borg-Warner, Bosch, Coring, Cummins, Delphi, and Siemens also provided NHTSA with fuel economy cost and effectiveness estimates during confidential meetings.

[160] Manufacturers that provided NHTSA with fuel economy cost and effectiveness estimates in response to our request for comments include BMW, Chrysler, Daimler, Ford, GM, Honda, Nissan, and Toyota.

as calorific value, to the output mechanical energy.

The efficiency of an automotive spark ignition engine varies considerably with the rotational speed and torque output demanded from the engine. The most efficient operating condition for most current engine designs occurs around medium speed (30–50 percent of the maximum allowable engine rpm) and typically between 70–85 percent of maximum torque output at that speed. At this operating condition, BTE is typically 33–36 percent. However, at lower engine speeds and torque outputs, at which the engine operates in most consumer vehicle use and on standardized drive cycles, BTE typically drops to 20–25 percent.

Spark ignition engine efficiency can be improved by reducing the energy losses that occur between the point of combustion of the fuel in the cylinders to the point where that energy reaches the output crankshaft. Reduction in this energy loss results in a greater proportion of the chemical energy of the fuel being converted into useful work. For improving engine efficiency at lighter engine load demand points, which are most relevant for CAFE fuel economy, the technologies that can be added to a given engine may be characterized by which type of energy loss is reduced, as shown in Table IV–9 below.

Table IV-9. Technology Characterization by Type of Loss Reduced

Technology	Heat Loss Reduction	Exhaust Energy Reduction	Gas Exchange Reduction	Friction Reduction
Low Friction Lubricants				✓
Engine Friction Reduction				✓
VVT - Coupled Cam Phasing (CCP) on SOHC			✓	
Discrete Variable Valve Lift (DVVL) on SOHC			✓	
Cylinder Deactivation on SOHC			✓	
VVT - Intake Cam Phasing (ICP)			✓	
VVT - Dual Cam Phasing (DCP)			✓	
Discrete Variable Valve Lift (DVVL) on DOHC			✓	
Continuously Variable Valve Lift (CVVL)			✓	
Cylinder Deactivation on DOHC			✓	
Cylinder Deactivation on OHV			✓	
VVT - Coupled Cam Phasing (CCP) on OHV			✓	
Discrete Variable Valve Lift (DVVL) on OHV			✓	
Conversion to DOHC with DCP			✓	
Stoichiometric Gasoline Direct Injection (GDI)		✓		
Combustion Restart				✓
Turbocharging and Downsizing			✓	✓
Exhaust Gas Recirculation (EGR) Boost		✓	✓	✓
Conversion to Diesel	✓	✓	✓	

✓ Represents area of primary influence

As Table IV–9 shows, the main types of energy losses that can be reduced in gasoline engines to improve fuel economy are exhaust energy losses, engine friction losses, and gas exchange losses. Converting the gasoline engine to a diesel engine can also reduce heat losses.

Exhaust Energy Loss Reduction

Exhaust energy includes the kinematic and thermal energy of the exhaust gases, as well as the wasted chemical energy of unburned fuel. These losses represent approximately 32 percent of the initial fuel chemical energy and can be reduced in three ways: first, by recovering mechanical or electrical energy from the exhaust gases; second, by improving the hydrocarbon fuel conversion; and third, by improving the cycle thermodynamic efficiency. The thermodynamic efficiency can be improved by either increasing the engine's compression ratio or by operating with a lean air/fuel ratio. The latter is not considered to be at the emerging technology point yet due to the non-availability of lean NO_X aftertreatment, as discussed below. However, the compression ratio may potentially be raised by 1 to 1.5 ratios using stoichiometric direct fuel injection.

Engine Friction Loss Reduction

Friction losses can represent a significant proportion of the global losses at low load. These losses are dissipated through the cooling system in the form of heat. Besides via direct reduction measures, friction can also be reduced through downsizing the engine by means of increasing the engine-specific power output.

Gas Exchange Loss Reduction

The energy expended while delivering the combustion air to the cylinders and expelling the combustion products is known as gas exchange loss, commonly referred to as pumping loss. The main source of pumping loss in a gasoline engine is the use of an inlet air throttle, which regulates engine output by controlling the pre-combustion cylinder air pressure, but is an inefficient way to achieve this pressure control. A more efficient way of controlling the cylinder air pressure is to modify the valve timing or lift. Another way to reduce the average pumping losses is to ''downsize'' the

engine, making it run at higher loads or higher pressures.

As illustrated in Table IV–9, several different technologies target pumping loss reduction, but it is important to note that the fuel consumption reduction from these technologies is not necessarily cumulative. Once most of the pumping work has been eliminated, adding further technologies that also target reduced pumping loss will have little additional effectiveness. Thus, in the revised decision trees, the effectiveness value shown for additional technologies targeting pumping loss depends on the existing technology combination already present on the engine.

(ii) Low Friction Lubricants (LUB)

One of the most basic methods of reducing fuel consumption in gasoline engines is the use of lower viscosity engine lubricants. More advanced multi-viscosity engine oils are available today with improved performance in a wider temperature band and with better lubricating properties. CAFE standards notwithstanding, the trend towards lower friction lubricants is widespread. Within the next several year, most vehicles are likely to use 5W–30 motor oil, and some will use even less viscous oils, such as 5W–20 or possibly even 0W–20, to reduce cold start friction.

The NPRM reflected NHTSA's belief that manufacturer estimates are the most accurate, and it estimated that low friction lubricants could reduce fuel consumption by 0.5 percent for all vehicle types at an incremental cost of $3, which represented the mid-point of manufacturer estimates range, rounded up to the next dollar. For the final rule NHTSA used the $3 cost from the NPRM, updated it to 2007 dollars, and marked it up to a retail price equivalent (RPE) of $5. Several manufacturers commented confidentially that low friction lubricants could reduce fuel consumption by 0 to 1 percent, and the Alliance suggested 0.5 percent relative to the baseline fleet. These comments confirm NHTSA's NPRM effectiveness estimate, so NHTSA has retained it for the final rule.

Low friction lubricants may be applied to any class of vehicles. The phase-in for low friction lubricants is capped at 50 percent for MY 2011. Honda commented that low friction lubricants cannot be applied to engines that have not been developed specifically for them.[161] NHTSA understands that in some cases there could be a need for design changes and durability verification to implement low friction lubricants in existing engines. However, aftermarket low friction lubricant products already exist, and have been approved for use in existing engines.

(iii) Engine Friction Reduction (EFR)

Besides low friction lubricants, manufacturers can also reduce friction and improve fuel economy by improving the design of engine components and subsystems. Examples include improvements in low-tension piston rings, roller cam followers, improved crankshaft design and bearings, material coatings, material substitution, more optimal thermal management, and piston and cylinder surface treatments.

In the NPRM, based on confidential manufacturer data and the NAS, NESCCAF, and EEA reports, NHTSA estimated that friction reduction could incrementally reduce fuel consumption for all vehicles by 1 to 3 percent at a cost of $0 to $21 per cylinder resulting in cost estimates of $0–$84 for a 4-cylinder, $0–$126 for a V–6, and $0–$168 for a V–8. For the final rule, NHTSA assumed there would be some cost associated with reducing engine friction, since at a minimum engineering and validation testing is required, in addition to any new components required such as roller followers or improved bearings. Additionally some revised components, such as improved surface materials/treatments, piston rings, etc., have costs that vary by component size which need to account for the full range of engines under consideration in the rulemaking, from small displacement gasoline to large displacement diesel engines.

Considering the above, NHTSA relied on confidential manufacturer comments in response to the NPRM to determine a lower technology cost bound of $35 for a 4-cylinder engine and an upper cost of $195 for a 6 cylinder engine. These costs were marked up by a 1.5 RPE factor to arrive at per-cylinder costs of $13 to $49 which were used to establish costs based on cylinder count. Costs of $52 to $196 for a 4-cylinder engine, $78 to $294 for a 6-cylinder engine, and $104 to $392 for an 8-cylinder engine were used in the final rule.

Confidential manufacturer comments submitted in response to the NPRM showed an effectiveness range of 0.3 to 2 percent for engine friction reduction. Besides the comments received another effectiveness estimate, a November 2007 press release from Renault, claimed a gain of 2 percent over the NEDC cycle[162] from engine friction reduction.[163] Based on the available sources, NHTSA established the fuel consumption effectiveness estimate for the final rule as 1 to 2 percent.

Engine friction-reducing technologies are available from model year 2011 and may be applied to all vehicle subclasses. No learning factors were applied to costs as the technology has a loosely defined BOM which may in part consist of materials (surface treatments, raw materials) that are commodity based. As was the case in the NPRM, an average of 20 percent year-over-year phase-in rate starting in 2011 was adopted. As confirmed by manufacturers' comments, NHTSA has maintained the NPRM position that engine friction reduction may only be applied in conjunction with a refresh cycle.

(iv) Variable Valve Timing (VVT)

Variable valve timing (VVT) is a classification of valve-train designs that alter the timing of the intake valve, exhaust valve, or both, primarily to reduce pumping losses, increase specific power, and control the level of residual gases in the cylinder. VVT reduces pumping losses when the engine is lightly loaded by positioning the valve at the optimum position needed to sustain horsepower and torque. VVT can also improve thermal efficiency at higher engine speeds and loads. Additionally, VVT can be used to alter (and optimize) the effective compression ratio where it is advantageous for certain engine operating modes.

VVT has now become a widely adopted technology: For the 2007 model year, over half of all new cars and light trucks have engines with some method of variable valve timing. Therefore, the degree of further improvement across the fleet is limited by the level of valvetrain technology already

[161] Docket NHTSA–2008–0089–0191.1.

[162] Due to the advanced nature of many of the technologies discussed in the NPRM, and in an effort to find broad based rationale for the specific benefits of each technology type, reference data has been gathered that specifies fuel consumption benefits as measured on the NEDC test cycle. To make this conversion, data from the International Council on Clean Transportation (ICCT) showed excellent correlation between CAFE test cycle results and NEDC test cycle results. While there was an offset in the linear best fit, the slope was nearly equal to 1; therefore, for this report, any percentage improvement found on the NEDC cycle will be assumed to be equivalent to gains found on the CAFE test cycle.

[163] Renault press release, ''Renault Introduces The Ecological, Economical Logan 'Renault Eco2' Concept At The Michelin Organized Challenge Bibendum, November 14, 2007. *Available at http://www.renault.com/renault_com/en/images/15181%2015181_DP_logan_eco2_Shanghai_14_nov_DEF_DB_2_tcm1120-686305.pdf* (last accessed October 27, 2008).

implemented on the vehicles. Comments from Ford received in response to the NPRM indicate that many of its new and upgraded engines during the specified time period will launch with or upgrade to advanced forms of VVT, which are discussed below.[164] Information found in the submitted product plans is used to determine the degree to which VVT technologies have already been applied to particular vehicles to ensure the proper level of VVT technology, if any, is applied. There are three different implementation classifications of variable valve timing: ICP (Intake Cam Phasing), where a cam phaser is used to adjust the timing of the inlet valves only; CCP (Coupled Cam Phasing), where a cam phaser is used to adjust the timing of both the inlet and exhaust valves equally; and DCP (Dual Cam Phasing), where two cam phasers are used to control the inlet and exhaust valve timing independently. Each of these three implementations of VVT uses a cam phaser to adjust the camshaft angular position relative to the crankshaft position, referred to as ''camshaft phasing.'' This phase adjustment results in changes to the pumping work required by the engine to accomplish the gas exchange process. The majority of current cam phaser applications use hydraulically actuated units, powered by engine oil pressure and managed by a solenoid that controls the oil pressure supplied to the phaser. Electrically actuated cam phasers are relatively new, but are now in volume production with Toyota, which suggests that technical issues have been resolved.

Honda commented that VVT is not applicable on existing engine designs that do not already contain these technologies due to durability, noise-vibration-harshness (NVH), thermal, packaging, and other constraints that require engine redesign.

1. Intake Cam Phasing (ICP)

Valvetrains with ICP can modify the timing of the inlet valves by phasing the intake camshaft while the exhaust valve timing remains fixed. This requires the addition of a cam phaser on each bank of intake valves on the engine. An in-line 4-cylinder engine has one bank of intake valves, while V-configured engines have two banks of intake valves.

In the NPRM, NHTSA and EPA estimated that ICP would cost $59 per cam phaser or $59 for an in-line 4 cylinder engine and $119 for a V-type, for an overall cost estimate of $59 to $119, based on the NAS, NESCCAF, and EEA reports and confidential manufacturer data. NHTSA received several updated cost estimates confidentially from manufacturers for ICP costs in response to the NPRM that varied over a wide range from $35 to $300, and additionally looked to the 2008 Martec report for costing guidance. According to the 2008 Martec report, content assumptions for ICP costing include the addition of a cam phaser and oil control valves at $25 and $10 respectively, per bank, which agreed with confidential manufacturer data received in response to the NPRM. These figures were then adjusted to include an incremental camshaft sensor per bank at $4, and an additional $2 increase to account for an ECU upgrade as shown by confidential data. Using a markup of 1.5 to yield a RPE value, the incremental cost for ICP in the final rule is estimated to be $61 per bank, resulting in a $61 charge for in-line engine configurations and $122 for V-engine configurations.

For fuel economy effectiveness values, NHTSA tentatively concluded in the NPRM that the incremental gain in fuel consumption for ICP would be 1 to 2 percent depending on engine configuration, in agreement with the NESCCAF study. Confidential manufacturer data submitted in response to the NPRM showed a larger effectiveness range of 1.0 to 3.4 percent, although the majority of those estimates fell at the lower end of that range. Based on the comments received, NHTSA retained the NPRM estimates of 1 to 2 percent incremental improvement in fuel consumption due to ICP.

ICP is applicable to all vehicle classes and can be applied at the refresh cycle. For the final rule, NHTSA has combined the phase-in caps for ICP, CCPS, CCPO and DCP and capped the joint penetration allowed at 15 percent in MY 2011 with time-based learning applied.

2. Coupled Cam Phasing (CCPS and CCPO)

Valvetrains with coupled (or coordinated) cam phasing can modify the timing of both the inlet valves and the exhaust valves an equal amount by phasing the camshaft of a single overhead cam (SOHC) engine or an overhead valve (OHV) engine.[165] For overhead cam engines, this requires the addition of a cam phaser on each bank of the engine. Thus, an in-line 4-cylinder engine has one cam phaser, while V-engines have two cam phasers. For overhead valve (OHV) engines, which have only one camshaft to actuate both inlet and exhaust valves, CCP is the only VVT implementation option available.[166]

In the NPRM, NHTSA explained that for an OHV engine, the same phaser added for ICP would be used for CCP control, so the cost for CCP should be identical to that for ICP. For an OHV, since only one phaser would be required since only camshaft exists, NHTSA estimated the cost for CCP at $59 regardless of engine configuration, using the logic provided for ICP. For purposes of the final rule, the logic for ICP also carries over to the cost estimates for CCP. Cost assumptions for CCP are the same as ICP resulting in RPE-adjusted costs of $61 for in-line SOHC or OHV engines and $122 for SOHC V-engine configurations, incremental to an engine without VVT.

For fuel economy effectiveness, NHTSA estimated in the NPRM that the incremental gain in fuel consumption for CCP is 1 to 3 percent above that obtained by ICP, in agreement with the NESCCAF report and confidential manufacturer data. Confidential manufacturer data submitted in response to the NPRM also showed an effectiveness range of 1 to 3 percent for CCP, although Ford has publicly reported a 3.3 percent improvement for CCP when applied to its 5.4 liter 3-valve V8 engine (which has high EGR tolerance due to the valve-masking effect with the 3-valve design).[167] Most engines are not as EGR-tolerant and so will not achieve as much effectiveness from CCP as the Ford engine. For purposes of the final rule, NHTSA essentially carried over the NPRM incremental effectiveness of applying the CCP technologies to be 1 to 3 percent. CCP can be applied to any class of vehicles at refresh. For the final rule, NHTSA has combined the phase-in caps for ICP, CCPS, CCPO and DCP and capped the joint penetration at 15 percent in MY 2011. Since these technologies are mature and in high volume, time-based learning factors are

[164] Docket No. NHTSA–2008–0089–0202.1, at 4.

[165] Although CCP appears only in the SOHC and OHV branches of the decision tree, it is noted that a single phaser with a secondary chain drive would allow CCP to be applied to DOHC engines. Since this would potentially be adopted on a limited number of DOHC engines NHTSA did not include it in that branch of the decision tree.

[166] It is also noted that coaxial camshaft developments would allow other VVT options to be applied to OHV engines. However, since they would potentially be adopted on a limited number of OHV engines NHTSA did not include them in the decision tree.

[167] Robert Stein, Tachih Chou, and Jeffrey Lyjak, ''The Combustion System Of The Ford 5.4 L 3 Valve Engine,'' Global Powertrain Congress 2003—Advanced Engine Design & Performance, Sep 2003, Volume 24. *Available at http://www.gpc-icpem.org/pages/publications.html* (last accessed Nov. 8, 2008).

applied. CCP can be applied to any class of vehicles.

3. Dual Cam Phasing (DCP)

The most flexible VVT design is dual (independent) cam phasing, where the intake and exhaust valve opening and closing events are controlled independently. This option allows the option of controlling valve overlap, which can be used as an internal EGR strategy. At low engine loads, DCP creates a reduction in pumping losses, resulting in improved fuel consumption. Additionally, increased internal EGR results in lower engine-out NO_X emissions and improved fuel consumption. This fuel economy improvement depends on the residual tolerance of the combustion system, as noted in the CCP section above. Additional improvements are observed at idle, where low valve overlap can result in improved combustion stability, potentially reducing idle fuel consumption.

In the NPRM, NHTSA estimated costs for DCP by building upon the cost estimates for ICP, where an additional cam phaser is added to control each bank of exhaust valves less the cost of the EGR valve which can be deleted. This resulted in an NPRM cost range of $89 to $209. For purposes of the final rule, cost assumptions for DCP, which included inflation, were determined by essentially doubling the ICP hardware, yielding an incremental cost of $61 per engine cylinder bank, over ICP. This translates to a cost of $61 for in-line engines and $122 for V-engine configurations, incremental to ICP technology.

For fuel economy effectiveness, NHTSA estimated in the NPRM that the incremental gain in fuel consumption for DCP is 1 to 3 percent, in agreement with the NESCCAF report and confidential manufacturer data. Confidential manufacturer data received in response to the NPRM showed an effectiveness range of 0.5 to 3.4 percent for DCP. Publicly available data from BMW [168] and Ford [169] show an effectiveness of 5 percent for DCP over engines without VVT, agreeing with the upper bounds for ICP and DCP combined. For purposes of the final rule, NHTSA concluded that the effectiveness for DCP should be at the upper end of the CCP range due to the additional flexibility gained through independent control of intake and exhaust valve timing, and therefore estimated an incremental fuel consumption reduction of 2 to 3 percent for DCP incremental to the 1 to 2 percent for ICP.

There are no class-specific applications of this technology and DCP can be applied at the refresh cycle. For the final rule, NHTSA has combined the annual average phase-in caps for ICP, CCPS, CCPO and DCP and capped the joint penetration at 15 percent in MY 2011. The DCP technology is assumed to be produced at high volume, thus time-based learning is applied.

(v) Discrete Variable Valve Lift (DVVLS, DVVLD, DVVLO)

DVVL systems allow the selection between two or three separate cam profiles by means of a hydraulically actuated mechanical system. By optimizing the cam profile for specific engine operating regions, the pumping losses can be reduced by reducing the amount of throttling required to produce the desired engine power output. This increases the efficiency of the engine. DVVL is normally applied together with VVT control. DVVL is also known as Cam Profile Switching (CPS). DVVL is a mature technology with low technical risk.

In the NPRM, based on the NESCCAF report and confidential manufacturer data, NHTSA estimated the incremental cost for DVVL at $169 to $322 compared to VVT depending on engine size, which included $25 for controls and associated oil supply needs. In response to the NPRM, confidential manufacturer comments noted a cost range of $150 to $600 for DVVL on OHC engines. Sierra Research has noted costs ranging from $518 to $656 for DVVL including dual cam phasers on a mid-size car and $634 to $802 on trucks.[170] For purposes of the final rule, NHTSA has changed the order of the technologies in the decision trees which has changed how the DVVL costs are handled.

For the overhead cam engines, SOHC and DOHC, the costs were derived by taking $30 per cylinder for lost motion devices, adding a $4 incremental cost for a camshaft position sensor upgrade and $10 for an oil control valve on each engine cylinder bank, as indicated by the 2008 Martec report. This assumes that one lost motion device is used to control either a single intake valve on an SOHC engine or a pair of intake valves on a DOHC engine, as was done in the NPRM. NHTSA's independent review concurred with data in the 2008 Martec report because it contained the most complete published description of DVVL costs and it agreed with confidential manufacturer data received in response to the NPRM NHTSA adopted these cost estimates for the final rule, such that incremental costs for DVVLS and DVVLD, including a 1.5 RPE markup, are $201 for an in-line 4-cylinder engine, $306 for V–6 engines, and $396 for V–8 engines. For overhead valve engines, OHV, the costs for V6 and V8 engines do not include the lost motion devices and control hardware since DVVLO follows cylinder deactivation on the OHV decision tree path and employs similar lost motion devices. Rather, the DVVLO cost is for active engine mounts on V6 and V8 OHV engines which was based on $50 variable cost from Martec, adjusted to 2007 dollars and marked up with a 1.5 RPE factor to $76. For in-line 4-cylinder engines cylinder deactivation is not allowed so the cost for DVVLO is the same as for DVVLS and DVVLD at $201.

For fuel economy effectiveness, in the NPRM NHTSA estimated that DVVL could incrementally reduce fuel consumption by 0.5 to 3 percent compared to VVT. Confidential manufacturer comments received in response to the NPRM indicated a 2 percent effectiveness for DVVL, while the Alliance commented that a two-step system with dual cam phasing could reduce fuel consumption by 6.3 percent, with 1.3 percent attributable to DVVL. Publicly-available estimates suggest an improvement over the NEDC test cycle of 8 percent for DCP with 2 stage inlet DVVL applied to a 1.6 liter DOHC 4 cylinder engine in a 1500 kg vehicle.[171] With the DCP system expected to deliver 5 percent effectiveness, this suggests the DVVL system is giving approximately 3 percent. The comments received from manufacturers and publicly available data are in alignment with independent review suggesting a range of 1 to 3 percent for overhead cam engines with VVT. NHTSA has therefore estimated an incremental reduction in fuel consumption for DVVLS and DVVLD of 1 to 3 percent for purposes of the final rule. On OHV engines, DVVLO is applied following both VVT and cylinder deactivation, therefore the fuel consumption effectiveness has been

[168] Meyer, BMW, ''Turbo-Charging BMW's Spray-Guided DI Combustion System—Benefits and Challenges,'' Global Powertrain Congress, September, 2005, vol. 33. *Available at http://www.gpc-icpem.org/pages/publications.html* (last accessed Nov. 8, 2008).

[169] Ulrich Kramer and Patrick Phlips, ''Phasing Strategy For An Engine With Twin Variable Cam Timing,'' SAE Technical Paper 2002-01-1101, 2002. *Available at http://www.sae.org/technical/papers/2002-01-1101.* (last accessed Nov. 9, 2008),

[170] Docket No. NHTSA–2008–0089–0179.1, p 59 and Docket No. NHTSA–2008–0089–0046, p. 52.

[171] Mark Sellnau and Eric Rask, ''Two-Step Variable Valve Actuation For Fuel Economy, Emissions, and Performance, Delphi Research Labs, SAE 2003–01–0029. *Available at http://www.sae.org/technical/papers/2003-01-0029.* (last accessed Nov. 9, 2008).

reduced from 1 to 3 percent for OHC engines to 0.5 to 2.6 percent.

This technology may be applied to any class of vehicles with any kind of engine at the redesign cycle. For the final rule, NHTSA has combined the phase-in caps for DVVLS, DVVLD, DVVLO and CVVL and capped the joint penetration allowed at 15 percent in MY 2011 with time-based learning applied. Other technologies, such as continuously variable valve lift (CVVL), described below, will be implemented in place of DVVL in some applications where the fuel economy requirements dictate further optimization of the engine's breathing characteristics to improve efficiency.

(vi) Continuously Variable Valve Lift (CVVL)

In CVVL systems, maximum valve lift is varied by means of a mechanical linkage, driven by an actuator controlled by the engine control unit. The valve opening and phasing vary as the maximum lift is changed; the relation depends on the geometry of the mechanical system. BMW has the most production experience with CVVL systems and has sold port-injected ''Valvetronic'' engines since 2001. CVVL allows the airflow into the engine to be regulated by means of inlet valve opening reduction, which improves engine efficiency by reducing pumping losses from throttling the intake system further upstream as with a normally throttled engine.

Variable valve lift gives a further reduction in pumping losses compared to that which can be obtained with cam phase control only, with CVVL providing greater effectiveness than DVVL, since it can be fully optimized for all engine speeds and loads, and is not limited to a two or three step compromise. There may also be a small reduction in valvetrain friction when operating at low valve lift. This results in improved low load fuel consumption for cam phase control with variable valve lift as compared to cam phase control only. Most of the fuel economy effectiveness is achieved with variable valve lift on the inlet valves only.

It is generally more difficult to achieve good cylinder-to-cylinder airflow balance at low load with a CVVL valve-throttled engine due to the sensitivity of airflow to small differences in lift caused by manufacturing tolerances. BMW has reported mixture quality issues with CVVL and port fuel injection, requiring a compromise on pumping work reduction to ensure good mixture quality. In addition, a small amount of throttling is necessary with CVVL to maintain the vacuum required for power brake assist, unless a separate vacuum pump is used. BMW calibrations maintain a small amount of inlet manifold depression on their ''Valvetronic'' engines to allow the brake servo to function, which reduces the efficiency gain from the system somewhat. Tumble air motion generated by the inlet port is not available in the cylinder at low valve lift, which has an effect on combustion characteristics. The high gas velocities at the valve seat generate high turbulence levels, but most of this has decayed by the time of ignition. This phenomenon could potentially lead to sub-optimal combustion characteristics, which would reduce the fuel consumption effectiveness of the technology.

In the NPRM, NHTSA estimated the cost for CVVL of $254 to $508 compared to VVT, with cost estimates varying from $254 for a 4-cylinder engine, $466 for a 6-cylinder engine, and $508 for an 8-cylinder engine, based on confidential manufacturer data and the NESCCAF report, with more weight given to the manufacturer data. As for DVVL, for purposes of the final rule, NHTSA relied primarily on the 2008 Martec report, because it contained the most complete published description of CVVL costs and agreed with confidential manufacturer data received in response to the NPRM. The system consists of 1 stepper motor per bank to control an eccentric shaft and the costs as described by Martec include dual cam phasing are $285 for an in-line 4-cylinder engine, $450 for a V–6 engine, and $550 for a V–8 engine. Applying a 1.5 RPE markup factor to these variable costs, and then deducting $122 for the incremental cost of both ICP and DCP per bank, the incremental RPE cost is $306 for a 4-cylinder engine, $432 for a 6-cylinder engine and $582 for an 8-cylinder engine.

For fuel economy effectiveness, in the NPRM NHTSA estimated that CVVL could incrementally reduce fuel consumption by 1.5 to 4 percent compared to VVT, based on confidential manufacturer data and the NESCCAF report. Confidential manufacturer comments received in response to the NPRM suggested a range of 3 to 7.4 percent incremental fuel consumption savings. NHTSA also found several sources reporting a 5 percent additional fuel consumption effectiveness over the NEDC cycle when applying CVVL to an engine with dual cam phasers.[172] For purposes of the final rule, NHTSA has estimated the reduction in fuel consumption for CVVL at 1.5 to 3.5 percent over an engine with DCP. This estimate is lower than the effectiveness reported by BMW and allows the application of CVVL without the need for the high level of manufacturing complexity inherent in BMW's ''Valvetronic'' engines.

There are no class specific applications of this technology, although it appears in only the DOHC portion of the decision tree. Due to the changes required to implement DVVL on an engine the Volpe model allows it to be applied at redesign model years only with time-based learning applied. For the final rule, NHTSA has combined the phase-in caps for DVVLS, DVVLD, DVVLO and CVVL and capped the joint penetration allowed at 20 percent per year on average (15 percent in year one). There is no technical reason this technology could not be applied to all DOHC engines, but due to engineering resource limitations it is unlikely that CVVL will be applied to all engines, and that other technologies such as DVVL will be used in some instances.

(vii) Cylinder Deactivation (DEACS, DEACD, DEACO)

In conventional spark-ignited engines, combustion occurs in all cylinders of the engine (i.e., the engine is ''firing on all cylinders''), and throttling the airflow controls the engine output, or load. This is an inefficient method of operating the engine at low loads as pumping losses result from throttling. Cylinder deactivation (DEAC) can improve engine efficiency by disabling or deactivating half of the cylinders when the load is less than half of the engine's total torque capability, allowing the active cylinders to operate at roughly twice the load level, and thereby incur roughly half the pumping losses.

Simplistically, cylinder deactivation control strategy relies on setting maximum and minimum manifold absolute pressures (which are directly proportional to load) within which it can deactivate the cylinders. The engine operating range over which cylinder deactivation may be enabled is restricted by other factors as well, with

[172] *See* Johannes Liebl, Manfred Kluting, Jurgen Poggel, and Stephen Missy, BMW, ''The New BMW 4–Cylinder Engine with Valvetronic Part 2: Thermodynamics and Functional Features,'' MTZ Worldwide, July/Aug. 2001, pp 26–29. *See also* Meyer, BMW, ''Turbo-Charging BMW's Spray-Guided DI Combustion System—Benefits and Challenges,'' Global Powertrain Congress, Sept. 2005, vol. 33. *Available at http://www.gpc-icpem.org/pages/publications.html* (last accessed Nov. 8, 2008). *See also* Rainer Wurms, Philipp Lobbert, Stefan Dengler, Ralf Budack, and Axel Eiser, Audi, ''How Much VVT Makes Sense?'' Haus der Technik Conference on Variable Valve Control, Essen, Feb. 2007.

noise, vibration, and harshness (NVH) being the primary concern; these restrictions all reduce the fuel economy effectiveness achievable with cylinder deactivation. In general, DEAC has very high sensitivity of efficiency gain relative to vehicle application, according to comments from Ford, Chrysler, the Alliance, and in confidential comments submitted in response to the NPRM.

Manufacturers have stated that use of DEAC on 4-cylinder engines would cause unacceptable NVH; therefore NHTSA has not applied cylinder deactivation to 4-cylinder engines. In addition, to address NVH issues for V6 and V8 engines, active engine mounts are included in the content list. Noise quality from both intake and exhaust systems has been problematic on some vehicle applications, and in some cases, has resulted in active exhaust systems solutions with an ECU-controlled valve.

The NPRM reported an incremental cost range for DEAC at $203 to $229, citing manufacturer data as the most credible, with the bill of materials including lost motion devices for each cylinder. The 2008 Martec report estimated the additional hardware necessary for cylinder deactivation ranging between $50 for the addition of two active engine mounts ($75 RPE using 1.5 RPE factor) where DVVL already exists. This value has been adopted by NHTSA in the final rule so DEACS and DEACD costs are $75. For OHV engines NHTSA estimates the costs for DEACO as being $306 for V6 engines and $400 for V8 engines that are not already equipped with DVVL using assumptions for lost motion devices plus incremental costs for oil control valves and camshaft position sensors as noted in the DVVL section.

For fuel economy effectiveness, in the NPRM NHTSA estimated that cylinder deactivation could reduce fuel consumption by 4.5 to 6 percent. As noted, DEAC has very high sensitivity of efficiency gain relative to vehicle application. Chrysler, for example, stated that the effectiveness could range from 3 to 10 percent on the same engine depending on the specific vehicle application.[173] Confidential manufacturer comments received in response to the NPRM reported a range of 3 to 7.5 percent. For the final rule, the incremental fuel consumption effectiveness varies depending on which branch of the decision tree it is on: For DOHC engines which are already equipped with DCP and DVVLD there is little benefit that can be achieved since the pumping work has already been minimized and internal EGR rates are maximized, so the effectiveness ranges from 0 to 0.5 percent for DEACD; for SOHC engines which have CCP and DVVLS applied, NHTSA estimates a 2.5 to 3 percent effectiveness for DEACS; and for OHV engines, which do not have VVT or VVL technologies, the effectiveness for DEACO ranges from 3.9 to 5.5 percent.

This technology may be applied only to V–6 and V–8 engines, as discussed above, and so does not apply to vehicle classes with I–4 engines. DEAC can be applied during a redesign or refresh model year with time-based learning. NHTSA proposed to raise the phase-in cap for this technology to 20 percent per year in the NPRM. For the final rule, NHTSA has combined the phase-in caps for DEACS, DEACD and DEACO and capped the joint penetration allowed at 9 percent in MY 2011.

(viii) Conversion to Double Overhead Camshaft Engine With Dual Cam Phasing (CDOHC)

This technology was named ''Multi-valve Overhead Camshaft Engine'' in the NPRM. Engines with overhead cams (OHC) and more than two valves per cylinder achieve increased airflow at high engine speeds and reductions of the valvetrain's moving mass and enable central positioning of the spark plug. Such engines typically develop higher power at high engine speeds. In the NPRM, the model was generally not allowed to apply multivalve OHC technology to OHV engine, except where continuous variable valve timing and lift (CVVL) is applied to OHV engine. In that case, the model assumed conversion to a DOHC valvetrain, because a DOHC valvetrain is a prerequisite for the application of any advanced engine technology over and above CVVL. Since applying CVVL to an OHV engine is the last improvement that could be made, it was assumed that manufacturers would redesign that engine as a DOHC and include CVVL as part of that redesign.

However, it appears likely that vehicles will still use overhead valve (OHV) engine with pushrods and one intake and one exhaust valve per cylinder into the next decade. For the final rule, NHTSA assumed that conversion of an OHV engine to a DOHC engine would more likely be accompanied by dual cam phasing (DCP) than by CVVL, since DCP application rates are higher than CVVL rates.

For V8 engines, the incremental cost to redesign an OHV engine as a DOHC with DCP was estimated as $746 which includes $415 for the engine conversion to DOHC per the 2008 Martec report and a 1.5 RPE factor, plus $122 for an incremental cam phasing system (reflecting the doubling of cam shafts). For a V6 engine we estimated 75 percent of the V8 engine cost to convert to DOHC plus the same incremental coupled cam phasing cost to arrive at $590. For inline 4-cylinder engines, 50 percent of the V8 engine conversion costs were assumed and one additional cam phasing system yielding an incremental cost including a 1.5 RPE factor of $373.

For fuel economy effectiveness, NHTSA estimated in the NPRM that the incremental gain in fuel consumption for conversion of an OHV engine with cylinder deactivation and CCP to a DOHC engine with CVVL at 1 to 4 percent, in agreement with the NESCCAF report and confidential manufacturer data. The fuel consumption benefit for converting an OHV engine to a DOHC engine with DCP is due largely to friction reduction according to a confidential manufacturer comment. For the final rule the upper bound stated in the NPRM was reduced because DCP will give less improvement than CVVL compared to an engine that already has cylinder deactivation and CCP applied. NHTSA estimates the incremental fuel consumption effectiveness at 1 to 2.6 percent independent of the number of engine cylinders.

There are no class-specific applications of this technology. In the NPRM, NHTSA proposed raising the phase-in cap to 20 percent per year, but has concluded for the final rule that a 9 percent phase-in cap for MY 2011 is more consistent with manufacturers' comments. No comments were received regarding phase-in rates of converting OHV engines to DOHC. The conversion from OHV to DOHC engine architecture with DCP is a major engine redesign that can be applied at redesign model years only with time-based learning applied.

(ix) Stoichiometric Gasoline Direct Injection (SGDI)

In gasoline direct injection (GDI) engines, fuel is injected into the cylinder rather than into the inlet manifold or inlet port. GDI allows for the compression ratio of the engine to be increased by up to 1.5 units higher than a port-injected engine at the same fuel octane level. As a result of the higher compression ratio, the thermodynamic efficiency is improved, which is the primary reason for the fuel economy effectiveness with stoichiometric DI systems. The compression ratio increase comes about as a result of the in-cylinder air charge cooling that occurs

[173] Docket No. NHTSA–2008–0089–0215.1.

as the fuel, which is sprayed directly into the combustion chamber, evaporates.

Volumetric efficiency in naturally-aspirated GDI engines can also be improved by up to 2 percent, due to charge cooling, which improves the full load torque. The improved full load torque capability of GDI engines can have a secondary effect on fuel economy by enabling engine downsizing, thereby reducing fuel consumption.

Two operating strategies can be used in gasoline DI engines, characterized by the mixture preparation strategy. One strategy is to use homogenous charge where fuel is injected during the intake stroke with a single injection. The aim is to produce a homogeneous air-fuel-residual mixture by the time of ignition. In this mode, a stoichiometric air/fuel ratio can be used and the exhaust aftertreatment system can be a relatively low cost, conventional three-way catalyst. Another strategy is to use stratified charge where fuel is injected late in the compression stroke with single or multiple injections. The aim here is to produce an overall lean, stratified mixture, with a rich area in the region of the spark plug to enable stable ignition. Multiple injections can be used per cycle to control the degree of stratification. Use of lean mixtures significantly improves efficiency by reducing pumping work, but requires a relatively high cost lean NO_X trap in the exhaust aftertreatment system.

For purposes of this rulemaking, only homogeneous charge stoichiometric DI systems were considered, due to the anticipated unavailability of low sulfur gasoline during the time period considered. This decision was supported by comments from Mercedes, which sells lean burn DI engines in other world markets, stating that lean burn DI engines cannot function in the absence of ultra-low sulfur gasoline. Lean NO_X trap technologies require ultra-low sulfur gasoline to function at high conversion efficiency over the entire life cycle of a vehicle.

Gasoline DI systems effectiveness from the increased efficiency of the thermodynamic cycle. The fuel consumption effectiveness from DI technology is therefore cumulative to technologies that target pumping losses, such as the VVT and VVLT technologies. The Sierra Research report stated that Sierra Research could not determine from the NPRM decision trees if VVLT technologies were retained when SGDI was applied. To clarify, as the model progresses through the decision trees, technologies preceding SGDI are retained in the cumulative effectiveness and cost.

In the NPRM, NHTSA estimated the incremental fuel consumption effectiveness for naturally aspirated SGDI [174] to be 1 to 2 percent. The Alliance commented that it estimated 3 percent gains in fuel efficiency, as well as a 7 percent improvement in torque, which can be used to mildly downsize the engine and give up to a 5.8 percent increase in efficiency. Other published literature reports a 3 percent effectiveness for SGDI,[175] and another source reports a 5 percent improvement on the NEDC drive cycle.[176] Confidential manufacturer data submitted in response to the NPRM reported an efficiency effectiveness range of 1 to 2 percent. For the final rule NHTSA has estimated, following independent review of all the sources referenced above, the incremental gain in fuel consumption for SGDI to be approximately 2 to 3 percent.

Content assumptions for cost estimating of SGDI include no major changes to engine architecture compared to a port fuel injection engine, although cylinder head casting changes are required to incorporate the fuel injection system and the piston must change as well to suit the revised combustion chamber geometry. The fuel injection system utilizes an electrically-driven low pressure fuel pump to feed a high pressure mechanical pump, supplying fuel at pressures up to 200 Bar. A common fuel rail supplies the injectors, which produce a highly atomized spray with a Sauter Mean Diameter (SMD) of 15–20 microns, which compares to approximately 50 microns for a port injector.

In the NPRM, NHTSA estimated the following incremental cost ranges for applying SGDI: $122 to $420 for an inline 4-cylinder engine, $204 to $525 for a V6 engine, and $228 to $525 for a V8 engine. The Alliance commented that NHTSA had not accounted for the costs required to address NVH concerns associated with the implementation of SGDI. For purposes of the final rule, all costs have been based upon side mount DI technology as these costs were determined in the 2008 Martec Report to be lower than center mount DI systems. An applied RPE factor of 1.5 was used in all cases, and a NVH package was added to all engines in response to Alliance comments, providing incremental costs that ranged from $293 to $440 for an I4 engine, to $384 to $558 for a V6 engine and $512 to $744 for a V8 engine.

Homogeneous, stoichiometric DI systems are regarded as mature technology with minimal technical risk and are expected to be increasingly incorporated into manufacturers' product lineups. Time-based learning has been applied to this technology due to the fact that over 1.5 million vehicles containing this technology are now produced annually. Due to the changes to the cylinder head and combustion system and the control system development required to adopt SGDI technology, which are fairly extensive, SGDI can be applied only at redesign model years. There are no limitations on applying SGDI to any vehicle class. The phase-in cap for SGDI is applied at a 3 percent rate for MY 2011 in order to account for the lead time required to incorporate SGDI engines.

(x) Combustion Restart (CBRST)

Combustion restart allows ''start-stop'' functionality of DI engines through the implementation of an upgraded starter with bi-directional rotation to allow precise crankshaft positioning prior to subsequent fuel injection and spark ignition, allowing engine restart. This method of implementing engine stop/start functionality allows not only the fuel savings from not idling the engine, but also reduces fuel consumption as the engine speeds up to its operational speed. A Direct Injection (DI) fuel system is required for implementation of this technology.

NHTSA has determined, upon independent review, combustion restart to be a high technical risk due to the following unresolved issues. First, very high or very low ambient air temperatures may limit the ability to start the engine in the described manner. Although the starter motor can provide fail-safe starting capability in these temperature limited areas, strategies must be developed to manage the transitions. Additionally, a fail-safe start strategy that recognizes failed attempts and responds quickly enough has yet to be demonstrated. The risk of missed start events is currently relatively high, which is unacceptable from a production implementation perspective. As a result, availability of this technology was assessed as beyond the emerging technology time frame for purposes of this MY 2011 rulemaking.

[174] SGDI was referred to as GDI or SIDI in the NPRM.

[175] Paul Whitaker, Ricardo, Inc., ''Gasoline Engine Performance and Emissions—Future Technologies and Optimization,'' ERC Symposium, Low Emission Combustion Technologies for Future IC Engines, Madison, WI, June 8–9, 2005. Available at *http://www.erc.wisc.edu/symposiums/2005_Symposium/June%208%20PM/Whitaker_Ricardo.pdf* (last accessed Nov. 9, 2008).

[176] Stefan Trampert, FEV Motorentechnik GmbH, ''Engine and Transmission Development Trends—Rising Fuel Cost Pushes Technology,'' Symposium on International Automotive Technology, Pune, India, January 2007.

(xi) Turbocharging and Downsizing (TRBDS)

Forced induction in the form of turbocharging and supercharging has been used on internal combustion engines for many years. Their traditional role has been to provide enhanced performance for high-end or sports car applications. However, turbocharging and downsizing can also be used to improve fuel economy. There is a natural friction reduction with a boosted downsized engine, because engine friction torque is primarily a function of engine displacement. When comparing FMEP (Friction Mean Effective Pressure—friction torque normalized by displacement) there is very little difference between the full size naturally-aspirated engine and the boosted downsized engine despite the higher cylinder pressure associated with higher BMEP. Turbocharging and downsizing can also reduce pumping losses (PMEP), because a turbocharged downsized engine runs at higher BMEP (Brake Mean Effective Pressure) levels, and therefore higher manifold pressures, than a naturally aspirated engine. The upper limit of BMEP level that can be expected from a naturally aspirated engine is approximately 13.5 Bar, whereas a turbocharged engine can produce BMEP levels in excess of 20 Bar. Engines that are not downsized and boosted use a throttle to regulate load, but this causes pumping losses as discussed previously. Thus, by using a small displacement engine with a turbocharger, the smaller engine works harder (higher cylinder load), which results in lower pumping loss since the throttle must be further open to produce the same road power output.

Due to the incremental nature of the decision tree, engines having turbocharging and downsizing applied are assumed to have SGDI already applied. In boosted engines, SGDI allows improved scavenging of the cylinder, which reduces the internal exhaust gas residual level and the charge temperature. This in turn allows a higher compression ratio to be used for a given fuel octane rating and can therefore improve the fuel consumption of boosted SGDI engines.

In most cases, a boosted downsized engine can replace a conventional naturally aspirated engine and achieve equivalent or greater (albeit at the expense of fuel economy) power and torque. However, there are some challenges associated with acceptance of a down sized boosted engine, including:

- Achievement of ''seamless'' power delivery compared to the naturally aspirated engine (no perceptible turbo lag);
- A complication in emissions regulatory compliance, because the addition of a turbocharger causes additional difficulty with catalyst light off due to the thermal inertia of the turbo itself;
- Potential issue with customer acceptance of smaller-displacement engines, given a common perception that only larger-displacement engines can be high-powered; and
- Additional base engine cost and vehicle integration costs.

Manufacturers' structural changes to the base engine are generally focused on increasing the structure's capacity to tolerate higher cylinder pressures. NHTSA believes that it is reasonable to expect that the maximum cylinder pressure would increase by 25 to 30 percent over those typical of a naturally aspirated engine. Another consideration is that higher pressures lead to higher thermal loads.

One potential disadvantage of downsized and boosted engines is cost. Turbocharging systems can be expensive and are best combined with direct injection and other engine technologies. The Alliance expressed a related concern that the fuel economy effectiveness was based on the use of premium grade fuel in direct injection turbocharged engines, and argued that as the baseline vehicles were not fueled with premium gasoline, this gave the direct injection turbocharged engines an unrealistic advantage.[177] However, CARB stated in its comments that premium fuel is not necessary for use with turbocharged downsized engines and that substantial effectiveness are still available with regular fuel.[178] In fact, most turbocharged direct injection engines will have a compression ratio and calibration designed to give best performance on premium fuel, although they are safe to operate on regular fuel. On regular fuel, the knock sensor output is used to allow the ECU to keep the engine safe by controlling boost and ignition timing. Maximum torque is reduced on the lower octane fuel due to the ECU intervention strategy, but at part load, where knock is not an issue, the fuel economy will not be affected adversely relative to the estimated effectiveness. Additionally, the driver retains the choice of obtaining more performance by paying more for premium fuel and will still obtain stated fuel consumption effectiveness.

Nevertheless, the case for using downsized boosted engines has strengthened with the wider introduction of direct injection gasoline engines. Downsized boosted engines with stoichiometric direct injection present minimal technical risk, although there have been only limited demonstrations of this technology achieving SULEV emission levels.

In the NPRM, NHTSA estimated that downsized and turbocharged engines could incrementally reduce fuel consumption from 5 to 7.5 percent. CARB commented that Sierra Research in its presentation to the NAS committee on January 24, 2008, suggested there is no carbon dioxide reduction potential for turbocharging and downsizing, but argued that this is not supported by other vehicle simulation efforts nor by manufacturer plans to release systems such as the Ford EcoBoost.[179] The Alliance and Sierra Research, in contrast, commented that turbocharged and downsized engines do not improve fuel economy unless they are also equipped with DI fuel systems and using premium fuel.[180] NHTSA believes that turbocharging and downsizing, when combined with SGDI, offers benefits without the use of premium fuel as noted above. Confidential manufacturer data suggests an incremental range of fuel consumption reduction of 4.8 to 7.5 percent for turbocharging and downsizing. Other publicly-available sources suggest a fuel consumption benefit of 8 to 13 percent compared to current-production naturally-aspirated engines without friction reduction or other fuel economy technologies: A joint technical paper by Bosch and Ricardo suggesting an EPA fuel economy gain of 8 to 10 percent for downsizing from a 5.7 liter port injection V8 to a 3.6 liter V6 with direct injection;[181] a Renault report suggesting a 11.9 percent NEDC fuel consumption gain for downsizing from a 1.4 liter port injection in-line 4-cylinder engine to a 1.0 liter in-line 4-cylinder engine with direct injection;[182] and a Robert Bosch paper suggesting a 13 percent NEDC gain for downsizing to a turbocharged DI engine.[183] These

[177] Docket No. NHTSA–2008–0089–0179.1.

[178] Docket No. NHTSA–2008–0089–0173.

[179] Docket No. NHTSA–2008–0089–0173.4.

[180] Docket No. NHTSA–2008–0089–0046, Docket No. NHTSA–2008–0089–0179.1.

[181] David Woldring and Tilo Landenfeld of Bosch, and Mark J. Christie of Ricardo, ''DI Boost: Application of a High Performance Gasoline Direct Injection Concept,'' SAE 2007–01–1410. *Available at http://www.sae.org/technical/papers/2007–01–1410* (last accessed Nov. 9, 2008).

[182] Yves Boccadoro, Loïc Kermanac'h, Laurent Siauve, and Jean-Michel Vincent, Renault Powertrain Division, ''The New Renault TCE 1.2L Turbocharged Gasoline Engine,'' 28th Vienna Motor Symposium, April 2007.

[183] Tobias Heiter, Matthias Philipp, Robert Bosch, ''Gasoline Direct Injection: Is There a Simplified,

Continued

reported fuel economy benefits show a wide range in large part due to the degree of vehicle attribute matching (such as acceleration performance) that was achieved.

For purposes of the final rule, NHTSA estimated a net fuel consumption reduction of approximately 14 percent for a turbocharged downsized DOHC engine with direct injection and DCP over a baseline fixed-valve engine that does not incorporate friction reducing technologies. This equates to an incremental fuel consumption reduction of 2.1 to 5.2 percent for TRBDS, which is incremental to an engine with SGDI and previously applied technologies (e.g., VVT and VVL) as defined by the decision tree. This wide range is dependent upon the decision tree path that is followed or the configuration of the engine prior to conversion to TRBDS. The incremental fuel consumption benefit for TRBDS is estimated to range from 2.1 to 2.2 percent for V6 and V8 engines and from 4.5 to 5.2 percent for inline 4-cylinder engines. As explained, the incremental improvement from TRBDS must be added to the previous technology point on the decision tree. In the case of SOHC and OHV engines, for example, moving to the TRBDS technology also assumes implementation of DOHC engine architecture in addition to DCP and SGDI.

In the NPRM, NHTSA estimated that the cost for a boosted/downsized engine system would be $690 for small cars, $810 for large trucks, and $120 for all other vehicle classes, based on the NAS report, the EEA report, and confidential manufacturer data, which assumed downsizing allowed the removal to two cylinders in most cases, except for small cars and large trucks. CARB questioned Martec's cost estimates for turbocharging and downsizing, specifically the credit for downsizing a V6 engine to an in-line 4 cylinder dropped from their estimate used in the NESCCAF report of $700 to $310 and the use of more expensive hardware than some manufacturers use. In response, NHTSA's independent review of the cost to downsize a V6 DOHC engine to a I4 DOHC engine closely aligned with the 2008 Martec credit of $310, while the report for NESCCAF was not specific with regard to the assumptions used to construct that estimate. Additionally, confidential manufacturer data submitted in response to the NPRM provided a range for TRBDS with SGDI of $600 to $1,400 variable cost or $900 to $2,100 RPE assuming a 1.5 markup factor. When comparing the confidential manufacturer cost range and the incremental RPE cost estimates for the final rule, it is important to realize the incremental cost for TRBDS does not include SGDI since it is considered a separate technology.[184]

Some of the costs included in turbocharging and downsizing come from structural changes due to the higher cylinder pressures and increased cylinder temperatures, which also drive additional cooling requirements (e.g. water-cooled charge air cooler, circulation pump, and thermostats) and require improved exhaust valve materials. High austenitic stainless steel exhaust manifolds and upgraded main bearings are some of the other hardware upgrades required. For purposes of the final rule, NHTSA used cost data from the 2008 Martec report, but constructed a bill of materials consistent with the incremental TRBDS technology as shown in the decision trees and based on confidential manufacturer data. For the vehicle subclasses which have a baseline gasoline V8 engine, two turbochargers rated for 1050 °C at $250 each were added, $270 was deducted for downsizing to a V6 from a V8 engine, $217 was added for engine upgrades to handle higher operating pressures and temperatures at, and a water-cooled charge air cooler was added at $280. The baseline SOHC engine was converted to a DOHC engine with 4 valves per cylinder at a variable incremental cost of $92. The total variable costs summed to $819 and a 1.5 RPE factor was applied to arrive at $1,229 incremental cost to turbocharging and downsizing.

For the vehicle subclasses which have a baseline gasoline V6 engine, a twin-scroll turbocharger rated for 1050 °C was added at a cost of $350, $310 was deducted for downsizing to an I4 from a V6 engine, $160 was added for engine upgrades to handle higher operating pressures and temperatures, and a water-cooled charge air cooler was added at $259. The baseline SOHC engine was converted to a DOHC engine with 4 valves per cylinder at a variable incremental cost of $87. The total variable costs summed to $548 and a 1.5 RPE factor was applied to arrive at $822 incremental cost to turbocharging and downsizing.

For the vehicle subclasses which have a baseline gasoline I4 engine, a twin-scroll turbocharger rated for 1050 °C was added at a cost of $350, $160 was added for engine upgrades to handle higher operating pressures and temperatures, and a water-cooled charge air cooler was added at $259. The baseline SOHC engine was converted to a DOHC engine with 4 valves per cylinder at a variable incremental cost of $46. The total variable costs summed to $815 and a 1.5 RPE factor was applied to arrive at $1,223 incremental cost for turbocharging and downsizing.

In summary, for the final rule NHTSA estimated TRBDS to have an incremental RPE cost of $1,223 for vehicle classes with a baseline in-line 4-cylinder engine downsized to a smaller I–4 engine which are: Subcompact, Performance Subcompact, Compact and Midsize Car, and Small Truck. For vehicle classes with a baseline V6 engine that was downsized to an I4 engine the RPE cost is estimated at $822; these classes are the Performance Compact, Performance Midsize and Large Car, Minivan and Midsize Truck. The two vehicle classes with baseline V8 engines, Performance Large Car and Large Truck, were downsized to V6 turbocharged engines at an incremental RPE cost of $1,229.

Time-based learning has been applied to TRBDS because submitted product plan data indicated turbocharging and downsizing would already be at high volume in 2011. Due to the fact that a turbocharged and downsized engine is entirely different than the baseline engine it can be applied only at redesign model years. The phase-in cap for TRBDS is applied at a 9 percent rate for MY 2011 in order to account for the lead time required to incorporate TRBDS engines.

(xii) Cooled Exhaust Gas Recirculation Boost (EGRB)

EGR Boost is a combustion concept that involves utilizing EGR as a charge dilutant for controlling combustion temperatures. Fuel economy is therefore increased by operating the engine at or near the stoichiometric air/fuel ratio over the entire speed and load range and using higher exhaust gas residual levels at part load conditions. Further fuel economy increases can be achieved by increased compression ratio enabled by reduced knock sensitivity, which enables higher thermal efficiency from more advanced spark timing. Currently

Cost-Optimal System Approach for an Attractive Future of Gasoline Engines?'' AVL Engine & Environment Conference, September 2005.

[184] NHTSA also examined the Jetta TDI as an example of a current vehicle model that comes in both diesel and gasoline-engine form, but in attempting to do an apples-to-apples comparison with the non-turbocharged/downsized version, the SE, found indications that VW appears to be keeping the cost of the TDI down by removing other content (e.g., the SE has a sunroof, which normally costs around $1,000, while the TDI does not). Thus, NHTSA did not find VW's price differential for the two versions of the Jetta to be convincing evidence of the actual cost of turbocharging and downsizing an engine.

available turbo, charge air cooler, and EGR cooler technologies are sufficient to demonstrate the feasibility of this concept.

However, this remains a technology with a number of issues that still need to be addressed and for which there is no production experience. EGR system fouling characteristics could be potentially worse than diesel EGR system fouling, due to the higher HC levels found in gasoline exhaust. Turbocharger compressor contamination may also be an issue for low pressure EGR systems. Additionally, transient controls of boost pressure, EGR rate, cam phasers and intake charge temperature to exploit the cooled EGR combustion concept fully will require development beyond what has already been accomplished by the automotive industry. These are all ''implementation readiness'' issues that must be resolved prior to putting EGR Boost into volume production.

Because of these issues NHTSA did not consider EGR Boost in the NPRM, and consequently had no tentative conclusions with regard to its cost or fuel economy effectiveness. For purposes of the final rule, NHTSA found no evidence from commenters or elsewhere that these implementation readiness issues could be resolved prior to MY 2011. Therefore, in the final rule, the phase-in cap for MY 2011 is zero.

(b) Diesel Engine Technologies

Diesel engines, which currently make up about 0.27 percent of engines in the MY 2008 U.S. fleet, have several characteristics that give them superior fuel efficiency compared to conventional gasoline, spark-ignited engines. Pumping losses are much lower due to lack of (or greatly reduced) throttling. The diesel combustion cycle operates at a higher compression ratio, with a very lean air/fuel mixture, and turbocharged light-duty diesels typically achieve much higher torque levels at lower engine speeds than equivalent-displacement naturally-aspirated gasoline engines. Additionally, diesel fuel has higher energy content per gallon.[185]

However, diesel engines, including those on the many diesel vehicles sold in Europe, have emissions characteristics that present challenges to meeting federal Tier 2 emissions standards. It is a significant systems-engineering challenge to maintain the fuel consumption advantage of the diesel engine while meeting U.S. emissions regulations, since fuel consumption is negatively impacted by emissions reduction strategies. Emission compliance strategies for diesel vehicles sold in the U.S. are expected to include a combination of combustion improvements and aftertreatment. These emission control strategies are currently widely used in Europe, but will have to be modified due to the fact that U.S. emission standards, especially for NO_X, are much tighter than corresponding European standards. To achieve U.S. Tier 2 emissions limits, roughly 45 to 65 percent more NO_X reduction is required compared to the Euro VI standards. Additionally, as discussed below, there may be a fuel consumption penalty associated with diesel aftertreatment since extra fuel is needed for the aftertreatment, subsequently this extra fuel is not used in the combustion process of the engine that provides torque to propel the vehicle.

Nevertheless, emissions control technologies do exist, and will enable diesel engines to make considerable headway in the U.S. fleet in coming years. Several key advances in diesel technology have made it possible to reduce emissions coming from the engine prior to aftertreatment. These technologies include improved fuel systems (higher pressures and more responsive injectors), advanced controls and sensors to optimize combustion and emissions performance, higher EGR levels and EGR cooling to reduce NO_X, lower compression ratios, and advanced turbocharging systems.

The fuel systems on advanced diesel engines are anticipated to be of a High-Pressure Common Rail (HPCR) type with piezoelectric injectors that operate at pressures up to 1800 Bar or greater and provide fast response to allow multiple injections per cycle. The air systems will include a variable geometry turbocharger for 4-cylinder inline engines with charge-air cooling and high-pressure and low-pressure EGR loops with EGR coolers. For V–6 or V–8 engines the air systems will employ series sequential turbo-charging with one variable geometry turbocharger and one fixed geometry turbocharger.

As suggested above, the traditional 3-way catalyst aftertreatment found on gasoline-powered vehicles is ineffective due to the lean-burn combustion of a diesel. All diesels will require a diesel particulate filter (DPF), a diesel oxidation catalyst (DOC), and a NO_X reduction strategy to comply with Tier 2 emissions standards. The most common NO_X reduction strategies include the use of lean NO_X traps (LNT) or selective catalytic reduction (SCR), which are outlined below.

(i) Diesel Engine With Lean NO_X Trap (LNT) Catalyst After-Treatment

A lean NO_X trap operates, in principle, by storing NO_X (NO and NO_2) when the engine is running in its normal (lean) state. When the control system determines (via mathematical model or a NO_X sensor) that the trap is saturated with NO_X, it switches the engine into a rich operating mode or may in some cases inject fuel directly into the exhaust stream to produce excess hydrocarbons that act as a reducing agent to convert the stored NO_X to N_2 and water, thereby ''regenerating'' the LNT and opening up more locations for NO_X to be stored. LNTs are sensitive to sulfur deposits that can reduce catalytic performance, but periodically undergo a desulfurization engine-operating mode to clean it of sulfur buildup.

The fuel consumption penalty associated with aftertreatment systems, including both DPF and LNT, is taken into account in the reported values. In the case of the DPF, extra fuel is needed to raise the temperature of the DPF above approximately 550°C to enable active regeneration. A similar process is needed to regenerate the LNT, but instead of being used to remove particulates and raise the temperature, the excess fuel is used to provide a fuel-rich condition at the LNT to convert the trapped NO_X on the LNT to nitrogen gas. The estimated fuel consumption penalty on the CAFE test cycle associated with the LNT aftertreatment system is 5 percent on the EPA city cycle and 3 percent on the highway cycle, as described in the report to the EPA.[186]

In order to maintain equivalent performance to comparable gasoline-engine vehicles, an inline 4-cylinder (I–4) diesel engine with displacement varying around 2 liters to meet vehicle performance requirements was assumed for Subcompact, Performance Subcompact, Compact, and Midsize Passenger Car and Small Truck vehicle subclasses, and it was also assumed that these vehicles would utilize LNT aftertreatment systems.

In the NPRM, NHTSA estimated that LNT-based diesels could incrementally reduce fuel consumption by 8 to 15 percent at an incremental RPE cost of $1,500 to $1,600 compared to a direct injected turbocharged and downsized

[185] Burning one gallon of diesel fuel produces about 11 percent more carbon dioxide than gasoline due to the higher density and carbon to hydrogen ratio.

[186] Ricardo, ''A Study of Potential Effectiveness of Carbon Dioxide Reducing Vehicle Technologies, Revised Final Report,'' at 62. *Available at http://www.epa.gov/otaq/technology/420r08004a.pdf* (last accessed Oct. 4, 2008).

spark-ignition engine, in agreement with confidential manufacturer data. These costs were based on a ''bottom up'' cost analysis that was performed with EPA, which then subtracted the costs of all previous steps on the decision tree prior to diesel engines.

Comments submitted in response to the NPRM including both manufacturers' confidential data and non-confidential data sources for diesel engines was in the range of 16.7 percent to 26.7 [187] percent fuel consumption benefit over a baseline gasoline engine at a variable cost of $2,000 to $11,200. Confidentially submitted diesel cost and effectiveness estimates generally did not differentiate between car and truck applications, engine size and aftertreatement systems leading to large ranges for both cost and effectiveness estimates. Additionally, most of the costs appeared to be stated as variable costs not RPE but this was not always completely discernible.

For purposes of the final rule, NHTSA estimated the net fuel consumption benefit for an I–4 diesel engine with LNT aftertreatment to be approximately 20 to 26 percent improvement over a baseline gasoline engine. This equates to a 5.3 to 7.7 percent improvement for DSLT, which is incremental to a turbocharged downsized gasoline engine (TRBDS) with EGRB, and a 15.0 to 15.3 percent incremental improvement for DSLC, which is incremental to a gasoline engine with combustion restart (CBRST). The 2008 Martec report was relied upon for cost estimates and the diesel cost was adjusted by removing the downsizing credit and applying a 1.5 RPE marked up factor to arrive at a cost of $4007 compared to a baseline gasoline engine. This results in an incremental RPE cost of $1,567 to $1,858 for DSLT and $2,963 to $3,254 for DSLC. NHTSA's independent review concurred with all the costs in this bill-of-material-based cost analysis.

A large part of the explanation for the cost increase since the NPRM is the dramatic increase in commodity costs for the aftertreatment systems, namely the platinum group metals. The updated cost estimates of Martec 2008 and others reflect the rise of global costs for raw materials since Martec 2004 and other prior referenced cost estimates were conducted. As described in Martec 2008, engine technologies employing high temperature steels or catalysts with considerable platinum group metals usage have experienced tremendous inflation of raw material prices. These updated estimates account for current spot prices of platinum and rhodium which have demonstrated cost inflation amounting to between 300 and 750 percent of global prices.[188]

(ii) Diesel Engine With Selective Catalytic Reduction (SCR) After-Treatment

An SCR aftertreatment system uses a reductant (typically, ammonia derived from urea) that is continuously injected into the exhaust stream ahead of the SCR catalyst. Ammonia combines with NO_X in the SCR catalyst to form N_2 and water. The hardware configuration for an SCR system is more complicated than that of an LNT, due to the onboard urea storage and delivery system (which requires a urea pump and injector into the exhaust stream). While a rich engine-operating mode is not required for NO_X reduction, the urea is typically injected at a rate of 3 to 4 percent of the fuel consumed. Manufacturers designing SCR systems intend to align urea tank refills with standard maintenance practices such as oil changes.

The fuel consumption penalty associated with the SCR aftertreatment system is taken into account in the values reported here. Similar to the LNT system, extra fuel is needed to warm up the SCR system to an effective operating temperature. The estimated fuel consumption penalty on the CAFE test cycle associated with the SCR aftertreatment system is 5 percent on the EPA city cycle and none on the highway cycle, as described in the report to the EPA.[189] A recent report, however, suggests a fuel economy benefit associated with the use of a SCR system, based on the supposition that the engine calibration is shifted towards improved fuel consumption and more of the NO_X reduction is being handled by the SCR system.[190] Nevertheless, since this benefit is not yet proven for high-volume production, it has not been applied for purposes of the final rule.

In order to maintain equivalent performance to comparable gasoline-engine vehicles, a V–6 diesel engine, with displacement varying around 3 liters was assumed for Performance Compact, Performance Midsize, Large Passenger Car, Minivan, and Midsize Truck. A V–8 diesel engine, with displacement varying around 4.5 liters to meet vehicle performance requirements, was assumed for Large Truck and Performance Large Car vehicle classes. It was also assumed that these classes with V–6 and V–8 diesel engines utilize SCR aftertreatment systems instead of LNT.

In the NPRM, NHTSA estimated incremental fuel consumption reduction for diesel engines with an SCR system to range from 11 to 20 percent at an incremental RPE cost of $2,051 to $2,411 compared to a direct injected turbocharged and downsized spark-ignition engine. These costs were based on a ''bottom up'' cost analysis that was performed with EPA, which then subtracted the costs of all previous steps on the decision tree prior to diesel engines.

As explained above for LNT, confidential manufacturer and non-confidential comment data submitted in response to the NPRM for diesel engines was in the range of 16.7 percent to 26.7 percent fuel consumption benefit over a baseline gasoline engine at variable cost of $2,000 to $11,200 with no detail about the aftertreatment, engine size or application. Additionally, Ricardo's vehicle simulation work for EPA found an incremental *fuel economy* benefit of 19 percent for a 4.8L diesel in a Large Truck.[191] However, when the baseline 4-speed automatic transmission shift and torque converter lockup scheduling was optimized for the diesel engine, an additional 5 percent fuel economy benefit was obtained to yield an incremental benefit for a diesel of 24 percent. As noted in the report on page 84, however, this does not represent an optimized result, as only the final packages complete with all technologies were optimized. Nevertheless, this is a reasonable estimate for diesel engine fuel economy benefit over a baseline gasoline engine with coordinated cam phasing (CCP). This estimate did not have the aftertreatment penalty, however, so applying the 5 percent

[187] The 26.7 percent fuel consumption reduction is a maximum estimate cited in a June 2008 Sierra Research report (Docket No. NHTSA–2008–089–0179.1) for a CAFE estimate in a midsize car, whereas an April 2008 Sierra report (Docket No. NHTSA–2008–089–0046) cites a maximum estimate of 22.4 percent for the same vehicle class; NHTSA was unable to discern why the estimates differed.

[188] Martec, ''Variable Costs of Fuel Economy Technologies,'' June 1, 2008, at 13–20. Docket No. NHTSA–2008–0089–0169.1.

[189] Ricardo, ''A Study of Potential Effectiveness of Carbon Dioxide Reducing Vehicle Technologies, Revised Final Report,'' at 62. *Available at http://www.epa.gov/otaq/technology/420r08004a.pdf* (last accessed Oct. 4, 2008).

[190] Timothy V. Johnson, ''Diesel Emission Control in Review,'' Society of Automotive Engineers Technical Series, 2008–01–0069, 2008. Available at *http://www.sae.org/technical/papers/2008-01-0069* (last accessed Nov. 9, 2008).

[191] Ricardo, ''A Study of Potential Effectiveness of Carbon Dioxide Reducing Vehicle Technologies, Revised Final Report,'' Table 7–9 shows incremental fuel economy and CO_2 benfits for Truck with technology package 11, p. 87. *Available at http://www.epa.gov/otaq/technology/420r08004a.pdf* (last accessed Oct. 4, 2008).

penalty associated with diesel oxidation catalyst, diesel particulate filter, and SCR aftertreatment brings the fuel economy benefit for diesel engine with aftertreatment down to 19 percent, which is equal to a 16 percent *fuel consumption* benefit.

For purposes of the final rule, NHTSA estimated the net fuel consumption benefit for a V–6 diesel engine with SCR aftertreatment to be approximately 20 to 26 percent improvement over a baseline gasoline engine. This equates to a 4.0 to 7.7 percent improvement for DSLT, which is incremental to a turbocharged downsized gasoline engine (TRBDS) with EGRB, and a 9.9 to 13.1 percent incremental improvement for DSLC, which is incremental to a gasoline engine with combustion restart (CBRST.) The 2008 Martec report was relied upon for cost estimates and the diesel cost was adjusted by removing the downsizing credit and applying a 1.5 RPE marked up factor to arrive at a cost of $5,603 compared to a baseline gasoline engine. This results in an incremental RPE cost of $3,110 to $3,495 for DSLT and $4,105 to $4,490 for DSLC. NHTSA's independent review concurred with all the costs in this bill-of-material-based cost analysis for V–6 engines.

NHTSA estimated the net fuel consumption benefit for a V–8 diesel engine with SCR aftertreatment to be approximately 19 to 25 percent improvement over a baseline gasoline engine. This equates to a 4.0 to 6.5 percent improvement for DSLT, which is incremental to a turbocharged downsized gasoline engine (TRBDS) with EGRB, and a 10.0 to 12.0 percent incremental improvement for DSLC, which is incremental to CBRST. The 2008 Martec report was relied upon for cost estimates and the diesel cost was adjusted by removing the downsizing credit and applying a 1.5 RPE marked up factor to arrive at a cost of $7,002 compared to a baseline gasoline engine. This results in an incremental RPE cost of $3,723 to $4,215 for DSLT and $5,125 to $5,617 for DSLC. NHTSA's independent review concurred with all the costs in this bill-of-material-based cost analysis for V–8 engines.

The diesel engine with SCR has an incremental cost that is significantly higher for the final rule than the NPRM. NHTSA believes the increase is explained by the improved accuracy of the final rule analysis which relied on the updated cost estimates from the 2008 Martec Report as described previously [192]. In addition, comments from the Alliance suggested that the incremental diesel cost for a midsize car was $6,198 and $7,581 [193] for a pickup truck.

The economic breakeven point for diesel engine aftertreatment options is based on public information[194] and on recent discussions that NHTSA and EPA have had with auto manufacturers and aftertreatment device manufacturers. NHTSA explained in the NPRM that it had received strong indications that LNT systems would probably be used on smaller vehicles while the SCR systems would be used on larger vehicles and trucks. The economic break-even point between LNT and SCR is dependent on the quantity of catalyst used, the market price for the metals in those catalysts, and the cost of the urea injection system. The NPRM estimated that the breakeven point would occur around 3 liters engine displacement, based on discussions with auto manufacturers and aftertreatment device manufacturers. Thus, NHTSA tentatively concluded that it would be cheaper to manufacture diesel engines smaller than 3 liters with an LNT system, and that conversely, it would be cheaper to manufacturer diesel engines larger than 3.0 liters with a SCR system. No comments were submitted to NHTSA regarding the breakeven point between a LNT and SCR system. However, according to one source of recently published data the breakeven point occurs between 2.0 to 2.5L.[195] Considering that continuing developments are being made in this area and the wide range of precious metal content required, NHTSA believes that an economic breakeven point of 2 to 3 liters is reasonable and that other factors will strongly influence which system is chosen by any given vehicle manufacturer.

Cummins commented that LNT systems should be considered for more than just the compact and subcompact vehicles, and stated that a number of large vehicles and trucks currently use LNT. Cummins argued that a LNT after-treatment system can be a cost-effective technology on both small and larger engines. For the final rule, NHTSA assumed the use of a LNT after-treatment system for three additional vehicle subclasses compared to the NPRM. However, following the rationale explained in the preceding paragraph, the SCR type after-treatment system is assumed for larger vehicle subclasses. As is the case with all technologies in the analysis, technology application assumptions are based on the general understanding of what a manufacturer could do in response to meeting emissions compliance but other manufacturer specific factors will dictate the actual technology applications.

In the NPRM, NHTSA assumed a 3 percent phase in rate per year for diesel technologies. For the final rule, passenger cars, as defined by the technology class, retained the 3 percent combined (for DSLT and DSLC) phase-in cap for MY 2011. However, diesel technologies for truck technology classes were allowed to be applied at a 4 percent combined (for DSLT and DSLC) phase-in cap for MY 2011 to account for the higher application rates observed in the submitted product plans and diesel's favorable characteristics in truck applications. Volume-based learning was assumed for the NPRM, however, confidential product plans indicated that this technology would be in high-volume in the 2011 time frame, thus time-based learning was assumed for the final rule. For the final rule, diesel technologies can only be applied at redesign, which is consistent with the NPRM.

(c) Transmission Technologies

NHTSA has also reconsidered the way it applies transmission technologies in the Volpe model to obtain increased fuel savings. The revised decision tree for transmission technologies reflects the fact that baseline vehicles now include either 4- or 5-speed automatic transmissions, given that many manufacturers are already employing 5-speed automatic transmissions or are going directly to 6-speed automatics.[196] The decision tree in the final rule also combines ''aggressive shift logic'' and

[192] Martec, ''Variable Costs of Fuel Economy Technologies,'' June 1, 2008, at 13–20. Docket No. NHTSA–2008–0089–0169.1.

[193] These cost estimates are taken from the April 2008 Sierra Research report (Docket No. NHTSA–2008–089–0046). A June 2008 Sierra Research report (Docket No. NHTSA–2008–089–0179.1) contained lower estimates of $5,947 and $7,271 for the same vehicles; NHTSA was unable to discern the reason for the difference.

[194] Timothy V. Johnson, ''Diesel Emission Control in Review,'' Diesel Engine-Efficiency and Emissions Research (DEER) Conference, Detroit, MI, August 20–24, 2006. *Available at http://www1.eere.energy.gov/vehiclesandfuels/pdfs/deer_2006/session2/2006_deer_johnson.pdf* (last accessed Nov. 9, 2008). See also Tim Johnson, ''Diesel Engine Emissions and Their Control,'' Platinum Metals Review, 52, at 23–37 (2008). *Available at http://www.platinummetalsreview.com/dynamic/article/view/52-1-23-37* (last accessed Nov. 9, 2008)

[195] *Id.*

[196] Confidential product plans indicate that future products manufactured within the rulemaking period may not go from 4- or 5-speed transmission, but will instead introduce 6- or 7-speed automatic transmissions as replacements.

''early torque converter lockup,'' although the NPRM considered them separately, because NHTSA concluded upon further review that the two technologies could be optimized simultaneously due to the fact that adding both of them primarily required only minor modifications to the transmission or calibration software. Cost and effectiveness numbers have also been thoroughly reexamined, as have learning rates and phase-in caps, based on comments received. The section below describes each of the transmission technologies considered.

(i) Improved Transmission Controls and Externals (IATC)

During operation, an automatic transmission's controller manages the operation of the transmission by scheduling the upshift or downshift, and locking or allowing the torque converter to slip based on a preprogrammed shift schedule. The shift schedule contains a number of lookup table functions, which define the shift points and torque converter lockup based on vehicle speed and throttle position, and other parameters such as temperature. Aggressive shift logic (ASL) can be employed in such a way as to maximize fuel efficiency by modifying the shift schedule to upshift earlier and inhibit downshifts under some conditions, which reduces engine pumping losses and engine friction as noted in the gas engine section. Early torque converter lockup [197] in conjunction with ASL can further improve fuel economy by locking the torque converter sooner, thus reducing inherent torque converter slippage or losses. As discussed above, the NPRM separated these two technologies, but they are combined for purposes of the final rule since the calibration software can be optimized for both functions simultaneously.

Calibrating the transmission shift schedule to improve fuel consumption reduces the average engine speed and increases the average engine load, which can lead to a perceptible increase in engine harshness. The degree to which the engine harshness can be increased before it becomes noticeable to the driver is strongly influenced by characteristics of the vehicle, and although it is somewhat subjective, it always places a limit on how much fuel consumption can be improved by transmission control changes. The Alliance agreed in its comments that ASL can be used effectively to reduce throttling losses, but at the expense of noise-vibration-harshness (NVH) and drivability concerns. The Alliance also commented that losses in the torque converter typically make automatic transmissions less efficient than manual transmissions, and suggested that efficiency can be improved by mechanically ''locking up'' the torque converter earlier or replacing the torque converter with a friction clutch of the type used on a manual transmission. Simply replacing a torque converter with a friction clutch, however, ignores the torque multiplication that torque converters provide at vehicle launch.

In the NPRM, NHTSA estimated that aggressive shift logic could incrementally reduce fuel consumption by 1 to 2 percent at an incremental cost of $38 and early torque converter lockup could incrementally reduce fuel consumption by 0.5 percent at a $30 cost for the calibration effort. Confidential manufacturer comments suggested that less aggressive shift logic must be employed on vehicles with low acceleration reserve, but that a 1–3 percent improvement in fuel economy was attainable on vehicles with adequate acceleration reserve.

For the final rule, NHTSA combined aggressive shift logic and early torque converter lockup into the IATC technology with an effectiveness estimate of 1.5 to 2.5 percent in agreement with most confidential manufacturer estimates. As aggressive shift logic and early torque converter lockup are both achievable with a similar calibration effort, the incremental cost for improved automatic transmission controls used the higher value of $38, converted this value to 2007 dollars, and applied a 1.5 RPE markup factor to arrive at an incremental cost estimate of $59 for the final rule.

The IATC technology is considered to be available at the start of the 2011 model year, and as was the case in the NPRM, NHTSA considers that it can be applied during a refresh model year since NVH concerns must be addressed. The technology is applicable to all vehicle subclasses and NHTSA determined IATC type technologies will be high volume within the 2011 time frame so time-based learning is assumed, with a phase-in cap for MY 2011 of 33 percent.

(ii) Automatic 6-, 7- and 8-Speed Transmissions (NAUTO)

Having more ''speeds'' on a transmission (i.e., having more gear ratios on the transmission) gives three effects in terms of vehicle performance and fuel economy. First, more gear ratios allow deeper 1st and 2nd gear ratios for improved launch performance, or increased acceleration. Second, a wider ratio spread also offers the ability to reduce the steps between gear ratios, which allows the engine to operate closer to optimum speed and load efficiency region. And third, a reduction in gear ratio step size improves internal transmission losses by reducing the sliding speeds across the clutches, thus reducing the viscous drag loss generated between two surfaces rotating at different speeds. Bearing spin losses are also reduced as the differential speed across the two bearing surfaces is reduced. This allows the engine to operate at a reduced load level to improve fuel economy.

Although the additional gear ratios improve shift feel, they also introduce more frequent shifting between gears, which can be perceived by consumers as bothersome. Additionally, package space limitations prevent 7- and 8-speed automatics from being applicable to front wheel drive vehicles.

Comparison between NPRM and final rule cost and effectiveness estimates are somewhat complicated by the revisions in the decision trees and technology assumptions. In the NPRM, NHTSA estimated that 6-, 7- and 8-speed transmissions could incrementally reduce fuel consumption by 0.5 to 2.5 percent at an incremental cost of $76 to $187, relative to a 5-speed automatic transmission, a technology not used in the final rule decision tree, and the incremental cost for a 4-speed to a 5-speed automatic transmission (again no longer considered in the final rule) was estimated to be $76 to $167.

In response to NHTSA's request for information, confidential manufacturer data projected that 6-speed transmissions could incrementally reduce fuel consumption by 0 to 5 percent from a baseline 4-speed automatic transmission, while an 8-speed transmission could incrementally reduce fuel consumption by up to 6 percent from a baseline 4-speed automatic transmission. The 2008 Martec report estimated a cost of $323 (RPE adjusted) for converting a 4-speed to a 6-speed transmission and a cost of $638 (RPE adjusted) for converting a 4-speed to an 8-speed transmission. GM has publicly claimed a fuel economy improvement of up to 4 percent for its

[197] Although only modifications to the transmission calibration software are considered as part of this technology, very aggressive early torque converter lock up may require an adjustment to damper stiffness and hysteresis inside the torque converter. Internal transmission hardware changes associated with this technology are addressed in 6/7/8–Speed Automatic Transmission with Improved Internals section.

new 6-speed automatic transmissions.[198] The 2008 EPA Staff Technical Report found a 4.5 to 6.5 percent fuel consumption improvement for a 6-speed over a 4-speed automatic transmission.[199]

For the final rule, NHTSA estimated that the conversion to a 6-, 7- and 8-speed transmission (NAUTO) from a 4 or 5-speed automatic transmission with IATC would have an incremental fuel consumption benefit of 1.4 percent to 3.4 percent, for all vehicle subclasses. The 2008 Martec report, which quoted high volume, fully learned costs, was relied on to develop the final rule cost estimates. Subcompact, Compact, Midsize, Large Car and Minivan subclasses, which are typically considered normal performance passenger cars, are assumed to utilize a 6-speed automatic transmission only (as opposed to 7 or 8 speeds) resulting in an incremental RPE cost of $323 from Martec 2008. For Performance Subcompact, Performance Compact, Performance Midsize, Performance Large car and Small, Midsize and Large truck, where performance and or payload/towing may be a larger factor, NHTSA assumed that 6-, 7- or 8-speed transmissions are applicable thus the incremental RPE cost range of $323–$638 was established which used the Martec 2008 six speed cost and 8-speed costs for the estimates.

This technology will be available from the start of the rulemaking period. Confidential manufacturer data indicates the widespread use of 6-speed or greater automatic transmissions and introductions into the fleet occur primarily at vehicle redesign cycles. This prompted NHTSA to set the phase-in rate at 50 percent for MY 2011, but also to consider that the technology can only be applied at a redesign cycle, as opposed to the refresh cycle application of the NPRM. The technology is determined to be at high volume in the 2011 timeframe, and since these are mature and stable technologies, time-based learning factors are applied.

(iii) Dual Clutch Transmissions/ Automated Manual Transmissions (DCTAM)

An automated manual transmission (AMT) is similar in architecture to a conventional manual transmission, but shifting and launch functions are performed through hydraulic or electric actuation. There are two basic types of AMTs, single-clutch and dual-clutch transmission (DCT), both of which were considered in the NPRM. Upon further consideration and in response to manufacturer comments to only include dual-clutch AMTs, single-clutch AMTs are not applied in the analysis for the final rule.

Single clutch transmissions exhibit a torque interruption when changing gears because the clutch has to be disengaged. In a conventional manual transmission vehicle, the driver has initiated the gear change, and so expects to feel the resulting torque interruption. With an AMT, in contrast, a control system initiates the shift, which is unexpected and can be disconcerting to the driver. Comments from Ford in response to the NPRM indicated that the acceptability of this torque interruption among U.S. drivers is poor, although Ford also commented that DCTs do not have the risk of customer acceptance that AMTs do. BorgWarner, a DCT supplier, echoed these comments. DCTs do not display the torque interrupt characteristic due to their use of two clutch mechanisms which allow for uninterrupted power transmission. To assist with launch of a DCT equipped vehicle, the first gear ratio can be deepened to gain back some of the performance advantage an automatic transmission possesses due to the torque converter's torque multiplication factor.

There are two types of DCT systems, wet clutch and dry clutch, which are used for different types of vehicles. Wet clutch DCTs offer a higher torque capacity that comes from the use of a hydraulic system that cools the clutches, but that are less efficient than the dry clutch type due to the losses associated with hydraulic pumping. Additionally, wet DCTs have a higher cost due to the additional hydraulic hardware required. Wet clutch DCT systems have been available in the U.S. market on imported products since 2005, and Chrysler has publicly stated that it will have a DCT transmission in its 2010 model year vehicle line-up.[200]

Consistent with manufacturers' confidential comments and based on its own analysis, NHTSA determined that dry clutch DCTs are applicable to smaller front wheel drive cars, due to their lower vehicle weight and torque production, and wet clutch DCTs are more applicable to higher torque applications with higher power requirements. Therefore lower cost, higher efficiency dry clutch DCTs are specified for the Subcompact and Compact Car vehicle classes, while all other classes required wet clutch DCTs.

In the NPRM, NHTSA estimated that the incremental cost for DCTs was $141, independent of vehicle class, which was the midpoint of the NESCCAF estimates and within the range provided confidential manufacturer data. CARB commented that NHTSA had incorrectly cited the cost of AMTs from the NESCCAF study in the NPRM, stating that AMTs had been determined to be cost neutral (zero cost) relative to baseline transmission, as opposed to a $0–$240 cost justification. Confidential manufacturer data suggest additional DCT costs from $80 to $740, with dry clutch DCT costs being approximately $100 less due to reduced hydraulic system content. The 2008 Martec study also reported variable costs for AMTs.

In the NPRM, NHTSA cited the NESCCAF study as projecting that AMTs could incrementally reduce fuel consumption by 5 to 8 percent and confidential manufacturer data projected that AMTs could incrementally reduce fuel consumption by 2 to 5 percent. On the basis of these estimates, NHTSA concluded in the NPRM that AMTs could incrementally reduce fuel consumption by 4.5 to 7.5 percent. Confidential manufacturer data received in response to the NPRM suggest a benefit of 2 to 12 percent for DCTs over a 6-speed planetary automatic, and one confidential manufacturer estimates a benefit of 1 to 2 percent for a dry clutch DCT over a wet clutch DCT. The 2008 EPA Staff Technical Report also indicates a benefit of 9.5 to 14.5 percent for a DCT (wet or dry was not specified) over a 4-speed planetary automatic transmission.

For the final rule, NHTSA estimated a 5.5 to 9.5 percent improvement in fuel consumption over a baseline 4/5-speed automatic transmission for a wet clutch DCT, which was assumed for all vehicle subclasses except Subcompact and Compact Car. This results in an incremental effectiveness estimate of 2.7 to 4.1 percent over the NAUTO technology. For Subcompact and Compact Cars, which were assumed to use a dry clutch DCT, NHTSA estimated an 8 to 13 percent fuel consumption improvement over a baseline 4/5-speed automatic transmission, which equates

[198] General Motors, news release, "From Hybrids to Six-Speeds, Direct Injection And More, GM's 2008 Global Powertrain Lineup Provides More Miles with Less Fuel" (released Mar. 6, 2007). *Available at http://www.gm.com/experience/fuel_economy/news/2007/adv_engines/2008-powertrain-lineup-082707.jsp* (last accessed Sept. 18, 2008).

[199] Page 17, "EPA Staff Technical Report: Cost and Effectiveness Estimates of Technologies Used to Reduce Light-duty Vehicle Carbon Dioxide Emissions" Environmental Protection Agency, EPA420–R–08–008, March 2008.

[200] Chrysler blog, "Dual-Clutch Transmissions Explained" (released October 3, 2007) available at *http://blog.chryslerllc.com/blog.do?p=entry&id=113*, last accessed September 18, 2008.

to a 5.5 to 7.5 percent incremental improvement over the NAUTO technology.

The 2008 Martec report was utilized to develop the cost estimates for the final rule; it estimated an RPE cost of $450 for a dry clutch DCT, and $600 for a wet clutch DCT, both relative to a baseline 4/5-speed. In the transmission decision tree for the final rule, this yielded a dry clutch DCT incremental cost estimate of $68 for the Subcompact and Compact Cars relative to the NAUTO technology. For Midsize, Large Car and Minivan classes the wet clutch DCT incremental cost over NAUTO is $218, which reflects the lower, 6-speed only cost of the NAUTO technology applied to these vehicles. The average incremental cost for wet DCT for the four Performance classes and the Small, Midsize and Larger truck is $61, which is lower than the other vehicle subclasses due to the higher cost NAUTO technology (up to 8-speeds) that the DCTAM technology supersedes.

NHTSA relied upon confidential manufacturer product plans showing DCT production will be readily available and at high volume by 2011. Therefore volume-based learning is not applicable, and since this is a mature and stable technology, time-based learning is applied. As production facility conversion or construction may be required to facilitate required capacity, NHTSA limited the production phase-in caps in MY 2011 to 20 percent. As with other transmission technologies, application was allowed at redesign only due to the vehicle changes required to adapt a new type transmission.

(iv) Continuously Variable Transmission (CVT)

A continuously variable transmission (CVT) is unique in that it does not use gears to provide ratios for operation. Most CVTs use either a belt or chain on a system of two pulleys (the less common toroidal CVTs replace belts and pulleys with discs and rollers) that progressively vary the ratio, thus permitting an infinite number of effective gear ratios between a maximum and minimum value, and often a wider range of ratios than conventional automatic transmissions. This enables even finer optimization of the transmission ratio under different operating conditions and, therefore, some reduction of engine pumping and friction losses. In theory, the CVT has the ability to be the most fuel-efficient kind of transmission due to the infinite ability to optimize the ratio and operate the engine at its most efficient point. However, this effectiveness is reduced by the significant internal losses from high-pressure, high-flow-rate hydraulic pump, churning, friction loss, and bearing losses required to generate the high forces needed for traction.[201]

Some U.S. car manufacturers have abandoned CVT applications because they failed to deliver fuel economy improvements over automatic transmissions. GM abandoned the use of CVT before 2006.[202] Ford offered a CVT in the Five Hundred and Freestyle from MYs 2005–2007 and discontinued it thereafter. However, Chrysler offers CVTs in the Dodge Caliber, the Jeep Compass, and the Jeep Patriot. Nissan was using CVTs in many vehicles, but appears to be restricting the use of this technology to passenger cars only.

In the NPRM, NHTSA estimated a CVT effectiveness of approximately 6 percent over a 4-speed automatic, which was above the NESCCAF value but in the range of NAS. For costs, NHTSA concluded in the NPRM that the adjusted costs presented in the 2002 NESCCAF study represent the best available estimates, and thus estimated that CVTs could incrementally reduce fuel consumption by 3.5 percent when compared to a conventional 5-speed automatic transmission (which cost an incremental $76–$167), a technology which is considered a baseline transmission option on the final rule decision tree, at an incremental cost of $100 to $139. After reviewing confidential manufacturer data and the Martec report, for the final rule NHTSA is now estimating the incremental cost of CVTs to be $300 for all vehicle subclasses, except for large performance cars, midsize light trucks and large light trucks for which the technology is incompatible.

Confidential manufacturer data in response to the NPRM suggested that the incremental effectiveness estimate from CVTs may be 2 to 8 percent over 4-speed planetary transmissions in simulation (however one commenter reported a zero percent improvement in dynamometer testing) at a cost of $140 to $800. Considering the NPRM conclusion and confidential data together with independent review, NHTSA has estimated the fuel consumption effectiveness for CVTs at 2.2 to 4.5 percent over a 4/5-speed automatic transmission, which translates into a 0.7 to 2.0 incremental effectiveness improvement over the IATC technology. NHTSA estimated the CVT incremental cost to be $300 for the final rule, noting that the NPRM costs were incremental to a 5-speed technology that is no longer represented in the decision tree, hence the higher final rule cost.[203]

CVTs are currently available, but due to their limited torque-carrying capability, they are not applied to Performance Large cars and Midsize and Large trucks. There is limited production capability for CVTs, so the phase-in cap for MY 2011 is limited to 5 percent to account for new plants and tooling to be prepared. CVTs can be introduced at product redesign intervals only based on confidential manufacturer data and consistent with the NPRM approach (since it requires vehicle attribute prove-out, test and certification prior to introduction). Confidential manufacturer data indicates that CVTs will be at high volumes by 2011, and this is a mature and stable technology, therefore NHTSA applied time-based learning factors.

(v) 6-Speed Manual Transmissions (6MAN)

Manual transmissions are entirely dependent upon driver input to change gear ratio: the driver selects when to perform the shift and which gear ratio to select. This is the most efficient transfer of energy of all transmission layouts, because it has the lowest internal gear losses, with a minimal hydraulic system, and the driver provides the energy to actuate the clutch. From a systems viewpoint, however, vehicles with manual transmissions have the drawback that the driver may not always select the optimum gear ratio for fuel economy. Nonetheless, increasing the number of available ratios in a manual transmission can improve fuel economy by allowing the driver to select a ratio that optimizes engine operation more often. Typically, this is achieved through adding overdrive ratios to reduce engine speed at cruising velocities (which saves fuel through reduced pumping losses) and pushing the torque required of the engine towards the optimum level. However, if the gear ratio steps are not properly designed, this may require the driver to

[201] "Transmission and Driveline—Major contributors to FUEL efficiency, safety, fun to drive and brand differentiation", Car Training Institute Symposium, May 6–7, 2008—Plenary Speech, Robert Lee, Vice President, Mircea Gradu, Director Transmission and Driveline, Chrysler LLC, USA. Available from the Car Training Institute, for contact information see *http://www.car-training-institute.com/cti_en/html/kontakt.html* (last accessed Nov. 9, 2008).

[202] See *http://car-reviews.automobile.com/news/general-motors-to-kill-continually-variable-transmission/166/* (last accessed Oct. 23, 2008).

[203] Since the decision trees are configured differently, the net cost to CVT in the NPRM included 5-speed automatic transmission technology costs that are not applied in the final rule.

change gears more often in city driving resulting in customer dissatisfaction. Additionally, if gear ratios are selected to achieve improved launch performance instead of to improve fuel economy, then no fuel saving effectiveness is realized.

NHTSA recognizes that while the manual transmission is very efficient, its effect on fuel consumption relies heavily upon driver input. In driving environments where little shifting is required, the manual transmission is the most efficient because it has the lowest internal losses of all transmissions. However, the manual transmission may have lower fuel efficiency on a drive cycle when drivers shift at non-optimum points.

In the NPRM, NHTSA estimated that a 6-speed manual transmission could incrementally reduce fuel consumption by 0.5 percent when compared to a 5-speed manual transmission, at an incremental cost of $107. Confidential manufacturer data received in response to the NPRM suggests that manual transmissions could incrementally reduce fuel consumption by 0 to 1 percent over a base 5-speed manual transmission at an incremental cost of $40 to $900. Most confidential comments suggested that the incremental cost was within the lower quartile of the full range, thus $225 (the lower quartile upper-bound) was multiplied by the 1.5 RPE markup factor for a total of $338. Therefore, the final rule states that the incremental fuel consumption effectiveness for a 6-speed manual transmission over a 5-speed manual transmission is 0.5 percent at a RPE cost of $338.

This technology is applicable to all vehicle classes considered and can be introduced at product redesign intervals, consistent with the NPRM and other final rule transmission technologies. Six-speed manuals are already in production at stable and mature high volumes so time-based learning is applied with a 33 percent phase-in rate for MY 2011.

(d) Hybrid and Electrification/Accessory Technologies

(i) Overview

A hybrid describes a vehicle that combines two or more sources of energy, where one is a consumable energy source (like gasoline) and one is rechargeable (during operation, or by another energy source). Hybrids reduce fuel consumption through three major mechanisms: (1) By turning off the engine when it is not needed, such as when the vehicle is coasting or when stopped; (2) by recapturing lost braking energy and storing it for later use; and by (3) optimizing the operation of the internal combustion engine to operate at or near its most efficient point more of the time. A fourth mechanism to reduce fuel consumption, available only to plug-in hybrids, is by substituting the fuel energy with energy from another source, such as the electric grid.

Engine start/stop is the most basic of hybrid functions, and as the name suggests, the engine is shut off when the vehicle is not moving or when it is coasting, and restarted when needed. This saves the fuel that would normally be utilized to spin the engine when it is not needed. Regenerative braking is another hybrid function which allows some of the vehicle's kinetic energy to be recovered and later reused, as opposed to being wasted as heat in the brakes. The reused energy displaces some of the fuel that would normally be used to drive the vehicle, and thus results in reduced fuel consumption. Operating the engine at its most efficient operating region more of the time is made possible by adding electric motor power to the engine's power so that the engine has a degree of independence from the power required to drive the vehicle. Fuel consumption is reduced by more efficient engine operation, the degree of which depends heavily on the amount of power the electric motor can provide. Hybrid vehicles with large electric motors and battery packs can take this to an extreme and drive the wheels with electric power only and the engine consuming no fuel. Plug-in hybrid vehicles can substitute fuel energy with electrical energy, further reducing the fuel consumption.[204]

Hybrid vehicles utilize some combination of the above mechanisms to reduce fuel consumption. The effectiveness of a hybrid, and generally the complexity and cost, depends on the utilization of the above mechanisms and how aggressively they are pursued.

In addition to the purely hybrid technologies, which decrease the proportion of propulsion energy coming from the fuel by increasing the proportion of that energy coming from electricity, there are other steps that can be taken to improve the efficiency of auxiliary functions (e.g., power-assisted steering or air-conditioning) which also reduce fuel consumption. These steps, together with the hybrid technologies, are collectively referred to as ''vehicle electrification'' because they generally use electricity instead of engine power. Three ''electrification'' technologies are considered in this analysis along with the hybrid technologies: Electrical power steering (EPS), improved accessories (IACC), and high voltage or improved efficiency alternator (HVIA).

(ii) Hybrid System Sizing and Cost Estimating Methodology

Estimates of cost and effectiveness for hybrid and related electrical technologies have been adjusted from those described in the NPRM to address commenters' concerns that NHTSA considered technologies not likely to be adopted by automakers (e.g., 42V electrical systems) or did not scale the costs for likely technologies across the range of vehicle subclasses considered. To address these concerns, the portfolio of vehicle electrification technologies has been refined based on commenter data as described below in the individual hybrid technologies sections. Ricardo and NHTSA have also developed a ''ground-up'' hybrid technology cost estimating methodology and, where possible, validated it to confidential manufacturer data. The hybrid technology cost method accounts for variation in component sizing across both the hybrid type and the vehicle platform. The method utilizes four pieces of data: (1) Key component sizes for a midsize car by hybrid system type; (2) normalized costs for each key component; (3) component scaling factors that are applied to each vehicle subclass by hybrid system type; and (4) vehicle characteristics for the subclasses which are used as the basis for the scaling factors.

Component sizes were estimated for a midsize car using publicly available vehicle specification data and commenter data for each type of hybrid system as shown in Table IV–10.

[204] Substituting fuel energy with electrical energy may not actually save total overall energy used, when considering the inefficiencies of creating the electricity at a power plant and storing it in a battery pack, but it does enable use of other primary energy sources, and reduces the vehicle's fuel consumption. Plug-in hybrids are also receiving increasing attention because of their ability to use ''clean energy'' from the electric grid, such as that solar or wind, which can reduce the overall greenhouse gas output.

Table IV-10. Component Sizes by Hybrid Type for a Midsize Car

Component	Hybrid Type				
	MHEV	ISG	PSHEV	2MHEV	PHEV
Primary Motor power, continuous (kW)	3	11	45	45	45
Secondary Motor power, continuous (kW)	na	na	30	45	30
Primary Inverter power, continuous (kW)	3	11	45	45	45
Secondary Inverter power, continuous (kW)	na	na	30	45	30
Controls complexity (relative to strong hybrid)	25%	50%	100%	100%	100%
NiMH Battery Pack capacity (kW-hr)	na	1	2	2	na
Li-Ion Battery Pack capacity (kW-hr)	na	na	na	na	15
DC/DC Converter power (kW)	0 7	3	3	3	3
High Voltage Wiring (relative to strong hybrid)	na	50%	100%	100%	100%
Supplemental heating	Yes	Yes	Yes	Yes	Yes
Mechanical Transmission (relative to baseline vehicle)	100%	100%	50%	100%	25%
Electric AC	No	No	Yes	Yes	Yes
Blended Brakes	No	No	Yes	Yes	Yes
Charger power, continuous (kW)	na	na	na	na	3

In developing Table IV–10, NHTSA made several assumptions:

(1) Hybrid controls hardware varies with the level of functionality offered by the hybrid technology. Assumed hybrid controls complexity for a 12V micro hybrid (MHEV) was 25 percent of a strong hybrid controls system and the complexity for an Integrated Starter Generator (ISG) was 50 percent. These ratios were estimates based on the directional need for increased functionality as system complexity increases.

(2) In the time frame considered, Li-ion battery packs will have limited market penetration, with a majority of hybrid vehicles using NiMH batteries. One estimate from Anderman indicates that Li-ion market penetration will achieve 35 percent by 2015.[205] For the purposes of this analysis, it was assumed that mild and strong hybrids will use NiMH batteries and plug-in hybrids will use Li-ion batteries.

(3) The plug-in hybrid battery pack was sized for a mid-sized car by assuming: the vehicle has a 20 mile all electric range and consumes an average of 300 W-hr per mile; the battery pack can be discharged down to 50 percent depth of discharge; and the capacity of a new battery pack is 20 percent greater than at end of life (i.e., range on a new battery pack is 24 miles).

(4) All hybrid systems included a DC/DC converter which was sized to accommodate vehicle electrical loads appropriate for increased vehicle electrification in the time frame considered.

(5) High voltage wiring scaled with hybrid vehicle functionality and could be represented as a fraction of strong hybrid wiring. These ratios were estimates based on the directional need for increased functionality as system complexity increases.

(6) All hybrid systems included a supplemental heater to provide vehicle heating when the engine is stopped, however, only stronger hybrids included electric air conditioning to enable engine stop/start when vehicle air conditioning was requested by the operator.

In the hybrid technology cost methodology developed for cost-scaling purposes, several strong hybrid systems replaced a conventional transmission with a hybrid-specific transmission, resulting in a cost offset for the removal of a portion of the clutches and gear sets within the transmission. The transmission cost in Table IV–11 below expresses hybrid transmission costs as a percentage of traditional automatic transmission cost, as described in the 2008 Martec Report, at $850. The method assumed that the mechanical aspect of a power-split transmission with a reduced number of gear sets and clutches resulted in a cost savings of 50 percent of a conventional transmission with torque converter. For a 2-mode hybrid, the mechanical aspects of the transmission are similar in complexity to a conventional transmission with a torque converter, thus no mechanical cost savings was appropriate. The plug-in hybrid assumed a highly simplified transmission for electric motor drive, thus 25 percent of the base vehicle transmission cost was applied.

Estimates for the cost basis of each key component are shown in Table IV–11 below along with the sources of those estimates. The cost basis estimates assume fully learned, high-volume (greater than 1.2 million units per annum) production. The costs shown are variable costs that are not RPE adjusted.

[205] Anderman, Advanced Automotive Battery Conference, May 2008. Proceedings available for purchase at *http://www.advancedautobat.com/Proceedings/index.html* (last accessed October 17, 2008).

Table IV-11. Component Cost Basis at High Volumes and Data Sources

Component	Cost Basis	Data Source
Primary Motor ($/kW)	$ 15	Martec 2008
Secondary Motor ($/kW)	$ 15	
Primary Inverter ($/kW)	$ 10	Confidential business information
Secondary Inverter ($/kW)	$ 10	
Controls	$ 100	
NiMH Battery Pack ($/kW-hr.)	$ 50	Attorneys General/Anderman comments (NHTSA-2008-089-0199.5)
Li-Ion Battery Pack ($/kW-hr.)	$ 600	Anderman, AABC 2008 ($900/kW-hr @ 2000 units/yr learned and rounded)
DC/DC Converter	$ 100	Confidential business information
High Voltage Wiring	$ 250	Martec 2008
Supplemental heating	$ 84	
Mechanical Transmission	$ 850	Martec 2008 (to 4-spd. Auto.)
Electric AC	$ 450	Confidential business information
Blended Brakes	$ 400	Martec 2008
Charger	$ 100	Confidential business information
Automatic Transmission pump	$ 75	Martec 2008

Component scaling factors were determined based on vehicle characteristics for each type of hybrid system as shown in Table IV–12 below.

Table IV-12. Component Scaling Factors applied to Vehicle Class for each Hybrid System Type

Component	Hybrid Type				
	MHEV	ISG	PSHEV	2MHEV	PHEV
Primary Motor	Engine displacement	Curb weight	Curb weight[1]		Engine power
Secondary Motor	na	na	Engine displacement		Vehicle mass[2]
Primary Inverter	Primary motor power				
Secondary Inverter	na	na	Secondary motor power		
Controls	Complexity				
NiMH Battery Pack	na	Vehicle mass			na
Li-Ion Battery Pack	na	na	na	na	Vehicle mass
DC/DC Converter	Vehicle mass[3]				
High Voltage Wiring	na	Vehicle footprint			
Supplemental heating	Vehicle footprint				
Mechanical Transmission	Same for all vehicle classes				
Electric AC	na	na	Vehicle footprint		
Blended Brakes	na	na	Same for all vehicle classes		
Charger	na	na	na	na	Same for all vehicle classes

(1) For all vehicle classes except for performance classes which use Engine Torque

(2) Vehicle mass used as surrogate for vehicle road load

(3) Vehicle mass used as surrogate for vehicle electrical load

NHTSA's CAFE database was used to define the average vehicle characteristics for each vehicle subclass as shown in Table IV–13 below, and these attributes were used as the basis of the scaling factors.

Table IV-13. Key Vehicle Characteristics For Each Vehicle Class

Vehicle Subclass	Curb Weight (lbs)	Footprint (ft2)	Engine Disp. (L)	Power (hp)	Torque (ft-lb)
Subcompact Car	2795	41	1.9	134	133
Compact Car	3359	44	2.2	166	167
Midsize Car	3725	47	2.9	205	206
Large Car	4110	50	3.4	258	248
Performance Subcompact Car	3054	40	2.7	260	260
Performance Compact Car	3516	44	3.0	269	260
Performance Midsize Car	3822	47	3.9	337	318
Performance Large Car	4189	51	4.8	394	388
Minivan	4090	50	3.3	247	242
Small Truck	3413	45	2.6	178	185
Medium Truck	4260	50	3.6	250	256
Large Truck	5366	63	5.0	323	352

Table IV–14 shows the costs for the different types of hybrid systems on a midsize vehicle. The individual component costs were scaled from the normalized costs shown in Table IV–11 according to the component size shown in Table IV–10 and adjusted to a low volume cost by backing out volume-

based learning reductions.[206] These component costs were summed to get the total low volume cost for each hybrid type, and a 1.5 RPE adjustment was applied. The ISG technology replaces the MHEV technology on the Electrification/Accessory technology decision tree, therefore the MHEV technology costs must be subtracted to reflect true costs ($2,898 – $707 = $2,191 in this example).

Wherever possible, the results of the hybrid technology cost method were compared with values as previously described in the NPRM and the results generally matched prior estimates. Additionally, the results from the hybrid technology cost method were validated with public literature and confidential manufactures test data as allowed. Elements of the 2008 Martec report identified cost data and a detailed bill of materials for several comparable hybrid technologies (Micro-hybrid systems and Full Hybrid systems), and the hybrid technology cost model agreed well with this data. The scalable bill of material based methodology described above was determined to offer the best solution for estimating component sizes and costs across a range of hybrid systems and vehicle platforms and the validation of these cost outputs with other data sources suggests that this approach is a reasonable approach.

Table IV-14. Hybrid System - Midsize Vehicle Low Volume Costs

Component	Hybrid Type Low Volume (Unlearned) Costs	
	MHEV	ISG*
Primary Motor [Example: MHEV = 3KW * 15$/KW * 1.56 (vol uplift)]	$ 70	$ 263
Secondary Motor	$ -	$ -
Primary Inverter	$ 47	$ 176
Secondary Inverter	$ -	$ -
Controls	$ 39	$ 78
NiMH Battery Pack	$ -	$ 546
Li-Ion Battery Pack	$ -	$ -
DC/DC Converter	$ 109	$ 468
High Voltage Wiring	$ -	$ 195
Supplemental heating	$ 131	$ 131
Mechanical Transmission	$ -	$ -
Electric AC	$ -	$ -
Blended Brakes	$ -	$ -
Charger	$ -	$ -
Automatic transmission pump	$ 75	$ 75
Total Hybrid System Cost @ Low Volume	$ 471	$ 1,932
RPE (1.5) System Cost @ Low Volume	***$ 707***	***$ 2,898***

* ISG replaces the MHEV technology on the Accessory/Electrification Decision Tree

(iii) Electrical Power Steering (EPS)

Electrical Power Steering (EPS) is advantageous over conventional hydraulic power-assisted steering in that it only draws power when the vehicle is being steered, which is typically a small percentage of the time a vehicle is operating. In fact, on the EPA test cycle no steering is done, so the CAFE fuel consumption effectiveness comes about by eliminating the losses from driving the hydraulic steering pump at engine speed. EPS systems use either an electric motor driving a hydraulic pump (this is a subset of EPS systems known as electro-hydraulic power steering) or an electric motor directly assisting in turning the steering column. EPS is seen as an enabler for all vehicle hybridization technologies, since it provides power steering when the engine is off. This was a primary consideration in placing EPS at the top of the Electrification/Accessory decision tree.

In the NPRM, NHTSA estimated the fuel consumption effectiveness for EPS at 1.5 to 2 percent at an incremental cost of $118 to $197, believing confidential manufacturer data most accurate. In response to the NPRM Sierra Research suggested EPS and high efficiency alternators combined is worth 1 to 1.8 percent on the CAFE test cycle,[207] and confidential manufacturer data indicated a 0.7 to 2.9 percent fuel consumption reduction. The cost range from confidential manufacturer data was $70 to $300. Sierra estimated EPS for cars at $82 and $150 for trucks.[208] A market study by Frost & Sullivan

[206] High volume costs are multiplied by a factor of 1.56, which represents two cycles of 20 percent reverse learning, to determine the appropriate low volume, or unlearned costs.

[207] Docket No. NHTSA–2008–0089–0179.1, Attachment 2, at 53.

[208] Docket No. NHTSA–2008–0089–0179.1, Attachment 2, at 59.

indicated the cost of an EPS system at roughly $65 more than a conventional hydraulic (HPS) system.[209] Because there is a wide range in the effectiveness for EPS depending on the vehicle size, NHTSA has increased the range from the NPRM to incorporate the lower ranges suggested by most manufacturers and estimates the fuel consumption effectiveness for EPS at 1 to 2 percent for the purpose of the final rule. The incremental costs are also estimated on range below the Sierra value for cars but above the Frost & Sullivan estimate at a piece cost range of $70 to $80 and included a 1.5 RPE uplift to $105 to $120 for the final rule.

EPS is currently in volume production in small to mid-sized vehicles with a standard 12V electrical system; however, heavier vehicles may require a higher voltage system, which adds cost and complexity. The Chevy Tahoe Hybrid, for example, uses a higher voltage EPS system. For purposes of the final rule, NHTSA has applied EPS to all vehicle subclasses except for Large trucks.

In the NPRM, NHTSA assumed a 25 percent phase in rate of EPS technologies. For the purposes of the final rule, EPS phase-in caps were limited to 10 percent in MY 2011 to address confidential manufacturer concerns over lead time. In the NPRM, NHTSA assumed a volume-based learning effect for EPS. For the final rule, however, NHTSA applied time-based learning for EPS since NHTSA's analysis indicated that this technology would be in high-volume use at the beginning of its first year of availability. NHTSA also assumed in the NPRM that EPS could be applied during refresh model years, which was consistent with information provided in confidential product plans, therefore for the purpose of the final rule, NHTSA again applied EPS at refresh timing.

(iv) Improved Accessories (IACC)

Improved accessories (IACC) was defined in the NPRM as improvements in accessories such as the alternator, coolant and oil pumps that are traditionally driven by the engine. Improving the efficiency or outright electrification of these accessories would provide opportunity to reduce the accessory loads on the engine. However, as the oil pump provides lubrication to the engine's sliding surfaces such as bearings pistons, and camshafts and oil flow is always required when the engine is spinning, and it is only supplied when the engine is spinning, there is no efficiency to be gained by electrifying the oil pump.[210]

Electrical air conditioning (EAC) could reduce fuel consumption by allowing the engine to be shut off when it is not needed to drive the vehicle. For this reason EAC is often used on hybrid vehicles. In highway driving, however, there is little opportunity to shut the engine off; furthermore, EAC is less efficient when the engine is running because it requires mechanical energy from the engine to be converted to electrical energy and then back again to mechanical. Since air conditioning is not required on the EPA city or highway test cycles, there is no CAFE fuel consumption effectiveness from EAC. Therefore, EAC does not improve accessory efficiency apart from the hybrid technologies. For the purposes of the final rule, IACC refers strictly to improved engine cooling, since electrical lubrication and air conditioning are not effective stand-alone fuel saving technologies and improved alternator is considered as a separate technology given its importance to vehicle electrification.

Improved engine cooling, or intelligent cooling, can save fuel through two mechanisms: By reducing engine friction as the engine warms up faster; and by operating an electric coolant pump at a lower speed than the engine would (i.e., independent of engine speed). Intelligent cooling can be applied to vehicles that do not typically carry heavy payloads. Larger vehicles with towing capacity present a challenge for electrical intelligent cooling systems, as these vehicles have high cooling fan loads. Therefore, NHTSA did not apply IACC to the Large Truck and SUV class.

In the NPRM, NHTSA estimated the fuel consumption effectiveness for improved accessories at 1 to 2 percent at an incremental cost of $124 to $166 based on the 2002 NAS Report and confidential manufacturer data. Confidential manufacturer data received in response to the NPRM and Sierra Research both suggested a range for fuel consumption effectiveness from 0.5 to 2 percent. A comment from MEMA suggested that improved thermal control of the engine could produce between 4 and 8 percent fuel economy improvement;[211] however, NHTSA's independent review of intelligent cooling suggests this estimate is high and concurs with the estimates from NAS. Independent review found the cost for IACC at low volumes, assuming the base vehicle already has an electric fan, to be $180 to $220. These costs were adjusted to account for volume-based learning and then marked up to account for the 1.5 RPE factor. For the purposes of the final rule, NHTSA retained the fuel consumption effectiveness at 1 to 2 percent and estimated the incremental costs to be $173 to $211.

MEMA also suggested that NHTSA consider solar glass technology to reduce cabin thermal loading; however, air conditioning technologies were not considered as part of this technology.

In the NPRM, NHTSA proposed a 25 percent phase-in cap for Improved Accessories. To address manufacturer concerns over lead time in the early years, the IACC phase-in cap was limited to 10 percent for MY 2011 for the final rule. In the NPRM, NHTSA assumed for improved accessories a volume-based learning curve. For the final rule, however, NHTSA applied time-based learning for IACC since NHTSA's analysis indicated that this technology would be in high-volume use at the beginning of its first year of availability. NHTSA assumed in the NPRM that improved accessories could be applied during any model year. For the purpose of the final rule, NHTSA applied intelligent cooling at refresh model years due to the significant changes required to the vehicle cooling system that necessitate recertification testing.

(v) 12V Micro Hybrid (MHEV)

12V Micro-Hybrid (MHEV) systems are the most basic of hybrid systems and offer mainly idle-stop capability. Their low cost and easy adaptability to existing powertrains and platforms can make them attractive for some applications. The conventional belt-driven alternator is replaced with a belt-driven, enhanced power starter-alternator and a redesigned front-end accessory drive system that facilitates bi-directional torque application. Also, during idle-stop, some functions such as power steering and automatic transmission hydraulic pressure are lost with conventional arrangements; so electric power steering and an auxiliary transmission pump are needed. These components are similar to those that would be used in other hybrid designs. Also included in this technology is the Smart Starter Motor. This system is comprised of an enhanced starter motor, along with some electronic control that

[209] Cost for EPS quoted at 48 Euros, at $1.35 per Euro exchange rate (Oct. 7, 2008) equates to $65, from Frost & Sullivan, Feb. 9, 2006 ''Japanese Steering System Market Moves Into High Gear,'' *http://www.theautochannel.com/news/2006/02/09/210036.html* (last accessed Nov. 2, 2008).

[210] Oil pump electrification comes with an additional potential technical and financial risk (to warranty and consumer), in that significant engine damage can occur should the system fail to provide engine lubrication, even on a momentary basis.

[211] Docket No. NHTSA–2008–0089–0193.1.

monitors the accelerator, brake, clutch positions, and the battery voltage as well as low-noise gears to provide fast and quiet engine starts. Despite its extended capabilities, the starter is compact and thus relatively easy to integrate in the vehicle.

12V micro hybrid was added to the technology list to address concerns from CARB and Delphi that the hybrid classifications used in the NPRM did not adequately represent these technologies.[212]

The effectiveness estimates by NHTSA for this technology are based on confidential manufacturer data and independent source data. For the vehicles equipped with (baseline) inline 4, those with smaller displacements, the effectiveness is between 1 and 2.9 percent, and for those equipped with V–6 or V–8, the effectiveness is between 3.4 and 4 percent. The 1 to 2.9 percent incremental fuel consumption savings applies to the Sub-Compact Car, Performance Sub-Compact Car, Compact Car, Midsized Car, and Small Truck/SUV variants. The 3.4 to 4 percent incremental fuel consumption applies to the remaining classes with the exception of Large Truck/SUV where MHEV is not applied due to payload and towing requirements for this class.

Confidential manufacturer comments submitted in response to the NPRM indicated a $200 to $1000 cost for the MHEV. The 12V micro-hybrid does not have a high voltage battery, and thus does not have a high-voltage wire cost. The 12V micro-hybrid system for the midsize vehicle has a 3kW electric motor. This agrees well with two commercially available systems used on smaller engines.[213] The value used for the DC/DC converter represents the cost for a 12V power conditioning circuit to allow uninterrupted power to the radio and a limited number of other accessories when the engine starter is engaged. The sizing for the rest of the components is shown in Table IV–9.

The MHEV technology, which will be available from the 2011 model year, is projected to be in high volume use at the beginning of its first year of availability according to NHTSA's analysis, therefore volume based learning reductions (two cycles at 20 percent) were applied to ''learn'' the hybrid method costs and time based learning factors were applied throughout the remaining years. For the final rule, NHTSA established incremental costs ranging from $372 to $549 with the highest cost applying to the Performance Large Car class.

The 12V micro hybrid technology is applicable across all the vehicle segments except for the Large Truck/SUV class. Although this technology was not specifically stated in the NPRM, a phase-in cap of 3 percent for MY 2011 was assumed for hybrid technologies. For the final rule, this figure was retained since it is generally supportable within the industry as expressed at the SAE HEV Symposium in San Diego in Feb 2008.

The NPRM proposed that all of the hybrid technologies could be introduced during the redesign model year only. This view is consistent with manufacturer's views, therefore, for this rule making, NHTSA has assumed that 12V micro hybrids can only be introduced at the redesign model years.

(vi) High Voltage/Improved Alternator (HVIA)

In the NPRM, a 42V accessory technology was identified in the decision tree for Other Technologies. Several confidential manufacturer comments received by NHTSA related to 42V technology, and indicated that the effectiveness of 42V system were not realized when electrical conversion efficiencies were considered, and the cost of transitioning the industry from a 12V to 42V system made the technology unreasonable for deployment in the emerging technology time frame. As a result of these comments, NHTSA revised the technology from 42V technology to High Voltage/Improved Alternator (HVIA).

The ''High Voltage/Improved Efficiency Alternator'' technology block represents technologies associated with increased alternator efficiency. As most alternators in production vehicles today are optimized for cost and the process for increasing the efficiency of an alternator is well understood by the industry, this technology is applicable to all vehicle subclasses except Midsize and Large Truck and SUV where it is not considered applicable due to the high utility of these classes.

The NPRM identified fuel economy effectiveness that were based on 42V accessory systems, and are not directly applicable for this current technology definition. Confidential manufacturer data indicates that a midsized car with an improved efficiency alternator provided 0.2 to 0.9 percent fuel consumption effectiveness over the CAFE drive cycles, and a pickup truck provided 0.6 percent fuel consumption effectiveness over the same cycles. As this technology can be applied over a range of vehicles, NHTSA believes the fuel consumption effectiveness for larger vehicles will be biased downward. For purposes of this final rule, NHTSA estimates the fuel consumption effectiveness for High Voltage/Improved Efficiency Alternator'' technology at 0.2 to 0.9 percent.

The NPRM identified several sources for high voltage/improved efficiency alternators incremental costs, but focused this technology on 42V systems, thus making some of these references not representative of the current technology description. The NPRM ''Engine accessory improvement'' technology discussion, however, did quote the NESCCAF study that indicated a $56 cost for a high efficiency generator. An independent confidential study estimated that the incremental cost increase for a high efficiency generator at high volume was similar to the NESCCAF quoted cost, thus NHTSA concludes that the NESCCAF study cost of $56 is still a representative cost for this technology. At a 1.5 RPE value, this cost equates to $84.

As the definition of the technology has been revised from the NPRM, phase-in rates identified in the NPRM are not applicable. NHTSA believes the High voltage/Improved Efficiency Alternator technology represents an adjustment to the alternator manufacturing industry infrastructure, so for purposes of this final rule, phase-in caps for this technology were estimated at 10 percent for MY 2011.

Also, as the definition of the technology has been revised from the NPRM, learning curve assumptions from the NPRM are not applicable. The high voltage/improved alternator technology costs were based on high volume estimates, thus, for purposes of the final rule, NHTSA assumed time-based learning (3 percent YOY) for High Voltage Systems/Improved Alternator technology. For purposes of the final rule, NHTSA assumed the technology can be introduced during refresh or redesign model changes only.

(vii) Integrated Starter Generator (ISG)

The next hybrid technology that is considered is the Integrated Starter Generator (ISG) technology. There are 2 types of integrated starter generator hybrids that are considered: the belt mounted type and the crank mounted type.

A Belt Mounted Integrated Starter Generator (BISG) system is similar to a micro-hybrid system, except that here it is defined as a system with a 110 to 144V battery pack which thus can

[212] Docket Nos. NHTSA–2008–0089–0173 and –0144.1, respectively.

[213] Citroen uses a 2kW system for a 1.4L diesel engine, and Valeo has a 1.6kW system applicable for engines up to 2L in displacement. The midsize vehicle class has an average engine size of 2.9L, and thus a 3kW starter is appropriate.

perform some regenerative braking, whereas the 12V micro-hybrid system cannot. The larger electric machine and battery enables additional hybrid functions of regenerative braking and a very limited degree of operating the engine independently of vehicle load. While having a larger electric machine and more battery capacity than a MHEV, this system has a smaller electric machine than stronger hybrid systems because of the limited torque capacity of the belt driven design.

BISG systems replace the conventional belt-driven alternator with a belt-driven, enhanced power starter-alternator and a redesigned front-end accessory drive system that facilitates bi-directional torque application utilizing a common electric machine. Also, during idle-stop, some functions such as power steering and automatic transmission hydraulic pressure are lost with conventional arrangements; so electric power steering and an auxiliary transmission pump need to be added. These components are similar to those that would be used in other hybrid designs.

A Crank Mounted Integrated Starter Generator (CISG) hybrid system, also called an Integrated Motor Assist (IMA) system, utilizes a thin axial electric motor (100–144V) bolted to the engine's crankshaft. The electric machine acts as both a motor for helping to launch the vehicle and a generator for recovering energy while slowing down. It also acts as the starter for the engine and is a higher efficiency generator. An example of this type of a system is found in the Honda Civic Hybrid. For purposes of the final rule, NHTSA assumed the electric machine is rigidly fixed to the engine crankshaft, thus making electric-only drive not practical.[214]

The fuel consumption effectiveness of the ISG systems are greater than those of micro-hybrids, because they are able to perform the additional hybrid function of regenerative braking and able to utilize the engine more efficiently because some transient power demands from the driver can be separated from the engine operation. Their transient performance can be better as well, because the larger electric machine can provide torque boost. The ISG systems are more expensive than the micro hybrids, but have lower cost than the strong hybrids described below because the electrical component sizes (batteries, electric machines, power electronics, etc.) are sized in between the micro-hybrid and the strong hybrid components. The engineering effort required to adapt conventional powertrains to these configurations is also in between that required for micro-hybrid and strong hybrid configurations. Packaging is a greater concern due to the fact that the engine-motor-transmission assembly is physically longer, and the battery pack, high voltage cabling and power electronics are larger.

The hybrid decision tree was modified to address several manufacturer comments and comments from CARB and Delphi asking for more appropriate separation of hybrid technology classifications (i.e., 12V versus higher voltage Integrated Starter Generators, etc.). The inclusion of the ISG technology in the final rule is in response to these comments and those from subject matter experts.

The NPRM had proposed a fuel consumption savings of between 5 and 10 percent for ISG systems, and between 3.5 and 8.5 percent for the Honda IMA system, both of which fall in the ISG category described above. Confidential manufacturer comments submitted in response to the NPRM indicated an incremental 3.8 to 7.4 percent fuel consumption effectiveness and a $1,500 to $2,400 cost as compared to the baseline vehicle.

The incremental fuel consumption savings for the Compact Car variant for ISG over a 12V Micro-hybrid with start/stop was calculated using published data and confidential manufacturer data, while published Honda Civic Hybrid data was used to calculate the fuel consumption gains due to the hybrid system. For the final rule, gains for the other technologies also included on this vehicle were subtracted out to give an incremental effectiveness of 5.7 to 6.5 percent for ISG. Data for these individual gains was taken from confidential manufacturer data. The 5.7 to 6.5 percent incremental fuel consumption savings was carried over from the Compact Car to all other vehicle subclasses. A 2 percent incremental effectiveness was subtracted from the Performance subclasses to allow for the improved baseline performance

The NPRM proposed a cost of $1,636 to $2,274 for these systems. For the final rule, NHTSA determined the cost for the ISG system using system sizing data for different available ISG hybrids. The 2006 Honda Civic has a Crank Mounted ISG and uses a 0.87 kW-hr battery pack. In light of the potential growth of vehicle electrification, a 1 kW-hr pack size was chosen for both the belt and crank mounted ISG systems. The crank mounted ISG was sized as 11kW continuous (15kW peak). This is an average of the 10kW system on the 2003 Honda Civic and the 12kW system on the 2005 Honda Accord. The 2006 Civic has a 15kW system. The belt mounted ISG has a slightly smaller electric machine (7.5kW continuous and 10kW peak) due to power transmission limitations of the belt.

For the final rule, the hybrid technology cost method projected costs ranging from $2,475 to $3,290 for the Sub-Compact car class through the Midsize Truck classes as compared to the conventional baseline vehicle and the incremental costs of $1,713 to $2,457 were calculated by backing out the prior hybrid technology costs. The ISG technology is projected to be in low volume use at the beginning of the rulemaking period therefore low volume costs are used and volume-based learning factors are applied.

Integrated starter generator systems are applicable to all vehicle subclasses except Large Truck. In the NPRM, a phase-in cap of 3 percent was assumed for both the ''ISG with idle off'' and ''IMA'' technologies. For the final rule, NHTSA has retained the phase-in cap of 3 percent for MY 2011. These values are generally supportable within the industry as expressed at the SAE HEV Symposium in San Diego in February 2008.

The NPRM proposed that all of the hybrid technologies could be introduced during the redesign model year only. This view is consistent with manufacturer's views as well, because all of the hybrid technologies under consideration require redesign of the powertrain (ranging from engine accessory drive to transmission redesign) and vehicle redesign to package the hybrid components (from high voltage cabling to the addition of large battery packs). Given this, for purposes of the final rule, they can only be introduced in redesign model years.

(viii) Power Split Hybrid

The Power Split hybrid (PSHEV) is described as a full or a strong hybrid since it has the ability to move the vehicle on electric power only. It replaces the vehicle's transmission with a single planetary gear and a motor/generator. A second, more powerful motor/generator is directly connected to the vehicle's final drive. The planetary gear splits the engine's torque between the first motor/generator and the final drive. The first motor/generator uses power from the engine to either charge the battery or supply power to the wheels. The speed of the first motor/

[214] A clutch between the engine and the electric motor would enable pure electric drive, but the Porsche Cayenne is the only example of such a system that is planned in the rulemaking time frame. Because of limited expected volumes of this type of system, and in the interest of reducing complexity, that variant is not included here.

generator determines the relative speed of the engine to the wheels. In this way, the planetary gear allows the engine to operate independently of vehicle speed, much like a CVT. The Toyota Prius and the Ford Hybrid Escape are two examples of power split hybrid vehicles.

In addition to providing the functions of idle engine stop and subsequent restart, regenerative braking, this hybrid system allows for pure EV operation. The two motor/generators are bigger and more powerful than those in an ISG hybrid, allowing the engine to be run in efficient operating zones more often. For these reasons, the power split system provides very good fuel consumption in city driving. During highway cycles, the hybrid functions of regenerative braking, engine start/stop and optimal engine operation cannot be applied as often as in city driving, and so the effectiveness in fuel consumption are less. Additionally, it is less efficient at highway speeds due to the fact that the first motor/generator must be spinning at a relatively high speed and therefore incurs losses.

The battery pack for PSHEV is assumed to be 300V NiMH for the time period considered in this rulemaking, as is used in current PSHEV systems today. Their reliability is proven (having been in hybrids for over 10 years) and their cost is lower than Li Ion, so it is likely that the battery technology used in HEVs will continue to be NiMH for the near future for hybrids that do not require high energy storage capability like a plug-in hybrid does.

The Power Split hybrid also reduces the cost of the transmission, replacing a conventional multi-speed unit with a single planetary gear. The electric components are bigger than those in an ISG configuration so the costs are correspondingly higher.

However, the Power Split system is not planned for use on full-size trucks and SUVs due to its limited ability to efficiently provide the torque needed by these vehicles. The drive torque is limited to the first motor/generator's capacity to resist the torque of the engine. It is anticipated that Large Trucks would use the 2-mode hybrid system.

In the NPRM, a phase-in rate of 3 percent was assumed for the power split technology. Although this system has been engineered for some vehicles by a couple of manufacturers, the required engineering resources both at OEMs and Tier 1 suppliers are high and most importantly, require long product development lead times. Thus NHTSA believes it would be extremely difficult for manufacturers to implement in levels greater than that of the submitted product plans for MY 2011. For the final rule, NHTSA limited the volumes of power split hybrids to zero percent in MY 2011. Power split hybrid cost and effectiveness estimates will not be discussed here, given that the technology is not applied in MY 2011 beyond product plan levels in NHTSA's analysis, and NHTSA will consider them further in its future rulemaking actions.

The NPRM proposed that all of the hybrid technologies could be introduced during the redesign model year only, consistent with manufacturer's views. Given this, for this final rule NHTSA has retained the redesign application timing.

(ix) 2-Mode Hybrid

The 2-mode hybrid (2MHEV) is another strong hybrid system that has all-electric drive capability. The 2MHEV uses an adaptation of a conventional stepped-ratio automatic transmission by replacing some of the transmission clutches with two electric motors, which makes the transmission act like a CVT. Like the Power Split hybrid, these motors control the ratio of engine speed to vehicle speed. But unlike the Power Split system, clutches allow the motors to be bypassed, which improves both the transmission's torque capacity and efficiency for improved fuel economy at highway speeds. This type of system is used in the Chevy Tahoe Hybrid.

In addition to providing the hybrid functions of engine stop and subsequent restart and regenerative braking, the 2MHEV allows for pure EV operation. The two motor/generators are bigger and more powerful than those in an ISG hybrid, allowing the engine to be run in efficient operating zones more often. For these reasons, the 2-mode system also provides very good fuel economy in city driving. The primary motor/generator is comparable in size to that in the PSHEV system, but the secondary motor/generator is larger. The 2-mode system cost is greater than that for the power split system due to the additional transmission complexity and secondary motor sizing.

The battery pack for 2MHEV is assumed to be 300V NiMH for the time period considered in this rulemaking, as is used in current 2MHEV systems today. Their reliability is proven (having been in hybrids for over 10 years) and their cost is lower than Li Ion, so it is likely that the batteries will continue to be NiMH for the near future for hybrids that do not require high energy storage capability like a plug-in hybrid does.

Given the relatively large size of the 2 mode powertrain, this technology was assumed to be applicable to the Small through Large Truck/SUV classes. In the NPRM, a phase-in rate of 3 percent was assumed for 2 mode hybrids. The 2-modes have recently been introduced in the marketplace on a few vehicle platforms. The engineering resources that are needed both at the OEMs and Tier 1s to develop this across many more platforms are considerable, as discussed above for power split hybrids. For purposes of the final rule, the phase-in rate has been set to zero percent in MY 2011. 2 mode hybrid cost and effectiveness estimates will not be discussed here, given that the technology is not applied in MY 2011 beyond product plan levels in NHTSA's analysis, and NHTSA will consider them further in its future rulemaking actions.

The NPRM proposed that all of the hybrid technologies could be introduced during the redesign model year only, consistent with manufacturer's views. Given this, for this final rule NHTSA has retained the redesign application timing.

(x) Plug-In Hybrid

Plug-In Hybrid Electric Vehicles (PHEV) are very similar to other strong hybrid electric vehicles, but with significant functional differences. The key distinguishing feature is the ability to charge the battery pack from an outside source of electricity (usually the electric grid). A PHEV would have a larger battery pack with greater energy capacity, and an ability to be discharged further (referred to as ''depth of discharge'').[215] No major manufacturer currently has a PHEV in production, although both GM and Toyota have publicly announced that they will launch plug-in hybrids in limited volumes by 2010.

PHEVs offer a significant opportunity to displace petroleum-derived fuels with electricity from the electrical grid. The reduction in petroleum use depends on the electric-drive range capability and the vehicle usage (i.e., trip distance between recharging, ambient temperature, etc.). PHEVs can have a wide variation in the All Electric Range (AER) that they offer. Some PHEVs are of the ''blended'' type where the engine is on during most of the vehicle operation, but the proportion of electric energy that is used to propel the vehicle is significantly higher than that used in a PSHEV or 2MHEV.

[215] NHTSA notes that the fuel consumption effectiveness of PHEVs is heavily dependent on the all-electric range, and hence the battery capacity. However, the fuel consumption effectiveness from a PHEV is currently difficult to quantify objectively because there is no standardized fuel economy test procedure yet for a PHEV.

PHEVs were not projected to be in volume use in the NPRM, but due to confidential manufacturer product plans, PHEVs do, in fact, appear in limited volumes in the final rule analysis, and therefore low volume, unlearned costs are assumed. However, the manufacturer-stated production volumes of PHEVs are very low, so the phase-in cap for MY 2011 is zero—given the considerable engineering hurdles, the low availability of Li-Ion batteries in the MY 2011 time frame and the reasons discussed above for power split and 2 mode hybrids, NHTSA did not believe that PHEVs could be applied to more MY 2011 vehicles beyond what was indicated in the product plans. Additionally, plug-in hybrid cost and effectiveness estimates will not be discussed here, given that the technology is not applied in MY 2011 beyond product plan levels in NHTSA's analysis, and NHTSA will consider them further in its future rulemaking actions. The NPRM proposed that all of the hybrid technologies could be introduced during the redesign model year only, consistent with manufacturer's views. Given this, for this final rule NHTSA has allowed application of PHEVs in redesign model years only.

(e) Vehicle Technologies

(i) Material Substitution (MS1, MS2, MS5)

The term ''material substitution'' encompasses a variety of techniques with a variety of costs and lead times. These techniques may include using lighter-weight and/or higher-strength materials, redesigning components, and size matching of components. Lighter-weight materials involve using lower-density materials in vehicle components, such as replacing steel parts with aluminum or plastic. The use of higher-strength materials involves the substitution of one material for another that possesses higher strength and less weight. An example would be using high strength alloy steel versus cold rolled steel. Component redesign is an ongoing process to reduce costs and/or weight of components, while improving performance and reliability. The Aluminum Association commented that lightweight structures are a significant enabler for the new powertrain technologies. Smaller and less expensive powertrains are required and the combination of reduced power and weight reduction positively reinforce and result in optimal fuel economy performance. An example would be a subsystem replacing multiple components and mounting hardware.

However, the cost of reducing weight is difficult to determine and depends upon the methods used. For example, a change in design that reduces weight on a new model may or may not save money. On the other hand, material substitution can result in an increase in price per application of the technology if more expensive materials are used. As discussed further below in Section VIII, for purposes of this final rule, NHTSA has considered only vehicles weighing greater than 5,000 lbs (curb weight) for weight reduction through materials substitution. A typical BOM for Material Substitution would include primarily substitution of high strength steels for heavier steels or other structural, materials on a vehicle. This BOM was established for each class but was not adjusted for each class due to the fact that the vehicle technology of Material Substitution is already scaled by it being based on percent of curb weight at or over 5,000 lbs.

In the NPRM, NHTSA estimated fuel economy effectiveness of a 2 percent incremental reduction in fuel consumption per each 3 percent reduction in vehicle weight. Nissan commented that NHTSA's modeling of material substitution application was overly optimistic, but did not elaborate further. Confidential manufacturer comments in response to the NPRM did not provide standardized effectiveness estimates, but ranged from 3.3 to 3.9 percent mpg improvement for a 10 percent reduction in mass, to 0.20 to 0.75 percent per 1 percent weight reduction, to 1 percent reduction on the FTP city cycle per 100 lbs reduced, with a maximum possible weight reduction of 5 percent.

Bearing in mind that NHTSA only assumes material substitution for vehicles at or above 5,000 lbs curb weight and based on manufacturer comments which together suggest an incremental improvement in fuel consumption of approximately 0.60 percent to 0.9 percent per 3 percent reduction in material weight, NHTSA has estimated an incremental improvement in fuel consumption of 1 percent (corresponding to a 3 percent reduction in vehicle weight, or roughly 0.35 percent fuel consumption per 1 percent reduction in vehicle weight). This estimate is consistent with the majority of the manufacturer comments.

As for costs, in the NPRM NHTSA estimated incremental costs of $0.75 to $1.25 per pound reduced through material substitution. The costs for material substitution were not clearly commented on in the confidential manufacturer responses. Confidential manufacturer estimates ranged from $50 to $511 for 1 percent reduction, although in most cases the cost estimates were not for the entire range of substitution (1–5 percent) and did not provide any additional clarification on how they specifically applied to the material substitution technology. Consequently, for purposes of the final rule NHTSA retained the existing NPRM cost estimates with adjustments to 2007 dollar levels resulting in an incremental $1 to $2 per pound of substituted material, which applies to the MS1 and MS2 technology, and $2 to $4 per pound for the MS5 technology. Costs for material substitution are not adjusted by vehicle subclass, as the technology costs are based on a percentage of the vehicle weight (per pound) and limited to Medium and Large Truck/SUV Van subclasses above 5,000 lbs curb weight.

The agency notes that comments from the Alliance and the Aluminum Association associated engine downsizing with weight reduction/material substitution and quoted effectiveness for this action as well. NHTSA considers engine downsizing separately from typical material substitution efforts, and consequently did not include those cost and fuel economy effectiveness for this technology.

In the NPRM, NHTSA assumed a 17 percent phase-in rate for material substitution. NHTSA received only one confidential manufacturer comment regarding material substitution phase-in percentage, suggesting 17 to 30 percent, but the agency notes that it generally received comments suggesting a non-linear phase-in rate for this technology, that would start at a rate lower than the current NPRM value and increase over time. In response to these comments, NHTSA revised the MY 2011 phase-in percentage to 5 percent to account for lead time limitations.

For material substitution technologies, neither volume-based cost reductions nor time-based cost reductions are applied. This technology does not employ a particular list of components to employ credible cost reduction.

In the NPRM, NHTSA assumed that material substitution (1 percent) could be applied during a redesign model year only. For this final rule, based on confidential manufacturer comments, NHTSA estimated that material substitution (1 percent) could be applied during either a refresh or a redesign model year, due to minimal design changes with minimal component or vehicle-level testing required. However, NHTSA retained the assumption that material substitution (2 percent and 5 percent) could be applied

during redesign model year only, as in the NPRM, because the agency neither received comments to contradict this assumption nor found other data to substantiate a change. The technology title was changed from Material Substitution (3 percent) to Material Substitution (5 percent) to more accurately represent the cumulative amount for the technology.

(ii) Low Drag Brakes (LDB)

Low drag brakes reduce the sliding friction of disc brake pads on rotors when the brakes are not engaged because the brake pads are pulled away from the rotating rotor. A typical BOM for Low Drag Brakes would typically include changes in brake caliper speed by changing the brake control system, springs, etc. on a vehicles brake system. This BOM was established for each class and was not adjusted for each class due to the fact that the vehicle technology BOM would not change by class across vehicle classes. Confidential manufacturer comments in response to the NPRM indicated that most passenger cars have already adopted this technology, but that ladder frame trucks have not yet adopted this technology. Consequently, in the final rule this technology was assumed to be applicable only to the Large Performance Passenger Car and Medium and Large Truck classes.

In the NPRM, NHTSA assumed an incremental improvement in fuel consumption of 1 to 2 percent for low drag brakes. Confidential manufacturer comments submitted in response to the NPRM indicated an effective range of 0.5–1.0 percent for this technology and this range was applied in the final rule. As for costs, NHTSA assumed in the NPRM incremental costs of $85 to $90 for the addition of low drag brakes. For the final rule, NHTSA took the average and adjusted it to 2007 dollars to establish an $89 final rule cost.

The NPRM assumed an annual average phase-in rate for low drag brakes of 25 percent. For the final rule, the MY 2011 phase-in cap is 20 percent. No learning curve was applied in the NPRM, but for the final rule, low drag brakes were considered a high volume, mature and stable technology, and thus time-based learning was applied. Low drag brakes are assumed in the final rule to be applicable at refresh cycle only.

(iii) Low Rolling Resistance Tires (ROLL)

Tire rolling resistance is the frictional loss associated mainly with the energy dissipated in the deformation of the tires under load—and thus, influence fuel economy. Other tire design characteristics (e.g., materials, construction, and tread design) influence durability, traction control (both wet and dry grip), vehicle handling, and ride comfort in addition to rolling resistance. A typical low rolling resistance tires BOM would include: tire inflation pressure, material change, and constructions with less hysteresis, geometry changes (e.g., reduced aspect ratios), reduction in sidewall and tread deflection, potential spring and shock tuning. Low rolling resistance tires are applicable to all classes of vehicles, except for ladder frame light trucks and performance vehicles. NHTSA assumed that this technology should not be applied to vehicles in the Large truck class due to the increased traction and handling requirements for off-road and braking performance at payload and towing limits which cannot be met with low resistance tire designs. Likewise, this technology was not applied to vehicles in the Performance Car classes due to increased traction requirements for braking and handling which cannot be met with low roll resistance tire designs. Confidential manufacturer comments received regarding applicability of this technology to particular vehicle classes confirmed NHTSA's assumption.

In the NPRM, NHTSA assumed an incremental reduction in fuel consumption of 1 to 2 percent for application of low rolling resistance tires. Confidential manufacturer comments varied widely and addressed the conflicting objectives of increasing safety by increasing rolling resistance for better tire traction, and improving fuel economy with lower rolling resistance tires that provide reduced traction. Confidential manufacturer comments suggested fuel consumption effectiveness of negative impact to a positive 0.1 percent per year over the next five years from 2008, while other confidential manufacturer comments indicate that the percentage effectiveness of low rolling resistance tires would increase each year, although it would apply differently for performance classes. Confidential manufacturer comments also indicated that some manufacturers have already applied this technology and consequently would receive no further effectiveness from this technology. The 2002 NAS Report indicated that an assumed 10 percent rolling resistance reduction would provide an increase in fuel economy of 1 to 2 percent. NHTSA believes the NAS effectiveness is still valid and used 1 to 2 percent incremental reduction in fuel consumption for application of low rolling resistance tires in the final rule.

NHTSA estimated the incremental cost of four low rolling resistance tires to be $6 per vehicle in the NPRM, independent of vehicle class, although not applicable to large trucks. NHTSA received few specific comments on the costs of applying low rolling resistance tires however confidential manufacturer comments that were received provided widely ranging and higher costs. NHTSA increased the range from the NPRM cost estimates to $6 to $9 per vehicle in the final rule.

In the NPRM, NHTSA assumed an annual phase-in rate of 25 percent for low rolling resistance tires. Confidential manufacturer comments on the phase-in rate for low rolling resistance tires varied, with some suggesting that many vehicle classes already had high phase-in rates planned or accomplished. As discussed above, the comments also suggested a non-linear phase-in plan over the 5-year period. Confidential manufacturer data was in the 25–30 percent range. Based on confidential manufacturer comments received and NHTSA's analysis, the final rule includes a phase-in cap for low rolling resistance tires with a phase-in rate of 20 percent for MY 2011.

For low rolling resistant tire technology, neither volume-based cost reductions nor time-based cost reductions are applied. This technology is presumed to be significantly dependent on commodity raw material prices and to be priced independent of particular design or manufacturing savings.

In the NPRM, NHTSA assumed that low rolling resistance tires could be applied during any model year. However, based on confidential manufacturer comments NHTSA recognizes that there are some vehicle attribute impacts which may result from application of low rolling resistance tires, such as changes to vehicle dynamics and braking. Vehicle validation testing for safety and vehicle attribute prove-out is not usually planned for every model year, so NHTSA assumed that this technology can be applied during a redesign or refresh model year for purposes of the final rule.

(iv) Front or Secondary Axle Disconnect for Four-Wheel Drive Systems (SAX)

To provide shift-on-the-fly capabilities, reduce wear and tear on secondary axles, and improve performance and fuel economy, many part-time four-wheel drive (4WD) systems use some type of axle disconnect. Axle disconnects are

typically used on 4WD vehicles with two-wheel drive (2WD) operating modes. When shifting from 2WD to 4WD ''on the fly'' (while moving), the front axle disconnect couples the front driveshaft to the front differential side gear only when the transfer case's synchronizing mechanism has spun the front driveshaft, transfer case chain or gear set and differential carrier up to the same speed as the rear driveshaft. 4WD systems that have axle disconnect typically do not have either manual- or automatic-locking hubs. For example, to isolate the front wheels from the rest of the front driveline, front axle disconnects use a sliding sleeve to connect or disconnect an axle shaft from the front differential side gear. The effectiveness to fuel efficiency is created by reducing inertial, chain, bearing and gear losses (parasitic losses).

Full time 4WD or all-wheel-drive (AWD) systems used for on-road performance and safety do not use axle disconnect systems due to the need for instantaneous activation of torque to wheels, and the agency is not aware of any manufacturer or suppliers who are developing a system to allow secondary axle disconnect suitable for use on AWD systems at this time. Secondary axle disconnect technology is primarily found on solid axle 4WD systems and not on the transaxle and/or independent axle systems typically found in AWD vehicles; thus, the application of this technology to AWD systems has not been considered for purposes of this rulemaking. The technology will be evaluated in future rulemakings.

Vehicle technology BOM information was not adjusted by vehicle classes due to the fact that the vehicle technology is limited to transfer case and front axle design changes. Scaling of components might be impacted but the components themselves will be the same. This is consistent with NHTSA's assumptions in the NPRM, and is supported by comments from confidential supplier and manufacturers. Secondary Axle Disconnect BOM typically involves a transfer case which includes electronic solenoid with clutch system to disconnect front drive and using axle mounted vacuum or electric disconnect that still allows driveshaft rotation without connection to wheel ends.

In the NPRM, NHTSA employed ''unibody'' and ''ladder frame'' terms to differentiate application of this technology, and had suggested ''unibody'' AWD systems could apply this same technology. In actuality, most 4WD vehicles are ''ladder frame'' technology and AWD are ''unibody'' designs (which for the reasons stated above will not be considered for this technology). Ladder frame technology is typically associated with greater payload, towing, and off-road capability, whereas unibody designs are typically used in smaller, usually front-wheel drive vehicles, and are typically not associated with higher payload, towing, and off-road use. For the final rule, NHTSA removed these vehicle design criteria since it is not a requirement to incorporate axle disconnect technology, only a historical design point and vehicle manufacturers should not be limited to a specific vehicle or chassis configuration to apply this technology. Therefore, this technology is applicable to 4WD vehicles in all vehicle classes (independent of chassis or frame design).

In the NPRM, NHTSA estimated an incremental reduction in fuel consumption of 1 to 1.5 percent for axle disconnect. Confidential manufacturer comments suggested an incremental effectiveness of 1 to 1.5 percent. Supported by this confidential manufacturer data, NHTSA maintained an incremental effectiveness of 1 to 1.5 percent for axle disconnect for the final rule.

As for costs, the NPRM estimated the incremental cost for adding axle disconnect technology at $114 for 4WD systems and the $676 estimate was for the AWD systems which are not applied in the final rule. NHTSA received no specific comments on costs for this technology and found no additional sources to support a change from this value for the 4WD value of $114, so for purposes of the final rule, NHTSA revised the $114 figure to 2007 dollars to establish a $117 final rule cost.

In the NPRM, NHTSA assumed a phase-in cap of 17 percent for secondary axle disconnect for each model year covered by the rulemaking. No specific comments were received regarding the phase-in rate for this technology, but as discussed above, manufacturers generally argued for a non-linear phase-in plan over the 5-year period covered by the rulemaking. Based on general comments received and NHTSA's analysis, the final rule includes a phase-in rate for secondary axle disconnect of 17 percent in MY 2011.

In the NPRM, NHTSA assumed a volume-based learning curve factor of 20 percent for secondary axle disconnect. For the final rule, secondary axle disconnect learning was established as time-based due to confidential manufacturer data demonstrating that this is a mature technology, such that additional volumes will provide no additional advantage for incorporation by manufacturers.

In the NPRM, NHTSA assumed that secondary axle disconnect could be applied to a vehicle either during refresh or redesign model years. NHTSA received no comments and found no sources to disagree with this assumption, and since testing to validate the functional requirements and vehicle attribute prove-out testing is usually not planned for every model year, NHTSA has retained this assumption for the final rule.

(v) Aerodynamic Drag Reduction (AERO)

Several factors affect a vehicle's aerodynamic drag and the resulting power required to move it through the air. While these values change with air density and the square and cube of vehicle speed, respectively, the overall drag effect is determined by the product of its frontal area and drag coefficient. Reductions in these quantities can therefore reduce fuel consumption. While frontal areas tend to be relatively similar within a vehicle class (mostly due to market-competitive size requirements), significant variations in drag coefficient can be observed. Significant fleet aerodynamic drag reductions may require incorporation into a manufacturer's new model phase-in schedules depending on the mix of vehicle classes distributed across the manufacturer's lineup. However, shorter-term aerodynamic reductions, with less of a fuel economy effectiveness, may be achieved through the use of revised exterior components (typically at a model refresh in mid-cycle) and add-on devices that are in general circulation today. The latter list would include revised front and rear fascias, modified front air dams and rear valances, addition of rear deck lips and underbody panels, and more efficient exterior mirrors.

Vehicle technology BOM information was not adjusted by vehicle classes due to the fact that Aero Drag Reductions are already scaled based on percent overall vehicle coefficient of drag CdA. Aero Drag Reduction BOM could include (but would not be limited to) the following components or subsystems: Underbody covers, front lower air dams, overall front fascia changes, headlights, hood, fenders, grill, windshield angle, A–Pillar angle, door seal gaps, roof (which would both be high impact and very high cost), side view mirrors, door handles (low impact), ride height, rear deck lip, wheels, wheel covers, and optimizing the cooling flow path.

In the NPRM, NHTSA estimated an incremental aerodynamic drag reduction of 20 percent for cars, and 10 percent for trucks. Confidential

manufacturer comments received indicated that the 20 percent reduction for cars in the NPRM may have been overly optimistic, as significant changes in aero drag have already been applied to those vehicle classes. However, confidential manufacturer comments agreed with the 10 percent aerodynamic drag reduction for trucks, since there are still significant opportunities to improve aero drag in trucks designed for truck-related utility. The Sierra Research study submitted by the Alliance concluded that a 10 percent incremental aerodynamic drag reduction for mid-size cars gives a 1.5 percent improvement in vehicle fuel economy. Thus, for purposes of the final rule, NHTSA has estimated that a fleet average of 10 percent total aerodynamic drag reduction is attainable (with a caveat for ''high-performance'' vehicles described below), which equates to incremental reductions in fuel consumption of 2 percent and 3 percent for cars and trucks, respectively. These numbers are in agreement with publicly-available technical literature [216] and are supported by confidential manufacturer information. Performance car classes are excluded from this technology improvement because they have largely applied this technology already.

As for costs, in the NPRM NHTSA assumed an incremental cost of $0 to $75 for aero drag reduction on both cars and trucks. After reviewing the 2008 Martec Report, however, NHTSA concluded that a lower-bound cost of $0 was not supportable. NHTSA replaced the lower-bound cost with $40 (non-RPE) based on the assumptions that the underbody cover and acoustic covers described in the Martec report approximates the cost for one large underbody cover as might be required for minimal aero drag reduction actions.[217] The upper limit was determined by updating the NPRM upper cost to 2007 dollars and applying an RPE uplift thereby establishing the incremental cost, independent of vehicle class, to range from $60 to $116 (RPE) for the final rule

In the NPRM, NHTSA assumed a 17 percent phase-in rate for aero drag reduction for each model year covered by the rulemaking. No specific comments were received regarding the phase-in rate for this technology, but as discussed above, manufacturers generally argued for a non-linear phase-in plan over a 5-year period. Based on comments received and NHTSA's analysis, the final rule includes a phase-in rate for aero drag reduction of 17 percent for MY 2011. Neither volume-based cost reductions nor time-based cost reductions are applied. In the NPRM, NHTSA assumed that aero drag reduction could be applied in either a refresh or a redesign model year and that assumption has been retained for the final rule.

(f) Technologies Considered But Not Included in the Final Rule Analysis

Although discussed and considered as potentially viable in the NPRM, NHTSA has determined that three technologies will be unavailable in the time frame considered. These technologies have been identified as either pre-emerging or not technologically feasible. Pre-emerging technologies are those that are still in the research phase at this time, and which are not expected to be under development for production vehicles for several years. In another case, the technology depends on a fuel that is not readily available. Thus, for the reasons discussed below, these technologies were not considered in NHTSA's analysis for the final rule. The technologies are camless valve actuation (CVA), lean burn gasoline direct injection (LBDI), homogeneous charge compression ignition (HCCI), and electric assist turbocharging. Although not applied in this rulemaking, NHTSA will continue to monitor the industry and system suppliers for progress on these technologies, and should they become available, consider them for use in any future rulemaking activity.

(i) Camless Valve Actuation

Camless valve actuation relies on electromechanical actuators instead of camshafts to open and close the cylinder valves. When electromechanical actuators are used to replace cams and coupled with sensors and microprocessor controls, valve timing and lift can be optimized over all conditions. An engine valvetrain that operates independently of any mechanical means provides the ultimate in flexibility for intake and exhaust timing and lift optimization. With it comes infinite valve overlap variability, the rapid response required to change between operating modes (such as HCCI and GDI), intake valve throttling, cylinder deactivation, and elimination of the camshafts (reduced friction). This level of control can enable even further incremental reductions in fuel consumption.

As noted in the NPRM, this technology has been under research for many decades and although some progress is being made, NHTSA has found no evidence to support that the technology can be successfully implemented, costed, or have defined fuel consumption effectiveness at this time.

(ii) Lean-Burn Gasoline Direct Injection Technology

One way to improve an engine's thermodynamic efficiency dramatically is by operating at a lean air-fuel mixture (excess air). Fuel system improvements, changes in combustion chamber design and repositioning of the injectors have allowed for better air/fuel mixing and combustion efficiency. There is currently a shift from wall-guided injection to spray guided injection, which improves injection precision and targeting towards the spark plug, increasing lean combustion stability. Combined with advances in NO_X after-treatment, lean-burn GDI engines may eventually be a possibility in North America.

However, as noted in the NPRM, a key technical requirement for lean-burn GDI engines to meet EPA's Tier 2 NO_X emissions levels is the availability of low-sulfur gasoline, which is projected to be unavailable during the time frame considered. Therefore the technology was not applied in the final rule

(iii) Homogeneous Charge Compression Ignition

Homogeneous charge compression ignition (HCCI), also referred to as controlled auto ignition (CAI), is an alternate engine operating mode that does not rely on a spark event to initiate combustion. The principles are more closely aligned with a diesel combustion cycle, in which the compressed charge exceeds a temperature and pressure necessary for spontaneous ignition. The resulting burn is much shorter in duration with higher thermal efficiency. Shorter combustion times and higher EGR tolerance permit very high compression ratios (which also increase thermodynamic efficiency), and additionally, pumping losses are reduced because the engine can run unthrottled.

NHTSA noted in the NPRM that several manufacturers had made public statements about the viability of incorporating HCCI into production vehicles over the next 10 years. Upon

[216] Sue Elliott-Sink, ''Improving Aerodynamics to Boost Fuel Economy,'' May 2, 2006. *Available at http://www.edmunds.com/advice/fueleconomy/articles/106954/article.html* (last accessed Oct. 5, 2008).

[217] 2008 Martec Report, at 25. NHTSA also assumed that the cost of fuel pulsation dampening technology noted in the Martec report grouped with the underbody cover and acoustic covers does not significantly impact the $40 cost as fuel pulsation dampening technology is very low in cost relative to the other actions. Therefore NHTSA did not modify the $40 estimate.

further review of confidential product plan information, and reviewing comments received in response to the NPRM, NHTSA has determined the technology will not be available within the time frame considered. Consequently, the technology was not applied in the final rule.

(iv) Electric Assist Turbocharging

The Alliance commented that global development of electric assist turbocharging has not demonstrated the fuel efficiency effectiveness of a 12V EAT up to 2kW power levels since the 2004 NESCCAF study, and stated that it saw remote probability of its application over the next decade.[218] While hybrid vehicles lower the incremental hardware requirements for higher-voltage, higher-power EAT systems, NHTSA believes that significant development work is required to demonstrate effective systems and that implementation in significant volumes will not occur in the time frame considered. Thus, this technology was not included on the decision trees.

[218] NHTSA–2008–0089–0169.1, at 41.

E. Cost and Effectiveness Tables

The tables representing the Volpe model input files for incremental technology costs by vehicle subclass are presented below. The tables have been divided into passenger cars, performance passenger cars, and light trucks to make them easier to read.

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Table IV-15. Technology Incremental Cost Estimates, Passenger Cars

VEHICLE TECHNOLOGY RETAIL PRICE EQUIVALENT INCREMENTAL COSTS PER VEHICLE ($) BY VEHICLE TECHNICAL CLASS - PASSENGER CARS					
		Subcompac Car	Compact Car	Midsize Car	Large Car
Nominal Baseline Engine (For Cost Basis)		Inline 4	Inline 4	Inline 4	V6
Low Friction Lubricants	LUB	5	5	5	5
Engine Friction Reduction	EFR	52 - 196	52 - 196	52 - 196	78 - 294
VVT - Coupled Cam Phasing (CCP) on SOHC	CCPS	61	61	61	122
Discrete Variable Valve Lift (DVVL) on SOHC	DVVLS	201	201	201	306
Cylinder Deactivation on SOHC	DEACS	n.a.	n.a.	n.a.	75
VVT - Intake Cam Phasing (ICP)	ICP	61	61	61	122
VVT - Dual Cam Phasing (DCP)	DCP	61	61	61	122
Discrete Variable Valve Lift (DVVL) on DOHC	DVVLD	201	201	201	306
Continuously Variable Valve Lift (CVVL)	CVVL	306	306	306	432
Cylinder Deactivation on DOHC	DEACD	n.a.	n.a.	n.a.	75
Cylinder Deactivation on OHV	DEACO	n.a.	n.a.	n.a.	306
VVT - Coupled Cam Phasing (CCP) on OHV	CCPO	61	61	61	122
Discrete Variable Valve Lift (DVVL) on OHV	DVVLO	201	201	201	76
Conversion to DOHC with DCP	CDOHC	373	373	373	590
Stoichiometric Gasoline Direct Injection (GDI)	SGDI	293 - 440	293 - 440	293 - 440	384 - 558
Turbocharging and Downsizing	TRBDS	1223	1223	1223	822
Conversion to Diesel following CBRST	DSLC	2,963 - 3,254	2,963 - 3,254	2,963 - 3,254	4,105 - 4,490
Conversion to Diesel following TRBDS	DSLT	1,567 - 1,858	1,567 - 1,858	1,567 - 1,858	3,110 - 3,495
Electric Power Steering	EPS	105 - 120	105 - 120	105 - 120	105 - 120
Improved Accessories	IACC	173 - 211	173 - 211	173 - 211	173 - 211
12V Micro-Hybrid	MHEV	372	408	453	490
Higher Voltage/Improved Alternator	HVIA	84	84	84	84
Integrated Starter Generator (Belt/Crank)	ISG	1713	2019	2190	2386
6-Speed Manual/Improved Internals	6MAN	338	338	338	338
Improved Auto. Trans. Controls/Externals	IATC	59	59	59	59
Continuously Variable Transmission	CVT	300	300	300	300
6/7/8-Speed Auto. Trans with Improved Internals	NAUTO	323	323	323	323
Dual Clutch or Automated Manual Transmission	DCTAM	68	68	218	218
Material Substitution (1%)	MS1	n.a.	n.a.	n.a.	n.a.
Material Substitution (2%)	MS2	n.a.	n.a.	n.a.	n.a.
Material Substitution (5%)	MS5	n.a.	n.a.	n.a.	n.a.
Low Rolling Resistance Tires	ROLL	6 - 9	6 - 9	6 - 9	6 - 9
Low Drag Brakes	LDB	n.a.	n.a.	n.a.	n.a.
Secondary Axle Disconnect	SAX	117	117	117	117
Aero Drag Reduction	AERO	60 - 116	60 - 116	60 - 116	60 - 116

Table IV-16. Technology Incremental Cost Estimates, Performance Passenger Cars

VEHICLE TECHNOLOGY RETAIL PRICE EQUIVALENT INCREMENTAL COSTS PER VEHICLE ($) BY VEHICLE TECHNICAL CLASS - PERFORMANCE CARS					
		Perform. Subcomp. Car	Perform. Compact Car	Perform. Midsize Car	Perform. Large Car
Nominal Baseline Engine (For Cost Basis)		Inline 4	V6	V6	V8
Low Friction Lubricants	LUB	5	5	5	5
Engine Friction Reduction	EFR	52 - 196	78 - 294	78 - 294	104 - 392
VVT - Coupled Cam Phasing (CCP) on SOHC	CCPS	61	122	122	122
Discrete Variable Valve Lift (DVVL) on SOHC	DVVLS	201	306	306	396
Cylinder Deactivation on SOHC	DEACS	n.a.	75	75	75
VVT - Intake Cam Phasing (ICP)	ICP	61	122	122	122
VVT - Dual Cam Phasing (DCP)	DCP	61	122	122	122
Discrete Variable Valve Lift (DVVL) on DOHC	DVVLD	201	306	306	396
Continuously Variable Valve Lift (CVVL)	CVVL	306	432	432	582
Cylinder Deactivation on DOHC	DEACD	n.a.	75	75	75
Cylinder Deactivation on OHV	DEACO	n.a.	306	306	400
VVT - Coupled Cam Phasing (CCP) on OHV	CCPO	61	122	122	122
Discrete Variable Valve Lift (DVVL) on OHV	DVVLO	201	76	76	76
Conversion to DOHC with DCP	CDOHC	373	590	590	746
Stoichiometric Gasoline Direct Injection (GDI)	SGDI	293 - 440	384 - 558	384 - 558	512 - 744
Turbocharging and Downsizing	TRBDS	1,223	822	822	1,229
Conversion to Diesel following CBRST	DSLC	2,963 - 3,254	4,105 - 4,490	4,105 - 4,490	5,125 - 5,617
Conversion to Diesel following TRBDS	DSLT	1,567 - 1,858	3,110 - 3,495	3,110 - 3,495	3,723 - 4,215
Electric Power Steering	EPS	105 - 120	105 - 120	105 - 120	105 - 120
Improved Accessories	IACC	173 - 211	173 - 211	173 - 211	173 - 211
12V Micro-Hybrid	MHEV	406	443	494	549
Higher Voltage/Improved Alternator	HVIA	84	84	84	84
Integrated Starter Generator (Belt/Crank)	ISG	1,789 - 1,864	2,054	2,183	2,351
6-Speed Manual/Improved Internals	6MAN	338	338	338	338
Improved Auto. Trans. Controls/Externals	IATC	59	59	59	59
Continuously Variable Transmission	CVT	300	300	300	n.a.
6/7/8-Speed Auto. Trans with Improved Internals	NAUTO	323 - 638	323 - 638	323 - 638	323 - 638
Dual Clutch or Automated Manual Transmission	DCTAM	(97) - 218	(97) - 218	(97) - 218	(97) - 218
Material Substitution (1%)	MS1	n.a.	n.a.	n.a.	n.a.
Material Substitution (2%)	MS2	n.a.	n.a.	n.a.	n.a.
Material Substitution (5%)	MS5	n.a.	n.a.	n.a.	n.a.
Low Rolling Resistance Tires	ROLL	n.a.	n.a.	n.a.	n.a.
Low Drag Brakes	LDB	n.a.	n.a.	n.a.	n.a.
Secondary Axle Disconnect	SAX	117	117	117	117
Aero Drag Reduction	AERO	60 - 116	60 - 116	60 - 116	60 - 116

Table IV-17. Technology Incremental Cost Estimates, Light Trucks

VEHICLE TECHNOLOGY RETAIL PRICE EQUIVALENT INCREMENTAL COSTS PER VEHICLE ($) BY VEHICLE TECHNICAL CLASS - LIGHT TRUCKS					
		Minivan LT	Small LT	Midsize LT	Large LT
Nominal Baseline Engine (For Cost Basis)		V6	Inline 4	V6	V8
Low Friction Lubricants	LUB	5	5	5	5
Engine Friction Reduction	EFR	78 - 294	52 - 196	78 - 294	104 - 392
VVT - Coupled Cam Phasing (CCP) on SOHC	CCPS	122	61	122	122
Discrete Variable Valve Lift (DVVL) on SOHC	DVVLS	306	201	306	396
Cylinder Deactivation on SOHC	DEACS	75	n.a.	75	75
VVT - Intake Cam Phasing (ICP)	ICP	122	61	122	122
VVT - Dual Cam Phasing (DCP)	DCP	122	61	122	122
Discrete Variable Valve Lift (DVVL) on DOHC	DVVLD	306	201	306	396
Continuously Variable Valve Lift (CVVL)	CVVL	432	306	432	582
Cylinder Deactivation on DOHC	DEACD	75	n.a.	75	75
Cylinder Deactivation on OHV	DEACO	306	n.a.	306	400
VVT - Coupled Cam Phasing (CCP) on OHV	CCPO	122	61	122	122
Discrete Variable Valve Lift (DVVL) on OHV	DVVLO	76	201	76	76
Conversion to DOHC with DCP	CDOHC	590	373	590	746
Stoichiometric Gasoline Direct Injection (GDI)	SGDI	384 - 558	293 - 440	384 - 558	512 - 744
Turbocharging and Downsizing	TRBDS	822	1223	822	1229
Conversion to Diesel following CBRST	DSLC	4,105 - 4,490	2,963 - 3,254	4,105 - 4,490	5,125 - 5,617
Conversion to Diesel following TRBDS	DSLT	3,110 - 3,495	1,567 - 1,858	3,110 - 3,495	3,723 - 4,215
Electric Power Steering	EPS	105 - 120	105 - 120	105 - 120	n.a.
Improved Accessories	IACC	173 - 211	173 - 211	n.a.	n.a.
12V Micro-Hybrid	MHEV	490	427	502	n.a.
Higher Voltage/Improved Alternator	HVIA	84	84	84	n.a.
Integrated Starter Generator (Belt/Crank)	ISG	2386	2029	2457	n.a.
6-Speed Manual/Improved Internals	6MAN	338	338	338	338
Improved Auto. Trans. Controls/Externals	IATC	59	59	59	59
Continuously Variable Transmission	CVT	300	300	n.a.	n.a.
6/7/8-Speed Auto. Trans with Improved Internals	NAUTO	323	323 - 638	323 - 638	323 - 638
Dual Clutch or Automated Manual Transmission	DCTAM	218	(97) - 218	(97) - 218	(97) - 218
Material Substitution (1%)	MS1	n.a.	n.a.	1 - 2	1 - 2
Material Substitution (2%)	MS2	n.a.	n.a.	1 - 2	1 - 2
Material Substitution (5%)	MS5	n.a.	n.a.	2 - 4	2 - 4
Low Rolling Resistance Tires	ROLL	6 - 9	6 - 9	6 - 9	n.a.
Low Drag Brakes	LDB	n.a.	n.a.	89	89
Secondary Axle Disconnect	SAX	117	117	117	117
Aero Drag Reduction	AERO	60 - 116	60 - 116	60 - 116	60 - 116

The tables representing the Volpe model input files for incremental technology effectiveness values by vehicle subclass are presented below. The tables have been divided into passenger cars, performance passenger cars, and light trucks to make them easier to read.

Table IV-18. Technology Incremental Effectiveness Estimates, Passenger Cars

VEHICLE TECHNOLOGY INCREMENTAL FUEL CONSUMPTION REDUCTION (-%) BY VEHICLE TECHNOLOGY CLASS - PASSENGER CARS					
		Subcompact Car	Compact Car	Midsize Car	Large Car
Nominal Baseline Engine (For Cost Basis)		Inline 4	Inline 4	Inline 4	V6
Low Friction Lubricants	LUB	0.5	0.5	0.5	0.5
Engine Friction Reduction	EFR	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0
VVT - Coupled Cam Phasing (CCP) on SOHC	CCPS	1.0 - 3.0	1.0 - 3.0	1.0 - 3.0	1.0 - 3.0
Discrete Variable Valve Lift (DVVL) on SOHC	DVVLS	1.0 - 3.0	1.0 - 3.0	1.0 - 3.0	1.0 - 3.0
Cylinder Deactivation on SOHC	DEACS	n.a.	n.a.	n.a.	2.5 - 3.0
VVT - Intake Cam Phasing (ICP)	ICP	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0
VVT - Dual Cam Phasing (DCP)	DCP	2.0 - 3.0	2.0 - 3.0	2.0 - 3.0	2.0 - 3.0
Discrete Variable Valve Lift (DVVL) on DOHC	DVVLD	1.0 - 3.0	1.0 - 3.0	1.0 - 3.0	1.0 - 3.0
Continuously Variable Valve Lift (CVVL)	CVVL	1.5 - 3.5	1.5 - 3.5	1.5 - 3.5	1.5 - 3.5
Cylinder Deactivation on DOHC	DEACD	n.a.	n.a.	n.a.	0 - 0.5
Cylinder Deactivation on OHV	DEACO	n.a.	n.a.	n.a.	3.9 - 5.5
VVT - Coupled Cam Phasing (CCP) on OHV	CCPO	1.0 - 1.5	1.0 - 1.5	1.0 - 1.5	1.0 - 1.5
Discrete Variable Valve Lift (DVVL) on OHV	DVVLO	0.5 - 2.6	0.5 - 2.6	0.5 - 2.6	0.5 - 2.6
Conversion to DOHC with DCP	CDOHC	1.0 - 2.6	1.0 - 2.6	1.0 - 2.6	1.0 - 2.6
Stoichiometric Gasoline Direct Injection (GDI)	SGDI	1.9 - 2.9	1.9 - 2.9	1.9 - 2.9	1.9 - 2.9
Turbocharging and Downsizing	TRBDS	4.5 - 5.2	4.5 - 5.2	4.5 - 5.2	2.1 - 2.2
Conversion to Diesel following CBRST	DSLC	15.0 - 15.3	15.0 - 15.3	13.8 - 14.2	11.1 - 12.0
Conversion to Diesel following TRBDS	DSLT	6.6 - 7.7	6.6 - 7.7	5.3 - 6.5	5.3 - 6.5
Electric Power Steering	EPS	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0
Improved Accessories	IACC	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0
12V Micro-Hybrid	MHEV	1.0 - 2.9	1.0 - 2.9	3.4 - 4.0	3.4 - 4.0
Higher Voltage/Improved Alternator	HVIA	0.2 - 0.9	0.2 - 0.9	0.2 - 0.6	0.2 - 0.6
Integrated Starter Generator (Belt/Crank)	ISG	5.7 - 6.5	5.7 - 6.5	5.7 - 6.5	5.7 - 6.5
6-Speed Manual/Improved Internals	6MAN	1	1	1	1
Improved Auto. Trans. Controls/Externals	IATC	1.5 - 2.5	1.5 - 2.5	1.5 - 2.5	1.5 - 2.5
Continuously Variable Transmission	CVT	0.7 - 2.0	0.7 - 2.0	0.7 - 2.0	0.7 - 2.0
6/7/8-Speed Auto. Trans with Improved Internals	NAUTO	1.4 - 3.4	1.4 - 3.4	1.4 - 3.4	1.4 - 3.4
Dual Clutch or Automated Manual Transmission	DCTAM	5.5 - 7.5	5.5 - 7.5	2.7 - 4.1	2.7 - 4.1
Material Substitution (1%)	MS1	n.a.	n.a.	n.a.	n.a.
Material Substitution (2%)	MS2	n.a.	n.a.	n.a.	n.a.
Material Substitution (5%)	MS5	n.a.	n.a.	n.a.	n.a.
Low Rolling Resistance Tires	ROLL	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0
Low Drag Brakes	LDB	n.a.	n.a.	n.a.	n.a.
Secondary Axle Disconnect	SAX	1.0 - 1.5	1.0 - 1.5	1.0 - 1.5	1.0 - 1.5
Aero Drag Reduction	AERO	2.0 - 3.0	2.0 - 3.0	2.0 - 3.0	2.0 - 3.0

Table IV-19. Technology Incremental Effectiveness Estimates, Performance Cars

VEHICLE TECHNOLOGY INCREMENTAL FUEL CONSUMPTION REDUCTION (-%) BY VEHICLE TECHNOLOGY CLASS - PERFORMANCE CARS					
		Perform. Subcomp. Car	Perform. Compact Car	Perform. Midsize Car	Perform. Large Car
Nominal Baseline Engine (For Cost Basis)		Inline 4	V6	V6	V8
Low Friction Lubricants	LUB	0.5	0.5	0.5	0.5
Engine Friction Reduction	EFR	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0
VVT - Coupled Cam Phasing (CCP) on SOHC	CCPS	1.0 - 3.0	1.0 - 3.0	1.0 - 3.0	1.0 - 3.0
Discrete Variable Valve Lift (DVVL) on SOHC	DVVLS	1.0 - 3.0	1.0 - 3.0	1.0 - 3.0	1.0 - 3.0
Cylinder Deactivation on SOHC	DEACS	n.a.	2.5 - 3.0	2.5 - 3.0	2.5 - 3.0
VVT - Intake Cam Phasing (ICP)	ICP	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0
VVT - Dual Cam Phasing (DCP)	DCP	2.0 - 3.0	2.0 - 3.0	2.0 - 3.0	2.0 - 3.0
Discrete Variable Valve Lift (DVVL) on DOHC	DVVLD	1.0 - 3.0	1.0 - 3.0	1.0 - 3.0	1.0 - 3.0
Continuously Variable Valve Lift (CVVL)	CVVL	1.5 - 3.5	1.5 - 3.5	1.5 - 3.5	1.5 - 3.5
Cylinder Deactivation on DOHC	DEACD	n.a.	0 - 0.5	0 - 0.5	0 - 0.5
Cylinder Deactivation on OHV	DEACO	n.a.	3.9 - 5.5	3.9 - 5.5	3.9 - 5.5
VVT - Coupled Cam Phasing (CCP) on OHV	CCPO	1.0 - 1.5	1.0 - 1.5	1.0 - 1.5	1.0 - 1.5
Discrete Variable Valve Lift (DVVL) on OHV	DVVLO	0.5 - 2.6	0.5 - 2.6	0.5 - 2.6	0.5 - 2.6
Conversion to DOHC with DCP	CDOHC	1.0 - 2.6	1.0 - 2.6	1.0 - 2.6	1.0 - 2.6
Stoichiometric Gasoline Direct Injection (GDI)	SGDI	1.9 - 2.9	1.9 - 2.9	1.9 - 2.9	1.9 - 2.9
Turbocharging and Downsizing	TRBDS	4.5 - 5.2	2.1 - 2.2	2.1 - 2.2	2.1 - 2.2
Conversion to Diesel following CBRST	DSLC	15.0 - 15.3	12.3 - 13.1	11.1 - 12.0	11.1 - 12.0
Conversion to Diesel following TRBDS	DSLT	6.6 - 7.7	6.6 - 7.7	5.3 - 6.5	5.3 - 6.5
Electric Power Steering	EPS	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0
Improved Accessories	IACC	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0
12V Micro-Hybrid	MHEV	1.0 - 2.9	1.2 - 2.9	3.4 - 4.0	3.4 - 4.0
Higher Voltage/Improved Alternator	HVIA	0.2 - 0.9	0.2 - 0.9	0.2 - 0.6	0.2 - 0.6
Integrated Starter Generator (Belt/Crank)	ISG	1.8 - 2.6	1.8 - 2.6	1.8 - 1.9	1.8 - 2.6
6-Speed Manual/Improved Internals	6MAN	0.5	0.5	0.5	0.5
Improved Auto. Trans. Controls/Externals	IATC	1.5 - 2.5	1.5 - 2.5	1.5 - 2.5	1.5 - 2.5
Continuously Variable Transmission	CVT	0.7 - 2.0	0.7 - 2.0	0.7 - 2.0	n.a.
6/7/8-Speed Auto. Trans with Improved Internals	NAUTO	1.4 - 3.4	1.4 - 3.4	1.4 - 3.4	1.4 - 3.4
Dual Clutch or Automated Manual Transmission	DCTAM	2.7 - 4.1	2.7 - 4.1	2.7 - 4.1	2.7 - 4.1
Material Substitution (1%)	MS1	n.a.	n.a.	n.a.	n.a.
Material Substitution (2%)	MS2	n.a.	n.a.	n.a.	n.a.
Material Substitution (5%)	MS5	n.a.	n.a.	n.a.	n.a.
Low Rolling Resistance Tires	ROLL	n.a.	n.a.	n.a.	n.a.
Low Drag Brakes	LDB	n.a.	n.a.	n.a.	n.a.
Secondary Axle Disconnect	SAX	1.0 - 1.5	1.0 - 1.5	1.0 - 1.5	1.0 - 1.5
Aero Drag Reduction	AERO	2.0 - 3.0	2.0 - 3.0	2.0 - 3.0	2.0 - 3.0

Table IV-20. Technology Incremental Effectiveness Estimates, Light Trucks

VEHICLE TECHNOLOGY INCREMENTAL FUEL CONSUMPTION REDUCTION (-%) BY VEHICLE TECHNOLOGY CLASS - LIGHT TRUCKS					
		Minivan LT	Small LT	Midsize LT	Large LT
Nominal Baseline Engine (For Cost Basis)		V6	Inline 4	V6	V8
Low Friction Lubricants	LUB	0.5	0.5	0.5	0.5
Engine Friction Reduction	EFR	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0
VVT - Coupled Cam Phasing (CCP) on SOHC	CCPS	1.0 - 3.0	1.0 - 3.0	1.0 - 3.0	1.0 - 3.0
Discrete Variable Valve Lift (DVVL) on SOHC	DVVLS	1.0 - 3.0	1.0 - 3.0	1.0 - 3.0	1.0 - 3.0
Cylinder Deactivation on SOHC	DEACS	2.5 - 3.0	n.a.	2.5 - 3.0	2.5 - 3.0
VVT - Intake Cam Phasing (ICP)	ICP	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0
VVT - Dual Cam Phasing (DCP)	DCP	2.0 - 3.0	2.0 - 3.0	2.0 - 3.0	2.0 - 3.0
Discrete Variable Valve Lift (DVVL) on DOHC	DVVLD	1.0 - 3.0	1.0 - 3.0	1.0 - 3.0	1.0 - 3.0
Continuously Variable Valve Lift (CVVL)	CVVL	1.5 - 3.5	1.5 - 3.5	1.5 - 3.5	1.5 - 3.5
Cylinder Deactivation on DOHC	DEACD	0 - 0.5	n.a.	0 - 0.5	0 - 0.5
Cylinder Deactivation on OHV	DEACO	3.9 - 5.5	n.a.	3.9 - 5.5	3.9 - 5.5
VVT - Coupled Cam Phasing (CCP) on OHV	CCPO	1.0 - 1.5	1.0 - 1.5	1.0 - 1.5	1.0 - 1.5
Discrete Variable Valve Lift (DVVL) on OHV	DVVLO	0.5 - 2.6	0.5 - 2.6	0.5 - 2.6	0.5 - 2.6
Conversion to DOHC with DCP	CDOHC	1.0 - 2.6	1.0 - 2.6	1.0 - 2.6	1.0 - 2.6
Stoichiometric Gasoline Direct Injection (GDI)	SGDI	1.9 - 2.9	1.9 - 2.9	1.9 - 2.9	1.9 - 2.9
Turbocharging and Downsizing	TRBDS	2.1 - 2.2	4.5 - 5.2	2.1 - 2.2	2.1 - 2.2
Conversion to Diesel following CBRST	DSLC	11.1 - 12.0	13.8 - 14.2	9.9 - 12.0	10.0 - 10.9
Conversion to Diesel following TRBDS	DSLT	5.3 - 6.5	5.3 - 6.5	4.0 - 6.5	4.0 - 5.3
Electric Power Steering	EPS	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0	n.a.
Improved Accessories	IACC	1.0 - 2.0	1.0 - 2.0	n.a.	n.a.
12V Micro-Hybrid	MHEV	3.4 - 4.0	1.0 - 2.9	3.4 - 4.0	n.a.
Higher Voltage/Improved Alternator	HVIA	0.2 - 0.6	0.2 - 0.9	0.2 - 0.6	n.a.
Integrated Starter Generator (Belt/Crank)	ISG	5.7 - 6.5	5.7 - 6.5	5.7 - 6.5	n.a.
6-Speed Manual/Improved Internals	6MAN	0.5	0.5	0.5	0.5
Improved Auto. Trans. Controls/Externals	IATC	1.5 - 2.5	1.5 - 2.5	1.5 - 2.5	1.5 - 2.5
Continuously Variable Transmission	CVT	0.7 - 2.0	0.7 - 2.0	n.a.	n.a.
6/7/8-Speed Auto. Trans with Improved Internals	NAUTO	1.4 - 3.4	1.4 - 3.4	1.4 - 3.4	1.4 - 3.4
Dual Clutch or Automated Manual Transmission	DCTAM	2.7 - 4.1	2.7 - 4.1	2.7 - 4.1	2.7 - 4.1
Material Substitution (1%)	MS1	n.a.	n.a.	0.4	0.4
Material Substitution (2%)	MS2	n.a.	n.a.	0.4	0.4
Material Substitution (5%)	MS5	n.a.	n.a.	1.0	1.0
Low Rolling Resistance Tires	ROLL	1.0 - 2.0	1.0 - 2.0	1.0 - 2.0	n.a.
Low Drag Brakes	LDB	n.a.	n.a.	0.5 - 1.0	0.5 - 1.0
Secondary Axle Disconnect	SAX	1.0 - 1.5	1.0 - 1.5	1.0 - 1.5	1.0 - 1.5
Aero Drag Reduction	AERO	2.0 - 3.0	2.0 - 3.0	2.0 - 3.0	2.0 - 3.0

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The tables representing the Volpe model input files for approximate net (accumulated) technology costs by vehicle subclass are presented below. The tables have been divided into passenger cars, performance passenger cars, and light trucks to make them easier to read.

Table IV-21. Approximate Net (Accumulated) Technology Costs, Passenger Cars

APPROXIMATE RETAIL PRICE EQUIVALENT NET COSTS PER VEHICLE ($) BY VEHICLE CLASS TO KEY TECHNOLOGIES (Rounded to nearest $100)				
Final Technology (As compared to baseline vehicle before any technologies are applied)	Subcompact Car	Compact Car	Midsize Car	Large Car
Stoichiometric Gas Direct Injection (SGDI)	600 - 1,100	600 - 1,100	600 - 1,100	1,000 - 1,900
Turbocharge and Downsize (TRBDS)	2,000 - 2,600	2,000 - 2,600	2,000 - 2,600	1,900 - 2,700
Diesel Engine (DSLT/DSLC)	4,000	4,000	4,000	5,600
Dual Clutch Transmission (DCTAM)	500	500	600	600
Integrated Starter Generator Mild-hybrid (ISG)	2,400 - 2,500	2,800	3,000 - 3,100	3,200 - 3,300

Table IV-22. Approximate Net (Accumulated) Technology Costs, Performance Passenger Cars

APPROXIMATE RETAIL PRICE EQUIVALENT NET COSTS PER VEHICLE ($) BY VEHICLE CLASS TO KEY TECHNOLOGIES (Rounded to nearest $100)				
Final Technology (As compared to baseline vehicle before any technologies are applied)	Performance Subcompact Car	Performance Compact Car	Performance Midsize Car	Performance Large Car
Stoichiometric Gas Direct Injection (SGDI)	600 - 1,100	1,000 - 1,700	1,000 - 1,900	1,200 - 2,400
Turbocharge and Downsize (TRBDS)	2,000 - 2,600	1,900 - 2,700	1,900 - 2,700	2,600 - 3,700
Diesel Engine (DSLT/DSLC)	4,000	5,600	5,600	7,000
Dual Clutch Transmission (DCTAM)	600	600	600	600
Integrated Starter Generator Mild-hybrid (ISG)	2,500 - 2,700	2,900	3,000 - 3,100	3,300

Table IV-23. Approximate Net (Accumulated) Technology Costs, Light Trucks

APPROXIMATE RETAIL PRICE EQUIVALENT NET COSTS PER VEHICLE ($) BY VEHICLE CLASS TO KEY TECHNOLOGIES (Rounded to nearest $100)				
Final Technology (As compared to baseline vehicle before any technologies are applied)	Minivan LT	Small LT	Midsize LT	Large LT
Stoichiometric Gas Direct Injection (SGDI)	1,000 - 1,900	600 - 1,100	1,000 - 1,900	1,200 - 2,400
Turbocharge and Downsize (TRBDS)	1,900 - 2,700	2,000 - 2,600	1,900 - 2,700	2,600 - 3,700
Diesel Engine (DSLT/DSLC)	5,600	4,000	5,600	7,000
Dual Clutch Transmission (DCTAM)	600	600	600	600
Integrated Starter Generator Mild-hybrid (ISG)	3,200 - 3,300	2,800 - 2,900	3,200	n.a.

The tables representing the Volpe model input files for approximate net (accumulated) technology effectiveness values by vehicle subclass are presented below. The tables have been divided into passenger cars, performance passenger cars, and light trucks to make them easier to read.

Table IV-24. Approximate Net Technology Effectiveness, Passenger Cars

NET EFFECTIVENESS ESTIMATES FUEL CONSUMPTION REDUCTION PER VEHICLE (-%) BY VEHICLE CLASS TO KEY TECHNOLOGIES				
Final Technology (As compared to baseline vehicle before any technologies are applied)	Subcompact Car	Compact Car	Midsize Car	Large Car
Stoichiometric Gas Direct Injection (SGDI)	4.8 - 13.1	4.8 - 13.1	4.8 - 13.1	7.2 - 14.1
Turbocharge and Downsize (TRBDS)	11.2 - 17.4	11.2 - 17.4	11.2 - 17.4	11.2 - 17.4
Diesel Engine (DSLT/DSLC)	21.2 - 25.9	21.2 - 25.9	20.2 - 24.9	20.2 - 24.9
Dual Clutch Transmission (DCTAM)	8.2 - 12.9	8.2 - 12.9	5.5 - 9.7	5.5 - 9.7
Integrated Starter Generator Mild-hybrid (ISG)	8.7 - 13.6	8.7 - 13.6	10.9 - 14.3	10.9 - 14.3

Table IV-25. Approximate Net Technology Effectiveness, Performance Passenger Cars

NET EFFECTIVENESS ESTIMATES FUEL CONSUMPTION REDUCTION PER VEHICLE (-%) BY VEHICLE CLASS TO KEY TECHNOLOGIES				
Final Technology (As compared to baseline vehicle before any technologies are applied)	Performance Subcompact Car	Performance Compact Car	Performance Midsize Car	Performance Large Car
Stoichiometric Gas Direct Injection (SGDI)	4.8 - 13.1	7.2 - 14.1	7.2 - 14.1	7.2 - 14.1
Turbocharge and Downsize (TRBDS)	11.2 - 17.4	11.2 - 17.4	11.2 - 17.4	11.2 - 17.4
Diesel Engine (DSLT/DSLC)	21.2 - 25.9	21.2 - 25.9	20.2 - 24.9	20.2 - 24.9
Dual Clutch Transmission (DCTAM)	5.5 - 9.7	5.5 - 9.7	5.5 - 9.7	5.5 - 9.7
Integrated Starter Generator Mild-hybrid (ISG)	4.9 - 10.0	5.1 - 10.0	7.2 - 10.1	7.2 - 10.7

Table IV-26. Approximate Net Technology Effectiveness, Light Trucks

NET EFFECTIVENESS ESTIMATES FUEL CONSUMPTION REDUCTION PER VEHICLE (-%) BY VEHICLE CLASS TO KEY TECHNOLOGIES				
Final Technology (As compared to baseline vehicle before any technologies are applied)	Minivan LT	Small LT	Midsize LT	Large LT
Stoichiometric Gas Direct Injection (SGDI)	7.2 - 14.1	4.8 - 13.1	7.2 - 14.1	7.2 - 14.2
Turbocharge and Downsize (TRBDS)	11.2 - 17.4	11.2 - 17.4	11.2 - 17.4	11.2 - 17.4
Diesel Engine (DSLT/DSLC)	20.2 - 24.9	20.2 - 24.9	20.2 - 23.9	19.2 - 23.9
Dual Clutch Transmission (DCTAM)	5.5 - 9.7	5.5 - 9.7	5.5 - 9.7	5.5 - 9.7
Integrated Starter Generator Mild-hybrid (ISG)	10.9 - 14.3	8.7 - 13.6	10.0 - 12.6	n.a.

V. Economic Assumptions Used in NHTSA's Analysis

A. Introduction: How NHTSA Uses the Economic Assumptions in Its Analysis

NHTSA's analysis of alternative CAFE standards for model year 2011 passenger cars and light trucks relies on a range of market information, estimates of the cost and effectiveness of technologies to increase fuel economy, forecasts of critical economic variables, and estimates of the values of important behavioral parameters. This section describes the sources NHTSA has relied upon to obtain this information, as well as how the agency developed the specific parameter values used in the analysis. Like the product plan information it obtains from vehicle manufacturers, these economic variables, forecasts, and parameter values play important roles in determining the level of CAFE standards, although some variables have larger impacts on the final standards than others.

As discussed above, the Volpe model uses the estimates of the costs and effectiveness of individual technologies to simulate the improvements that manufacturers could elect to make to the fuel economy of their individual vehicle models in order to comply with higher CAFE standards at the lowest cost, and to estimate each manufacturer's total costs for meeting new standards. To calculate the reductions in fuel use over the lifetime of each car and light truck model from the resulting increases in fuel economy, the model then combines those increases with estimates of the fraction of cars and light trucks that remain in service at different ages, the number of miles they are driven at each age, and the size of the fuel economy rebound effect. Forecasts of future fuel prices are then applied to these fuel savings to estimate their economic value during each year the vehicles affected by the higher CAFE standards are projected to remain in service. The Volpe model also uses estimates of the fractions of fuel

savings that will reduce U.S. imports of crude petroleum and refined fuel to estimate the reduction in economic externalities that result from U.S. imports.

Using emission rates per mile driven by different types of vehicles or per gallon of fuel consumed, together with estimates of emissions that occur within the U.S. in the process of refining and distributing fuel, the Volpe model calculates changes in emissions of regulated (or criteria) air pollutants and carbon dioxide (CO_2), the main greenhouse gas emitted during fuel production and vehicle use. These are combined with estimates of the economic damages to human health and property caused by regulated air pollutants, and by projected future changes in the global climate resulting from increases in CO_2 emissions, to estimate the benefits from the resulting reductions in emissions. Finally, the model calculates benefits to vehicle owners from having to refuel less frequently based on the estimated values of vehicle occupants' time, the decline in vehicle operating costs due to lower fuel consumption, and the increase in mobility afforded by added rebound-effect driving.

As the following discussion makes clear, the costs and effectiveness of fuel economy technologies, forecasts of future gasoline prices, and the discount rate applied to future benefits have the largest influence over the level of the standards. In contrast, estimates of the value of economic externalities generated by U.S. petroleum imports, the fuel economy rebound effect, the gap between test and on-road fuel economy, and the economic values of reducing emissions of greenhouse gases and regulated air pollutants each have more modest effects on determining the final CAFE standards. NHTSA has analyzed the sensitivity of the final standards and their resulting benefits to plausible variation in the most important of these inputs, both by varying their values individually and conducting a Monte Carlo-type analysis of joint variation in their probably values. NHTSA recognizes that there may be other reasonable assumptions that the agency could have made. However, for purposes of the MY 2011 rulemaking, NHTSA continues to believe that the assumptions made are the most appropriate based on the information available. The agency will, however, review these assumptions in future rulemakings, especially in light of comments received and accounting for changing circumstances, both domestically and globally, and consider whether other assumptions would be more reasonable under the circumstances at that time.

For the reader's reference, Table V–1 below summarizes the values of many of the variables NHTSA uses to estimate the costs, fuel savings, and resulting economic benefits from increases in car and light truck CAFE standards.

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Table V-1. Economic Values for Benefits Computations (2007$)

Fuel Prices (average retail gasoline price per gallon, 2011-30)	$3.33
Discount Rates Applied to Future Benefits	
Reductions in CO_2 Emissions	3%
Other Benefits	7%
Economic Costs of Oil Imports ($/gallon)	
"Monopsony" Component	$0.27
Price Shock Component	$0.12
Total Economic Costs	$0.39
Fuel Economy Rebound Effect	15%
"Gap" between Test and On-Road mpg	20%
Value of Refueling Time ($/vehicle-hour)	$24.64
External Costs from Additional Automobile Use Due to "Rebound" Effect ($/vehicle-mile)	
Congestion	$0.054
Accidents	$0.023
Noise	$0.001
Total External Costs	$0.078
External Costs from Additional Light Truck Use Due to "Rebound" Effect ($/vehicle-mile)	
Congestion	$0.048
Accidents	$0.026
Noise	$0.001
Total External Costs	$0.075
Emission Damage Costs	
Carbon Monoxide ($/ton)	$ 0
Volatile Organic Compounds ($/ton)	$1,700
Nitrogen Oxides ($/ton)	$4,000
Particulate Matter ($/ton)	$168,000
Sulfur Dioxide ($/ton)	$16,000
Carbon Dioxide ($/metric ton)	
(U.S. domestic value)	$2.00[219]
(Mean global value from Tol (2008))	$33.00
(One standard deviation above mean global value)	$80.00
Annual Increase in CO_2 Damage Cost	2.4%

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B. What economic assumptions does NHTSA use in its analysis?

1. Determining Retail Price Equivalent

NHTSA explained in the NPRM that the technology cost estimates used in the agency's analysis are intended to represent manufacturers' direct costs for high-volume production of vehicles with these technologies and sufficient experience with their application so that all cost reductions due to ''learning curve'' effects were fully realized. However, NHTSA recognized that manufacturers may also incur additional corporate overhead, marketing, or distribution and selling expenses as a consequence of their efforts to improve the fuel economy of individual vehicle models and their overall product lines.

In order to account for these additional costs, NHTSA applied an indirect cost multiplier in the NPRM of 1.5 to the estimate of the vehicle manufacturers' direct costs for producing or acquiring each fuel economy-improving technology. Historically, NHTSA used an almost identical multiplier, 1.51, for the markup from variable costs or direct manufacturing costs to consumer costs. The markup takes into account fixed costs, burden, manufacturer's profit, and dealers' profit. NHTSA's methodology for determining this markup was peer-reviewed in 2006.[220]

NHTSA stated in the NPRM that the estimate of 1.5 was confirmed by Argonne National Laboratory in a recent review of vehicle manufacturers' indirect costs. The Argonne study was specifically intended to improve the accuracy of future cost estimates for production of vehicles that achieve high fuel economy by employing many of the same advanced technologies considered in NHTSA's analysis.[221] Thus, NHTSA stated in the NPRM that it believed that

[219] Derived from NHTSA's $33 per metric ton estimate of the global value of reducing CO_2 emissions.

[220] See Docket No. NHTSA–2007–27453, Item 4.

[221] Vyas, Anant, Dan Santini, and Roy Cuenca, *Comparison of Indirect Cost Multipliers for Vehicle Manufacturing*, Center for Transportation Research, Argonne National Laboratory, April 2000. Available at *http://www.transportation.anl.gov/pdfs/TA/57.pdf* (last accessed August 14, 2008).

applying a multiplier of 1.5 to direct manufacturing costs to reflect manufacturers' increased indirect costs for deploying advanced fuel economy technologies is appropriate for use in the analysis for this rulemaking. NHTSA describes this multiplier in Section IV above as the Retail Price Equivalent factor, or RPE factor.

Some commenters argued that NHTSA's mark-up factor of 1.5 was too high. NESCAUM commented that NHTSA had relied on the 2004 NESCCAF study as one source for its technology estimates, but appeared to have incorrectly reported information from that study with regard to the mark-up factor.[222] NESCAUM stated that in the report, entitled ''Reducing Greenhouse Gas Emissions from Light-Duty Motor Vehicles,'' NESCCAF only used a 1.4 RPE, but ''NHTSA applies a 1.5 retail price equivalent (RPE) factor to the manufacturer costs presented in Appendix C of the NESCCAF report, and at other times uses a 1.4 RPE—and presents both costs as NESCCAF costs.'' NESCAUM argued that ''The reporting of costs using the 1.5 multiplier as NESCCAF costs is incorrect and leads to uncertainty as to how the costs were developed.'' [223] NESCAUM stated that ''All reported costs and benefits, attributed to NESCCAF by NHTSA, [should] be reviewed carefully for errors and amended accordingly.'' CARB also stated that there was ''inconsistency * * * in the treatment of NESCCAF costs,'' because NHTSA sometimes used a 1.5 markup and sometimes 1.4, and argued that ''These errors in citing the NESCCAF report raise doubts about whether RPE costs from other sources are cited accurately.''

CARB further commented that NHTSA had inconsistently added costs for the engineering effort required to add some technologies to vehicles, when those costs should have been covered by the RPE markup. CARB cited NHTSA's language in the NPRM that ''manufacturers' actual costs for applying these technologies to specific vehicle models are likely to include *additional outlays for accompanying design or engineering changes to each model*, development and testing of prototype versions, recalibrating engine operating parameters, and integrating the technology with other attributes of the vehicle.'' (Emphasis added) CARB argued that adding additional costs for engineering effort to any technology amounted to double-counting. CARB also commented that NHTSA's methodology for determining the indirect cost markup was unsound, because ''the cost to incorporate a technology is the same regardless of vehicle production,'' and because ''manufacturers are moving toward global vehicle architectures in an effort to spread development costs across the largest volume of vehicles possible, thus reducing engineering costs.'' CARB argued that ''The engineering cost methodology cited in the NPRM conflicts with this trend as well.''

Other commenters argued that NHTSA's mark-up factor of 1.5 was too low. The Alliance commented that the RPE mark-up factor of 1.5 used by NHTSA is ''far too low,'' and cited the Sierra Research report and a study by Wynn V. Bussman, submitted as an attachment by the Alliance, as concluding that ''the best estimate for RPE is more on the order of 2.0.'' The Alliance argued that NHTSA's citation of the Argonne study as support for an RPE of 1.5 was incorrect and out of context, stating that ''As both Bussman and Sierra noted, the Argonne National Laboratory recommended use of 2.0 as the RPE factor.'' The Alliance stated that the Argonne study had simply used a 1.5 RPE for outsourced components, because ''Manufacturers that outsource components do not bear warranty and other costs under typical contractual arrangements.'' The Alliance argued that ''A 1.5 RPE * * * is simply unrepresentative for components that are developed in house by the original equipment manufacturers (''OEMs'').'' The Alliance further argued that ''Use of a 1.5 RPE for all purposes also glosses over the fact that outsourced components can nevertheless require significant integration expenditures from manufacturers putting together and selling entire vehicles.'' [224] Chrysler concurred separately with the Alliance that ''NHTSA's use of an RPE of 1.5 does not adequately account for the full cost of implementing new technologies,'' and stated that an RPE of 2.0 ''is the appropriate factor to use for new technologies.''

The Alliance also commented that Bussman had ''considered the literature on RPE factors extensively,'' and ''concluded that studies that advised RPEs of approximately 1.5 were filled with errors and that when these errors were corrected, these studies also supported the conclusion that the proper RPE is 2.0.'' The Alliance concluded by arguing that the Sierra Research report had found that ''some recent analyses of RPE are based on unrepresentative and unsustainable profit levels by manufacturers,'' and that ''If realistic long-term profit rates are used, then the RPE increases from 2.0 to a range of 2.09 to 2.15.''

NADA did not expressly agree or disagree with a mark-up factor of 1.5, but commented that since the NPRM states that the 1.5 multiplier includes ''dealer profit'' among other related additional costs, NHTSA ''should review whether its estimates include all dealer costs-of-sales when calculating 'dealer profit' and the extent to which it has properly accounted for the finance costs consumers typically pay when purchasing new automobiles.''

Agency response: NHTSA notes that the analysis for this final rule relies on entirely new cost estimates for fuel economy technologies developed by the agency in response to comments and in coordination with an international engineering consulting firm, Ricardo, Inc., based on a bill of materials approach as described in Section IV of this notice and not based on the 2004 NESCCAF study, so the issue of apparent inconsistency in the RPE factor applied to those estimates noted by NESCAUM and CARB is no longer relevant. The agency also notes that both the production and application of fuel economy-improving technologies include separate engineering cost components. Developing these technologies and readying them for high-volume production entails significant initial investments in product design and engineering, while as the NPRM pointed out, applying individual technologies to specific vehicle models can entail significant additional costs for accompanying engineering changes to its existing drive train, development and testing of prototype versions, recalibrating engine operating parameters, and integrating the technology with other attributes of the vehicle. While design and engineering costs for developing fuel economy-improving technologies are included in the production cost estimates for individual technologies,

[222] NESCAUM stated that NESCCAF, or Northeast States Center for a Clean Air Future, is an affiliate organization of NESCAUM.

[223] NESCAUM gave a specific example with regard to the cost of a turbocharger, as follows:

NHTSA states the NESCCAF turbocharger cost is $600. In this case, NHTSA applied a 1.5 RPE factor to manufacturer costs presented in Appendix C of the NESCCAF report to arrive at the $600 cost. This is different from the cost that NESCCAF developed. Conversely, on page 24369 of the Federal Register notice, NHTSA accurately states the NESCCAF cylinder deactivation costs ranged from $161 to $210. This cost accurately reflects manufacturer costs presented in Appendix C of the NESCCAF report, multiplied by the 1.4 retail price equivalent used by NESCCAF.

[224] The Alliance cited the Sierra Research report as stating that ''* * * the 1.5 multiplier clearly does not apply to changes in engines, transmissions, or bodies in cases where the vehicle manufacturer designs and produces its own engines, transmissions, and bodies.'' Sierra Research report at 61.

additional engineering costs incurred by manufacturers in applying them to specific vehicle models are included in NHTSA's estimate of the RPE factor. Finally, the agency notes that its estimate of the RPE factor includes high-volume production and application of fuel economy technologies, because it assumes that initial design and engineering costs to develop and begin production of these technologies will be recovered over large production volumes. Thus, NHTSA believes that CARB's concerns about potential double-counting of engineering costs for developing and applying fuel economy technologies reflect a failure to recognize that engineering costs arise in both their development and application. The agency also believes that CARB's concern about whether NHTSA's RPE factor assumes the spreading of initial design and engineering costs for developing these technologies over insufficiently high production volumes is unfounded.

In response to the concerns expressed by the Alliance and others that NHTSA's RPE factor is too low, the agency notes that the RPE factor of 2.0 reported in the Argonne and Sierra Research studies includes various categories of production overhead costs (for product development and engineering, depreciation and amortization of production facilities, and warranty) that are included in NHTSA's estimates of production costs for fuel economy technologies. When applied to technology production costs defined to include these components, the agency's RPE factor of 1.5 is thus consistent with full recovery of these cost components. This conclusion is independent of whether overhead costs for developing and producing fuel economy technologies are initially borne by equipment suppliers or by vehicle manufacturers themselves. Consequently, NHTSA has continued to employ an RPE factor of 1.5 in its analysis for this final rule.

2. Potential Opportunity Costs of Improved Fuel Economy

In the NPRM, NHTSA discussed the issue of whether achieving the fuel economy improvements required by alternative CAFE standards would require manufacturers to compromise the performance, carrying capacity, safety, or comfort of some vehicle models. If so, the resulting reduction in the value of those models to potential buyers would represent an additional cost of achieving the improvements in fuel economy required by stricter CAFE standards. While exact dollar values of these attributes to consumers are difficult to infer from vehicle purchase prices, changing vehicle attributes can affect the utility that vehicles provide to their owners, and thus their value to potential buyers. This is not to suggest that buyers typically attach low values to fuel economy; rather, it recognizes that buyers value many different attributes, so that requiring manufacturers to make tradeoffs among them may alter the overall value of certain vehicle models to individual buyers.

NHTSA has approached this potential problem by developing tentative cost estimates for fuel economy-improving technologies that include any additional production costs necessary to maintain the product plan levels of performance, comfort, capacity, and safety of the models on which they are used. In doing so, NHTSA primarily followed the precedent established by the 2002 NAS Report, although the NPRM updated its assumptions as necessary for purposes of the current rulemaking. The NAS Report estimated ''constant performance and utility'' costs for fuel economy technologies, and NHTSA used those as the basis for its further efforts to develop the initial technology costs employed in analyzing manufacturers' costs for complying with alternative CAFE standards.

NHTSA acknowledged the difficulty of estimating technology costs that include costs for the accompanying changes in vehicle design that are necessary to maintain performance, capacity, and utility. However, as NHTSA stated in the NPRM, the agency believes that the tentative cost estimates for fuel economy-improving technologies should be generally sufficient to prevent significant reductions in consumer welfare provided by vehicle models to which manufacturers apply those technologies. Nonetheless, the NPRM sought comment on alternative ways to address these issues.

NHTSA did not receive comments that explicitly addressed NHTSA's question of whether there are better ways for the agency to estimate technology costs that capture changes in vehicle design so that fuel economy can be improved while maintaining performance, capacity, and utility. Some comments, however, expressed concern that the proposed CAFE standards, and more stringent CAFE standards generally, would prevent manufacturers from maintaining intended levels of performance, comfort, capacity, and/or safety of at least some of their vehicle models.

For example, the American Farm Bureau Federation commented that the proposed standards would result in ''more expensive trucks that lack the power needed to perform the tasks required'' of them by farmers, and that ''trucks laden with expensive untested technologies may prove undependable and costly to repair.'' AFBF stated that farmers need trucks that can haul and tow heavy loads and trailers, which requires ''heavy frames, strong engines, and adequate horsepower and torque.'' AFBF argued that the proposal would cause manufacturers either to downsize and reduce power in their vehicles, or to sell fewer powerful trucks and increase their cost, all of which would create hardship for farmers who need such trucks for their livelihoods.

NADA similarly suggested in its comments that the proposed standards could constrain the ability of light truck manufacturers to meet ''market needs'' for towing and hauling capability, as well as space and power. NADA also stated that manufacturers of small high-performance (i.e., sports) cars might be forced by the stringency of the proposed standards to exit the market or reduce product offerings.

BMW expressed concern that the proposed footprint-based standards will ''provide a disincentive to install safety devices on vehicles,'' since ''In general, safety devices add mass,'' and ''additional mass will lead to higher fuel consumption.'' Thus, BMW argued, all manufacturers will think twice before adding safety equipment to a vehicle, in order not to hurt their chances of meeting the CAFE standards. Along those lines, BMW argued that its vehicles were ''high feature-density vehicles,'' which it defined as ''those that include extraordinary safety, comfort, and convenience features like electronic/advanced stability, braking, suspension, steering, lighting, and security controls.'' BMW stated that these vehicles ''have a high mass per footprint density,'' and suggested that the proposed footprint-based standards provide manufacturers with a disincentive to continue offering this type of vehicle.

Agency response: The agency did not include a reduction in performance as one of the countermeasures that the manufacturers could take to meet the final rule for two main reasons. First, the agency believes that manufacturers could meet the standards adopted in this final rule at the estimated compliance costs without noticeably affecting vehicle performance or utility. As noted previously, NHTSA's cost estimates for individual fuel economy-improving technologies are intended to include any additional production costs necessary to maintain the performance,

comfort, capacity, and safety of the models on which they are used. The agency has reviewed its cost estimates for individual fuel economy technologies in detail, and is confident that they include sufficient allowances to prevent significant reductions in these critical attributes, and this in the utility that vehicle models to which manufacturers apply those technologies will provide to potential buyers.

Second, NHTSA believes that the commenters' concerns about potential opportunity costs for reduced vehicle performance and utility are largely unfounded. Manufacturers are technically capable of producing vehicles with reduced performance, as evidenced by the fact that most manufacturers offer otherwise-similar vehicle models that feature a range of engine sizes, and thus different levels of power and performance. Although some manufacturers offer versions of the same vehicle model with a smaller engine in Europe than is sold in the United States, their decisions not to market these vehicles domestically demonstrates that they do not believe that they can produce and sell such vehicles to U.S. buyers in sufficient quantities to be profitable at this time. This is presumably because in order to sell vehicles that do not meet U.S. buyers' preferences for power and performance, manufacturers would be required to discount their prices sufficiently to compensate for their lower levels of these attributes.

While it may be true that a manufacturer could produce lower-performance versions of its vehicle models at reduced costs compared to a higher-performance version of that same model, this does not make performance reduction a zero or negative cost compliance option. Manufacturers apparently estimate that the reduction in the values of lower-performing versions to their potential buyers exceeds their savings in manufacturing costs to produce them, since otherwise they would already produce and offer lower-performance versions of their existing models for sale. The net cost of reducing performance, which is measured by the difference between the reduced value of lower-performance models to buyers and manufacturers' cost savings for producing them, represents a cost of employing performance reduction as a compliance strategy.

Both manufacturers and NHTSA experience difficulty in determining how much value consumers place on performance, as well as in determining whether this value would remain stable over time. While NHTSA recognizes that there may be specific situations where performance reduction may be a cost-effective compliance strategy for certain manufacturers, the agency believes that the net cost of reducing performance must generally be comparable to or higher than that of technological approaches to fuel economy improvement. Thus the outcome of this rulemaking process is not significantly affected by omission of performance reduction as an explicit compliance strategy.

In response to BMW's comment that footprint-based standards may discourage manufacturers from offering safety and other features that increase vehicle weight, NHTSA notes that increased vehicle weight due to safety and other features will make it more difficult for manufacturers to comply with any CAFE standard—whether attribute-based or uniform—and not just with footprint-based standards. Further, NHTSA believes that manufacturers will continue to include features whose value to potential buyers exceeds manufacturers' costs for supplying them. Those costs will include any outlays for additional fuel economy technologies that are necessary to compensate for the fuel economy penalties imposed by features that add weight, and thus enable manufacturers to comply with higher CAFE standards. NHTSA notes, however, that buyers generally appear to value such features highly, as evidenced by the prices of car and light truck models on which they are featured, as well as by prices that manufacturers generally charge when they offer such features as options. Any increase in costs to achieve CAFE compliance that BMW or other manufacturers might experience as a result of providing these features likely should not, therefore, affect significantly the extent to which they are included as standard features or offered as optional features and purchased by vehicle buyers.

3. The On-Road Fuel Economy 'Gap'

NHTSA explained in the NPRM that actual fuel economy levels achieved by passenger cars and light trucks in on-road driving fall somewhat short of their levels measured under the laboratory-like test conditions that EPA uses to establish its published fuel economy ratings. In analyzing the fuel savings from alternative CAFE standards for previous light truck rulemakings, NHTSA adjusted the actual fuel economy performance of each light truck model downward by 15 percent from its rated value to reflect the expected size of this on-road fuel economy ''gap.''

However, in December 2006, EPA adopted changes to its regulations on fuel economy labeling which were intended to bring vehicles' rated fuel economy levels closer to their actual on-road fuel economy levels.[225] In its Final Rule, EPA estimated that actual on-road fuel economy for light-duty vehicles averages 20 percent lower than published fuel economy levels. For example, if the overall EPA fuel economy rating of a light truck is 20 mpg, the on-road fuel economy actually achieved by a typical driver of that vehicle is expected to be 16 mpg (20 mpg x 0.8). In the NPRM, NHTSA employed EPA's revised estimate of this on-road fuel economy gap in its analysis of the fuel savings resulting from the proposed and alternative CAFE standards.

NHTSA received no explicit comments regarding the on-road fuel economy gap. CARB submitted a report by Greene et al. that addressed in-use fuel economy, but was completed prior to EPA's changes to its labeling regulations, and CARB did not indicate in its comments how this report was relevant to the CAFE rulemaking.[226] The report by Sierra Research included by the Alliance did not comment specifically on NHTSA's use of EPA's estimate of the on-road fuel economy gap, but employed different ''adjustment factors'' ''to translate CAFE to customer service fuel economy,'' using a factor of 0.85 to ''adjust[] the 'composite' CAFE value to what consumers are expected to achieve in customer service when the 'city' mpg is discounted by 10% and the 'highway' mpg is discounted by 22%.'' Sierra Research also used a 0.82 adjustment factor for hybrid vehicles. However, these estimates were presented as part of Sierra's analysis with no explanation of how they were derived, nor why they differed from EPA's estimate of 20 percent (which was available at the time when Sierra developed its report).[227] Moreover, neither Sierra nor the Alliance suggested that NHTSA use these numbers instead of EPA's for analyzing fuel savings.

Because no substantive comments were received on this issue, and because no new information on the magnitude of the on-road fuel economy gap has come to NHTSA's attention since the NPRM was published, NHTSA has continued

[225] 71 FR 77871 (Dec. 27, 2006).

[226] David L. Greene et al., ''Analysis of In-Use Fuel Economy Shortfall Based on Voluntarily Reported MPG Estimates,'' 2005. *Available at* Docket No. NHTSA–2008–0089–0173.11.

[227] Sierra Research report, at 96–97. *Available at* Docket No. NHTSA–2008–0089–0179.1, Attachment 2.

to use the EPA estimate of a 20 percent on-road fuel economy gap for purposes of this final rule.

4. Fuel Prices and the Value of Saving Fuel

NHTSA explained in the NPRM that projected future fuel prices are a critical input into the economic analysis of alternative CAFE standards, because they determine the value of fuel savings both to new vehicle buyers and to society. NHTSA relied on the most recent fuel price projections from the U.S. Energy Information Administration's (EIA) Annual Energy Outlook (AEO) in analyzing the proposed standards. Specifically, the agency used the AEO 2008 Early Release forecasts of inflation-adjusted (constant-dollar) retail gasoline and diesel fuel prices, which NHTSA stated represent the most up-to-date estimate of the most likely course of future prices for petroleum products.[228] Federal government agencies generally use EIA's projections in their assessments of future energy-related policies.

The retail fuel price forecasts presented in AEO 2008 span the period from 2008 through 2030. Measured in constant 2006 dollars, the Reference Case forecast of retail gasoline prices during calendar year 2020 in the Early Release was $2.36 per gallon, rising gradually to $2.51 by the year 2030 (these values include federal, state, and local taxes). However, NHTSA explained in the NPRM that valuing fuel savings over the 36-year maximum lifetime of light trucks assumed in this analysis required fuel price forecasts that extended through 2050, the last year during which a significant number of MY 2015 vehicles would remain in service.[229] To obtain fuel price forecasts for the years 2031 through 2050, NHTSA assumed that retail fuel prices would remain constant (in 2006 dollars) from 2031 through 2050.

NHTSA stated that the value to buyers of passenger cars and light trucks of fuel savings resulting from improved fuel economy is determined by the retail price of fuel, which includes federal, state, and any local taxes imposed on fuel sales. Total taxes on gasoline averaged $0.47 per gallon during 2006, while those levied on diesel averaged $0.53. These figures include federal taxes plus the sales-weighted average of state fuel taxes. Because fuel taxes represent transfers of resources from fuel buyers to government agencies, however, rather than real resources that are consumed in the process of supplying or using fuel, NHTSA explained that their value must be deducted from retail fuel prices to determine the value of fuel savings resulting from more stringent CAFE standards to the U.S. economy.

In estimating the economy-wide or ''social'' value of fuel savings due to increasing CAFE levels, NHTSA assumed that current fuel taxes would remain constant in real or inflation-adjusted terms over the lifetimes of the vehicles being regulated. In effect, this assumed that the average value per gallon of taxes on gasoline and diesel fuel levied by all levels of government would rise at the rate of inflation over that period. This value was deducted from each future year's forecast of retail gasoline and diesel prices reported in the AEO 2008 Early Release to determine the social value of each gallon of fuel saved during that year as a result of improved fuel economy. Subtracting fuel taxes resulted in a projected value for saving gasoline of $1.83 per gallon during 2020, rising to $2.02 per gallon by the year 2030.

In conducting the preliminary uncertainty analysis of benefits and costs from alternative CAFE standards, as required by OMB, NHTSA also considered higher and lower forecasts of future fuel prices. The results of the sensitivity runs were made available in the PRIA. EIA includes a ''High Price Case'' and a ''Low Price Case'' in each annual edition of its AEO, which reflect uncertainties regarding future conditions in the world petroleum market and the U.S. fuel refining and distribution system. However, EIA does not attach specific probabilities to either its Reference Case forecast or these alternative cases; instead, the High Price and Low Price cases are intended to illustrate the range of uncertainty that exists.[230]

The AEO 2008 Early Release included only a Reference Case forecast of fuel prices and did not include the High and Low Price Cases, so NHTSA estimated high and low fuel prices corresponding to the AEO 2008 Reference Case forecast by assuming that high and low price forecasts would bear the same relationship to the Reference Case forecast as the High and Low Price cases in AEO 2007.[231] These alternative scenarios projected retail gasoline prices that range from a low of $1.94 per gallon to a high of $3.26 per gallon during 2020, and from $2.03 to $3.70 per gallon during 2030. In conjunction with NHTSA's assumption that fuel taxes would remain constant in real or inflation-adjusted terms over this period, these forecasts implied social values of fuel savings ranging from $1.47 to $2.79 per gallon during 2020, and from $1.56 to $3.23 per gallon in 2030.

NHTSA explained that EIA is widely recognized as an impartial and authoritative source of analysis and forecasts of U.S. energy production, consumption, and prices. EIA has published annual forecasts of energy prices and consumption levels for the U.S. economy since 1982 in its Annual Energy Outlooks. These forecasts have been widely relied upon by federal agencies for use in regulatory analysis and for other purposes. Since 1994, EIA's annual forecasts have been based upon that agency's National Energy Modeling System (NEMS), which includes detailed representation of supply pathways, sources of demand, and their interaction to determine prices for different forms of energy.

From 1982 through 1993, EIA's forecasts of world oil prices—the primary determinant of prices for gasoline, diesel, and other transportation fuels derived from petroleum—consistently overestimated actual prices during future years, often very significantly. Of the total of 119 forecasts of future world oil prices for

[228] U.S. Department of Energy, Energy Information Administration, Annual Energy Outlook 2008, Early Release, Reference Case Table 12. *Available at http://www.eia.doe.gov/oiaf/aeo/pdf/aeotab_12.pdf* (last accessed October 10, 2008). EIA released the full AEO 2008 in June 2008, which NHTSA stated in the NPRM it would use in the final rule. EIA explained upon releasing the full AEO 2008 that it had been updated from the Early Release to reflect EIA's expectations of the effect of EISA, which was enacted after the Early Release was made public. The full AEO 2008 is *available at http://www.eia.doe.gov/oiaf/aeo/pdf/0383(2008).pdf* (last accessed October 10, 2008).

[229] The agency defines the maximum lifetime of vehicles as the highest age at which more than 2 percent of those originally produced during a model year remain in service. For recent model years, this age has typically been 25 years for passenger cars and 36 years for light trucks.

[230] In AEO 2008, EIA explains the High Price Case as follows:

The high price case assumes that non-OPEC conventional oil resources are less plentiful, and the overall costs of extraction are higher, than assumed in the reference case. The high price case also assumes that OPEC will choose to allow a decline in its market share to 38 percent of total world liquids production.

EIA also explains the Low Price Case as follows:

The low price case assumes that non-OPEC conventional oil resources are more plentiful, and the overall costs of extraction are lower, than in the reference case, and that OPEC will choose to increase its market share to 45 percent.

AEO 2008, at 51. As the reader can see, there is nothing probabilistic about either the Low or High Price Case vis-à-vis the Reference Case.

[231] EIA, *Annual Energy Outlook 2007*, High Price Case, Table 12, *available at http://www.eia.doe.gov/oiaf/aeo/pdf/aeohptab_12.pdf* (last accessed October 10, 2008); and Annual Energy Outlook 2007, Low Price Case, Table 12, *available at http://www.eia.doe.gov/oiaf/aeo/pdf/aeolptab_12.pdf* (last accessed October 10, 2008).

the years 1985 through 2005 that EIA reported in its 1982–1993 editions of the AEO, 109 overestimated the subsequent actual values for those years, on average exceeding their corresponding actual values by 75 percent.

Since that time, however, EIA's forecasts of future world oil prices show a more mixed record for accuracy. The 1994–2005 editions of the AEO reported 91 separate forecasts of world oil prices for the years 1995–2005, of which 33 subsequently proved too high, while the remaining 58 underestimated actual prices. The average absolute (i.e., regardless of its direction) error of these forecasts has been 21 percent, but over- and underestimates have tended to offset one another, so that on average EIA's more recent forecasts have underestimated actual world oil prices by 7 percent. Although both its overestimates and underestimates of future world oil prices for recent years have often been large, the most recent editions of the AEO have significantly underestimated petroleum prices during those years for which actual prices are now available.

However, NHTSA explained that it did not regard EIA's recent tendency to underestimate future prices for petroleum and refined products or the high level of current fuel prices as adequate justification to employ forecasts that differed from the Reference Case forecast presented in the Revised Early Release. NHTSA stated that this was particularly the case because this forecast was revised upward significantly since the initial release of AEO 2008, which in turn represented a major upward revision from EIA's fuel price forecast reported in AEO 2007. NHTSA also noted that retail gasoline prices across the U.S. had averaged $2.94 per gallon (expressed in 2005 dollars) for the first three months of 2008, slightly below EIA's revised forecast that gasoline prices will average $2.98 per gallon (also in 2005 dollars) throughout 2008.

NHTSA also considered that comparing different forecasts of world oil prices showed that the Reference Case forecast in AEO 2007 was actually the highest of all six publicly-available forecasts of world oil prices over the 2010–2030 time period.[232] NHTSA stated that because world petroleum prices are the primary determinant of retail prices for refined petroleum products such as transportation fuels, this suggested that the Reference Case forecast of U.S. fuel prices reported in AEO 2007 was likely to be the highest of those projected by major forecasting services. Further, as indicated above, EIA's most recent fuel price forecasts had been revised significantly upward from those projected in AEO 2007.

NHTSA received several thousand comments regarding its fuel price assumptions, mostly from individuals stating that current pump prices were much higher than EIA's Reference Case forecasts for future prices, and arguing that NHTSA should use higher fuel price assumptions for setting more stringent standards in the final rule. Summaries of the comments are presented below, grouped according to the following categories: (1) Fuel prices have the largest effect on CAFE stringency of any of NHTSA's economic assumptions; (2) EIA's Reference Case is too low compared to current gas prices; (3) current gas prices reflect a fundamental change in market conditions that will affect future prices; (4) why NHTSA is incorrect in its representation of the Reference Case as the ''most likely course'' of future oil prices; (5) NHTSA's sensitivity analysis in the PRIA indicates that higher fuel price assumptions will lead to more stringent standards; (6) EIA's tendency to underestimate in its fuel price forecasts; (7) EIA's recent changes to its Short-Term Energy Outlook; (8) recent public statements on NHTSA's fuel price assumptions; (9) comments in favor of or neutral with regard to NHTSA's use of the Reference Case for its fuel price assumptions; (10) what fuel price assumptions NHTSA should use in setting the standards in the final rule; and (11) whether NHTSA should hold public hearings regarding its fuel price assumptions.

(1) Fuel Prices Have the Largest Effect on CAFE Stringency of any of NHTSA's Economic Assumptions

Several commenters addressed the impact that fuel price assumptions have on NHTSA's analysis of the appropriate stringency of CAFE standards. The Members of Congress[233] stated that fuel prices have the largest effect of ''all the factors that could be considered on how high standards could be raised,'' and that therefore ''NHTSA's reliance on these highly unrealistic projections have the effect of artificially lowering the calculated 'maximum feasible' fuel economy standards that NHTSA is directed by law to promulgate.'' CFA commented that the underestimation of fuel prices affected every part of NHTSA's analysis, while CBD stated that ''The use of an inappropriate gasoline price projection greatly skews the results,'' and argued that ''NHTSA has failed to analyze a gas price that even approaches today's prices, even in the sensitivity analysis.'' EDF argued that because ''Underestimating future gasoline prices would lead NHTSA to undervalue the benefits to the U.S. and consumers from stronger fuel economy standards and set inefficiently low standards,'' NHTSA should ''perform extensive sensitivity analyses using higher gas price assumptions, including but not limited to the EIA 'high price' projections.''

(2) EIA's Reference Case Is Too Low Compared to Current Gas Prices

Many commenters, including CBD, EDF, NRDC, Sierra Club et al., UCS, CFA, the Attorneys General, NACAA, NESCAUM, the mayor of the City of Key West, 45 Members of Congress, and several thousand individual commenters, stated that NHTSA's fuel price assumptions based on EIA's Reference Case were unreasonably low given current gasoline prices. CBD, for example, commented that NHTSA's use of the Reference Case fuel price estimates was ''impossible to justify'' given current fuel prices and the fact that ''there is every indication that the price of oil will continue to increase over the short term.'' UCS argued that although NHTSA ''point[ed] to recent increased fuel prices in AEO 2008 to justify use of AEO Reference Case data,'' the Reference Case projection ''still falls well below current gasoline prices.'' The Attorneys General commented that EIA's Reference Case forecast indicated future fuel prices much lower than current pump prices, and argued that ''Unless NHTSA can provide publicly-available, mainstream documentation supporting an almost fifty percent drop from current prices, it must substantially re-calibrate those estimates.'' CFA and the Attorneys General further argued that even EIA's High Price Case was too low given current gasoline prices.

UCS also submitted nearly 7,000 form letters from individual citizens, which generally stated that gas prices in their home areas are currently significantly higher than NHTSA's fuel price assumptions for the proposed standards.

[232] *See http://www.eia.doe.gov/oiaf/archive/aeo07/pdf/forecast.pdf*, Table 19, at 106.

[233] Representative Markey authored this comment, which was signed by himself and 44 other Members of Congress. In this section, when the term ''Members of Congress'' is used, this is the comment to which the agency refers. Besides the comments received from several Representatives and Senators regarding the fuel prices employed in NHTSA's analysis for the NPRM, Representative Markey and Senator Cantwell additionally submitted bills in the House and Senate to require NHTSA to use fuel prices at least as high as EIA's High Price Case in setting CAFE standards. Representative Markey introduced H.R. 6643 on July 29, 2008, and Senator Cantwell introduced S. 3403 on July 31, 2008.

The individual citizens commented that NHTSA should ''correct'' its fuel price assumptions for the final rule, so as not to ''allow automakers to shave three to four miles per gallon off of their CAFE requirements,'' and so as to achieve ''a fleet average of approximately 40 miles per gallon by 2020,'' which the letters stated ''is both feasible and cost effective using technology already available.'' Sierra Club submitted over 3,000 form letters from individual citizens commenting similarly that NHTSA must use ''realistic'' fuel prices for setting the standards in the final rule, given pump prices at that time of approximately $4 per gallon.

(3) Current Gas Prices Reflect a Fundamental Change in Market Conditions That Will Affect Future Prices

A number of commenters argued that changed oil market conditions both make EIA's Reference Case out-of-date and will continue to impact future fuel prices. Public Citizen stated that ''Gas prices have been rising steadily since 2004,'' but that ''the price increases in the last six to 12 months have been especially dramatic, rising by over a third in the past six months, and by nearly 170 percent in five years.'' NESCAUM commented that current fuel prices are due principally to ''high global demand in a supply constricted market.'' NESCAUM further argued that ''There is little expectation that the gap between supply and demand will be narrowed in the foreseeable future,'' so ''the price of gasoline should remain * * * well above the mid-$2.00 range.'' CFA argued that ''geopolitical factors'' are responsible for gasoline prices setting ''record after record,'' and stated that the proposed standards ''do not reflect the fundamental reality of this crisis'' because NHTSA's ''analysis [is not based] on a value of gasoline savings that is consistent with the real world.'' ACEEE argued that the ''adherence [to the Reference Case forecast] is not justified, given recent changes in the oil market.'' However, ACEEE also argued that the High Price Case does not ''necessarily capture fully current understanding of how high fuel prices are likely to be in the coming decades.''

CARB stated that NHTSA's use of EIA's Reference Case ''border[s] on the absurd given recent fuel price hikes, [and] recent assessments that the price hikes are structural.'' CARB cited and attached to its comments an ''Economic Letter'' by the Federal Reserve Bank of Dallas from May 2008, which stated that factors such as changes in global oil supply and demand, the weakening of the dollar, and the fact that much global oil production takes place in ''politically unstable regions * * * suggest the days of relatively cheap oil are over and the global economy faces a future of high energy prices.''

NRDC stated that other analysts such as Goldman Sachs and Citigroup predict higher gasoline prices at least through 2011, due to lack of ''spare capacity'' in either OPEC or non-OPEC supply. NRDC also cited EIA's June 25, 2008 International Energy Outlook (IEO), which has a similar reference case to AEO 2008, and which NRDC quoted as stating that given ''current market conditions, it appears that world oil prices are on a path that more closely resembles the projection in the high price case than in the reference case.'' [234]

(4) Why NHTSA Is Incorrect in Its Representation of the Reference Case as the ''Most Likely Course'' of Future Oil Prices

UCS stated that NHTSA was incorrect to assume that EIA's Reference Case ''represent[s] the EIA's most up-to-date estimate of the most likely course of future prices for petroleum products,'' arguing that EIA itself does not refer to the Reference Case projection as the ''most likely course,'' but states that the Reference Case merely ''assumes that current policies affecting the energy sector remain unchanged throughout the projection period.''

(5) NHTSA's Sensitivity Analysis in the PRIA Indicates That Higher Fuel Price Assumptions Will Lead to More Stringent Standards

A number of commenters, including NACAA, Public Citizen, UCS, Sierra Club et al. and ACEEE, cited NHTSA's sensitivity analysis using the EIA High Price case as evidence that, as the Members of Congress stated, ''demonstrates that the technology is available to cost-effectively achieve a much higher fleet wide fuel economy of nearly 35 mpg in 2015.'' CFA also stated that the High Price Case, which NHTSA ran as a sensitivity analysis using approximately $3.40 per gallon in 2008 dollars for 2015, was a ''more realistic fuel price scenario, one that is not terribly high.''

(6) EIA's Tendency to Underestimate in Its Fuel Price Forecasts

Several commenters, including UCS, CFA, NRDC, CARB, and the Attorneys General argued that EIA estimates were unreliable because EIA had underestimated in recent years. CARB cited NHTSA's statement on page 24406 of the NPRM (73 FR 24406, May 2, 2008) noting ''EIA's own recent tendency to underestimate,'' as CARB put it, as indication that NHTSA's use of EIA's Reference Case ''border[s] on the absurd.'' CFA argued that ''EIA's projections of gasoline prices have been consistently low and NHTSA was not obligated to use those projections.'' NRDC analyzed EIA's forecasting accuracy in greater detail, concluding that ''The past five versions of the AEO have all underestimated actual gasoline prices,'' in both the Reference and High Case scenarios, and providing a table comparing EIA Reference and High Case projections from one year prior to the actual average recorded price in 2003–2008, which showed actual prices as consistently higher than EIA projections.

(7) EIA's Recent Changes to Its Short-Term Energy Outlook

Several commenters stated that recent EIA upward revisions to its Short-Term Energy Outlook fuel price forecasts indicate that the longer-term Reference Case forecasts are also in need of upward revision. CARB, for example, argued that recent EIA upward revisions to its short-term fuel price forecasts provide further evidence that ''the assumptions underlying the EIA long-term gasoline projections have significantly changed since EIA last made those long-term projections.'' CFA similarly argued that EIA needed to adjust its long-term projections upward given recent increases in short-term projections, and stated that extrapolating EIA's short-term projections linearly results in a gasoline price in 2015 of $5.50 per gallon in 2008 dollars, which might not itself be reliable for purposes of setting CAFE standards, but is high enough to indicate that ''EIA's high price scenario seems much more appropriate as the basis for NHTSA's economic analysis.'' NRDC and the Attorneys General made similar arguments. The Attorneys General suggested that consequently, NHTSA should attempt to ''obtain from EIA a truly current projection for gasoline prices over the relevant period'' for use in the final rule.

(8) Recent Public Statements on NHTSA's Fuel Price Assumptions

Several commenters, including the Members of Congress, Public Citizen, UCS, NRDC, Sierra Club et al., and the Attorneys General cited testimony by EIA Administrator Guy Caruso on June 11, 2008, before the House Select Committee on Energy Independence and

[234] Energy Information Administration (2008) International Energy Outlook 2008: Complete Highlights. June 25.

Global Warming, as evidence that, as the Attorneys General argued, ''Even EIA agrees that NHTSA should have not used its reference case for the analysis in this rulemaking, but instead should have used EIA's high price case.'' Administrator Caruso testified, in response to a question regarding whether NHTSA should use EIA's High Price Case scenario to set CAFE standards, that ''We're on the higher price path right now. If you were to ask me today what I would use, I would use the higher price.'' [235]

The Members of Congress and Sierra Club et al., also cited then-DOT Secretary Peters' May 17, 2008 statement that ''As we look toward the finalization of the rule and look again what the average fuel costs are then, I think we're going to make more progress on the miles per gallon at a lower overall cost.'' [236] The commenters argued that this statement indicated an expectation that fuel prices used in the final rule would be higher than those used in the NPRM.

(9) Comments in Favor of or Neutral With Regard to NHTSA's Use of the Reference Case for Its Fuel Price Assumptions

NADA was the only commenter arguing directly in favor of NHTSA continuing ''to rely on the most recent reference case fuel price projections of the U.S. Energy Information Administration's (EIA).'' NADA recognized that EIA has over- and under-estimated fuel prices in the past, but argued that ''Despite the inherent volatility or uncertainty of fuel prices, EIA and NHTSA would be remiss if they were to arbitrarily abandon the best models and data available or to use 'high' or 'low' price case projections that are inherently not probabilistic.'' NADA further commented that ''the use of a high price case to justify unduly costly CAFE standards could lead to decreased new motor vehicle sales and a commensurate lower than projected rate of fuel energy savings and greenhouse gas reduction benefits.''

The Alliance did not argue that NHTSA should use any particular fuel price in its economic assumptions, but commented that NHTSA should not conclude that ''recent increases in gasoline prices nationwide'' would justify more stringent CAFE standards. The Alliance cited the Sierra Research and NERA reports, which it said performed sensitivity analyses using all of EIA's price scenarios (Low, Reference, and High), and ''did not find that use of the 'high' case significantly altered its conclusions about the feasibility of imposing much higher costs on manufacturers.'' Given that Sierra and NERA both concluded that the proposed standards were already too stringent, this result is hardly surprising.

(10) What Fuel Price Assumptions NHTSA Should Use in Setting the Standards in the Final Rule

Many commenters, including UCS, CARB, ACEEE, Sierra Club et al., the Attorneys General, and the Members of Congress stated that NHTSA should set standards in the final rule using fuel price assumptions equivalent to at least EIA's High Price Case. Wisconsin DNR suggested that NHTSA use the ''high price fuel scenario'' in EIA's International Energy Outlook (2008) for a ''suitable higher estimate from a recognized federal agency.'' [237]

Several commenters calling for ''at least'' the High Price Case also suggested other preferred alternatives. CARB suggested that NHTSA delay the final rule until ''recent volatility has stabilized and EIA can provide its final 2008 estimates in February 2009.'' The Attorneys General suggested NHTSA obtain ''relevant, up-to-date data directly'' from EIA ''specifically for the docket in this rulemaking,'' or ''wait for EIA's public, final 2008 estimates, which are scheduled to be released in December.'' ACEEE commented that NHTSA should ''Work with EIA to produce an up-to-date fuel price projection for purposes of the final rule. * * *'' Sierra Club et al., stated that NHTSA should also ''examine other fuel price estimates, such as the oil futures market price predictions which project prices for a barrel of oil through 2016.''

Other commenters suggested that NHTSA develop estimates based on current pump-price equivalents for its fuel price assumptions. Public Citizen commented that NHTSA should ''base its final rulemaking on a more realistic estimate of future fuel price based on the high estimate and an at-the-pump price that pushes the standard in the direction of real-world gas prices.'' NESCAUM urged NHTSA ''to reevaluate the effect of a wider range of gasoline prices to the $4.00 per gallon level and above,'' stating that it would raise standards. EDF stated that NHTSA must set standards that ''reflect real world gas prices.'' CBD stated that ''Today's gas price must form the starting point for the analysis, and calculations must be performed that consider the overwhelmingly likely scenario that gas prices will be significantly higher than the projections used in the NPRM.'' NRDC stated that because both the Reference and High Case scenarios are too low, ''NHTSA should develop a plausible and realistic projection of future oil prices for use in determining maximum feasible fuel economy levels.''

(11) Whether NHTSA Should Hold Public Hearings Regarding Its Fuel Price Assumptions

Several commenters called for NHTSA to hold hearings regarding the appropriate stringency of CAFE standards, specifically in light of fuel prices. CFA, in requesting hearings, commented that EIA's Reference Case resulted in fuel prices that are too low, and ''have consistently been used [in recent CAFE rulemakings] to undercut the use of existing technology to meet the statutory goals. CFA stated that ''The use of more realistic fuel prices make more technology cost-justified and will result in higher standards.'' Environment America, National Wildlife Federation, NRDC, Pew Environment Group, Sierra Club, and UCS also submitted a joint comment requesting public hearings and citing NHTSA's fuel price assumptions. Like CFA, the commenters stated that using the EIA Reference Case ''vastly undercuts the potential for higher fuel economy'' and that ''If NHTSA used more realistic gas prices, we could be on a path to achieving higher fuel economy that is both technologically achievable and cost effective.''

Agency response: NHTSA has carefully considered available evidence, recent trends in petroleum and fuel prices, and the comments it received on the NPRM analysis. After doing so, NHTSA has decided to use EIA's High Price Case forecast in its final rule analysis and to determine the MY 2011 CAFE standards. As NHTSA recognized in the NPRM, commenters are correct that projected future fuel prices have the

[235] UCS stated that this quote was taken from ''Global Warming Hearing on the Future of Oil,'' June 11, 2008, which it stated was available online at *http://speaker.house.gov/blog*.

[236] Sierra Club cited David Shepardson, ''Gas prices may spur revision of mpg plan,'' Detroit News Washington, Saturday, May 17, 2008, for this quote from Secretary Peters.

[237] Wisconsin DNR cited the source of the ''high price fuel scenario'' as ''DOE–EIA Report #0484 (2008),'' which is EIA's International Energy Outlook (IEO) for 2008. NHTSA assumes that the commenter intended to cite this source, and not AEO 2008. However, EIA describes the forecasts of world oil prices—a primary determinant of U.S. fuel prices—reported in IEO 2008 as ''* * * consistent with those in the Annual Energy Outlook 2008,'' and cites AEO2008 as the source for those oil price projections. See U.S. Energy Information Administration, *International Energy Outlook 2008*, Chapter 2, ''Liquid Fuels,'' Figure 30 and accompanying text. Available at *http://www.eia.doe.gov/oiaf/ieo/liquid_fuels.html* (last accessed October 4, 2008).

largest effect of all the economic assumptions that NHTSA employs in determining benefits both to new vehicle buyers and to society, and thus on CAFE stringency. This is why it is vital that NHTSA base its fuel price assumptions on what it believes to be the most accurate forecast available that covers the expected lifetimes of MY 2011 passenger cars and light trucks, which can extend up to 25–35 years from the date they are produced. The long time horizon of NHTSA's analysis also makes it critical that the agency not rely excessively on current price levels as an indicator of the prices that are likely to prevail over an extended future period. Instead, NHTSA relies largely on EIA's professional expertise and extensive experience in developing forecasts of future trends in energy prices, as do most other federal agencies.

In addition, NHTSA notes that several manufacturers employed fuel prices consistent with or exceeding the AEO 2008 High Price Case for the time period covered by the rulemaking in their revised product plan estimates of fuel economy and sales for individual models. If the agency employs fuel price forecasts that differ from those used by manufacturers, it may incorrectly attribute the fuel savings resulting from increased market demand for fuel economy to higher CAFE standards, or conversely, underestimate the fuel savings resulting from increased standards by attributing too much of the increase in fuel economy to higher market demand. Given manufacturers' assumptions about fuel prices, the agency's estimates of fuel savings and economic benefits resulting from the standards adopted in this final rule are conservative, because they are likely to underestimate fuel savings attributable to the increase in fuel economy above its market-determined level that CAFE standards will require.

Although some commenters suggested that NHTSA develop its own fuel price forecasts based on then-current pump prices, NHTSA does not believe that it has the independent capability to provide a more reliable prediction of future fuel prices, or that it would have the credibility of EIA's forecasts. If NHTSA had assumed that that fuel prices would remain at their mid-2008 peak levels throughout the lifetimes of MY 2011 cars and light trucks, the agency would have overvalued the benefits attributed to fuel savings, and thus likely have established excessively stringent MY 2011 standards. While petroleum prices were rising at the time the NPRM was published, eventually reaching nearly $140 per barrel, since then global average prices for crude oil have declined to levels as low as $35 per barrel.[238] The recent extreme volatility in petroleum and fuel prices illustrates the danger in relying on current prices as an indicator of their likely future levels, and gives NHTSA greater confidence in relying on EIA's forecasts of future movements in fuel prices in response to changes in demand and supply conditions in the marketplace.

While NHTSA also agrees with the commenters that the sensitivity analysis demonstrates that higher CAFE standards could be established if higher fuel price assumptions were employed, the agency cannot simply choose to employ higher fuel price assumptions because it wishes to raise CAFE levels. Doing so would be inconsistent with the agency's approach of using what it concludes is the most reliable estimate of the benefits from conserving fuel when establishing fuel economy standards. NHTSA recognizes that predicting future oil prices is difficult, particularly during periods when world economic conditions are as volatile as they are today. Nevertheless, NHTSA continues to believe that EIA's fuel price forecasts as reported in its AEO represent the most reliable estimates of future fuel prices, and thus of the benefits from reducing fuel consumption through higher CAFE standards. While NHTSA recognizes that other forecasts exist, the agency believes the EIA forecasts are preferable for its purposes, since they are the product of an impartial government agency with considerable and long-standing expertise in this field. Any simple extrapolation of current or recent retail fuel prices, which commenters recognize have shown extreme volatility in recent months, is likely to provide a considerably less reliable forecast of future prices than the current AEO. Each time EIA issues a new AEO, it considers recent and likely future developments in the world oil market, the effect of the current geopolitical situation on oil supply and prices, and conditions in the domestic fuel supply industry that affect pump prices.[239]

For example, the Overview section to AEO 2008 states that because EISA was passed between the Early Release and the time of publication for AEO 2008, EIA updated the Reference Case to reflect the impact it expected EISA to have on fuel prices. EIA also updated its projections for the AEO 2008 Reference Case ''to better reflect trends that are expected to persist in the economy and in energy markets,'' including a lower projection for U.S. economic growth (a key determinant of U.S. energy demand), higher price projections for crude oil and refined petroleum products, slower projected growth in energy demand, higher forecasts of domestic oil production (particularly in the near term), and slower projected growth in U.S. oil imports.[240] Thus NHTSA is confident that EIA is aware of and has accounted reasonably for current political and economic conditions that are likely to affect future trends in fuel supply, demand, and retail prices.

Although a majority of commenters asserted that EIA's Reference Case forecast is likely to underestimate future fuel prices significantly, and that NHTSA's reliance on the Reference Case resulted in insufficiently stringent proposed CAFE standards, they did so in an environment when retail fuel prices were at or above $4.00 per gallon. Many commenters stated that at a minimum, NHTSA should use EIA's High Price Case as the source for its fuel price forecasts, primarily because those appeared to be more consistent with then-current fuel prices. As one illustration, NRDC cited EIA's own International Energy Outlook 2008, published the same month as the AEO 2008, which stated that given ''* * * current market conditions, it appears that world oil prices are on a path that more closely resembles the projection in the high price case than in the reference case.''[241] Commenters also cited EIA Administrator Caruso's June 2008 statement that ''We're on the higher price path right now. If you were to ask me today what I would use, I would use the higher price.'' NHTSA also notes that several manufacturers in their confidential product plan submissions indicated that they had based their product plans on gas price estimates

[238] Energy Information Administration, World Crude Oil Prices, data for week ended 1/2/2009, available at *http://tonto.eia.doe.gov/dnav/pet/pet_pri_wco_k_w.htm* (last accessed February 12, 2009).

[239] AEO 2008 states as follows with regard to factors which EIA accounts for in developing the Reference Case:

As noted in AEO2007, energy markets are changing in response to readily observable factors, which include, among others: Higher energy prices; the growing influence of developing countries on worldwide energy requirements; recently enacted legislation and regulations in the United States; changing public perceptions on issues related to emissions of air pollutants and greenhouse gases and the use of alternative fuels; and the economic viability of various energy technologies.

[240] AEO 2008 Overview, *at http://www.eia.doe.gov/oiaf/aeo/overview.html* (last accessed October 10, 2008).

[241] Energy Information Administration (2008) International Energy Outlook 2008: Complete Highlights. June 25.

that were either between EIA's Reference and High Price Cases, or above even the High Price Case.

The AEO High Price Case is best understood in the context of its relationship to the Reference Case. EIA described the Reference Case as follows in AEO 2008:

> The reference case represents EIA's current judgment regarding exploration and development costs and accessibility of oil resources in non-OPEC countries. It also assumes that OPEC producers will choose to maintain their share of the market and will schedule investments in incremental production capacity so that OPEC's conventional oil production will represent about 40 percent of the world's total liquids production.[242]

In contrast, EIA describes its Low Price case in the following terms:

> The low price case assumes that OPEC countries will increase their conventional oil production to obtain approximately a 44-percent share of total world liquids production, and that conventional oil resources in non-OPEC countries will be more accessible and/or less costly to produce (as a result of technology advances, more attractive fiscal regimes, or both) than in the reference case. With these assumptions, non-OPEC conventional oil production is higher in the low price case than in the reference case.[243]

Finally, EIA describes its High Price case as follows:

> The high price case assumes that OPEC countries will continue to hold their production at approximately the current rate, sacrificing market share as global liquids production increases. It also assumes that oil resources in non-OPEC countries will be less accessible and/or more costly to produce than assumed in the reference case.[244]

As these descriptions emphasize, EIA's Low and High Price Cases are based on specific assumptions about the possible behavior of oil-producing countries and future developments affecting global demand for petroleum energy, and how these might differ from the behavior assumed in constructing its Reference Case. However, this distinction does not necessarily imply that EIA expects either its Low Price or High Price Case forecast to be more accurate than its Reference Case forecast, since EIA offers no assessment of which set of assumptions underlying its Low Price, Reference, and High Price cases it believes is most reliable.

EIA did recognize that world oil prices at the time the final version of AEO 2008 were above even those forecast in its High Price Case. However, it attributed this situation to short-term developments, most or all of which were likely to prove transitory, as evidenced by its statement in the Overview to AEO 2008:

> As a result of recent strong economic growth worldwide, transitory shortages of experienced personnel, equipment, and construction materials in the oil industry, and political instability in some major producing regions, oil prices currently are above EIA's estimate of the long-run equilibrium price.[245]

This observation is consistent with EIA's statement in IEO 2008 that current market conditions appeared to place world oil prices on a path closer to the High Price Case than the Reference Case. While EIA clearly expects prices to remain high in the near term, this does not necessarily imply that it expects its High Price Case forecast to be more reliable over the extended time horizon spanned by AEO 2008.

NHTSA has seriously considered the comments it received on the fuel price forecasts used in the NPRM analysis, and paid close attention to recent developments in the world oil market and in U.S. retail fuel prices. The agency has also reviewed forecasts of world oil prices and U.S. fuel prices available from sources other than EIA, as well as the views expressed by petroleum market experts, professional publications, and press reports.[246] The agency notes that although both the views of experts and projections of petroleum prices differ widely, the emerging consensus appears to be that world petroleum and U.S. retail fuel prices are likely to remain at levels that are more consistent with those forecast in the AEO 2008 High Price Case than with the Reference Case forecasts over the foreseeable future.[247]

Over the period from 2011, when the standards adopted in this final rule would take effect, and 2030, the outer time horizon of the AEO 2008 forecasts, retail gasoline prices in the AEO 2008 High Price case are projected to rise steadily from $2.95 to $3.62 per gallon, averaging $3.28 per gallon (all prices expressed in 2007 dollars). For the years 2031 and beyond, the agency's analysis assumes that retail fuel prices will remain at their forecast values for the year 2030, or $3.62 per gallon. These prices are significantly higher than the AEO 2008 Revised Early Release Reference Case forecast used in the agency's NPRM analysis, which averaged $2.34 per gallon (in 2006 dollars) over that same period.[248] After deducting state and federal fuel taxes, this revised forecast results in an average value of $3.08 per gallon of fuel saved over the lifetimes of 2011 passenger cars and light trucks. Because of the uncertainty surrounding future gasoline prices, the agency also conducted sensitivity analyses using EIA's Reference and Low Price case forecasts of retail fuel prices.

NHTSA is aware that EIA recently released a preliminary version of its Annual Energy Outlook 2009, which appears to confirm then-EIA Administrator Caruso's testimony before the House Select Committee in June 2008 that the future path of gasoline prices likely more closely resembles the AEO 2008 High Price Case than the 2008 Reference Case. However, the agency has elected not to use this

[242] AEO 2008, at 199. Available at *http://www.eia.doe.gov/oiaf/aeo/pdf/0383(2008).pdf* (last accessed October 10, 2008).

[243] *Id.*

[244] *Id.*

[245] *Id.*, at 5.

[246] These include EIA, Short-Term Energy Outlook, various issues, available at *http://www.eia.doe.gov/emeu/steo/pub/contents.html* (last accessed November 13, 2008); International Energy Agency, *World Energy Outlook 2008*, summary available at *http://www.iea.org/Textbase/npsum/WEO2008SUM.pdf* (last accessed November 13, 2008); AJM Petroleum Consultants, The AJM Price Forecast, available at *http://www.ajmpetroleumconsultants.com/index.php?page=price-forecast* (last accessed Novemebr 13, 2008); PetroStrategies, Inc, Survey of Oil Price Forecasts, available at *http://www.petrostrategies.org/Graphs/Oil_Price_Forecasts.htm* (last accessed November 13, 2008); International Monetary Fund, World Economic Outlook, October 2008, Chapter 3: Is Inflation Back? Commodity Prices and Inflation, available at *http://www.imf.org/external/pubs/ft/weo/2008/02/pdf/c3.pdf* (last accessed November 13, 2008); and Federal Reserve Bank of Dallas Economic Letter, Volume 3, No. 5, May 2008, available at *http://www.dallasfed.org/research/eclett/2008/el0805.html* (last accessed November 13, 2008).

[247] In the AEO High Price Case, prices for imported petroleum are projected to average about $75 per barrel over the next 10 years, while U.S. retail gasoline prices are forecast to average $2.90 per gallon over that same period; see AEO 2008, High Price Case Table 12, available at *http://www.eia.doe.gov/oiaf/aeo/excel/aeohptab_12.xls* (last accessed October 19, 2008).

[248] The fuel price forecasts reported in EIA's AEO 2008 Revised Early Release and Final Release reflect the estimates effects of various provisions of EISA—including the requirement to achieve a combined CAFE level of 35 mpg by model year 2020—on the demand for and supply of gasoline and other transportation fuels. Thus the fuel price forecasts reported in these versions of AEO 2008 may already account for the reduction in fuel demand expected to result from the CAFE standards adopted in this Final Rule, whereas the agency's analysis of their effects would ideally use fuel price forecasts that do not assume the adoption of higher CAFE standards for model years 2011–20. However, the agency notes that the difference between the Reference Case forecasts of retail gasoline prices for 2011–30 between EIA's Early Release of AEO 2008, which did not incorporate the effects of EISA, and its subsequent Revised Early Release, which did reflect EISA, averaged only $0.0004 (i.e., less than one-half cent) per gallon over the period 2011–30. This suggests that accounting for the effect of EISA would have had only a minimal effect on the fuel price forecasts used in this analysis.

newly-available forecast of fuel prices in this final rule, in part because it did not have adequate time to replicate the entire analysis reported in this rule using revised forecasts of fuel prices.[249] Moreover, the forecast of gasoline prices from AEO 2009 Early Release averages $3.45 over the period from 2009–30, only slightly higher than the comparable figure for the AEO 2008 High Price forecast the agency relied upon in preparing this analysis. Thus incorporating EIA's newest forecast would be unlikely to have an effect on the fuel economy standards adopted in this rule. The agency will continue to monitor fuel price forecasts available from all sources and other forecasts, and consider their implications for its choice among alternative price scenarios developed by EIA.

5. Consumer Valuation of Fuel Economy and Payback Period

In the NPRM, NHTSA explained that in estimating the value of fuel economy improvements that would result from alternative CAFE standards to potential vehicle buyers, NHTSA assumed that buyers value the resulting fuel savings over only part of the expected lifetime of the vehicles they purchase. Specifically, we assume that buyers value fuel savings over the first five years of a new vehicle's lifetime, and that buyers behave as if they do not discount the value of these future fuel savings. NHTSA chose the five-year figure because it represents the current average term of consumer loans to finance the purchase of new vehicles. NHTSA recognized that the period over which individual buyers finance new vehicle purchases may not correspond to the time horizons they apply in valuing fuel savings from higher fuel economy, but NHTSA expressed its belief that five years represents a reasonable estimate of the average period over which buyers who finance their purchases of new vehicles receive—and thus are compelled to recognize—the monetary value of future fuel savings resulting from higher fuel economy.

NHTSA explained that the value of fuel savings over the first five years of a vehicle model's lifetime that would result under each alternative fuel economy standard is calculated using the projections of retail fuel prices described in the section above. The value of fuel savings is then deducted from the technology costs incurred by the vehicle's manufacturer to produce the improvement in that model's fuel economy estimated for each alternative standard, to determine the increase in the ''effective price'' to buyers of that vehicle model. The Volpe model uses these estimates of effective costs for increasing the fuel economy of each vehicle model to identify the order in which manufacturers would be likely to select models for the application of fuel economy-improving technologies in order to comply with stricter standards. The average value of the resulting increase in effective cost from each manufacturer's simulated compliance strategy is also used to estimate the impact of alternative standards on manufacturers' total sales for future model years.

However, NHTSA stated that it is important to recognize that the agency estimates the aggregate value to the U.S. economy of fuel savings resulting from alternative standards—or their ''social'' value—over the entire expected lifetimes of vehicles manufactured under those standards, rather than over this shorter ''payback period'' that NHTSA assumes for vehicle buyers. This point is discussed in the section below titled ''Vehicle survival and use assumptions.'' NHTSA noted that as indicated previously, the maximum vehicle lifetimes used to analyze the effects of alternative fuel economy standards are estimated to be 25 years for passenger cars and 36 years for light trucks.

NADA and Sierra Research agreed with the agency's assumption of a 5-year payback period for consumer valuation of fuel economy. NADA commented that NHTSA's assumption of a 5 year payback period for consumer valuation of fuel economy was reasonable. NADA argued that ''Even at high fuel prices, consumers who view fuel economy as an important purchase criteria are hard pressed to make the case for buying a more fuel efficient new vehicle if the up-front capital costs associated with doing so cannot be recouped in short order.'' Thus, NADA concluded, ''NHTSA should assume that most prospective purchasers will not invest in fuel economy improvements that do not exhibit a payback of five years or sooner.'' NADA also added that factors other than the value of fuel savings should also be taken into account in calculating the length of the payback period; specifically, it stated that ''for purposes of calculating payback, real-world purchaser finance costs, opportunity costs, and additional maintenance costs all should be accounted for.''

The Sierra Research report submitted by the Alliance as Attachment 2 to its comments ''considered fuel cost savings over 'payback' periods of 5 and 20 years,'' but stated parenthetically that ''It is more likely that average consumers would consider the savings during the period of time they expect to own the vehicle, likely closer to the five-year period.''

Other commenters disagreed with the agency's assumption of a 5-year payback period for consumer valuation of fuel economy. Mr. Delucchi stated simply that NHTSA ''should not do a 'payback' analysis with a zero discount rate and a 5-year payback period, because there is no economic theory or consumer behavioral evidence to support this.'' However, he offered no additional suggestions as to what NHTSA should use instead. Similarly, as part of its discussion on fuel price estimates, the Sierra Club commented that NHTSA had ''arbitrarily restricted'' the consumer payback period to 5 years, but offered no further comments or explanation of this point.

CFA commented that ''the five year payback constraint plays a critical role in ordering the technologies that are included in the fleet to comply with various levels of the standard,'' and argued that while NHTSA should perhaps not have included a payback period at all, if it intended to do so, it should justify the 5-year payback period better and consider a longer payback period. CFA commented that ''it is not clear that one must assume a payback for any component of a vehicle purchase. But if one does, the logical connection is between the period of ownership and the payback, not the loan period.'' CFA further commented that NHTSA failed to recognize the extent to which ''consumers and the market appreciate fuel economy,'' arguing that ''even if one looks at the ownership period, most alternative investment opportunities available to consumers do not yield a five year payback period; hybrids, many of which have payback periods of ten years or more, are flying off auto dealer lots. Increasing the payback period by one year raises the value of the fuel savings substantially, by 20 percent.''

Ford commented that NHTSA should not have used the increase in the ''effective price'' to buyers to determine consumer valuation of fuel economy, for two reasons. First, Ford argued that while NHTSA ''implicitly assumed that the technology costs incurred by the manufactures can be fully passed on to buyers,'' this is not true ''in the competitive environment of the U.S. automotive market.'' Second, Ford

[249] U.S. Energy Information Administration, Annual Energy Outlook 2009 Early Release, available at *http://www.eia.doe.gov/oiaf/aeo/index.html* (last accessed February 12, 2009).

commented that the estimates of ''effective price'' depend on fuel price assumptions, such that ''a higher gasoline price assumption will lower the effective price estimates, holding everything else constant.'' Ford cited the June 26, 2008 analysis by Sierra Research that ''estimates that a consumer would not break even over a 20 year period unless gas prices are sustained at $4.47 a gallon. Sierra also concluded that by using a more conservative payback period of 5 years the estimated breakeven gas price would have to be $6.59.''

Ford argued that NHTSA should instead use ''hedonic pricing technique in estimating the consumer valuation of fuel economy,'' which ''determines the price of a vehicle by the characteristics of the car such as towing, cargo volume, performance etc.'' Ford also argued that NHTSA should not use ''effective price'' as a way of identifying in which order manufacturers would apply technologies, because ''It is quite unlikely that manufacturers are using this metric for selecting models, since most manufacturers do not assume the technology costs can be fully passed on to the buyers.''

Agency response: NHTSA notes that the payback period and the effective cost calculation affect only the order in which manufacturers are assumed to apply technologies in order to improve the fuel economy of specific vehicles, and thus have no effect on the final CAFE standards. Thus the assumptions about the length of the payback period and discount rate that affect these calculations, while subject to some uncertainty, are not a critical determinant of CAFE standards themselves. Instead, their main role is to estimate the increase in the value to potential buyers of the increases in fuel economy of specific vehicle models, and to provide some indication of the extent to which manufacturers are likely to be able to recoup their costs for complying with higher CAFE standards through increases in those vehicles' sales prices. The agency also reiterates that it estimates the social benefits of fuel savings resulting from alternative standards over the entire expected lifetimes of cars and light trucks subject to higher CAFE standards, rather than over the payback period assumed for vehicle buyers. Although many commenters mistakenly believe that the payback period has an important effect on the stringency of the fuel economy standards and therefore were suggesting different periods, no commenter provided any data to support a different number of years for payback. Thus NHTSA has continued to employ the same assumptions used in the NPRM in developing the CAFE standards adopted in this final rule.

6. Vehicle Survival and Use Assumptions

NHTSA stated in the NPRM that its preliminary analysis of fuel savings and related benefits from adopting alternative standards for MY 2011–2015 passenger cars and light trucks was based on estimates of the resulting changes in fuel use over their entire lifetimes in the U.S. vehicle fleet. NHTSA's first step in estimating lifetime fuel consumption by vehicles produced during a model year is to calculate the number of vehicles that are expected to remain in service during each future year after they are produced and sold.[250] This number is calculated by multiplying the number of vehicles originally produced during a model year by the proportion expected to remain in service at the age they will have reached during each subsequent year, often referred to as a ''survival rate.''

NHTSA explained that for the number of passenger cars and light trucks that will be produced during future years, it relies on projections reported by the EIA in its AEO Reference Case forecast.[251] For age-specific survival rates for cars and light trucks, NHTSA uses updated values estimated from yearly registration data for vehicles produced during recent model years, to ensure that forecasts of the number of vehicles in use reflect recent increases in the durability and expected life spans of cars and light trucks.[252] These updated survival rates suggest that the typical expected lifetimes of recent-model passenger cars and light trucks are 13.8 and 14.5 years, respectively.

NHTSA's next step in estimating fuel use was to calculate the total number of miles that the cars and light trucks produced in each model year affected by the proposed CAFE standards will be driven during each year of their lifetimes. To estimate total miles driven, the number of cars and light trucks projected to remain in use during each future year (calculated as described above) was multiplied by the average number of miles that they are expected to be driven at the age they will have reached in that year.

The agency initially estimated the average number of miles driven annually by cars and light trucks of each age using data from the Federal Highway Administration's 2001 National Household Transportation Survey (NHTS).[253] The agency then adjusted the NHTS estimates of annual vehicle use to account for the effect of differences in fuel cost per mile driven between the date the NHTS was conducted and the future years when MY 2011 cars and light trucks would be in use. This adjustment is intended to account for the ''rebound effect'' on vehicle use caused by changes in fuel cost per mile (see Section V.B.8. below). Fuel cost per mile driven is measured by the retail price of fuel per gallon forecast for a future calendar year, divided by the estimated on-road fuel economy in miles per gallon achieved by vehicles of each model year that remain in service during that future year. The agency made this adjustment by applying its estimate of the rebound effect to the difference in fuel cost per mile driven between 2001, when the NHTS was conducted, and the projected average fuel cost per mile over the lifetimes of MY 2011 cars and light trucks.

Finally, NHTSA estimated fuel consumption during each calendar year of model year 2011 vehicles' lifetimes by dividing the total number of miles that that model year's surviving vehicles are driven by the fuel economy that they are expected to achieve under each alternative CAFE standard. Lifetime fuel consumption by MY 2011 cars or light trucks is the sum of the fuel use by the vehicles produced during that model year that are projected to remain in use during each year of their expected lifetimes. In turn, the savings in lifetime fuel use by MY 2011 cars or light trucks that would result from each alternative CAFE standard would be the difference between its lifetime fuel use at the fuel economy level they are projected to attain under the Baseline (No Action) alternative, and their lifetime fuel use at the higher fuel economy level they are

[250] Vehicles are defined to be of age 1 during the calendar year corresponding to the model year in which they are produced. Thus, for example, model year 2000 vehicles are considered to be of age 1 during calendar year 2000, age 2 during calendar year 2001, and to reach their maximum age of 26 years during calendar year 2025. NHTSA considers the maximum lifetime of vehicles to be the age after which less than 2 percent of the vehicles originally produced during a model year remain in service. Applying these conventions to vehicle registration data indicates that passenger cars have a maximum age of 26 years, while light trucks have a maximum lifetime of 36 years. See Lu, S., NHTSA, Regulatory Analysis and Evaluation Division, ''Vehicle Survivability and Travel Mileage Schedules,'' DOT HS 809 952 (January 2006), at 8–11. *Available at http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/Rpts/2006/809952.pdf* (last accessed August 21, 2008).

[251] U.S. Energy Information Administration, *Annual Energy Outlook 200*, Reference Case Table 43. Available at (last accessed October 4, 2008).

[252] See Lu, supra note 250, at 8–11.

[253] For a description of the NHTS, *see http://nhts.ornl.gov/quickStart.shtml* (last accessed August 21, 2008).

projected to achieve under that alternative standard.

As an illustration of this procedure, the revised estimates of new vehicle sales used in the final rule analysis project that 6.85 million light trucks will be produced during 2011, and NHTSA's updated survival rates showed that slightly more than half of these—50.1 percent, or 3.43 million—are projected to remain in service during the year 2025, when they will have reached an age of 14 years. At that age, the estimates of vehicle use employed in this final rule analysis indicate that light trucks achieving the fuel economy level required under the Baseline alternative would be driven an average of 9,385 miles, assuming that the AEO 2008 High fuel price forecast proves to be correct. Thus surviving model year 2011 light trucks are projected to be driven a total of 32.20 billion miles (= 3.43 million surviving vehicles × 9,385 miles per vehicle) during 2025. Summing the results of similar calculations for each year of their 36-year maximum lifetime, the 6.85 million light trucks originally produced during MY 2011 would be driven a total of 1,185 billion miles under the Baseline alternative.

Under the Baseline alternative, MY 2011 light trucks are projected to achieve a test fuel economy level of 23.0 mpg, which corresponds to actual on-road fuel economy of 18.4 mpg (= mpg × 80 percent). Thus, their lifetime fuel use under the Baseline alternative is projected to be 64.4 billion gallons (1,185 billion miles divided by 18.4 miles per gallon). Under the Optimized CAFE standard for MY 2011, light trucks are projected to achieve a test fuel economy of 25.0 mpg, which corresponds to an actual on-road mpg of 20.0. After adjusting their average annual mileage to reflect the increase in usage that results from the rebound effect of improved fuel economy, MY 2011 light trucks are projected to be driven a total of 1,187 billion miles over their expected lifetimes. Thus their lifetime fuel consumption under the Optimized CAFE standard is projected to amount to 59.4 billion gallons (1,187 billion miles divided by 20.0 miles per gallon), a reduction of 5.0 billion gallons from the 64.4 billion gallons they would consume under the Baseline alternative.

NHTSA received no specific comments regarding the assumptions about vehicle survival and use described in the NPRM. The exact figures for annual vehicle use that are employed in the agency's analysis supporting the final rule are updated to reflect differences in estimated fuel economy levels under alternative CAFE standards, but are otherwise unchanged from those used in the NPRM.

7. Growth in Total Vehicle Use

In the NPRM, NHTSA also explained its assumptions for potential future growth in average annual vehicle use. By assuming that the average number of miles driven by cars and light trucks at each age—and thus their lifetime total mileage—will remain constant over the future, NHTSA effectively assumes that future growth in total vehicle-miles driven stems only from increases in the number of vehicles in use, rather than from continuing increases in the average number of miles that cars and light trucks are driven each year.[254] Similarly, because the survival rates used to estimate the number of cars and light trucks remaining in service to various ages are assumed to remain fixed for future model years, growth in the total number of cars and light trucks in use is effectively assumed to result only from increasing sales of new vehicles. In order to determine the validity of these assumptions, the agency conducted a detailed analysis of the causes of recent growth in total car and light truck use.

From 1985 through 2005, the total number of miles driven (usually referred to as vehicle-miles traveled, or VMT) by passenger cars increased 35 percent, equivalent to a compound annual growth rate of 1.5 percent.[255] During that time the total number of passenger cars registered in the U.S. grew by about 0.3 percent annually, almost exclusively as a result of increasing sales of new cars.[256] Thus, growth in the average number of miles that passenger cars are driven each year accounted for the remaining 1.2 percent (= 1.5 percent—0.3 percent) annual growth in total passenger car use.[257]

The NPRM explained, however, that over this same period, total VMT by light trucks increased much faster, growing at an annual rate of 5.1 percent. In contrast to the causes of growth in passenger car use, nearly all growth in light truck use over these two decades was attributable to rapid increases in the *number* of light trucks in use. FHWA data show that growth in total miles driven by ''Two-axle, four-tire trucks,'' a category that includes most or all light trucks subject to CAFE standards, averaged 5.1 percent annually from 1985 through 2005. However, the number of miles that light trucks are driven each year averaged 11,114 during 2005, almost unchanged from the average figure of 11,016 miles during 1985.[258] This means that virtually all of the growth in total light truck VMT over this period resulted from growth in the number of these vehicles in service, rather than from growth in their average annual use. In turn, growth in the size of the nation's light truck fleet has resulted almost exclusively from rising production and sales of new light trucks, since the fraction of new light trucks remaining in service to various ages has remained stable or declined very slightly over the past two decades.[259]

On the basis of this analysis, NHTSA tentatively concluded in the NPRM that its projections of future growth in light truck VMT account fully for the primary cause of its recent growth, which has been the rapid increase in sales of new light trucks during recent model years. However, the assumption that average annual use of passenger cars will remain fixed over the future seemed to ignore an important source of recent growth in their total use, the gradual increase in the average number of miles they are driven. NHTSA explained that to the extent that this factor continued to represent a significant source of growth in future passenger car use, the agency's analysis would be likely to underestimate the reductions in fuel use and related environmental impacts resulting from more stringent CAFE

[254] As described in the preceding section, increases in fuel economy required by CAFE standards are assumed to increase lifetime usage of cars and light trucks due to the fuel economy rebound effect. Because a vehicle's fuel economy is determined when it is produced, however, the resulting changes in its average annual use at each age and its expected lifetime mileage are also determined when it is produced. While the fuel economy rebound effect thus contributes to differences in annual and lifetime vehicle use between the Baseline alternative and Optimized CAFE standards, it is not a source of continuing growth in average annual miles per vehicle or in total annual VMT over the future.

[255] Calculated from data reported in FHWA, Highway Statistics, Summary to 1995, Table VM–201a, available at *http://www.fhwa.dot.gov/ohim/summary95/vm201a.xlw* (last accessed August 20, 2008), and Highway Statistics Publications, Annual Editions 1996–2005, Table VM–1, available at *http://www.fhwa.dot.gov/policy/ohpi/hss/hsspubs.cfm* (last accessed October 4, 2008); follow links to individual annual editions, select Section V: Roadway Extent Characteristics, and Performance, scroll down to section entitled ''Traffic and Travel Data,'' and select link to Table VM–1.

[256] An increase in the fraction of new passenger cars remaining in service beyond age 10 accounted for approximately one-tenth of total growth in the U.S. automobile fleet from 1985 to 2005, while the remaining 90 percent was accounted for by growth in sales of new automobiles. The fraction of new automobiles remaining in service to various ages was computed from R.L. Polk vehicle registration data for 1997 through 2005 by the agency's Center for Statistical Analysis.

[257] *Id.*

[258] *Id.*

[259] *See* the Lu study, *supra* note 250.

standards for passenger cars.[260] NHTSA stated that it planned to account explicitly for potential future growth in average annual use of both cars and light trucks in the analysis for the final rule. NHTSA received no specific comments to the NPRM about vehicle survival and use.

In its analysis for this final rule, the agency has used estimates of the annual number of miles driven by MY 2011 passenger cars and light trucks at each age of their expected lifetimes that reflect the previously-discussed adjustment for increased use due to the fuel economy rebound effect. Similarly, these estimates also reflect the effect on vehicle use of differences in fuel prices between the year 2001, when the National Household Travel Survey (NHTS), the agency's original source for its estimates of annual vehicle use by age, was conducted, and the AEO 2008 forecast of fuel prices for the period when these vehicles will be in use. As discussed briefly in the preceding section and in more detail in the following section, changes in fuel prices are also assumed to cause a rebound effect in vehicle use, because—like increases in fuel economy—variation in retail fuel prices directly affects vehicles' fuel cost per mile driven. Because future fuel prices are projected to be significantly higher than the $1.80 (2007 dollars) average that prevailed at the time the NHTS was conducted, this adjustment reduces projected average vehicle use during future years, thus partly offsetting the effect of higher fuel economy.

Finally, the agency's estimates of vehicle use assume that the average number of miles driven by passenger cars will continue to rise by 1 percent annually, slightly below its 1.2 percent average annual growth rate over the past two decades. This growth is assumed to be independent of the changes in passenger car use that are projected to result from increased fuel economy and higher fuel prices through the rebound effect. Because average annual use of light trucks has not increased significantly over the past two decades, no future change in light truck use is assumed to occur independently of those attributable to higher fuel prices and improved fuel economy through the rebound effect.

NHTSA received no specific comments regarding the assumptions about growth in total vehicle use presented in the NPRM. The assumptions employed in the agency's analysis supporting the final rule remain unchanged from those used in the NPRM.

8. Accounting for the Rebound Effect of Higher Fuel Economy

As discussed in the NPRM, the rebound effect refers to the tendency of vehicle use to increase in response to higher fuel economy. The rebound effect occurs because an increase in a vehicle's fuel economy reduces its fuel cost for each mile driven (typically the largest single component of the cost of operating a vehicle), and vehicle owners take advantage of this reduced cost by driving more. Even with higher fuel economy, this additional driving uses some fuel, so the rebound effect reduces the fuel savings that would otherwise result when fuel economy standards require manufacturers to increase fuel economy. The rebound effect is usually expressed as the percentage by which annual vehicle use increases when the cost of driving each mile declines, due either to an increase in fuel economy or a reduction in the retail price of fuel.

The rebound effect is an important parameter in NHTSA's evaluation of alternative CAFE standards for future model years, because it affects the actual fuel savings that are likely to result from adopting stricter standards. The rebound effect can be measured by estimating the elasticity of vehicle use with respect either to fuel economy itself, or to fuel cost per mile driven.[261] When expressed as a positive percentage, either of these parameters gives the fraction of fuel savings that would be expected to result from increased fuel economy, but is offset by the added fuel use that occurs when vehicles with higher fuel economy are driven more.

In the NPRM, NHTSA summarized existing research on the rebound effect in order to explain its rationale for choosing the estimate of 15 percent it employed in analyzing alternative MY 2011–2015 fuel economy standards; the following paragraphs repeat NHTSA's summary for the reader's benefit.

Research on the magnitude of the rebound effect in light-duty vehicle use dates to the early 1980s, and almost unanimously concludes that a statistically-significant rebound effect occurs when vehicle fuel efficiency improves.[262] The most common approach to estimating its magnitude has been to analyze household survey data on vehicle use, fuel consumption, fuel prices (often obtained from external sources), and other determinants of household travel demand to isolate the response of vehicle use to higher fuel economy. Other studies have relied on econometric analysis of annual U.S. data on vehicle use, fuel economy, fuel prices, and other variables to identify the response of total or average vehicle use to changes in fuel economy. Two recent studies analyzed yearly variation in vehicle ownership and use, fuel prices, and fuel economy among individual states over an extended time period in order to measure the response of vehicle use to changing fuel economy. Most studies measure the influence of fuel economy on vehicle use indirectly through its effect on fuel cost per mile driven, although a few attempt to measure the direct effect of fuel economy on vehicle use.

An important distinction among studies of the rebound effect is whether they assume that the effect is constant, or varies over time in response to prevailing fuel prices, fuel economy levels, personal income, and household vehicle ownership. This distinction is important because studies that allow the rebound effect to vary in response to changes in these factors are likely to provide more reliable forecasts of its future value.

In order to arrive at a preliminary estimate of the rebound effect for use in assessing the fuel savings, emissions reductions, and other impacts of the alternative standards, NHTSA reviewed 22 studies of the rebound effect conducted from 1983 through 2007. NHTSA then conducted a detailed analysis of the 66 separate estimates of the long-run rebound effect reported in these studies, which is summarized in

[260] NHTSA explained that assuming that average annual miles driven per passenger car will continue to increase over the future would increase the agency's estimates of total lifetime mileage for MY 2011 passenger cars. Their estimated lifetime fuel use would also increase under each alternative standard considered in the NPRM, but in inverse relation to their fuel economy. Thus, NHTSA explained, lifetime fuel use would increase by more under the No Increase alternative than under any of the alternatives that would increase passenger car CAFE standards, and by progressively less for the alternatives that impose stricter standards. NHTSA stated that taking account of this factor would thus increase the agency's estimates of fuel savings for those alternatives, just as omitting it would cause the agency's analysis to underestimate those fuel savings.

[261] Fuel cost per mile is equal to the price of fuel in dollars per gallon divided by fuel economy in miles per gallon, so fuel cost per mile declines when a vehicle's fuel economy increases.

[262] Most studies estimate that the long-run rebound effect is significantly larger than the immediate response to increased fuel efficiency, since over a longer period drivers have more opportunities to adjust their vehicle use to changes in fuel costs. This long-run effect is more appropriate for evaluating the fuel savings likely to result from stricter CAFE standards, since the increases in fuel economy they require would reduce fuel costs over the entire lifetimes of vehicles they affect. These lifetimes can extend up to 25 years for passenger cars, and up to 36 years for light trucks.

Table V–2 below.[263] As the table indicates, historical estimates of the long-run rebound effect range from as low as 7 percent to as high as 75 percent, with a mean of 23 percent. A higher rebound effect means that more of the savings in fuel use expected to result from higher fuel economy will be offset by additional driving, so that less fuel savings will actually result.

Limiting the sample of rebound effect estimates to the 50 estimates reported in the 17 published studies yields the same range but a slightly higher mean (24 percent), while focusing on the authors' preferred estimates from published these studies narrows this range and lowers its average slightly. In all three cases, the median estimate of the rebound effect, which is less likely to be influenced by unusually small and large estimates, is 22 percent. As Table V–2 indicates, approximately two-thirds of all estimates reviewed, all published estimates, and authors' preferred estimates fall in the range of 10 to 30 percent.

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[263] Some studies did not separately present the overall rebound effect, so NHTSA derived estimates of the overall rebound effect when the studies reported more detailed results. For example, when studies estimated different rebound effects for households owning different numbers of vehicles, but did not report an overall rebound effect, NHTSA computed a weighted average of the reported values using the distribution of households among vehicle ownership categories.

Table V-2. Summary of Rebound Effect Estimates

Category of estimates	Number of studies	Number of estimates	Range		Distribution		
			Low	High	Median	Mean	Std. Dev.
All estimates	22	66	7%	75%	22%	23%	14%
Published estimates	17	50	7%	75%	22%	24%	14%
Authors' preferred estimates	17	17	9%	75%	22%	22%	15%
U.S. time-series estimates	7	34	7%	45%	14%	18%	9%
Household survey estimates	13	23	9%	75%	31%	31%	16%
Pooled U.S. state estimates	2	9	8%	58%	22%	25%	14%
Constant rebound effect (1)	15	37	7%	75%	20%	23%	16%
Variable rebound effect (1)							
Reported estimates	10	29	10%	45%	23%	23%	10%
Updated to 2006 (2)	10	29	6%	46%	16%	19%	12%

(1) Three studies estimate both constant and variable rebound effects.
(2) Reported estimates updated to reflect current conditions, using 2006 values of fuel prices, fuel economy, household income, and vehicle ownership.

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The type of data used and authors' assumptions about whether the rebound effect varies over time have important effects on its estimated magnitude, although the reasons for these patterns are difficult to identify. As the table shows, the 34 estimates derived from analysis of U.S. annual time-series data produce a median estimate of 14 percent for the long-run rebound effect, while the median of the 23 estimates based on household survey data is more than twice as large (31 percent). The 37 estimates from studies that assume a constant rebound effect produce a median of 20 percent, while the 29 estimates from studies allowing the rebound to vary have a slightly higher median value (23 percent).

In selecting a value for the rebound effect to use in analyzing alternative fuel economy standards for this rulemaking, NHTSA attached greater significance to

studies that allow the rebound effect to vary in response to changes in the factors that affect its magnitude. The agency's view is that updating their estimates to reflect current economic conditions provides a more reliable indication of its likely magnitude over the lifetimes of vehicles that will be affected by those standards. As Table V–2 reports, recalculating these 29 original estimates using 2006 values for retail fuel prices, average fuel economy, personal income, and household vehicle ownership reduces their median estimate to 16 percent.[264] Considering the empirical evidence on the rebound effect as a whole, but according greater importance to the updated estimates from studies allowing the rebound effect to vary, NHTSA selected a rebound effect of 15 percent in the NPRM to evaluate the fuel savings and other effects of the alternative fuel economy standards. However, NHTSA stated that it did not believe that evidence of the rebound effect's dependence on fuel prices or household income is sufficiently convincing to justify allowing its future value to vary in response to forecast changes in these variables. A range extending from 10 percent to at least 20 percent, and perhaps as high as 25 percent, appeared to NHTSA to be appropriate for the required analysis of the uncertainty surrounding these estimates. While the agency selected 15 percent, it also conducted analyses using rebound effects of 10 and 20 percent. The results of these sensitivity analyses are shown in the FEIS at Section 3.4.4.2.

The only commenter suggesting that NHTSA use a larger rebound effect than 15 percent was the Alliance, which based its comments on analyses it commissioned from Sierra Research and NERA Economic Consulting, Inc. Sierra Research cited a 1999 paper by David Greene, et al., at ORNL as evidence that the long-run rebound effect should be 20 percent,[265] and stated further that NHTSA used a rebound effect of 20 percent in its April 2003 final rule setting fuel economy standards for MY 2005–2007 light trucks. Sierra Research assumed a 17 percent rebound effect in its analysis for the Alliance ''to be conservative.'' NERA's report argued that NHTSA should use a rebound effect of 20 percent, because 15 percent gave ''disproportionate weight'' to the Small and Van Dender study, which NERA called ''a single study with empirical limitations.'' NERA stated that its analysis ''corrected'' the Small and Van Dender model, the primary correction apparently being to ''properly account for differences in the cost of living across states,'' with respect to income and fuel prices. NERA consequently used a 24 percent rebound effect for its report.

Other commenters, including CARB, UCS, EDF, Public Citizen, CFA, and Mark Delucchi, argued that NHTSA should use a lower rebound effect than 15 percent, generally because Small and Van Dender's recent study found a lower rebound effect. CARB, for example, commented that while it is true that the consensus estimate of past studies is that the rebound effect should be 15 percent, Small and Van Dender had found a long-run rebound effect of 4.9 percent for the 1997–2001 period in California due to higher incomes, and that it would decline even further by 2020. Thus, CARB argued, NHTSA should accept ''two critical findings'' of the Small and Van Dender study, specifically that (1) the future value of the rebound effect would decline as household real income increases; and that (2) as fuel prices increase, people spend a larger share of their income on fuel purchases, thus becoming more sensitive to fuel prices. CARB stated that NHTSA should use a rebound effect of no higher than 10 percent, and conduct a sensitivity analysis using a rebound effect of 5 percent.

UCS similarly commented that if NHTSA intends to ''attach greater significance'' to the Small and Van Dender study, as NHTSA stated in the NPRM, then it must accept Small and Van Dender's conclusion ''that the rebound effect in the U.S. is small and has been getting smaller.'' Thus, UCS argued, NHTSA should employ a rebound effect of no greater than 10 percent, and only if NHTSA used higher fuel prices in the final rule. UCS implied, however, that NHTSA should apply no rebound effect at all unless it used higher fuel prices in the final rule, citing a 2005 final report by Small and Van Dender to CARB as stating that ''* * * [the authors] cannot prove that there is any rebound effect resulting from stricter fuel efficiency regulations * * *.'' Mr. Delucchi also commented that NHTSA should use a lower rebound effect because the agency should ''give more weight to Small and Van Dender,'' although he did not explain how the agency should give this additional weight. Mr. Delucchi also stated that a recent study by Hughes et al. ''found a very low short-run price elasticity of demand for gasoline.''

EDF and Public Citizen focused on other findings in the Small and Van Dender study to argue for a lower rebound effect. EDF commented that NHTSA should not have selected a 15 percent rebound effect based on existing rebound effect literature, because when Small and Van Dender reviewed the literature, the authors suggested ''that many prior studies have overestimated the rebound effect because of some model specification problems, such as not allowing for the fact that fuel efficiency is endogenous, i.e., driving more efficient cars might encourage more driving, but long commutes might encourage purchase of more fuel efficient vehicles.'' EDF argued that because Small and Van Dender's study did not have these biases, NHTSA should use a 10 percent rebound effect, ''to be consistent with the latest findings and to reflect current conditions of income, urbanization and fuel costs.''

EDF also suggested that the rebound effect may be zero, citing Greene's 2005 testimony before the House of Representatives Science Committee that ''the rebound effect could be reduced to negligible if we '[take] into account the fact that increased fuel economy will increase the price of vehicles together with the likelihood that governments will respond to losses in highway revenues by raising motor fuel taxes.' '' Public Citizen focused on Small and Van Dender's finding that ''most empirical measurements of the rebound effect rely heavily on variations in the fuel price,'' stating that this ''again raises the question of whether NHTSA's assumptions about the rebound effect are colored by the estimates of future fuel prices.''

CFA commented that NHTSA should use a rebound effect of no higher than

[264] As an illustration, Small and Van Dender (2005) allow the rebound effect to vary over time in response to changes in real per capita income as well as in response to average fuel cost per mile driven. While their estimate for the entire interval (1966–2001) that they analyze is 22 percent, updating this estimate using 2007 values of these variables reduces the rebound effect to about 10 percent. Similarly, updating Greene's 1992 original estimate of a 15 percent rebound effect to reflect 2007 fuel prices and average fuel economy reduces it to approximately 7 percent. See David L. Greene, ''Vehicle Use and Fuel Economy: How Big is the Rebound Effect?'' The Energy Journal, 13:1 (1992), at 117–143.

In contrast, the distribution of households among vehicle ownership categories in the data samples used by Hensher et al. (1990) and Greene et al. (1999) are nearly identical to the most recent estimates for the U.S., so updating their original estimates to current U.S. conditions changes them very little. See David A. Hensher, Frank W. Milthorpe, and Nariida C. Smith, ''The Demand for Vehicle Use in the Urban Household Sector: Theory and Empirical Evidence,'' Journal of Transport Economics and Policy, 24:2 (1990), at 119–137; see also David L. Greene, James R. Kahn, and Robert C. Gibson, ''Fuel Economy Rebound Effect for Household Vehicles,'' The Energy Journal, 20:3 (1999), at 1–21.

[265] David L. Greene, et al., ''Fuel Economy Rebound Effect for U.S. Household Vehicles,'' The Energy Journal, Vol. 20, No. 3, 1999.

5 percent, citing a recent analysis by the Congressional Budget Office that rising real incomes have made consumers much less responsive to short-run changes in gasoline prices. CFA thus argued that since gasoline is more expensive now, NHTSA was incorrect to assume ''that consumers irrationally burn up their fuel savings on increased driving, rather than use it to buy other goods and services and applied this 'rebound' effect to analyses where it should not play a role.'' CFA also argued that NHTSA should have identified and provided more information about the conclusions in each of the studies it reviewed in developing its number for the rebound effect.

Agency response: NHTSA has updated the 29 estimates from studies that allowed the rebound effect to vary to reflect 2008 fuel prices, fuel economy, vehicle ownership levels, and household income. The resulting updated estimates are significantly higher than those reported in the NPRM, primarily because of the large increase in fuel prices since 2006 (the date to which the estimates reported in the NPRM were updated). The updated 2008 estimates of the fuel economy rebound effect range from 8 percent to 46 percent, with a median value of 19 percent. Using the average retail gasoline price forecast for 2011–30 from the AEO 2008 High Price case, the projected estimates of the rebound effect for those years would range from 7 percent to 46 percent, with a median value of 19 percent.

NHTSA also notes that the forecast of fuel prices used to develop its adopted CAFE standards for MY 2011 projects that retail gasoline prices will continue to rise by somewhat more than 1 percent annually over the lifetimes of vehicles affected by those standards. At the same time, real household incomes are projected to grow by about 2 percent annually over this same period. Given the relative sensitivity of the Small and Van Dender rebound effect estimate to changes in fuel prices and income, these forecasts suggest that future growth in fuel prices is likely to offset a significant fraction of the projected decline in the rebound effect that would result from income growth.

In response to the comment by EDF citing Greene's statement that the rebound effect could be negligible over the foreseeable future, NHTSA notes that increases in the purchase price or ownership cost of vehicles may not significantly affect the marginal cost of additional vehicle use, since the depreciation and financing components of vehicle ownership costs vary only minimally with vehicle use. In addition, the agency notes that Greene's assertion that governments are likely to respond to losses in fuel tax revenues by raising fuel tax rates (thus increasing retail fuel prices) is highly speculative, and there is limited evidence that this has actually occurred in response to recent declines in state fuel tax revenues.[266]

In light of these results, NHTSA has elected to continue to use a 15 percent rebound effect in its analysis of fuel savings and other benefits from higher CAFE standards for this final rule. Recognizing the uncertainty surrounding this estimate, the agency has analyzed the sensitivity of its benefits estimates to a range of values for the rebound effect from 10 percent to 20 percent. In its future CAFE rulemaking activities, NHTSA will review all new available data and consider whether and to what extent any assumptions regarding the rebound effect merit revising based on that data.

9. Benefits From Increased Vehicle Use

The NPRM explained that NHTSA also values the additional benefits that derive from increased vehicle use due to the rebound effect. This additional mobility provides drivers and their passengers better access to social and economic opportunities away from home, because they are able to make longer or more frequent trips. The amount by which the total benefits from this additional travel exceed its costs (for fuel and other operating expenses) measures the net benefits that drivers receive from the additional travel, usually referred to as increased consumer surplus. NHTSA's analysis estimates the economic value of this increased consumer surplus using the conventional approximation, which is one half of the product of the decline in vehicle operating costs per mile and the resulting increase in the annual number of miles driven. The NPRM noted that the magnitude of these benefits represents a small fraction of the total benefits from the alternative fuel economy standards considered.

In its comment on the NPRM, NERA speculated that NHTSA ''may have miscalculated the 'consumer surplus' associated with the additional driving due to the rebound effect.'' NERA stated that NHTSA

> * * * describes its calculation in terms of the conventional triangle under the demand curve but above the price paid. However, it appears that instead NHTSA estimated the total area under the demand curve for the extra VMT traveled. That is appropriate if NHTSA's estimates of net savings in fuel expenditures include additional expenditures on the additional fuel consumed as a result of the rebound effect.

NHTSA notes in response to NERA's comment that its estimates of net savings in fuel expenditures do reflect the costs for additional fuel consumed as a result of increased rebound-effect driving. Thus the agency has correctly calculated the increase in consumer surplus associated with the additional driving due to the rebound effect. Since it received no other comments on the estimates of benefits from increased vehicle use presented in the NPRM, NHTSA has calculated these benefits using the same procedure in its analysis supporting this final rule.

10. Added Costs From Congestion, Crashes, and Noise

NHTSA also factors in the additional costs from increased traffic congestion, motor vehicle accidents, and highway noise that result from additional vehicle use associated with the rebound effect. Increased vehicle use can contribute to traffic congestion and delays by increasing traffic volumes on facilities that are already heavily traveled, which may cost drivers more in terms of increased travel time and operating expenses. Increased vehicle use can also increase the external costs associated with traffic accidents; although drivers may consider the costs they (and their passengers) might face from the possibility of being involved in a traffic accident when they decide to make additional trips, it is very unlikely that they account for the potential ''external'' costs that any accident imposes on the occupants of other vehicles or on pedestrians.

Finally, increased vehicle use can also contribute to traffic noise, which causes inconvenience, irritation, and potentially even discomfort to occupants of other vehicles, to pedestrians and other bystanders, and to residents or occupants of surrounding property. Since drivers are unlikely to consider the effect their vehicle's noise has on others, noise represents another externality that NHTSA attempts to account for. Any increase in these externality costs, however, is dependent on the traffic conditions under which

[266] Federal Highway Administration data show that fuel tax revenues declined in only 5 of the 50 states between 2000 and 2006, and that none of these states raised gasoline taxes over that same period; see FHWA, Highway Statistics 2006, Table MF–205, available at *http://www.fhwa.dot.gov/policy/ohim/hs06/pdf/mf205.pdf* (last accessed November 13, 2008), Table MF–1 available at *http://www.fhwa.dot.gov/policy/ohim/hs06/xls/mf1.xls* (last accessed November 13, 2008), and Highway Statistics 2000, Table MF–1 available at *http://www.fhwa.dot.gov/ohim/hs00/xls/mf1.xls* (last accessed November 13, 2008).

additional rebound-effect driving takes place.

In the NPRM, NHTSA relied on estimates developed by the Federal Highway Administration (FHWA) of the increased external costs of congestion, accidents (property damage and injuries), and noise costs caused by added driving due to the rebound effect.[267] These estimates are intended to measure the increases in costs due to these externalities caused by automobiles and light trucks that are borne by persons other than their drivers, or ''marginal'' external costs. Updated to 2007 dollars, FHWA's ''Middle'' estimates for marginal congestion, accident, and noise costs caused by automobile use amount to 5.4 cents, 2.3 cents, and 0.1 cents per vehicle-mile (or 7.8 cents per vehicle-mile in total), while costs for light trucks are 4.8 cents, 2.6 cents, and 0.1 cents per vehicle-mile (7.5 cents per vehicle-mile in total).[268] These costs are multiplied by the annual increases in automobile and light truck use from the rebound effect to yield the estimated increases in congestion, accident, and noise externality costs during each future year.

NHTSA received comments from the Alliance and from the Mercatus Center on the increased costs from congestion, crashes, and noise due to the rebound effect. The Alliance submitted an analysis by NERA Economic Consulting that argued that NHTSA had underestimated the increased costs from congestion, crashes, and noise. The NERA analysis disagreed with NHTSA's method for updating the FHWA estimates, arguing that it was unclear exactly how NHTSA had updated the FHWA values to 2006 dollars. The NERA analysis also argued that FHWA's estimate was ''based on a value of $12.38 per vehicle hour (in 1994 dollars),'' while NHTSA used a value of $24 per vehicle hour ''to value time savings it estimates would result from fewer fill-ups as a result of higher MPG and increased range for a tank of fuel.'' Thus, the NERA analysis concluded that NHTSA had overvalued the time savings, which NERA seemed to attribute to its belief that NHTSA does not value time spent in traffic congestion ''at least as highly as time spent in service stations while filling up.''[269] Thus, the NERA analysis argued that congestion costs per mile would increase by about 68 percent if NHTSA had updated FHWA's estimates in a ''consistent'' manner with ''NHTSA's valuation of time savings for vehicle occupants in another part of its analysis.''

The NERA analysis also argued that the baseline 1997 congestion values ''should be adjusted upward even more to reflect increasing levels of congestion between then and now and the further increases likely'' within the lifetimes of the vehicles, the basis for NHTSA's cost analysis. The analysis stated that this was because ''With higher baseline congestion, the marginal impact of additional VMT will increase because congestion, like other queuing phenomena, increases at an increasing rate as capacity utilization grows.''

NERA also argued more generally that increased costs from congestion, crashes, and noise are proportional to the rebound effect, which means that a higher rebound effect would result in higher costs.[270]

The NERA analysis did not cover NHTSA's estimates of accident and noise costs per mile, but cited the same RFF study referred to in the NPRM to say that it ''estimated a value per mile roughly 20 percent higher ($0.030 vs. $0.025) than NHTSA's.''

The Mercatus Center focused only on congestion costs, and commented that NHTSA should consider ''The possibility that the cost of increased congestion, a product of the 'rebound effect,' does not take into account likely increasing marginal costs as considered in NHTSA's model.'' The commenter stated that NHTSA's estimates ''implicitly assume[] a constant marginal cost of congestion across all possible total quantities of vehicle miles driven for each vehicle category.'' However, it cited the FHWA study as stating that congestion cost impacts are ''extremely sensitive'' to peak versus off-peak traffic periods. Thus, the commenter argued, if the costs can vary within a day (as during peak and off-peak periods), they must certainly vary across years, if the total amount of traffic varies across years as well. In essence, if VMT increases, total congestion and the marginal cost of congestion must also increase, all other things held constant.

However, if all other things are not held constant, e.g., if new roads are built to handle increasing traffic, the commenter argued that ''total congestion does not necessarily increase with increases in total vehicle miles driven.'' The commenter argued that NHTSA should include an estimate of the costs of building additional roads or altering existing ones to mitigate congestion due to the rebound effect. That estimate should include accounting for ''the increasing difficulty of building a new road in an urbanized area,'' which the commenter stated is ''probably one of the best examples of an activity that has rapidly increasing marginal costs,'' as well as the environmental costs of building new roads, i.e., costs due to sprawl. The commenter asserted that ''It is incumbent upon NHTSA and the Environmental Protection Agency to produce an inclusive estimate of the costs of the rebound effect—one that either includes both increasing marginal cost of congestion and the cost of the new roads that will lead to increased congestion.''

The Mercatus Center also pointed out an apparent inconsistency in the NPRM in the reporting of FHWA's estimates of passenger car versus light truck costs for increased congestion, crashes, and noise.

For this final rule, NHTSA has corrected the inconsistency in the NPRM's reporting of external costs from additional automobile and light truck use noted by the Mercatus Center.

NHTSA notes that congestion cost associated with additional travel may be particularly high if it occurs during peak travel periods and on facilities that are already heavily utilized. However, the FHWA estimates of increased congestion costs from added vehicle use assume that the increase in travel is distributed over the hours of the day and among specific routes in proportion to the existing temporal and geographic distributions of total VMT. Thus while some of the additional travel may impose significant costs for additional congestion and delays, much of it is likely to occur at times and locations where excess roadway capacity is available and congestion costs imposed by added vehicle use are minimal.

NHTSA believes it is reasonable to assume that additional vehicle use due to the fuel economy rebound effect will be distributed over the day and among locations in much the same way as current travel is distributed. As a consequence, the FHWA estimates of congestion costs from increased vehicle use are likely to provide more accurate estimates of the increased congestion

[267] These estimates were developed by FHWA for use in its 1997 Federal Highway Cost Allocation Study. See *http://www.fhwa.dot.gov/policy/hcas/final/index.htm* (last accessed October 5, 2008).

[268] Id., at Tables V–22, V–23, and V–24 (last accessed October 5, 2008).

[269] NERA appears to suggest that time spent in service stations while filling up includes the fact that ''stops at service stations often serve multiple purposes, not just refueling.'' NERA then appears to suggest that people feel similarly about time spent in traffic congestion.

[270] NERA suggested using a rebound elasticity of −0.2 instead of −0.15, which it claimed would increase the costs from congestion, crashes, and noise by about one third.

costs caused by added rebound-effect driving than are the estimates submitted by commenters, which apply to peak travel periods and locations that experience high traffic volumes. Thus in the analysis supporting the final rule, NHTSA has continued to rely upon the FHWA values to estimate the increase in congestion costs likely to result from added rebound-effect driving.

11. Petroleum Consumption and Import Externalities

The NPRM also discussed the fact that U.S. consumption and imports of petroleum products also impose costs on the domestic economy that are not reflected in the market price for crude petroleum, or in the prices paid by consumers of petroleum products such as gasoline. In economics literature on this subject, these costs include (1) higher prices for petroleum products resulting from the effect of U.S. oil import demand on the world oil price; (2) the risk of disruptions to the U.S. economy caused by sudden reductions in the supply of imported oil to the U.S.; and (3) expenses for maintaining a U.S. military presence to secure imported oil supplies from unstable regions, and for maintaining the Strategic Petroleum Reserve (SPR) to cushion against resulting price increases.[271] Higher U.S. imports of crude oil or refined petroleum products increase the magnitude of these external economic costs, thus increasing the true economic cost of supplying transportation fuels above the resource costs of producing them. Conversely, reducing U.S. imports of crude petroleum or refined fuels or reducing fuel consumption can reduce these external costs. Any reduction in their total value that results from improved passenger car and light truck fuel economy represents an economic benefit of setting more stringent CAFE standards, in addition to the value of fuel savings and emissions reductions themselves.

NHTSA explained that increased U.S. oil imports can impose higher costs on all purchasers of petroleum products, because the U.S. is a sufficiently large purchaser of foreign oil supplies that changes in U.S. demand can affect the world price. The effect of U.S. petroleum imports on world oil prices is determined by the degree of OPEC monopoly power over global oil supplies, and the degree of monopsony power over world oil demand exerted by the U.S. The combination of these two factors means that increases in domestic demand for petroleum products that are met through higher oil imports can cause the price of oil in the world market to rise, which imposes economic costs on all other purchasers in the global petroleum market in excess of the higher prices paid by U.S. consumers.[272] Conversely, reducing U.S. oil imports can lower the world petroleum price, and thus generate benefits to other oil purchasers by reducing these ''monopsony costs.''

NHTSA stated that although the degree of current OPEC monopoly power is subject to debate, the consensus appears to be that OPEC remains able to exercise some degree of control over the response of world oil supplies to variation in world oil price so that the world oil market does not behave completely competitively.[273] The extent of U.S. monopsony power is determined by a complex set of factors, including the relative importance of U.S. imports in the world oil market, and the sensitivity of petroleum supply, and demand to its world price among other participants in the international oil market. Most evidence appears to suggest that variation in U.S. demand for imported petroleum continues to exert some influence on world oil prices, although this influence appears to be limited.[274]

The second component of external economic costs imposed by U.S. petroleum imports that NHTSA considered arises partly because an increase in oil prices triggered by a disruption in the supply of imported oil reduces the level of output that the U.S. economy can produce. The reduction in potential U.S. economic output depends on the extent and duration of the increases in petroleum product prices that result from a disruption in the supply of imported oil, as well as on whether and how rapidly these prices return to pre-disruption levels. Even if prices for imported oil return completely to their original level, however, economic output will be at least temporarily reduced from the level that would have been possible without a disruption in oil supplies.

Because supply disruptions and resulting price increases tend to occur suddenly rather than gradually, they can also impose costs on businesses and households for adjusting their use of petroleum products more rapidly than if the same price increase had occurred gradually over time. These adjustments impose costs because they temporarily reduce economic output even below the level that would ultimately be reached once the U.S. economy completely adapted to higher petroleum prices. The additional costs to businesses and households reflect their inability to adjust prices, output levels, and their use of energy and other resources quickly and smoothly in response to rapid changes in prices for petroleum products.

Since future disruptions in foreign oil supplies are an uncertain prospect, each of these disruption costs must be adjusted by the probability that the supply of imported oil to the U.S. will actually be disrupted. The ''expected value'' of these costs—the product of the probability that an oil import disruption will occur and the costs of reduced economic output and abrupt adjustment to sharply higher petroleum prices—is the appropriate measure of their magnitude. Any reduction in these expected disruption costs resulting from a measure that lowers U.S. oil imports represents an additional economic benefit beyond the direct value of savings from reduced purchases of petroleum products.

While the vulnerability of the U.S. economy to oil price shocks is widely thought to depend on total petroleum consumption rather than on the level of oil imports, variation in imports is still likely to have some effect on the magnitude of price increases resulting from a disruption of import supply. In addition, changing the quantity of petroleum imported into the U.S. may also affect the probability that such a disruption will occur. If either the size of the likely price increase or the probability that U.S. oil supplies will be disrupted is affected by oil imports, the expected value of the costs from a

[271] See, e.g., Bohi, Douglas R. and W. David Montgomery (1982). Oil Prices, Energy Security, and Import Policy, Washington, DC, Resources for the Future, Johns Hopkins University Press; Bohi, D.R. and M.A. Toman (1993). ''Energy and Security: Externalities and Policies,'' Energy Policy 21: 1093–1109; and Toman, M.A. (1993). ''The Economics of Energy Security: Theory, Evidence, Policy,'' in A.V. Kneese and J.L. Sweeney, eds. (1993). Handbook of Natural Resource and Energy Economics, Vol. III, Amsterdam, pp. 1167–1218.

[272] For example, if the U.S imports 10 million barrels of petroleum per day at a world oil price of $20 per barrel, its total daily import bill is $200 million. If increasing imports to 11 million barrels per day causes the world oil price to rise to $21 per barrel, the daily U.S. import bill rises to $231 million. The resulting increase of $31 million per day is attributable to increasing daily imports by only 1 million barrels. This means that the incremental cost of importing each additional barrel is $31, or $10 more than the newly-increased world price of $21 per barrel. This additional $10 per barrel represents a cost imposed on all other purchasers in the global petroleum market by U.S. buyers, in excess of the price they pay to obtain those additional imports.

[273] For a summary of this issue, see Leiby, Paul N., Donald W. Jones, T. Randall Curlee, and Russell Lee, *Oil Imports: An Assessment of Benefits and Costs*, ORNL–6851, Oak Ridge National Laboratory, November 1, 1997, at 17. Available at *http://pzl1.ed.ornl.gov/ORNL6851.pdf* (last accessed August 26, 2008).

[274] Id., at 18–19.

supply disruption will also depend on the level of imports.

NHTSA explained that businesses and households use a variety of market mechanisms, including oil futures markets, energy conservation measures, and technologies that permit rapid fuel switching to ''insure'' against higher petroleum prices and reduce their costs for adjusting to sudden price increases. While the availability of these market mechanisms has likely reduced the potential costs of disruptions to the supply of imported oil, consumers of petroleum products are unlikely to take account of costs they impose on others, so those costs are probably not reflected in the price of imported oil. Thus, changes in oil import levels probably continue to affect the expected cost to the U.S. economy from potential oil supply disruptions, although this component of oil import costs is likely to be significantly smaller than estimated by studies conducted in the wake of the oil supply disruptions during the 1970s.

The third component that NHTSA identified of the external economic costs of importing oil into the U.S. includes government outlays for maintaining a military presence to secure the supply of oil imports from potentially unstable regions of the world and to protect against their interruption. Some analysts also include outlays for maintaining the U.S. Strategic Petroleum Reserve (SPR), which is intended to cushion the U.S. economy against the consequences of disruption in the supply of imported oil, as additional costs of protecting the U.S. economy from oil supply disruptions.

NHTSA expressed its belief that while costs for U.S. military security may vary over time in response to long-term changes in the actual level of oil imports into the U.S., these costs are unlikely to decline in response to any reduction in U.S. oil imports resulting from raising future CAFE standards for passenger cars and light trucks. U.S. military activities in regions that represent vital sources of oil imports also serve a broader range of security and foreign policy objectives than simply protecting oil supplies, and as a consequence are unlikely to vary significantly in response to changes in the level of oil imports prompted by higher standards.

Similarly, NHTSA stated that while the optimal size of the SPR from the standpoint of its potential influence on domestic oil prices during a supply disruption may be related to the level of U.S. oil consumption and imports, its actual size has not appeared to vary in response to recent changes in oil imports. Thus while the budgetary costs for maintaining the SPR are similar to other external costs in that they are not likely to be reflected in the market price for imported oil, these costs do not appear to have varied in response to changes in oil import levels.

In analyzing benefits from its recent actions to increase light truck CAFE standards for model years 2005–2007 and 2008–2011, NHTSA relied on a 1997 study by Oak Ridge National Laboratory (ORNL) to estimate the value of reduced economic externalities from petroleum consumption and imports.[275] More recently, ORNL updated its estimates of the value of these externalities, using the analytic framework developed in its original 1997 study in conjunction with recent estimates of the variables and parameters that determine their value.[276] These include world oil prices, current and anticipated future levels of OPEC petroleum production, U.S. oil import levels, the estimated responsiveness of oil supplies and demands to prices in different regions of the world, and the likelihood of oil supply disruptions. ORNL prepared its updated estimates of oil import externalities for use by EPA in evaluating the benefits of reductions in U.S. oil consumption and imports expected to result from its Renewable Fuel Standard Rule of 2007 (RFS).[277]

The updated ORNL study was subjected to a detailed peer review by experts nominated by EPA, and its estimates of the value of oil import externalities were subsequently revised to reflect their comments and recommendations.[278] Specifically, reviewers recommended that ORNL increase its estimates of the sensitivity of oil supply by non-OPEC producers and oil demand by nations other than the U.S. to changes in the world oil price, as well as reduce its estimate of the sensitivity of U.S. GDP to potential sudden increases in world oil prices.

After making the revisions recommended by peer reviewers, ORNL's updated estimates of the monopsony cost associated with U.S. oil imports ranged from $2.77 to $13.11 per barrel, with a most likely estimate of $7.41 per barrel (in 2005 dollars). These estimates imply that each gallon of fuel saved as a result of adopting higher CAFE standards will reduce the monopsony costs of U.S. oil imports by $0.066 to $0.312, with the most likely value $0.176 per gallon saved. ORNL's updated and revised estimates of the increase in the expected costs associated with oil supply disruptions to the U.S. and the resulting rapid increase in prices for petroleum products amount to $2.10 to $7.40 per barrel, with a likely estimate of $4.59 per barrel (again in 2005 dollars). According to these estimates, each gallon of fuel saved will reduce the expected cost disruption to the U.S. economy by $0.050 to $0.176 per gallon, with the most likely value $0.109 per gallon.

NHTSA stated that when updated to 2006 dollars, the updated and revised ORNL estimates suggest that the combined reduction in monopsony costs and expected costs to the U.S. economy from oil supply disruptions resulting from lower fuel consumption total $0.120 to $0.504 per gallon, with a most likely estimate of $0.295 per gallon. This represents the additional economic benefit likely to result from each gallon of fuel saved by higher CAFE standards, *beyond* the savings in resource costs for producing and distributing each gallon of fuel saved. NHTSA explained that it employed this most likely estimate in its analysis of the benefits from fuel savings projected to result from alternative CAFE standards for MYs 2011–2015. NHTSA also analyzed the effect on these benefits estimates from variation in this value over the range from $0.120 to $0.504 per gallon of fuel saved.

NHTSA's analysis of benefits from alternative CAFE standards for the NPRM did not include cost savings from either reduced outlays for U.S. military operations or maintaining a smaller SPR among the external benefits of reducing gasoline consumption and petroleum imports by means of tightening future standards. NHTSA stated that this view concurs with both the original ORNL study of economic costs from U.S. oil imports and its recent update, which conclude that savings in government outlays for these purposes are unlikely to result from reductions in consumption of petroleum products and oil imports on the scale of those likely to result from reductions in consumption of petroleum products and oil imports on the scale of those likely to result from the alternative increases in CAFE standards considered for MYs 2011–2015.

All commenters addressing the issue of military costs argued that NHTSA should use a value higher than zero. Mr. Delucchi, CARB, and the Attorneys General all cited Mr. Delucchi's 2008

[275] *Id.*

[276] Leiby, Paul N., ''Estimating the Energy Security Benefits of Reduced U.S. Oil Imports: Final Report,'' Oak Ridge National Laboratory, ORNL/TM–2007/028, Revised March 14, 2008. *Available at http://pzl1.ed.ornl.gov/energysecurity.html* (click on link below ''Oil Imports Costs and Benefits'') (last accessed August 26, 2008).

[277] 72 FR 23899 (May 1, 2007).

[278] *Peer Review Report Summary: Estimating the Energy Security Benefits of Reduced U.S. Oil Imports,* ICF, Inc., September 2007.

peer-reviewed article in *Energy Policy*[279] to argue that military costs should be higher than zero. CARB commented that the study ''undermines the 15-year-old logic from a Congressional Research Study, which NHTSA appears to adopt here (page 24411), which concluded we have so many other security interests in the Middle East that sharply reducing oil imports, therefore, would not affect our military expense there.'' CARB argued that ''to the contrary, the Energy Policy study authors conclude 'spending on defense of the Persian Gulf is in fact related to U.S. interests in the region, which are mainly, but not entirely, oil interests.' '' CARB cited the study as stating that the ''best estimate of this relationship translates to $0.03–$0.15 per gallon * * *'' The Attorneys General also cited the *Energy Policy* article as assigning ''values to the military savings attributable to decreased oil imports,'' and referenced the same per-gallon conclusion.

The Attorneys General also argued that given that ''one of the primary purposes of EISA is to achieve energy security,'' and given that the ''impact of higher CAFE standards on energy security is not zero,'' it was ''astounding'' that ''NHTSA assigned a value of zero to the government outlay aspect of energy security (increased military spending and purchases for the Strategic Petroleum Reserve).'' (Emphasis in original.) The Attorneys General compared NHTSA's decision not to monetize military security costs in the NPRM to NHTSA's decision not to monetize benefits from reducing CO_2 emissions in the April 2006 light truck CAFE rule, and argued that the Ninth Circuit's decision in CBD supports their position that ''Uncertainty about a benefit's value is not a valid reason to assign that value at zero.''[280] The Attorneys General also argued that just as increases in CAFE standards cannot eliminate global warming, but are part of the overall global warming solution, increases in CAFE standards similarly ''will not'' in and of itself, eliminate these energy security costs,'' but are ''a necessary piece of the puzzle in assessing all of the costs and benefits of a CAFE standard.''

CFA cited the same Delucchi article to comment that ''A zero for the military and strategic value of oil reduction is simply wrong.'' CFA argued that ''There is a substantial policy and academic literature that believes oil has a military value,'' and that ''The fact the statute had energy independence and security in its title should have alerted NHTSA to the likelihood that Congress considers the military and strategic value of oil important.'' CFA provided a fairly long excerpt from the Delucchi article to argue that there may be large unquantifiable costs beyond specific expenditures on the military with regard to the ''entire relevant military or 'security' cost of using oil,'' including

> reduced flexibility in the conduct of U.S. foreign policy, strains on international relations due to the activities of the U.S. military and even due to competition for oil, anti-American sentiment due to the presence of the U.S. military in the Middle East, political destabilization of the Middle East, and the nonfinancial human-suffering cost of war and political instability related to U.S. demand for oil.[281]

CFA concluded that ''NHTSA should have quantified what it could in the framework of the model,'' and ''To the extent that there is a large and significant unquantifiable value, it should have oriented its considerations toward greater energy conservation.'' CFA suggested a value of $0.30 for military costs, apparently on the basis of this argument.

Public Citizen also commented that NHTSA's value for military security costs should be higher than zero. Public Citizen stated that NHTSA's rationale for assigning a zero value was similar to its logic in assigning a value of zero to reducing CO_2 emissions in the 2006 light truck CAFE final rule, and argued that the Ninth Circuit had ''rejected this justification in *Center for Biological Diversity* v. *NHTSA*, finding that uncertainty about how to assign a value was not a justification for setting the value at zero.'' NRDC and the Sierra Club et al. also made this point in their comments.

NRDC stated that ''the undisputed fact that there are currently military expenditures associated with the protection of access to oil supplies implies that there must be a positive military cost associated with each gallon of gasoline consumed.'' NRDC argued that ''Since it can be assumed that the United States would expend little or no military resources to secure access to a non-strategic commodity, there must exist a positive benefit in moving the consumption to the point where oil is no longer a strategic commodity.'' NRDC described this value as ''the country's opportunity to decrease military expenditure or respond more flexibly to supply threats, and must have a positive magnitude.'' NRDC suggested several ''aggregate expenditure estimates [produced] through rigorous, data-driven analysis'' for NHTSA to consider, including the estimate of $0.03 to $0.17 from the Delucchi article, a 2004 analysis for the National Commission on Energy Policy estimating a ''peacetime per gallon'' cost of $0.23 to $0.28,[282] and estimates of $0.14 to $0.26 per gallon based on a 2005 study by the International Center for Technology Assessment.[283] NRDC stated, however, that because ''current expenditures may pale in comparison to the total future financial cost of military actions,'' ''this presents a strong rationale for using per-gallon cost estimates near the upper bound of the determined range.'' NRDC argued that ''The initial [literature] review herein suggests that the per gallon marginal benefit of reducing oil consumption may be as high as 28 cents per gallon of gasoline.''

The Sierra Club et al. commented that NHTSA must ''provide an accurate dollar value for'' ''the national security costs of oil,'' by ''considering the relevant research.'' Sierra Club argued that the national security costs of oil are twofold, coming from both climate change and oil dependence. Regarding the national security costs expected from climate change, Sierra Club commented that a recent ''report from the National Intelligence Council * * * found that climate change poses a serious national security threat to our country,'' in the form of ''humanitarian disasters, economic migration, and food and water shortages'' due to climate change contributing to ''political instability, disputes over resources, and mass migrations'' in many ''at-risk regions'' of the world, that will have economic impacts in the United States. Regarding the national security costs of oil dependence, Sierra Club cited the 2005 ICTA report mentioned by NRDC as an example of the ''numerous studies * * * [that] document these costs.''

Although UCS offered no discussion of military costs in its primary comment document, it submitted as an attachment a report suggesting that NHTSA use a value of $0.35 per gallon (in 2006 dollars) for ''improved oil security.'' The report cited ''A recent study from Oak Ridge National

[279] Mark A. Delucchi and James J. Murphy, ''U.S. military expenditures to protect the use of Persian Gulf oil for motor vehicles,'' 36 Energy Policy 2253 (2008). Available at Docket No. NHTSA–2008–0089–0173.14.

[280] Citing *CBD* v. *NHTSA*, 508 F.3d 508, 533–35.

[281] CFA comments at 48, citing Delucchi at 2262.

[282] Jaffe, Amy Myers (2004). *United States and the Middle East: Policies and Dilemmas.* Analysis commissioned by the National Commission on Energy Policy.

[283] International Center for Technology Assessment (2005). ''Gasoline Cost Externalities: Security and Protection Services.'' NRDC stated that it adjusted the estimates found in the study from 2005 values of 13 to 23 cents into 2008 values using *http://data.bls.gov/cgi-bin/cpicalc.pl.*

Laboratory [which] assesses these energy security benefits of reduced oil consumption at $14.51 per barrel, or $0.35 per gallon.'' [284] The report stated that ''This is a conservative assessment, as it excludes all military program costs, as well as the 'difficult-to-quantify foreign policy impact of oil import reliance.' (Leiby 2007)''

NHTSA received no comments on the estimates of monopsony costs or potential costs from oil supply disruptions. Thus it has continued to employ the estimates of these costs reported in the updated ORNL study in establishing final CAFE standards and evaluating their benefits. The agency notes, however, that the monopsony cost varies directly with world oil prices, and that the forecast of world oil prices used in this analysis differs significantly from that assumed in the ORNL study. Thus NHTSA has adjusted the updated ORNL estimate of the monopsony cost to reflect the AEO 2008 High Price Case forecast of world oil prices, which averages $88 per barrel (in 2007 dollars) over the period from 2011–30. Expressed in 2007 dollars, NHTSA's revised estimates of the reductions in monopsony costs and expected costs from oil supply disruptions are $0.266 and $0.116 per gallon of fuel saved.

NHTSA disagrees with commenters who asserted that fuel savings resulting from higher CAFE standards are likely to result directly in reductions in U.S. military expenses to protect the supply of petroleum imports, particularly from the Persian Gulf region. NHTSA agrees that by reducing fuel consumption and U.S. petroleum imports from politically unstable regions, higher CAFE standards might reduce the military and political risks posed by U.S. military deployments in these regions. However, the agency does not believe there is convincing evidence at this time that reducing these risks would necessarily reduce U.S. military activities or expenditures in the Persian Gulf or elsewhere. None of the commenters presented any evidence that reductions in U.S. military spending would occur in response to fuel savings and reductions in U.S. petroleum imports, nor do any of the references included in their comments provide such evidence.

In particular, NHTSA does not agree with Public Citizen's analogy between energy security and ''global warming costs.'' Although the economic valuation of climate-related benefits from reducing carbon dioxide emissions is uncertain, there is nevertheless a direct causal link between changes in U.S. oil consumption and changes in U.S. carbon dioxide emissions. In contrast, no such causal linkage—either scientific or empirical—exists between changes in U.S. oil consumption or imports and changes in U.S. military expenditures in the Persian Gulf, or elsewhere in the world. The agency notes that one particularly comprehensive and authoritative treatment of the potential security benefits from reducing U.S. energy consumption reaches exactly this same conclusion.[285]

Although one recent economic analysis cited widely by commenters did estimate the value of U.S. military spending attributable to securing oil imports from the Persian Gulf region, this study does not estimate the extent to which U.S. military spending is likely to vary in response to changes in U.S. imports of Persian Gulf oil. Nor does it estimate the potential savings in U.S. military outlays that might result from reductions in U.S. oil imports of the magnitude likely to result from higher CAFE standards.[286]

The study argues that its purpose is to develop ''the military cost of highway transportation.'' The authors attempt to do this in four steps:

- Estimate the amount spent annually to defend all U.S. interests in the Persian Gulf;
- Deduct the cost of defending U.S. interests other than oil in the Persian Gulf;
- Deduct the cost of defending against the possibility of a worldwide recession due to the effects of an oil price shock or supply interruption originating in the Persian Gulf on other countries; and
- Deduct the cost of defending the use of oil in sectors of the U.S. economy other than highway transportation.

This analysis yields an estimate of the annual ''military cost of oil use by motor vehicles'' in the United States ranging from $5.8 billion to $25.4 billion in 2004. The authors then divide these figures by 2004 U.S. gasoline and diesel consumption by on-road motor vehicles to arrive at an average ''military cost of highway transportation'' ranging from $0.03 to $0.15 per gallon of fuel.[287]

However, the authors do not argue that U.S. military spending would be reduced by this—or any other—amount as a consequence of incremental reductions in domestic consumption of transportation fuels. Instead, they describe their estimate in the following terms: ''The bottom line of our analysis is that if *all motor vehicles in the U.S. (light-duty and heavy-duty) did not use oil,* Congress might reduce defense spending by $6–$25 billion annually in the long run. This amounts to about $0.03–$0.15 per gallon ($0.01–$0.04 per liter) of all gasoline and diesel motor fuel in 2004.'' (p. 2260; emphasis added.)

Thus the values they report are clearly intended as estimates of the total and average per-gallon costs of U.S. military activities in the Persian Gulf that might reasonably be related to petroleum consumption by U.S. motor vehicles, and not as estimates of the extent to which those costs might be reduced as a consequence of lower fuel consumption by U.S. motor vehicles. Nothing in their analysis suggests that this average value bears any necessary relationship to the savings in military outlays that might results from modest reductions in U.S. petroleum consumption or imports. Although the authors speculate that the proportional reduction in these outlays might be larger than any proportional reduction in U.S. petroleum imports from the Persian Gulf region, they provide no support for this hypothesis.[288]

Nor does this study attempt to demonstrate any causal or empirical linkage between domestic consumption of transportation fuels and the level of U.S. military activities or spending in the Persian Gulf (or elsewhere), as would be required to support any argument that military outlays would actually be reduced in response to lower U.S. fuel consumption and petroleum imports. As the authors clearly acknowledge, achieving any reduction in U.S. military spending that might be facilitated by lower U.S. oil imports would require specific actions by Congress, and would not result automatically or necessarily. However carefully their analysis of military spending might be done, defining some fraction of U.S. military expenditures as being allocated to the defense of oil interests in the Persian Gulf, and then dividing the resulting figure by some quantity of petroleum use does not demonstrate any causal linkage between changes in the numerator (military spending) and incremental changes in the denominator (petroleum consumption) of this calculation.

[284] The report noted that it had updated this value from 2004 dollars to 2006 dollars.

[285] Douglas R. Bohi and Michael A. Toman, Economics of Energy Security, Kluwer Academic Publishers, 1996.

[286] See Mark A. Delucchi and James J. Murphy, U.S. Military Expenditures to Protect the Use of Persian Gulf Oil Imports, 36 Energy Policy 2253 (2008) (assigning a cost of between $0.03 and $0.15 per gallon). Available at Docket No. NHTSA–2008–0089–0173.14.

[287] Id., at 2260.

[288] Id., at 2261–2262.

The analysis described above is irrelevant to NHTSA's analysis of fuel economy standards, because NHTSA's cost-benefit analysis is properly concerned with comparing two alternative states of the world: (1) The world as we expect it to exist over the next few years, in the absence of any new CAFE standards, compared with (2) an alternative world that is identical in every respect except that new CAFE standards are in place. NHTSA should, therefore, consider how U.S. defense expenditures might vary between these two states of the world. The relevant question for a cost-benefit analysis is: How much would U.S. military expenditures change if U.S. passenger-car and light-truck fuel consumption is several percent lower in the next decade than it otherwise would have been?

Neither the Congress nor the Executive Branch has ever attempted to calibrate U.S. military expenditures, force levels, or deployments to any oil market variable, or to some calculation of the projected economic consequences of hostilities in the Persian Gulf. Instead, changes in U.S. force levels, deployments, and thus military spending in that region have been largely governed by political events, emerging threats, and other military and political considerations, rather than by shifts in U.S. oil consumption or imports. NHTSA thus concludes that the levels of U.S. military activity and expenditures are likely to remain unaffected by even relatively large changes in light duty vehicle fuel consumption.

Nevertheless, the agency conducted a sensitivity analysis of the potential effect of assuming that some reduction in military spending would result from fuel savings and reduced petroleum imports in order to investigate its impacts on the standards and fuel savings. Assuming that the preceding estimate of total U.S. military costs for securing Persian Gulf oil supplies is correct, and that approximately half of these expenses could be reduced in proportion to a reduction in U.S. oil imports from the region, the estimated savings would range from $0.02 to $0.08 (in 2007 dollars) for each gallon of fuel savings that was reflected in lower U.S. imports of petroleum from the Persian Gulf. If the Persian Gulf region is assumed to be the marginal source of supply for U.S. imports of crude petroleum and refined products, then each gallon of fuel saved might reduce U.S. military outlays by $0.05 per gallon, the midpoint of this range. NHTSA employs this estimate in its sensitivity analysis.

While NHTSA believes that military expenditures appropriated by the U.S. Congress are not directly related to changes in domestic petroleum consumption, the agency recognizes that reductions in petroleum consumption may provide other benefits that are more difficult to quantify, by reducing some constraints on U.S. diplomatic and military action. U.S. foreign policy decisions consider a wide range of U.S. interests, including the maintenance of secure petroleum supplies. Reduced consumption of petroleum might allow the U.S. to more vigorously pursue other foreign policy interests, by reducing concerns about the implications of pursuing these other interests for the availability and continuity of petroleum imports.

The agency recognizes, however, that both the effect of reducing U.S. petroleum imports on the flexibility of its foreign policy initiatives and the economic value of such additional flexibility are highly uncertain. Reducing petroleum consumption is likely to have unpredictable effects on both military actions and diplomatic initiatives, and even if the U.S. government planned and signaled its foreign policy intentions under various levels of petroleum consumption in advance, NHTSA is unaware of any accepted methods for establishing the economic value of increased freedom in designing military or diplomatic actions. And because the nation's foreign policy intentions are not communicated in advance, the agency would need to develop a procedure for anticipating how military and diplomatic actions would respond to future changes in petroleum consumption. Nevertheless, in its future rulemaking activities, NHTSA will investigate whether practical methods for predicting and valuing in economic terms any increased flexibility in U.S. foreign policy that is likely to result from reduced petroleum imports exist or can be developed.

12. Air Pollutant Emissions

(a) Impacts on Criteria Pollutant Emissions

Criteria air pollutants are common pollutants that EPA regulates under the Clean Air Act, by establishing permissible concentrations on the basis of human health-related or science-based criteria.[289] NHTSA explained in the NPRM that while reductions in domestic fuel refining and distribution that result from lower fuel consumption will reduce U.S. emissions of criteria air pollutants, additional vehicle use associated with the rebound effect from higher fuel economy will in turn increase emissions of those pollutants. Thus, the net effect of stricter CAFE standards on emissions of each criteria pollutant depends on the relative magnitudes of its reduced emissions in fuel refining and distribution, and increases in its emissions from vehicle use. Because the relationship between emissions rates in fuel refining[290] and in vehicle use[291] is different for each criteria pollutant, the net effect of fuel savings from the proposed standards on total emissions of each pollutant is likely to differ. Criteria air pollutants emitted by vehicles and during fuel production include carbon monoxide (CO), hydrocarbon compounds (usually referred to as ''volatile organic compounds'' or VOCs), nitrogen oxides (NO_X), fine particulate matter ($PM_{2.5}$) and sulfur oxides (SO_X).

For additional vehicle use due to the rebound effect, NHTSA estimates the increase in emissions of these pollutants by multiplying the increase in total miles driven by vehicles of each model year and age by age-specific emission rates per vehicle-mile for each pollutant. NHTSA developed these emission rates using EPA's MOBILE6.2 motor vehicle emissions factor model.[292] Emissions of these pollutants also occur during crude oil extraction and transportation, fuel refining, and fuel storage and distribution. The reduction in total emissions from each of these sources thus depends on the extent to which fuel savings result in lower imports of refined fuel, or in reduced domestic fuel refining. To a lesser extent, they also depend on whether any reduction in domestic gasoline refining is translated into reduced imports of crude oil or reduced domestic extraction of petroleum.

Based on an analysis of changes in U.S. gasoline imports and domestic gasoline consumption forecast in AEO's 2008 Early Release, NHTSA tentatively estimated in the NPRM that 50 percent of fuel savings resulting from higher CAFE standards would result in reduced imports of refined gasoline, while the remaining 50 percent would

[289] Criteria pollutants regulated by EPA include ozone, particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide, and lead. For more information, see *http://www.epa.gov/air/urbanair/* (last accessed October 5, 2008).

[290] That is, emissions per gallon of fuel refined.

[291] That is, emissions per mile driven.

[292] U.S. EPA, MOBILE6 Vehicle Emission Modeling Software, available at *http://www.epa.gov/otaq/m6.htm#m60* (last accessed October 5, 2008).

reduce domestic fuel refining.[293] The reduction in domestic refining was assumed to leave its sources of crude petroleum unchanged from the mix of 90 percent imports and 10 percent domestic production projected by AEO.

For fuel refining and distribution, NHTSA proposed to estimate criteria pollutant emission reductions using emission rates from Argonne National Laboratories' Greenhouse Gases and Regulated Emissions in Transportation (GREET) model.[294] The GREET model provides separate estimates of air pollutant emissions that occur in four phases of fuel production and distribution: Crude oil extraction, crude oil transportation and storage, fuel refining, and fuel distribution and storage.[295] NHTSA tentatively assumed, for purposes of the NPRM analysis, that reductions in imports of refined fuel would reduce criteria pollutant emissions during fuel storage and distribution only. Reductions in domestic fuel refining using imported crude oil as a feedstock were tentatively assumed to reduce emissions during crude oil transportation and storage, as well as during gasoline refining, distribution, and storage, because less of each of these activities would be occurring. Similarly, reduced domestic fuel refining using domestically produced crude oil was tentatively assumed to reduce emissions during phases of gasoline production and distribution.[296]

The net changes in emissions of each criteria pollutant were calculated by adding the increases in their emissions that result from increased vehicle use and the reductions that result from lower domestic fuel refining and distribution. The net change in emissions of each criteria pollutant was converted to an economic value using estimates of the economic damage costs per ton emitted[297] developed by EPA and submitted to OMB for review. For certain criteria pollutants, EPA estimates different per-ton costs for emissions from vehicle use than for emissions of the same pollutant during fuel production, reflecting differences in their typical geographic distributions, contributions to ambient pollution levels, and resulting population exposure.

NHTSA received comments on this issue from the Alliance, NADA, the Air Improvement Resources Committee of the Alamo Area Council of Governments, and an individual, Mr. Mark Delucchi. Mr. Delucchi commented that NHTSA should clarify what kinds of damages are included in the per-ton damage cost estimates for criteria pollutants and CO_2. He suggested that if NHTSA's estimates are based on EPA's damage estimates, then they do not include health damages, visibility, crop damages, materials damages, and natural-ecosystem damages. Mr. Delucchi argued that NHTSA should include estimates for these additional categories of damage due to pollutants, and that the agency ''can find peer-reviewed estimates of damages in most of these categories on [his] faculty web page.''

The Air Improvement Resources Committee of the Alamo Area Council of Governments (Texas) did not comment specifically on NHTSA's estimates for criteria pollutants, but simply expressed its support for the proposed standards due to the fact that they would ''create net reductions in oxides of nitrogen over the lifetimes of Model Years 2011–2015 vehicles, and the San Antonio region is NO_X limited, meaning reducing NO_X emissions in the region will have a greater impact on ozone levels than would comparable volatile organic compound (VOC) reductions.'' The AIRC stated that ''Although the proposed rulemaking would create a net increase in VOCs, the NO_X increase is of greater benefit for ozone formation in our region,'' and therefore the AIRC supported the proposed standards.

The Alliance commented more specifically on NHTSA's estimates for criteria pollutants, arguing that NHTSA's estimates of reductions in ozone precursors were overstated for two main reasons: First, because ''NHTSA did not properly take into account the new source review standards [under the Clean Air Act], and otherwise assumed away federal (and state) laws that would have the effect of requiring offsets from the upstream refineries that NHTSA attempts to claim credit for;'' and second, because ''there is no indication that NHTSA has * * * considered the fleet turnover effect,'' ''meaning that the significant costs NHTSA will add to the price of new vehicles will delay the transition the market would naturally make to more fuel efficient and cleaner vehicles.'' NADA also argued that the ''Criteria pollutant reduction benefits associated with the proposed CAFE standards are overstated as the negative impact of inhibited fleet turnover was not accounted for.''

As support for its comment that NHTSA had overlooked federal and state laws that would impact upstream criteria pollutant emissions, the Alliance cited both the Sierra Research and the NERA Reports it included as attachments to its comments. Sierra Research commented that ''Most upstream emissions associated with the use of gasoline * * * in areas with air pollution problems'' are already subject to air pollution control regulations, such that ''changes in fuel type or the volume of fuel produced are governed by * * * offset requirements and credit provisions.'' Sierra Research argued that the GREET model used by NHTSA ignores the impacts of these regulations, by assuming that reductions in gasoline consumption translate directly into reductions in pollutant emissions. However, Sierra argued, in tightly regulated areas of the country, the air pollution control system will be much more complicated than that, such that any ''give'' in one part of the pollution control system will simply be absorbed by another part, and there will be no net reduction in emissions for that area. Sierra also argued that the GREET model does not properly account for ''marketing'' (i.e., from gasoline station) emissions, which have been reduced in recent years due to proliferating vapor recovery system regulations at the state and local levels.

The NERA Report first argued that NHTSA had overestimated the amount of criteria pollutant emissions that would be reduced. It echoed Sierra Research's comment about New Source Review standards impacting criteria pollutant emissions, but argued further that their analysis of total emissions estimates for refineries in the National

[293] Estimates of the response of gasoline imports and domestic refining to fuel savings from stricter standards are variable and highly uncertain, but NHTSA's preliminary analysis as of the time the NPRM was published indicated that under any reasonable assumption about these responses, the magnitude of the net change in criteria pollutant emissions (accounting for both the rebound effect and changes in refining emissions) is extremely low relative to their current total.

[294] Argonne National Laboratories, The Greenhouse Gas and Regulated Emissions from Transportation (GREET) Model, Version 1.8. Available at *http://www.transportation.anl.gov/software/GREET/index.html* (last accessed October 5, 2008).

[295] Emissions that occur during vehicle refueling at service stations (primarily evaporative emissions of VOCs) are already accounted for in the ''tailpipe'' emission factors used to estimate the emissions generated by increased car and light truck use. GREET estimates emissions in each phase of gasoline production and distribution in mass per unit of gasoline energy content; these factors are then converted to mass per gallon of gasoline using the average energy content of gasoline.

[296] As NHTSA stated in the NPRM, in effect, this assumes that the distances crude oil travels to U.S. refineries are approximately the same whether the oil travels from domestic oilfields or import terminals, and that the distances that gasoline travels from refineries to retail stations are approximately the same as those from import terminals to retail stations.

[297] These costs result primarily from damages to human health.

Emission Inventory database for 2002 suggested that NHTSA had substantially overestimated NO_X and $PM_{2.5}$ emissions, by ''more than two and three times * * *, respectively.'' NERA compared NEI database refinery emissions estimates for 2002 to ''estimates of refining emissions based on NHTSA's emission factors for refineries and U.S. production of gasoline and diesel fuels in that same year (EPA 2002),'' assuming that NHTSA's estimates should be smaller, since ''refineries produce other products besides gasoline and diesel fuel.'' However, NERA found that ''estimates based on NHTSA's rates for only two refinery products (gasoline and diesel fuel) are larger than the NEI estimates for all refinery operations.'' NERA thus concluded that NHTSA had overestimated the benefits associated with reducing criteria pollutant emissions, because it had overestimated the amount of criteria pollutant emissions that would be reduced. NERA also stated that to the extent that fuel consumption was reduced in the long-run, refineries would be subject to more stringent emissions standards anyway, or fuel imports would be reduced, which would have no impact on U.S. emissions, although NERA did not attempt to quantify those effects.

The NERA Report next argued that NHTSA had used ''ad hoc'' estimates of the value per ton of criteria pollutants based on recommendations from EPA's OTAQ, which were unverifiable. NERA implied that NHTSA should instead use ''values based on published EPA estimates,'' which it found included in a 2006 report by OMB to Congress. NERA stated that ''OMB's values are slightly higher than NHTSA's for VOCs, but substantially lower for $PM_{2.5}$ and SO_X.''

The NERA Report finally argued that ''increasing quality-adjusted new vehicle prices will lead to an increase in the average age of the vehicle fleet, [which] will increase emissions both because older vehicles faced less stringent emission standards when sold and because the effectiveness of controls (especially those for NO_X) declines as the vehicle ages.'' NERA did not, however, attempt to quantify these emissions impacts. The Alliance in its comments emphasized this point about the fleet turnover effect, stating that it ''shows that most criteria pollutant and air toxic levels will worsen for decades in consequence of NHTSA's proposed standards, as consumers delay purchasing new, more fuel-efficient vehicles in the current marketplace prior to an expensive new government mandate.'' The Alliance argued that EPCA and principles of administrative law require NHTSA to consider this effect.[298]

Agency response: In response to Mr. Delucchi's comment, NHTSA is confident that the damage cost estimates it used in the NPRM to value reductions in criteria air pollutants and their chemical precursors include the full range of human health impacts known to be associated with exposure to each of these pollutants that current scientific and economic knowledge allows to be quantified and valued in economic terms. Differences between these damage costs and the estimates by OMB cited by commenters reflect the fact that the estimates provided to NHTSA by EPA apply specifically to emissions by motor vehicles, and include separate costs for emissions from stationary sources such as petroleum refineries where such differences are appropriate. The estimates provided by EPA also reflect more up-to-date knowledge about the human health impacts of exposure to criteria air pollutants and the economic costs associated with those impacts than do the estimates reported by OMB. Thus in the analysis it conducted for this final rule, NHTSA has continued to use the damage cost estimates supplied by EPA to determine the economic costs or benefits from changes in emissions of criteria air pollutants that result from higher CAFE standards.

In response to comments provided by NERA on behalf of the Alliance, NHTSA acknowledges that it may have overestimated reductions in upstream emissions of some criteria air pollutants (particularly PM and NO_X) resulting from fuel savings in the analysis it conducted for the NPRM. NHTSA has taken two steps to remedy this possible overestimation. First, the agency used updated emission factors supplied by EPA for vehicles used to transport crude petroleum and refined fuel, including ocean tankers, railroad locomotives, barges, and heavy-duty trucks, to recalculate the emissions factors for each stage of fuel production and distribution in Argonne's GREET model. These updated emission factors reflect the effects of recent and pending EPA regulations on vehicle emissions and fuel composition, and result in significant reductions in the upstream emission rates for fuel production and distribution estimated using GREET. These lower upstream emission rates reduce NHTSA's estimates of emissions during fuel production and distribution under both Baseline and alternative CAFE standards, and by doing so also lower the reductions in upstream emissions projected to result from any increase in CAFE standards from their Baseline levels.

In addition, NHTSA notes that the estimates of reductions in upstream emissions it reported in the NPRM incorrectly included reductions in ocean tanker emissions for transportation of crude petroleum from overseas to ports or offshore oil terminals in the U.S. Since most of these emissions probably occur outside of the U.S., they should not be included in NHTSA's estimates of upstream emissions reductions, since those are intended to represent changes in domestic emissions of criteria air pollutants.[299] NHTSA has revised its analysis for this final rule to exclude reductions in ocean tanker emissions.

In response to comments by Sierra Research and NERA submitted by the Alliance, NHTSA notes that there are currently two cap-and-trade programs governing emissions of criteria pollutants by large stationary sources. The Acid Rain Program seeks to limit NO_X and SO_2 emissions, but applies only to electric generating facilities.[300] The NO_X Budget Trading Program is also primarily intended to reduce electric utility emissions, but does include some other large industrial sources such as refineries; however, as of 2003, refineries participating in the program accounted for less than 5 percent of total NO_X emissions by U.S. refineries.[301] In addition, some

[298] NHTSA notes that the Alliance also included a Sierra Research report previously submitted to EPA in connection with California's waiver application regarding the fleet-turnover effect with respect to California's proposed GHG emissions standards, as Attachment 14 to the Alliance's comments. NHTSA has not summarized the findings of that report in detail because it believes that the purpose for which the Alliance submitted the report is already captured by the NERA Report comments, and because the fleet-turnover effect due to California's proposed standards would have no direct impact on NHTSA's decision for the final rule.

[299] Emissions from ocean tankers while in port areas, as well as pipeline or truck emissions occurring during transportation of crude petroleum from import terminals to U.S. refineries, do occur within the U.S., and reductions in these emissions should be included when estimating changes in domestic emissions. However, it is not possible to separate these emissions from those that occur in foreign ports or on the open oceans, so NHTSA's analysis does not include reductions in them. As a consequence, the analysis may underestimate reductions in upstream emissions occurring within the U.S.

[300] For a detailed description of the Acid Rain program, see *http://www.epa.gov/airmarkt/progsregs/arp/basic.html#princips* (last accessed October 6, 2008).

[301] Estimated from EPA, NO_X Budget Trading Program (SIP Call) 2003 Progress Report, Appendix A, *http://www.epa.gov/airmarkets/cmprpt/nox03/NBP2003AppendixA.xls*, and National Air Quality

Continued

refineries could be included among the sources of NO_X emissions that will be controlled under EPA's Clean Air Interstate Rule, which is scheduled to take effect beginning in 2009. However, refinery NO_X emissions could only be affected in states that specifically elect to include sources other than electric generating facilities in their plans to comply with the rule, and EPA has indicated that it expects states to achieve the emissions reductions required by the Clean Air Interstate Rule primarily from the electric power industry.[302] Thus, the agency continues to assume that the reduction in domestic gasoline refining estimated to result from the adopted CAFE standard will be reflected in reduced refinery emissions of criteria pollutants.

NHTSA also notes in response to comments by Sierra Research and NERA submitted by the Alliance that emissions occurring during refueling at retail stations are included in the emissions factors estimated using EPA's MOBILE emission factor model, which also accounts for expected future reductions in these emissions. Thus, NHTSA believes that reductions in refueling emissions were correctly estimated in its NPRM analysis, and has not revised its procedures for doing so.

Finally, in response to comments by the Alliance and NERA, NHTSA acknowledges that the effect of higher prices for new vehicles on the retention and use of older vehicles is potentially significant, depending on the magnitude of expected price increases. As indicated in the discussion of the appropriate discount rate to use in analyzing the impacts of alternative CAFE standards (see Section V.B.14 below), however, NHTSA believes that manufacturers are likely to experience difficulty raising prices for new cars and light trucks sufficiently to recover all their costs for complying with higher CAFE standards. Based on a detailed econometric analysis of the effects of new vehicle prices and other variables on retirement rates for used vehicles very similar to the analysis conducted by NERA for the Alliance, NHTSA concludes that price increases for MY 2011 cars and light trucks likely to result from higher CAFE standards are unlikely to cause significant or lasting changes in retirement rates for older vehicles. NHTSA also notes that the vehicles whose retirement rates would be most affected by increases in prices for MY 2011 passenger cars and light trucks are those that will be 10–15 years of age at the time when 2011 vehicles are offered for sale.[303] These include cars and light trucks produced during model years 2001 through 2005, and NHTSA's analysis of their emission rates at those ages predicted using EPA's MOBILE6.2 motor vehicle emission factor model suggests that they will not be dramatically higher than emission rates for comparable new 2011 models. Thus the effect on total motor vehicle emissions of criteria air pollutants resulting from any reduction in new vehicle sales and accompanying increase in use of older vehicles caused by increased prices for new 2011 cars and light trucks is likely to be modest.

In its future CAFE rulemaking activities, NHTSA will coordinate with EPA to develop updated estimates for the economic benefits that are likely to result from reducing motor vehicle emissions of criteria air pollutants and the resulting atmospheric concentrations of these pollutants. EPA maintains an on-going research program to document, estimate, and value the reduction in threats to human health that occur in response to declines in atmospheric pollutant levels and population exposure to harmful concentrations of these pollutants. At the same time, the agency will incorporate recent improvements in EPA's motor vehicle emission factor models to increase the accuracy of its estimates of changes in criteria pollutant emissions resulting from increased fuel economy. Similarly, the agency will also support any efforts by EPA to develop comparable estimates of the economic value of reduced threats to human health that result from lower emissions of hazardous air pollutants by motor vehicles, while continuing to improve its methods for estimating reductions in emissions of these pollutants that result from increased fuel efficiency.

(b) Reductions in CO_2 Emissions

In the NPRM, NHTSA also discussed the fact that fuel savings from stricter CAFE standards result in lower emissions of carbon dioxide (CO_2), the main greenhouse gas emitted as a result of refining, distributing, and using transportation fuels. Lower fuel consumption reduces CO_2 emissions directly, because the primary source of transportation-related CO_2 emissions is fuel combustion in internal combustion engines. NHTSA tentatively estimated reductions in carbon dioxide emissions resulting from fuel savings by assuming that the entire carbon content of gasoline, diesel, and other fuels is converted to carbon dioxide during the combustion process.[304]

Reduced fuel consumption also reduces carbon dioxide emissions that result from the use of carbon-based energy sources during fuel production and distribution.[305] For purposes of the NPRM, NHTSA estimated the reductions in CO_2 emissions during each phase of fuel production and distribution using CO_2 emission rates obtained from the GREET model discussed above, using the previous assumptions about how fuel savings are reflected in reductions in each phase. The total reduction in CO_2 emissions from the improvement in fuel economy under each alternative CAFE standard is the sum of the reductions in emissions from reduced fuel use and from lower fuel production and distribution.

NHTSA stated in the NPRM that it had not attempted to estimate changes in emissions of other GHGs, in particular methane, nitrous oxide, and

and Emissions Trends Report 2003, Table A–4, *http://www.epa.gov/air/airtrends/aqtrnd03/pdfs/a4.pdf*.

[302] The Clean Air Interstate Rule also requires reductions in SO_2 emissions and establishes an emissions trading program to achieve them, but only electric generating facilities are included in the rule's SO_2 emissions trading program; see EPA, Clean Air Interstate Rule: Basic Information, *http://www.epa.gov/cair/basic.html#timeline* (last accessed October 6, 2008) and *http://www.epa.gov/cair/pdfs/cair_final_fact.pdf* (last accessed October 6, 2008). Although the rule was held to exceed the scope of EPA's delegated authority under the CAA, *North Carolina* v. *EPA*, 531 F.3d 896 (2008), the Court remanded the rule to EPA and so it remains in force. Order of December 23, 2008 in No. 05–1244.

[303] This conclusion is based on unpublished econometric analysis of the effects of new vehicle prices and other variables on retirement rates for used vehicles conducted by the Volpe Center. This analysis concluded that retirement rates for 10–15 year old vehicles are most sensitive to changes in new vehicle prices.

[304] NHTSA explained that this assumption results in a slight overestimate of carbon dioxide emissions, since a small fraction of the carbon content of gasoline is emitted in the forms of carbon monoxide and unburned hydrocarbons. However, the magnitude of this overestimate is likely to be extremely small. This approach is consistent with the recommendation of the Intergovernmental Panel on Climate Change for ''Tier 1'' national greenhouse gas emissions inventories. Cf. Intergovernmental Panel on Climate Change, 2006 Guidelines for National Greenhouse Gas Inventories, Volume 2, Energy, Chapter 3, ''Mobile Combustion,'' at 3.16. See *http://www.ipcc-nggip.iges.or.jp/public/2006gl/pdf/2_Volume2/V2_3_Ch3_Mobile_Combustion.pdf* (last accessed October 6, 2008).

[305] NHTSA did not, for purposes of the NPRM, attempt to estimate changes in upstream emissions of GHGs other than CO_2. This was because carbon dioxide from final combustion itself accounts for nearly 97 percent of the total CO_2-equivalent emissions from petroleum production and use, even with other GHGs that result from those activities (principally methane and nitrous oxide) weighed by their higher global warming potentials (GWPs) relative to CO_2. Calculated from EPA's Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990–2006, Tables 3–3, 3–39, and 3–41, EPA 430–R–08–05, April 15, 2008. Available at *http://www.epa.gov/climatechange/emissions/downloads/08_CR.pdf* (last accessed August 15, 2008).

hydrofluorocarbons,[306] and invited comment on the importance and potential implications of doing so under NEPA.

NHTSA received two comments on this issue. The Alliance commented that NHTSA's decision not to address other GHGs was within the agency's discretion for two reasons. First, because as the Alliance stated that NHTSA suggested in the NPRM, ''analyzing the emissions of GHGs other than CO_2 simply does not have a large effect on any analysis of potential GHG benefits as connected to CAFE standard setting,'' which the Alliance argued CARB also implicitly agreed with by denominating other GHGs in CO_2-equivalents. The Alliance stated that even though other GHGs have higher global warming potentials than CO_2, ''even factoring GWP into the analysis still leaves the other GHGs with little significance to any consideration of the benefits of more-stringent CAFE standards.'' The Alliance further argued that the Ninth Circuit decision only concerned NHTSA's valuation of CO_2, so that NHTSA had no obligation under case law to monetize the effects of other GHGs as long as it evaluates them qualitatively.[307]

CBD, in contrast, agreed with NHTSA that other GHGs make up only a small portion of the total GHGs emitted from automobiles. However, CBD argued that these other GHG emissions ''* * * nonetheless represent large amounts of greenhouse gases and must be included in both the economic and environmental analyses.'' CBD gave the example that ''* * * nitrous oxide emissions with greenhouse gas impacts equivalent to 29 million metric tons of CO_2 are far from insignificant.'' NHTSA also notes that EPA's TSD on reducing GHG emissions, which was submitted as an attachment to EDF's comments, considers GHGs generally rather than focusing on CO_2.

In response to the comment from CBD, NHTSA has prepared detailed estimates of changes in emissions of certain non-CO_2 GHGs, including methane and nitrous oxide, that would result from alternative CAFE standards for 2011–15 passenger cars and light trucks. These estimates are reported in the Final Environmental Impact Statement accompanying this rule.[308] Because the estimated reductions in emissions of these non-CO_2 GHGs represent a small fraction of reductions in CO_2 emissions, however, and because they are less reliable than the estimates of reductions in CO_2 itself, NHTSA has not included the economic value of reductions in non-CO_2 GHGs in its estimates of economic benefits from higher CAFE standards.[309]

(c) Economic Value of Reductions in CO_2 Emissions

Emissions of carbon dioxide and other greenhouse gases (GHGs) occur throughout the process of producing and distributing transportation fuels, as well as from fuel combustion itself. By reducing the volume of fuel consumed by passenger cars and light trucks, higher CAFE standards will thus reduce GHG emissions generated by fuel use, as well as throughout the fuel supply cycle. Lowering these emissions is likely to slow the projected pace and reduce the ultimate extent of future changes in the global climate, thus reducing future economic damages that changes in the global climate are otherwise expected to cause. Further, by reducing the probability that climate changes with potentially catastrophic economic or environmental impacts will occur, lowering GHG emissions may also result in economic benefits that exceed the resulting reduction in the expected future economic costs caused by gradual changes in the earth's climatic systems.

Quantifying and monetizing benefits from reducing GHG emissions is thus an important step in estimating the total economic benefits likely to result from establishing higher CAFE standards. Since direct estimates of the economic benefits from reducing GHG emissions are generally not reported in published literature on the impacts of climate change, these benefits are typically assumed to be the ''mirror image'' of the estimated incremental costs resulting from an increase in those emissions. That is, the benefits from reducing emissions are usually measured by the savings in estimated economic damages that an equivalent increase in emissions would otherwise have caused.

Researchers usually estimate the economic costs of increased GHG emissions in several steps. The first is to project future changes in the global climate and the resulting economic damages that are expected to result under a baseline projection of net global GHG emissions. These projections are usually developed using models that relate concentrations of GHGs in the earth's atmosphere to changes in summary measures of the global climate such as temperature and sea levels, and in turn estimate the reductions in global economic output that are expected to result from changes in climate. Since the effects of GHG emissions on the global climate occur decades or even centuries later, and there is considerable inertia in the earth's climate systems, changes in the global climate and the resulting economic impacts must be estimated over a comparably long future period.

Next, this same process is used to project future climate changes and resulting economic damages under the assumption that GHG emissions increase by some increment during a stated future year. The increase in projected global economic damages resulting from the assumed increase in future GHG emissions, which also occurs over a prolonged period extending into the distant future, represents the added economic costs resulting from the assumed increase in emissions. Discounted to its current value as of the year when the increase in emissions are expected to occur and expressed per unit of GHG emissions (usually per ton of carbon emissions, with non-CO_2 GHGs converted to their equivalents in terms of carbon emissions), the resulting value represents the global economic cost of increasing GHG emissions by one unit—usually a metric ton of carbon—in a stated future year. This value is often referred to in published research and debates over climate policy as the Social Cost of Carbon (SCC), and applies

[306] This was because methane and nitrous oxide account for less than 3 percent of the tailpipe GHG emissions from passenger cars and light trucks, while CO_2 emissions account for the remaining 97 percent. Of the total (including non-tailpipe) GHG emissions from passenger cars and light trucks, tailpipe CO_2 represents about 93.1 percent, tailpipe methane and nitrous oxide represent about 2.4 percent, and hydrofluorocarbons (from air conditioner leaks) represent about 4.5 percent. Calculated from EPA's Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990–2006, Table 215, EPA 430–R–08–05, April 15, 2008. Available at *http://www.epa.gov/climatechange/emissions/downloads/08_CR.pdf* (last accessed August 15, 2008).

[307] The Alliance cited Center for *Auto Safety* v. *Peck*, 751 F.2d 1336, 1367, 1368 (D.C. Cir. 1985) (Scalia, J.) (upholding agency decision predicated upon weighing of non-monetized and monetized benefits against monetized costs).

[308] The FEIS is available at Docket No. NHTSA–2008–0060–0605.

[309] Expressed in CO_2-equivalent terms using global warming potentials estimated by IPCC, the reductions in methane and nitrous oxide emissions represent only about 3% of the estimated reduction in CO_2 itself. NHTSA views its estimates of non-CO_2 GHGs as less reliable than those of CO_2 itself partly because the vehicle emission factors for methane and nitrous oxide obtained from documentation for EPA's MOVES motor vehicle emission factor model assume little or no change over future model years or with vehicle age, in contrast to the pronounced declines projected for emissions of criteria air pollutants and CO_2. Similarly, the emission factors for non-CO_2 GHGs during gasoline and diesel production and distribution that are utilized in Argonne's GREET model are assumed to be fixed over the period spanned by NHTSA's analysis, again in contrast to those for criteria air pollutants and CO_2.

specifically to increased emissions during that year.

This process involves multiple sources of uncertainty, including those in scientific knowledge about the effects of varying levels of GHG emissions on the magnitude and timing of changes in the functioning of regional and global climatic and ecological systems. In addition, significant uncertainty surrounds the anticipated extent, geographic distribution, and timing of the resulting impacts on the economies of nations located in different regions of the globe. Because the climatic and economic impacts of GHG emissions are projected to occur over the distant future, uncertainty about the correct rate at which to discount these future impacts also significantly affects the estimated economic benefits of reducing GHG emissions.

Researchers have not yet been able to quantify many of the potentially significant effects of GHG emissions and their continued accumulation in the earth's atmosphere on the global climate. Nor have they developed complete models to represent the anticipated impacts of changes in the global climate on economic resources and the productivity with which they are used to generate economic output. As a consequence, the estimates of economic damages resulting from increased GHG emissions that are generated using integrated models of climate and economic activity exclude some potentially significant sources of costs that are likely to result from increased emissions. As a result, estimates of economic benefits derived from these models' estimates of the likely future climate-related economic damages caused by increased GHG emissions may underestimate the true economic value of reducing emissions, although the extent to which they are likely to do so remains unknown.

In the NPRM, NHTSA explained how it accounted for the economic benefits of reducing CO_2 emissions in this rulemaking, both in developing the proposed CAFE standards and in assessing the economic benefits of each alternative that was considered. The agency noted that the Ninth Circuit found in *CBD* v. *NHTSA* that NHTSA had been arbitrary and capricious in deciding not to monetize the benefit of reducing CO_2 emissions, stating that the agency had not substantiated the conclusion in its April 2006 final rule that the appropriate course was not to monetize (i.e., quantify the value of) carbon emissions reduction at all. NHTSA's discussion in the NPRM of how it estimated the economic value of reductions in CO_2 emissions received a great deal of attention from commenters, so for the reader's benefit, it is largely reproduced below.

To that end, NHTSA reviewed published estimates of the ''social cost of carbon'' (SCC) emissions. As noted above, the SCC refers to the marginal cost of additional damages caused by the increase in expected climate impacts resulting from the emission of each additional metric ton of carbon, which is emitted in the form of CO_2.[310] It is typically estimated as the net present value of the impact over some extended time period (100 years or longer) of one additional ton of carbon emitted into the atmosphere. Because atmospheric concentrations of greenhouse gases are increasing over time, and the potential damages from global climate are believed to increase with higher atmospheric GHG concentrations, the economic damages resulting from an additional ton of CO_2 emissions are expected to increase over time. Thus, estimates of the SCC are typically reported for a specific year, and these estimates are generally larger for emissions in more distant future years.

NHTSA found substantial variation among different authors' estimates of the SCC, much of which can be traced to differences in their underlying assumptions about several variables. These variables include the sensitivity of global temperatures and other climate attributes to increasing atmospheric concentrations of GHGs, discount rates applied to future economic damages from climate change, whether damages sustained by developing regions of the world should be weighted more heavily than damages to developed nations, how long climate changes persist once they occur, and the economic valuation of specific climate impacts.[311]

NHTSA explained that, taken as a whole, recent estimates of the SCC may underestimate the true damage costs of carbon emissions because they often exclude damages caused by extreme weather events or climate response scenarios with low probabilities but potentially extreme impacts, and may underestimate the climate impacts and damages that could result from multiple stresses on the global climatic system. At the same time, however, many studies do not consider potentially beneficial impacts of climate change, and do not adequately account for how future technological innovations, development patterns, and adaptations could reduce potential impacts from climate change or the economic damages they cause.

Given the uncertainty surrounding estimates of the SCC, NHTSA suggested that the use of any single study may not be advisable, since its estimate of the SCC will depend on many assumptions made by its authors. NHTSA cited the Working Group II's contribution to the Fourth Assessment Report of the United Nations Intergovernmental Panel on Climate Change (IPCC) as noting that:

> The large ranges of SCC are due in large part to differences in assumptions regarding climate sensitivity, response lags, the treatment of risk and equity, economic and non-economic impacts, the inclusion of potentially catastrophic losses, and discount rates.[312]

Although the IPCC is considered authoritative on the topic of the SCC, it did not recommend a single estimate. However, the IPCC did cite the Tol (2005) study on four separate occasions as the only available survey of the peer-reviewed literature that has itself been subjected to peer review.[313] Tol developed a probability function using the SCC estimates of the peer-reviewed literature, which ranged from less than zero to over $200 per metric ton of carbon. In an effort to resolve some of the uncertainty in reported estimates of climate damage costs from carbon emissions, Tol (2005) reviewed and summarized 103 estimates of the SCC from 28 published studies. He concluded that when only peer-reviewed studies published in recognized journals are considered, ''* * * climate change impacts may be very uncertain but it is unlikely that the marginal damage costs of carbon dioxide emissions exceed $50 per [metric] ton carbon,''[314] which is about

[310] Carbon itself accounts for 12/44, or about 27 percent, of the mass of carbon dioxide (12/44 is the ratio of the molecular weight of carbon to that of carbon dioxide). Thus, each ton of carbon emitted is associated with 44/12, or 3.67, tons of carbon dioxide emissions. Estimates of the SCC are typically reported in dollars per ton of carbon, and must be divided by 3.67 to determine their equivalent value per ton of carbon dioxide emissions.

[311] For a discussion of these factors, see Yohe, G.W., R.D. Lasco, Q.K. Ahmad, N.W. Arnell, S.J. Cohen, C. Hope, A.C. Janetos, and R.T. Perez, ''Perspectives on climate change and sustainability,'' 2007, in Climate Change 2007: Impacts, Adaptation and Vulnerability, Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, M.L. Parry, O.F. Canziani, L.P. Palutikof, P.J. van der Linden and C.E. Hanson, eds., Cambridge University Press, 2007, at 821–824. Available at *http://www.ipcc.ch/ipccreports/ar4-wg2.htm* (last accessed March 23, 2009).

[312] Climate Change 2007: Impacts, Adaptation and Vulnerability, Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, at 17. Available at *http://www.ipcc.ch/ipccreports/ar4-wg2.htm* (last accessed March 23, 2009).

[313] *Id.*, at 17, 65, 813, and 822.

[314] Tol, Richard S.J., ''The marginal damage costs of carbon dioxide emissions: an assessment of the

$14 per metric ton of CO_2. In the NPRM, NHTSA assumed that the summary SCC estimates reported by Tol were denominated in U.S. dollars of the year of his article's publication, 2005.

NHTSA stated that because of the number of assumptions required by each study, the wide range of uncertainty surrounding these assumptions, and their critical influence on the resulting estimates of climate damage costs, some studies have undoubtedly produced estimates of the SCC that are unrealistically high, while others are likely to have estimated values that are improbably low. Using a value for the SCC that reflects the central tendency of estimates drawn from many studies reduces the chances of relying on a single estimate that subsequently proves to be biased.

It is important to note that the published estimates of the SCC almost invariably include the value of worldwide damages from potential climate impacts caused by carbon dioxide emissions, and are not confined to damages likely to be suffered within the U.S. In contrast, the other estimates of costs and benefits of raising fuel economy standards included in this proposal include only the economic values of impacts that occur within the U.S. For example, the economic value of reducing criteria air pollutant emissions from overseas oil refineries is not counted as a benefit resulting from this rule, because any reduction in damages to health and property caused by overseas emissions are unlikely to be experienced within the U.S.

In contrast, the reduced value of transfer payments from U.S. oil purchasers to foreign oil suppliers that results when lower U.S. oil demand reduces the world price of petroleum (the reduced ''monopsony effect'') is counted as a benefit of reducing fuel use. [315] The agency states that if its analysis were conducted from a worldwide rather than a U.S. perspective, however, the benefit from reducing air pollution overseas would be included, while reduced payments from U.S. oil consumers to foreign suppliers would not.

In the NPRM, NHTSA tentatively concluded that in the interest of analytical consistency, i.e., in order to be consistent with the agency's use of exclusively domestic costs and benefits in prior CAFE rulemakings, the appropriate value to be placed on climate damages caused by carbon emissions should be the one that reflects the change in damages to the U.S. alone. Accordingly, NHTSA noted that the value for the benefits of reducing CO_2 emissions might be restricted to the fraction of those benefits that are likely to be experienced within the U.S.

Although no estimates are currently available for the benefits to the U.S. itself that are likely to result from reducing CO_2 emissions, NHTSA explained that it expected that if such values were developed, the agency would employ those, rather than global benefit estimates, in its analysis. NHTSA also stated that it anticipated that if such values were developed, they would be lower than comparable global values, since the U.S. is likely to sustain only a fraction of total global damages resulting from climate change.

In the meantime, NHTSA explained that it elected to use the mean value of peer-reviewed estimated global value reported by Tol (2005), which was $43 per metric ton of carbon, as an upper bound on the global benefits resulting from reducing each metric ton of U.S. emissions.[316] This value corresponds to approximately $12 per metric ton of CO_2 when expressed in 2006 dollars. The Tol (2005) study is cited repeatedly as an authoritative survey in various IPCC reports, which are widely accepted as representing the general consensus in the scientific community on climate change science.

Since Tol's estimate includes the worldwide costs of potential damages from carbon dioxide emissions, NHTSA elected to employ it as an upper bound on the estimate value of the reduction in *U.S. domestic* damage costs that is likely to result from lower CO_2 emissions.[317] NHTSA noted that Tol had a more recent (2007) and inclusive survey published online with peer-review comments. NHTSA stated that it had elected not to rely on this study, but that it would consider doing so in its analysis for the final rule if the survey had been published, and would also consider any other newly-published evidence.

NHTSA noted that the IPCC Working Group II Fourth Assessment Report (2007, at 822) further suggests that the SCC is growing at an annual rate of 2.4 percent, based on estimated increases in damages from future emissions reported in published studies. NHTSA also elected to apply this growth rate to Tol's original 2005 estimate. Thus, by 2011, NHTSA estimated that the upper bound on the benefits of reducing CO_2 emissions will have reached about $14 per metric ton of CO_2, and will continue to increase by 2.4 percent annually thereafter.

In setting a lower bound, the agency agreed with the IPCC Working Group II report (2007) that ''significant warming across the globe and the locations of significant observed changes in many systems consistent with warming is very unlikely to be due solely to natural variability of temperatures or natural variability of the systems.'' (p. 9) Although this finding suggests that the global value of economic benefits from reducing carbon dioxide emissions is unlikely to be zero, NHTSA stated that it does not necessarily rule out low or zero values for the benefit to the U.S. itself from reducing emissions.

In some of the analysis it performed to develop the CAFE standards, NHTSA employed a point estimate for the value of reducing CO_2 emissions. For this estimate, the agency used the midpoint of the range from $0 to $14, or $7.00, per metric ton of CO_2 as the initial value for the year 2011, and assumed that this value would grow at 2.4 percent annually thereafter. This estimate was employed for the analyses conducted using the Volpe model to support development of the proposed standards. The agency also conducted sensitivity analyses of the benefits from reducing CO_2 emissions using both the upper ($14/metric ton) and lower ($0/metric ton) bounds of this range.

NHTSA sought comment on its tentative conclusion for the value of the SCC, the use of a domestic versus a global value for the economic benefit of reducing CO_2 emissions, the rate at which the value of the SCC grows over time, the desirability of and procedures for incorporating benefits from reducing emissions of GHGs other than CO_2, and any other aspects of developing a reliable SCC value for purposes of establishing CAFE standards.

NHTSA received many comments on its assumptions in the NPRM about the SCC. The comment summaries are presented below and grouped by topic:

(1) NHTSA's proposal of a single value for the SCC;

uncertainties,'' Energy Policy 33 (2005), 2064–2074, at 2072.

[315] The reduction in payments from U.S. oil purchasers to domestic petroleum producers is not included as a benefit, however, since it represents a transfer that occurs entirely within the U.S. economy.

[316] $43 per ton of carbon emissions was reported by Tol (at 2070) as the mean of the ''best'' estimates reported in peer-reviewed studies (at the time). It thus differs from the mean of all estimates reported in the peer-reviewed studies surveyed by Tol. The $43 per ton value was also attributed to Tol by IPCC Working Group II (2007), at 822.

[317] For purposes of comparison, NHTSA noted that in the rulemaking to establish CAFE standards for MY 2008–11 light trucks, NRDC recommended a value of $10-$25 per ton of CO_2 emissions reduced by fuel savings, and both EDF and UCS recommended a value of $50 per ton of carbon, which is equivalent to about $14 per ton of CO_2 emissions.

(2) NHTSA's proposal of $7 as the value for the SCC;

(3) NHTSA's proposal of $0 as the lower bound estimate for the domestic U.S. value for the SCC;

(4) NHTSA's proposal of $14 as the upper bound estimate for the domestic U.S. value for the SCC;

(5) other values that NHTSA could have proposed for the SCC;

(6) NHTSA's use of a domestic versus a global value for the economic benefit of reducing CO_2 emissions;

(7) the rate at which the SCC grows over time;

(8) the discount rate that should be used for SCC estimates; and

(9) other issues raised by commenters.

(1) NHTSA's Proposal of a Single Value for the SCC

NHTSA received a comment on its proposal of a single value for the SCC from Prof. Gary Yohe, an economist who has considered the SCC extensively and whom NHTSA cited in the NPRM. Prof. Yohe commented that the NPRM had stated that ''Using a value for the SCC that reflects the central tendency of estimates drawn from many studies reduces the chances of relying on a single estimate that subsequently proves to be biased.'' [318] Prof. Yohe argued that proposing a single value for the SCC inherently creates bias, because ''Any value is based on presumptions about pure rate of time preference, risk and/or inequity aversion, and climate sensitivity.''

(2) NHTSA's Proposal of $7 as the Value for the SCC

NHTSA received comments from 3 individuals, CARB, the Attorneys General, 10 U.S. Senators, 10 environmental and consumer groups, and the Alliance. Prof. Tol, whose 2005 paper provided the basis for NHTSA's proposal of an SCC number, commented that contrary to NHTSA's belief that the dollars used in Tol (2005) were 2005 dollars, they were in fact 1995 dollars. Prof. Tol also commented that NHTSA should ''alert the reader'' that although Tol (2007) was only ''conditionally accepted,'' as NHTSA had noted in the NPRM, the newer study ''finds larger estimates than the 2005 paper.'' Sierra Club et al., in its comments, also stated that Prof. Tol had commented on the NPRM, arguing that using 1995 instead of 2005 dollars ''would make his 1995 value of $14 closer to a 2005 value of $19.26.''

Several commenters disputed NHTSA's proposal of $7 as the midpoint between $0 and $14. UCS argued that proposing $7 puts as much weight on $0 as on $14, even though failing to assign a value was declared by the Ninth Circuit to be arbitrary and capricious. CBD commented that ''NHTSA's methodology for the selection of an estimate of the value of reducing greenhouse gas emissions is arbitrary and designed to minimize the estimate.'' CBD argued that ''* * * simply splitting the difference between two points is not a defensible methodology, particularly when the low point of the range is not part of a valid range but simply an arbitrary selection of zero as an endpoint.''

EDF also commented NHTSA's decision to propose $7 because it is the midpoint between $0 and $14 also ''lacks a reasoned basis,'' for which ''NHTSA fails to provide any justification.''

The Sierra Club et al. commented that NHTSA is wrong to place ''equal weighting and probability'' on $0 and $14 and pick the median, and that $7 is ''far below current carbon estimates,'' citing the 2006 Stern Review which found an SCC of ''on the order of'' $85/tonne CO_2. The Sierra Club argued that this shows how ''misguided and unrealistic NHTSA's carbon pricing really is.''

The Attorneys General commented that NHTSA's decision to simply halve Tol's estimate was ''not a reasoned judgment.''

Public Citizen argued that there is no justification for using the midpoint, and that NHTSA should instead ''weight the credibility of each estimate,'' by making ''apples to apples'' comparisons between the studies by ''looking at studies based on their assumptions.'' Public Citizen argued that this will help NHTSA avoid skewing the result of averaging estimates from multiple studies. NRDC similarly argued that proposing $7 as ''a simple average of its proposed upper and lower bounds * * * assumes a normal distribution of damages, which is decidedly not the distribution of social cost of carbon estimates.'' NRDC further argued that ''* * * most social cost of carbon estimates are biased downwards, for the simple reason that almost all models assume perfect substitutability between normal consumption goods and environmental goods.'' NRDC cited 2007 research by Sterner and Persson disaggregating ''goods'' into ''environmental goods'' and ''consumption goods,'' which found that the price of an environmental good like carbon reductions increased at a faster rate as damage progressed than consumption goods would increase. Accordingly, NRDC argued, ''NHTSA's social cost of carbon is much too low.''

Prof. Hanemann also commented that NHTSA did not justify its decision to pick the midpoint (between $0 and $14) and then project it to 2011, although he focused more particularly on NHTSA's not having applied ''the escalation factor of a 2.4 percent increase in real terms beginning in 2005.''

The Alliance commented that proposing $7 as the midpoint between $0 and $14 is incorrect. The Alliance argued that NHTSA must try harder to estimate the purely domestic effects of CO_2 emissions reductions, and stated that NERA had found that the U.S. portion of world gross product ''is a much better means of allocating the United States' share of any benefits in reduced CO_2 emissions'' than picking the midpoint of a range of global SCC estimates. NERA assumed that the U.S. portion is 20 percent, which ''reduces NHTSA's estimate of CO_2 benefits with the 'optimized standard' for MY2015 from $869 million to $348 million.'' NERA also argued that this was conservative, since the U.S., as a developed country, should be better able to adapt to negative global warming consequences.

Several commenters also criticized Tol (2005) as being out of date. Prof. Hanemann made this point, and commented that ''more recent analyses show higher damage estimates.'' The Attorneys General similarly commented that ''It seems likely that there are better estimates'' than Tol's, ''Since [that] article is now three years old, and it itself explains in detail the many deficiencies in the economic literature at that time.'' The Attorneys General stated that ''NHTSA should consult with EPA on this issue, and conduct a review of the current scientific and economics literature.''

Several commenters simply argued that $7/ton is too low a value for the SCC. CARB argued that ''NHTSA's assumed social cost of carbon in the future is also unreasonably low, and if set at defensible levels that also properly value cumulative impacts, could affect the stringency of the standards.'' Carin Skoog, an individual, similarly commented that ''The arbitrary decision to use $7/ton underestimates the economic, social, and environmental consequences of the impacts of global warming.'' ACEEE similarly commented that NHTSA's use of $7/ton is both ''inconsistent with current estimates'' and ''fails to take into account the potentially high probability of a catastrophic climate change situation.'' The 10 U.S. Senators who commented stated that NHTSA's value of $7 per ton

[318] 73 FR 24414 (May 2, 2008).

is ''underestimated,'' and ''likely to be found arbitrary and capricious.''

(3) NHTSA's Proposal of $0 as the Lower Bound Estimate for the Domestic U.S. Value for the SCC

No commenters supported NHTSA's use of $0/ton as the lower bound estimate for the U.S. domestic SCC. Several commenters, including UCS, EDF, and Prof. Hanemann cited the IPCC Fourth Assessment Report as evidence that, as Prof. Hanemann stated, ''there is no credible evidence of any significant net benefit to the U.S. from the climate change scenarios developed for the Fourth IPCC Report.'' The U.S. Senators who commented also stated that in citing the IPCC as not precluding low or zero values to the U.S., NHTSA had ''fail[ed] to recognize that IPCC was looking at global estimates which are not disaggregated.''

Commenters also mentioned other reports as providing evidence that there would be some net adverse impact on the U.S. from climate change, and thus a lower bound value of $0 was untenable. Prof. Hanemann cited the recent USCCSP report ''conclusively eliminates the notion that climate change is likely to have no net adverse impact on the United States.''

UCS argued that proposing $0 as the lower bound ''implies the possibility that climate change won't have any negative consequences,'' which ''stands in stark contrast to recent government study findings on U.S. climate change effects and findings from * * * the Academies of Science for the G8+5.''

EDF commented that ''A recent review of economic studies on the predicted impacts of climate change on different economic sectors in the U.S. by the Center for Integrative Environmental Research at the University of Maryland, 'The US Economic Impacts of Climate Change and the Costs of Inaction: A Review and Assessment,' also demonstrates the range and scope of adverse impacts that climate change will have on different sectors and regions of the U.S. economy.'' EDF stated that ''The study concluded that 'Scientific evidence is mounting that climate change will directly or indirectly affect all economic sectors and regions of the country, though not all equally. Although there may be temporary benefits from a changing climate, the costs of climate change rapidly exceed benefits and place major strains on public sector budgets, personal income and job security.' ''

Sierra Club et al. commented that ''several government reports [that] have clearly stated that CO_2 emissions do have a significant impact on our economy.'' NHTSA's conclusion that ''it does not necessarily rule out low or zero carbon values for the benefit to the U.S. itself from reducing emissions'' is arbitrary given agency's admission that ''the global value of economic benefits from reducing carbon dioxide emissions is unlikely to be zero.''

NRDC cited a U.S. government report that ''documents that many of the projected impacts have already begun,'' as well as the Stern Review which ''estimated that impacts could result in a loss of 5–20 percent of world GDP by 2100,'' and its own May 2008 report which ''found U.S. damages from four impacts alone would cost 1.8 percent of GDP by 2100.''

Several commenters instead raised objections to studies that may show a positive net benefit to the U.S. from climate change, such that a domestic SCC value could be $0. CBD stated that NHTSA offered ''absolutely no evidence to support'' proposing $0 as the lower bound, and argued that ''only one study surveyed in Tol (2005) included central estimates below $0.00; and that was a non-peer-reviewed article, also authored by Tol.'' CBD further argued that Tol (2005) never found, nor included as a consideration in developing SCC estimates, as NHTSA suggested in the NPRM, that any studies failed ''to consider potentially beneficial impacts of climate change,'' or to account adequately ''for how future development patterns and adaptations could reduce potential impacts from climate change or the economic damages they cause.''

Prof. Hanemann also argued that studies suggesting any possible positive net benefit to U.S. from global warming ''have serious flaws and cannot withstand serious scrutiny,'' and concluded that a value of $0 per ton is ''wildly unrealistic'' ''even [for] a sensitivity analysis.''

NRDC commented that ''NHTSA's lower bound seems to be based upon the fact that some estimates exist that are zero and even negative.'' However, NRDC argued that ''These lower bound estimates are likely based on outdated science.'' NRDC ''urge[d] NHTSA to do a rigorous re-examination of Tol's work, eliminating outdated zero estimates and adjusting for fat tailed upper distributions.''

Several commenters also focused on the CBD decision to argue that NHTSA may not use $0 as the lower bound estimate, because as UCS stated, ''the Ninth Circuit found a value of $0 to be arbitrary and capricious.'' EDF also commented that NHTSA's decision to pick $0 as the lower bound ''lacks a reasoned basis,'' given the Ninth Circuit decision. Sierra Club et al. and the U.S. Senators similarly commented that $0 as the lower bound is contrary to CBD. The comment by the U.S. Senators stated that ''* * * we can only conclude that the purpose of this 'low bound' estimate is to cut the more accurate value in half in an arbitrary manner. We recommend NHTSA remove or justify this low bound estimate in its final CAFE regulation.''

(4) NHTSA's Proposal of $14 as the Upper Bound Estimate for the Domestic U.S. Value for the SCC

No commenters supported NHTSA's proposal of $14/ton, based on Tol (2005), as the upper bound estimate for the domestic U.S. value for the SCC. ACEEE argued that ''NHTSA's decision to use Tol's estimate of $14 as the upper bound based on the argument that this value includes the worldwide costs CO_2 is flawed,'' although the commenter did not explain why.

Some commenters argued that NHTSA should not have picked the median from Tol (2005) as its upper bound estimate.

The U.S. Senators who commented stated that NHTSA is wrong to use $14 as the upper bound because Tol's median is an average of multiple estimates, and averages should be used as averages and not as maximums. The Senators stated further that ''NHTSA selected the lower of Tol's two estimates without explanation.'' The U.S. Senators also commented that Tol (2007) updates the previous study and finds a median of over $19/ton. NRDC also cited Tol (2007) as reflecting an increase in the median from $14 to $20 dollars per ton of CO_2.

Sierra Club et al. commented that $14 is an incorrect ''maximum,'' because the maximum that Tol ''states that the maximum carbon value is in the range of $55–$95 per metric ton CO_2.'' The commenter further argued that if NHTSA could justify $0 as the lower bound, ''then it should not be able to rule out the high value of $95 per ton CO_2 in the study, and the average value would be much higher.''

NRDC commented that NHTSA should not have used Tol's median value of $14 as its upper bound for two reasons. First, a median value is not properly reflective of climate change damage estimate distributions, which are ''asymmetric'' with ''fat'' upper tails. And second, because of the unique aspects of climate change damage estimates, such as ''nonlinearities, abrupt change, and thresholds,'' ''a full probability density function should be estimated, using the *full range* of all [SCC] estimates from the studies, not

simply a collection of their 'best-guesses.' '' [Emphasis in original.] NRDC argued that research has shown that ''When the same traditional social cost of carbon analyses are rerun incorporating the potential for nonlinear change, the resulting policy conclusions are changed considerably to greater mitigation,'' and that ''Another recent study has shown that incorporating the potential for low-probability, high-damage events can increase the social cost of carbon by a factor of 20.''

NRDC also cited Prof. Weitzman to argue that the complications of climate change damage estimates require any analysis to weigh more heavily the ''low probability/high catastrophic risks,'' because these will otherwise be insufficiently accounted for. In discussing the uncertainties associated with climate change, NRDC cited Weitzman as stating that

> The result of this immense cascading of huge uncertainties is a ''reduced form'' of truly stupendous uncertainty about the aggregate-utility impacts of catastrophic climate change, which mathematically is represented by a very-spread-out very-fat-tailed PDF [probability density function] of what might be called (present discounted) ''welfare sensitivity'' * * * [T]he value of ''welfare sensitivity'' is effectively bounded only by some *very* big number representing something like the value of statistical civilization as we know it or maybe even the value of statistical life on earth as we know it.

Thus, NRDC argued, using an upper bound of $14 cannot possibly account for the uncertainties and risk of climate change. Like Sierra Club et al., NRDC further argued that ''* * * for consistency with the rationale used for proposing the lower bound, NHTSA's upper bound should be based upon some function of the highest estimates in the Tol 2005 study (the very highest was $1,666).''

Some commenters argued that NHTSA had overlooked particular aspects of the Tol (2005) study, and thus arrived at $14 incorrectly.

CBD argued that NHTSA overlooked key aspects of the Tol (2005) analysis in proposing $14 per ton, including the fact that Tol included significantly higher estimates in his analysis. EDF similarly commented that NHTSA had failed to ''discuss the significant gaps in the existing research reviewed in [Tol (2005)] and focuse[d] on a specific estimate of the SCC that is biased toward lower value estimates.'' EDF stated that NHTSA's decision to use only peer-reviewed studies from Tol (2005) introduced particular bias, because those studies ''systematically used higher discount rates * * * which may have biased their results downward'' compared to averaging all the studies together.

Some commenters argued that Tol (2005) was flawed to the point that it could not provide a reliable basis for NHTSA to use its median estimate as the upper bound.

CBD commented that ''the studies cited in the Tol (2005) survey dated back as much as 18 years, to 1991, and 25 of the 28 studies cited were published more than five years ago,'' so given that climate change science is progressing very rapidly, these studies are probably outdated.

EDF also argued that ''Most of the 28 studies surveyed by Tol'' are outdated and ''consider only a limited number of potential impacts from climate change,'' as Tol recognizes by cautioning that the estimates analyzed ''may understate the true cost of climate change.'' EDF stated that the IPCC's ''most recent compilation of SCC research'' agrees. EDF also commented that Tol's meta-analysis ''compares studies with widely different methodologies and assumptions,'' particularly discount rates, which EDF stated NHTSA should have controlled for because it ''can have a considerable impact on SCC estimates.''

NRDC criticized Tol (2005) extensively in its comments. NRDC stated that Tol's estimate was based on studies which exclude (1) ''non-market costs, such as damage to and loss of entire ecosystems and species;'' and (2) ''studies of national security costs caused by conflicts over stressed resources and increased migration from heavily impacted areas,'' which ''describe global warming as a 'threat multiplier.' '' NRDC recognized that Tol acknowledged that ''costs such as those described above are poorly accounted for in current social cost of carbon estimates,'' but insisted that NHTSA must nonetheless account for them.

NRDC also argued that Tol's estimate is based on outdated studies, because ''there are smaller natural sinks for carbon than Tol assumed, higher emissions than he assumed, a higher temperature response to emissions than he assumed, and faster changes in observed impacts than he assumed.'' NRDC commented that recent events like Hurricane Katrina are evidence that the U.S. cannot adapt to climate change-related disasters as fast as previously thought. NRDC further commented that it was unclear whether Tol's estimate ''included any valuation for lost lives,'' suggesting that including this valuation could raise SCC considerably, and arguing that EPA accounts for it in Clean Air Act rulemakings.

(5) Other Values That NHTSA Could Have Chosen for the SCC

Many commenters suggested other SCC values that they thought NHTSA should use instead of a value based on Tol (2005).

Several commenters mentioned SCC values produced by EPA. In March 2008, EPA produced an analysis for the Senate Committee on Environment and Public Works for S. 2191, ''America's Climate Security Act,'' also known as the Lieberman-Warner bill.[319] Public Citizen commented that NHTSA's upper bound estimate should be at least as high as EPA's estimates for the Lieberman-Warner bill, which Public Citizen said ''are more recent than the Tol estimate cited in NHTSA's notice.'' Public Citizen commented that EPA ''estimated the value of CO_2 in 2015 between $22 and $40 per metric ton of CO_2, and cited two other analyses with higher estimates of $48 and $50 per metric ton CO_2.'' Sierra Club et al. also commented that NHTSA must use a higher SCC value, and stated that ''EPA's recent analysis of America's Climate Security Act of 2007 noted that the value of a ton of CO_2 could be as high as $22–$40.28.'' An individual, Carin Skoog, also commented that ''The US EPA recently suggested the value of a ton of CO_2 could be as high as $22–35.'' ACEEE appeared to refer obliquely to the EPA estimates, recommending that NHTSA use a higher CO_2 estimate. ACEEE argued that ''legislative efforts to implement a carbon regime in which the projected market cost of CO_2 is expected to lie between $20 and $30—significantly higher than the average damage cost assumed by NHTSA—serves as evidence that the U.S. is now beginning to contemplate the high risk of rising greenhouse gas emissions.''

NRDC commented that NHTSA cited ''compliance cost estimates provided by NRDC and others in the 2006 light truck rulemaking'' in describing its proposal of the upper bound estimate. NRDC argued that NHTSA should instead consider damage costs and not rely on compliance cost estimates. NRDC stated that ''If NHTSA were to consider compliance costs it must consider current analyses, such as EPA's analysis of S. 2191, which finds that CO_2 allowances would cost 19 to 67 (2005) dollars per ton of CO_2-equivalent in 2012 rising at 5 percent per year real (the range for EPA's Core Scenario is $19 to $35 in 2012, rising at 5 percent per year real).''

[319] Available at *http://www.epa.gov/climatechange/downloads/s2191_EPA_Analysis.pdf* (last accessed March 23, 2009).

EPA also recently released a ''Technical Support Document on the Benefits of Reducing GHG Emissions,'' [320] (TSD) to accompany an Advance Notice of Proposed Rulemaking (ANPRM) on regulating GHG emissions under the Clean Air Act.[321] EDF commented in its original comments that ''The higher SCC estimates contained in EPA's draft ANPR, and EPA's accompanying discussion of the remaining omissions and weaknesses in state-of-the-art SCC research, further demonstrates that NHTSA's estimates are underestimating the benefits of reducing carbon dioxide emissions, and therefore setting CAFE standards below optimal levels.'' After the TSD was released, EDF submitted it to NHTSA's NPRM docket, and submitted late additional comments arguing that NHTSA must ''adjust its final rulemaking action in accordance with EPA's assessment and findings,'' because ''EPA's assessment is far more rigorous than NHTSA's proposal, and EPA's determinations are supported by a considerable and well-reasoned volume of information.'' EDF stated that EPA did its own meta-analysis ''building on'' Tol (2005) and (2007), but including ''only recent peer reviewed studies that met a range of quality criteria in its evaluation.'' EDF further stated that EPA arrived at an estimate of \$40/tCO_2 (using a 3 percent discount rate), or \$60/tCO_2 (using a 2 percent discount rate). EDF commented that EPA concluded that estimates ''likely underestimate costs of carbon dioxide emissions,'' because they do not account for all the climate change impacts identified by the IPCC, like ''non-market damages, the effects of climate variability, risks of potential extreme weather, socially contingent events [(such as violent conflict)], and potential long-term catastrophic events.''

The U.S. Senators who commented argued that NHTSA's use of \$14/ton based on Tol (2005) as the ''high bound'' estimate was incorrect because EPA had been working since 2007 ''to develop more accurate, 'state-of-the-art' estimates of the benefits of reducing greenhouse gas pollution.'' The Senators stated that ''Although EPA's estimates have not been finalized, the Agency used \$40 per ton as the value of reducing carbon dioxide emissions.'' The Senators further stated that ''NHTSA's draft rule inexplicably makes no mention of EPA's extensive research and analysis in this area.''

Other commenters argued that NHTSA should have used or considered the value at which CO_2 allowances are currently trading in the EU regulatory system. UCS stated that using \$14 as the upper end is ''unacceptably low,'' given that ''The European Climate Exchange, which provides a futures market value for global warming pollution in Europe's carbon constrained market, indicates 2011 contracts for carbon dioxide at approximately \$45 (U.S.) per metric ton—well above the figure cited by NHTSA.'' UCS argued that ''This value represents a predicted marginal abatement cost (the cost of avoiding global warming pollution), and is likely a conservative estimate of the benefit of reducing global warming since the cost of avoiding climate change is lower than the cost of fixing the damage after it occurs.'' UCS further argued that this number is also ''generally consistent with other recent allowance price estimates, such as the EPA's assessment of GHG allowance prices under Lieberman-Warner: \$22–\$40 in 2015 and \$28–\$51 in 2020 (EPA figures are in 2005 dollars per ton of CO_2-equivalent.)''

Sierra Club et al., Public Citizen, and CARB all also commented that NHTSA's value for the SCC is too low, and that NHTSA should instead use a CO_2 damage value based on the market value in the European Trading System, either the current value (which Public Citizen stated was ''recently * * * around €30 per allowance (one metric ton CO_2 equivalent),'' and CARB stated was ''currently trading around \$42 per ton''), or some future value. Sierra Club et al. argued that ''the futures market value for a metric ton of CO_2 in 2011 is already up to \$45,'' while CARB went on to argue that ''* * * Germany Deutsche Bank [is] forecasting EUA prices of \$60 for 2008 and EUA prices as high as \$100 by 2020 [citation removed].''

Other commenters suggested other SCC values different from any discussed so far. For example, Prof. Hanemann argued that, based on his own research, NHTSA use a value of ''about \$25 per metric ton [of CO_2] in 2005\$,'' and should apply a real growth rate of 2.4 percent per year to determine the value of reducing emissions in future years. CARB, in contrast, commented that ''NHTSA should also consider using substantially higher estimates.'' CARB stated that ''the International Energy Agency (IEA) recently estimated that to limit global CO_2 emissions by the 50 percent GHG reduction that the IPCC concluded is needed to keep global temperatures from rising more than two degrees Celsius by 2050, CO_2 offset prices will need to rise to up to \$200 per ton * * *.'' CARB further argued that ''* * * even this higher market price for carbon may not incorporate the true cost of all natural resources damages, an externality.''

Mr. Montgomery commented that NHTSA should use an SCC value of \$0, because he argued that ''If a comprehensive cap on [CO_2] emissions is put in place, as many commentators and policymakers predict, then the *choice* of policy instrument will have no effect on the overall level of emissions,'' such that ''Tightening a CAFE standard will only result in greater mitigation in emissions from [motor vehicles] and less mitigation in parts of the economy where decisions are made in response to carbon prices without specific regulatory mandates.'' Thus, Mr. Montgomery concluded that ''the damages from global warming will be the same no matter what the level of the CAFE standard, so that the SCC used should be zero.''

Mr. Montgomery also commented that an SCC based on Tol's estimates will be too high if the ''global policy objective toward greenhouse gas emissions * * * is a lower concentration than that on which the Tol estimates are based.'' Mr. Montgomery argued that ''Marginal damages depend on the level of GHG concentrations at which they are measured,'' so that ''If the goal for global concentrations is set at a high level (e.g., 750 ppm) then damages from an additional ton of CO_2 (due to higher concentrations during the period of its residence in the atmosphere) will be higher than if the goal is set at a low level (350 ppm) at which point most of the damaging consequences have been eliminated.''

Ford redacted much of its discussion of the SCC based on confidentiality concerns, but seemed to argue generally that reducing CO_2 emissions from motor vehicles is expensive compared to reducing emissions in other sectors, and commented that ''All sectors must contribute'' to reducing emissions. Ford ''recommended that NHTSA consider using CO_2 mitigation cost in their analysis in lieu of emission damage cost.''

NADA commented that ''NHTSA should consider incorporating into its analysis the \$2.97 per metric ton recently paid by the U.S. House of Representatives for carbon offsets.'' [322]

[320] Available at Docket No. NHTSA–2008–0089–0456.2.

[321] EPA's ANPRM was signed July 11, 2008, after NHTSA's NPRM was published. See 73 FR 44353 (July 30, 2008).

[322] NADA cited the ''Statement of Daniel P. Beard, Chief Administrative Officer, U.S. House of Representatives, Concerning the Purchase of Carbon

Continued

The Alliance was the only commenter to suggest that NHTSA not quantify the SCC at all. The Alliance argued that ''* * * given the fact that no published studies of which we are aware address the SCC apportionment issue, NHTSA would be well within its rights to decide that SCC will be considered purely in a qualitative balancing fashion and not quantified.'' The Alliance cited *Transmission Access Policy Study Group* v. *FERC*, 225 F.3d 667, 736 (D.C. Cir. 2000) (''Given that FERC's comparison of the frozen efficiency case to its base case yielded little difference, the agency had no reason to conduct further analysis. By rigorously examining the frozen efficiency case, even though it believed the case to be unreasonable, FERC ensured that its decision was 'fully informed' and 'well-considered.' '').

(6) NHTSA's Use of a Domestic Versus a Global Value for the Economic Benefit of Reducing CO_2 Emissions

NHTSA received a number of comments on its tentative decision to employ a domestic value for the SCC instead of a global value. Several commenters supported a domestic value, while other commenters supported a global value.

The Alliance argued that NHTSA must consider only domestic impacts both because of EPCA, which refers to ''the need of the United States to conserve energy,'' and because of the ''extraterritoriality'' or ''*Aramco* canon,'' see *EEOC* v. *Arabian American Oil Co.*, 499 U.S. 244, 260 (1991) (''It is a longstanding principle of American law 'that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.') (quoting *Foley Bros.* v. *Filardo*, 336 U.S. 281, 285 (1949)). The Alliance further argued that because NHTSA must consider only domestic impacts, it must ''develop some mechanism for scaling down the global SCC estimates produced in the published literature,'' besides NHTSA's proposal which just took the midpoint between $0 and $14 as the domestic SCC value. The Alliance argued that it would be inappropriate to use land mass to determine the domestic portion, since so much of the land mass on the planet is uninhabited; and also argued that it would be inappropriate to use population, since ''not all human beings live in areas that are expected to be equally impacted by climate change.'' As discussed above, the Alliance cited to the NERA Report that it included with its comments as having found that an SCC value based on the U.S. share of world gross product was more appropriate.

NADA similarly commented that ''NHTSA should account only for any domestic impacts of reducing the social costs of motor vehicle CO_2, given that EPCA focuses on U.S. energy security and all other costs and benefits evaluated with respect to the proposed CAFE standards are domestic only.''

Mr. Delucchi agreed with NHTSA's discussion that ''consistency requires'' that only U.S. domestic ''global warming damages'' be considered if NHTSA also accounts for the monopsony effect in the reduced value of transfer payments from U.S. oil purchasers to foreign oil suppliers. Mr. Delucchi suggested that NHTSA use a procedure described in his previous research to estimate the fraction of global damages from climate change that would be borne within the U.S., and apply this fraction to the estimated global SCC to determine the value of U.S. domestic benefits from reducing emissions. This procedure adjusts the fraction of global GDP accounted for by the U.S. by the relative sensitivity of the U.S. to climate damages compared to the remainder of the world, which Delucchi measures by the ratio of U.S. dollar damages from climate change per dollar of U.S. GDP to global economic damages from climate change per dollar of global GDP. Using this method, he estimates that U.S. damages from climate change are likely to represent 0–14 percent of total global damages, and thus that the value to the U.S. of reducing carbon emissions is equal to that same percentage of the estimated global value of the SCC.[323]

Mr. Montgomery argued that a domestic SCC value was appropriate, commenting that ''U.S. policy should be based on marginal damages to the U.S. from CO_2 emissions in the U.S., as stated in relevant OMB circulars on cost-benefit analysis and suggested in the draft.'' Mr. Montgomery further stated that ''The consensus appears to be that richer countries are less vulnerable than poorer, and that temperature increases will be least in temperate regions like the U.S.'' Thus, Mr. Montgomery argued that a conservative estimate of U.S. damages would be a calculation ''based on the ration of U.S. GDP to world GDP.''

Other commenters argued that NHTSA should use a global SCC value. NRDC commented that because ''Carbon dioxide is a global pollutant, and much of the damages other countries will experience are a result of U.S. emissions,'' and because ''emissions in other countries will cause damages in the U.S.,'' that ''It is fundamentally inconsistent with the global circulation of these pollutants to arbitrarily limit assessment of the benefits of reducing U.S. emissions to those accruing in our own territory.'' NRDC also commented that national security studies show that the global social costs of carbon will ''spill over'' to the U.S. and other wealthy countries. EDF also commented that NHTSA should use a global SCC number rather than a domestic one, because ''Climate change is clearly a global issue,'' so EDF ''recommend[s] that benefits of reducing CO_2 concentrations should reflect benefits to society as a whole.''

EDF and the U.S. Senators commented that use of a global SCC value would be consistent with OMB guidance that international impacts of regulations may be considered if appropriate. The Senators also commented that the U.S. must consider the global climate change effects of its regulations because it ratified the United Nations Framework Convention on Climate Change in 1992. If every nation considers only domestic effects of climate change, the Senators argued, emissions reduction policies will fall ''far short of the socially optimized level.''

CBD similarly commented that NHTSA should use a global value for CO_2, arguing that using $7 ''fails to incorporate the full economic costs of global climate change, values that are difficult to monetize, and costs to the world outside the boundaries of the United States.'' CBD stated that ''In general, the estimate of the social costs of climate change fails to incorporate the loss of biodiversity, complex and large-scale ecosystem services, and the disproportionate impacts of global climate change on the developing world.'' CBD also stated that NHTSA's use of $0 as the lower bound estimate is ''[p]resumably * * * meant to imply that the United States might benefit economically by letting other countries bear the costs of unabated American greenhouse gas emissions. Setting aside the tremendous ethical implications of such a position, NHTSA provides absolutely no evidence to support the claim.''

Offsets,'' which does not list the specific price paid for the offsets described. Available at *http://cao.house.gov/press/cao-20080205.shtml* (last accessed March 23, 2009).

[323] Mark A. Delucchi, Summary of the Non-Monetary Externalities of Motor Vehicle Use, UCD–ITS–RR–96–3 (9) rev.1, Institute of Transportation Studies, University of California, Davis, originally published September 1998, revised October 2004. Available at *http://www.its.ucdavis.edu/publications/2004/UCD-ITS-RR-96-03(09)_rev1.pdf* (last accessed March 23, 2009).

In its late comments accompanying its submission of EPA's TSD, EDF argued that EPA's TSD concluded that a global number is correct, for several reasons. Because GHGs are global pollutants and affect everyone, using ''domestic only'' estimates would ''omit potential impacts on the United States (e.g., economic or national security impacts) resulting from climate change impacts in other countries.'' Consequently, a global number must be used to avoid missing any benefits and to maximize global net benefits (i.e., ''countries would need to mitigate up to the point where their domestic marginal cost equals the global marginal benefit.'' EDF stated that EPA's TSD cites Nordhaus (2006), and says that ''Net present value estimates of global marginal benefits internalize the global and intergenerational externalities of reducing a unit of emissions and can therefore help guide policies towards an efficient level of provision of the public good.''

(7) The Rate at Which the SCC Grows Over Time

Several commenters cited the IPCC Fourth Assessment Report with regard to the rate at which the SCC should increase over time. CBD commented that as part of the Fourth Assessment Report, the IPCC ''* * * states that 'It is virtually certain that the real social cost of carbon and other greenhouse gases will increase over time; it is very likely that the rate of increase will be 2% to 4% per year.' '' The U.S. Senators commented that the 2.4 percent per year increase that NHTSA used in the NPRM is incorrect, because ''the IPCC report states that 'it is very likely that the rate of increase will be 2% to 4% per year.' ''

EDF stated that IPCC's recommendation of a 2.4 percent growth rate was meant to be used in combination with a low, intergenerational discount rate. EDF further argued that after the Fourth Assessment Report was released, one of the lead authors recommended using a growth rate of 3 percent, but that ''The OMB equivalent guidance for the UK * * * recommend using a 2 percent yearly increase.'' EDF thus concluded that the 2.4 percent growth rate could be used, but only with a maximum 3 percent discount rate, and argued that a range of growth rates should be run in the sensitivity analysis ''because of considerable uncertainty.''

(8) The Discount Rate That Should Be Used for SCC Estimates

Commenters urged NHTSA to consider a low or even negative discount rate in choosing an estimate for the SCC. CBD, for example, stated that Stern found that '' 'If consumption falls along a path, the discount rate can be negative. If inequality rises over time, this would work to reduce the discount rate, for the social welfare functions typically used. If uncertainty rises as outcomes further into the future are contemplated, this would work to reduce the discount rate, with the welfare functions typically used.' '' CBD then argued that ''A negative discount rate would dramatically increase the cost of climate change in the cost-benefit analyses in the proposed rule.''

NRDC commented that NHTSA should use a discount rate of no more than 3 percent for the entire rulemaking, and returned to this argument in its SCC discussion, criticizing Tol's estimate for relying ''primarily upon estimates that did not use current accepted climate change discounting procedures of a declining discount rate over time.''

In its initial comments, EDF stated that NHTSA should only consider recent studies that use a 3 percent discount rate for estimating SCC. In its late comments, EDF stated that EPA's TSD concluded that ''a low discount rate is most appropriate for SCC estimation,'' for several reasons. First, because OMB Circular A–4 allows agencies to use a lower discount rate when there are inter-generational benefits associated with a rulemaking. Second, because ''In this inter-generational context, a three percent discount rate is consistent with observed interest rates from long-term intra-generational investments (net of risk premiums) as well as interest rates relevant for monetary estimates of the impacts of climate change that are primarily consumption effects.'' Third, because EPA had found that the scientific literature supports the use of a discount rate of 3 percent or lower, as being ''* * * more consistent with conditions associated with long-run uncertainty in economic growth and interest rates, intergenerational considerations, and the risk of high impact climate damages (which could reduce or reverse economic growth).''

(9) Other Issues Raised by Commenters

The remaining issues raised by commenters with regard to NHTSA's proposal regarding the value for the SCC were as follows:

Public Citizen commented that NHTSA should also have considered ''the costs of inaction on reducing greenhouse gas emissions and the resultant consequences of global warming,'' including other environmental and health consequences such as those analyzed in NHTSA's DEIS. Public Citizen cited EPA's denial of California's waiver request and ''a recent report from the University of Maryland'' as evidence of some of these costs, and argued that NHTSA needed to estimate ''the costs of inaction'' in making its final decision.

NRDC commented that emissions reductions may be ''greater than what CAFE accomplishes,'' such that the U.S. would ''get * * * a larger social cost of carbon benefits stream,'' if the U.S. actions in ''taking a lead in reducing emissions * * * [helps to] induce other countries, especially China and India, to also reduce.'' NRDC also argued that ''Carbon dioxide has a very slow decay rate in the atmosphere, lasting hundreds of years into the future,'' which means that ''the social costs of carbon extend well past the life time of the vehicle.'' Thus, ''Any sensible benefits stream would extend them at least several decades past the lifetime of a vehicle.''

In its original comments, EDF argued that NHTSA should have considered using a risk-management framework in developing an SCC estimate, because cost-benefit analysis ''cannot capture the range of uncertainty and risk that characterizes climate change.'' EDF cited Prof. Weitzman's work as highlighting ''that the expected damages of climate change may be dominated by the existence of consequences which have very low probability but very high damages (such as double-digit increases in mean global temperature), or a 'fat tail' in the distribution of possible outcomes.'' In its late comments, EDF added that EPA's TSD also suggested that a risk assessment framework may be more appropriate than cost-benefit analysis ''in light of the ethical implications of climate change and the difficulty in valuing catastrophic risks to future generations.'' The TSD went on to say that ''Economics alone cannot answer the questions, policy, legal, ethical considerations are relevant too, and many cannot be quantified. When there is much uncertainty, economics recommends a risk management framework for guiding policy.''

Agency response: In determining its responses to the public comments on the value of reducing CO_2 emissions, the agency was mindful that the 9th Circuit remanded rulemaking to NHTSA ''for it to *include a monetized value for this benefit* [the reduced risk of global warming as a result of reducing CO_2 emissions] *in its analysis* of the proper CAFE standards.'' [324] (Emphasis added.) NHTSA understands this directive to require the agency to include within its modeling, with at least some level of

[324] CBD, 508 F.3d 508, 535.

specificity, actual values for the SCC. Further, as in the case of other public comments, the agency is required by the Administrative Procedure Act to respond to the relevant and significant public comments, including those central to the agency's decision on standards under EPCA, in a manner reflecting consideration of the relevant factors.

As noted above, in the NPRM, we tentatively selected the mean value ($14) in Tol (2005) as a global value, and announced plans to attempt to develop and possibly use a domestic value for the final rule. For most of the analysis it performed to develop the proposed standards using the Volpe CAFE model, NHTSA used a single estimate for a domestic value of reducing CO_2 emissions. The agency thus elected to use the midpoint of the range from $0 to $14 (or $7.00) per metric ton of CO_2 as the initial value for the year 2011, and assumed that this value would grow at 2.4 percent annually thereafter. This estimate was employed for the analyses conducted using the Volpe CAFE model to support development of the proposed standards. The agency also conducted sensitivity analyses of the benefits from reducing CO_2 emissions using both the upper ($14 per metric ton, since the domestic value could not exceed the global one) and lower ($0 per metric ton) bounds of this range.

After considering comments on the approach it employed in the NPRM and more recent estimates of the SCC, NHTSA has decided to employ a range of estimates for the value of reducing GHG emissions in the analysis it performed to support this Final Rule for MY 2011 as discussed in further detail below. To do so, the agency identified a range of estimates from current peer-reviewed estimates of the value of the SCC, and then tested the sensitivity of alternative CAFE standards to this range of uncertainty while holding the other economic parameters used in its analysis fixed at their estimated values. The range of estimates, which the agency believes fairly represents the uncertainty surrounding the value of the SCC, consists of a domestic value ($2) at the lower end, a global value ($33) equal to the mean value in Tol (2008) and a global value ($80) one standard deviation above the mean value. NHTSA believes that, based on currently available information and analysis, $2 is a reasonable domestic value and $33 is a reasonable global value, but notes the uncertainty regarding both values. The agency tested the sensitivity of alternative CAFE standards to this range of uncertainty while holding the other economic parameters used in its analysis fixed at their estimated values.

On the basis of this analysis, the agency has concluded that its adopted standards for MY 2011 are not sensitive to the alternative estimates of the value of reducing CO_2 emissions, so although it has selected global and domestic values for the SCC for use in analyzing the effects of different SCC values on the standards in this one-year rulemaking, NHTSA believes that is not necessary for purposes of this rulemaking to make definitive, long term choices about the most appropriate global or domestic value or to choose between using a global versus domestic value. This approach is sufficient for this rulemaking and will allow efforts to make more specific choices to be deferred until additional scientific and economic evidence can be accumulated, and the participation of other federal agencies in those efforts can enable the development of a consistent estimate for use in those agencies' respective regulatory and policy-making activities, including the next CAFE rulemaking.

The agency is well aware that scientific and economic knowledge about the contribution of GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed in this rulemaking on reducing CO_2 emissions is subject to likely change. NHTSA recognizes the importance of continuing to monitor current research on the potential economic damages resulting from climate change, and of periodically updating estimates of the value of reducing CO_2 emissions to reflect continuing advances in scientific and economic knowledge about the nature and extent of climate change and the threat it poses to world economic development. NHTSA recognizes the interest and expertise of other federal agencies, particularly EPA and DOE, in the issue of valuing the reductions in climate damages that are likely to result from those agencies' own efforts to reduce GHG emissions. NHTSA will continue to work closely with those and other federal agencies in the development and review of the economic values of reducing GHG emissions that it plans to employ in its next CAFE rulemaking.

Global Value of Reducing CO_2 Emissions

To develop a range of estimates that accurately reflects the uncertainty surrounding the value of reducing emissions, NHTSA relied on Tol's (2008) expanded and updated survey of 211 estimates of the global SCC, which was published after the agency completed the analysis it conducted to develop its proposed CAFE standards.[325] Tol's 2008 survey encompasses a larger number of estimates for the global value of reducing carbon emissions than its previously-published counterpart, Tol (2005), and continues to represent the only recent, publicly-available compendium of peer-reviewed estimates of the SCC that has itself been peer-reviewed and published. The wide range of estimates it includes reflects their authors' varying assumptions about critical parameters that affect the SCC, including the sensitivity of the global climate system to increasing atmospheric concentrations of CO_2 and other GHGs, the extent of economic damages likely to result from climate change, the rate at which to discount future damages, the relative valuation of climate damages likely to be sustained by nations with different income levels, and the degree of collective aversion to the risk of extreme climate change and the resulting potential for equally extreme economic damages. NHTSA believes that Tol's updated survey provides a reliable and consistent current basis for establishing a range of plausible values for reducing CO_2 emissions from fuel production and use.

Tol's updated survey includes 125 estimates of the SCC published in peer-reviewed journals through the year 2006. Each of these represents an independent estimate of the world-wide value of increased economic damages from global climate change that would be likely to result from a small increase in carbon emissions, and by implication, the global value of the reduction in future economic damages from climate change that would result from an incremental decline in GHG emissions. Tol reports that the mean value of these estimates is $71 per ton of carbon emissions, and that the standard deviation of this estimate—a measure of how much a typical estimate differs from their average value—is $98 per ton; the fact that this latter measure is significantly larger than the mean value indicates the broad range spanned by the estimates.

NHTSA staff confirmed in conversations with the author that these values apply to carbon emissions occurring during the mid-1990s time frame, and are expressed in

[325] Richard S.J. Tol (2008), The social cost of carbon: Trends, outliers, and catastrophes, *Economics—the Open-Access, Open-Assessment E–Journal*, 2 (25), 1–24.

approximately 1995 dollars.[326] The $71 mean value of the social cost of increased carbon emissions reported by Tol corresponds to a global value of $19 per metric ton of CO_2 emissions reduced or avoided when expressed in 1995 dollars, while the $98 standard deviation for carbon emissions corresponds to $27 per ton of CO_2.[327] Adjusted to reflect increases since the mid-1990s in the marginal damage costs of emissions at now-higher atmospheric concentrations of GHGs, and expressed in 2007 dollars, Tol's mean value corresponds to a global damage cost of $33 per ton of CO_2 emitted during the year 2007, with a standard deviation of nearly $47 per ton. Thus, the value that is one standard deviation above the $33 figure is $80 per ton of CO_2.

Many commenters noted that some recent estimates of the SCC are significantly higher that those reported by Tol (2005), and suggested that NHTSA employ these higher estimates of the SCC to determine the value of reducing CO_2 emissions. Specifically, commenters highlighted the widely-cited Stern Review's estimate that the current SCC is likely to be in excess of $300 per metric ton of carbon, or approximately $80 per ton of CO_2.[328] Some commenters argued that Stern's estimate should be given substantial weight in determining the value of reducing CO_2 emissions used to develop the agency's final CAFE standards. Although Stern's estimate is reported in Tol's 2008 survey, it is not included in the estimates that form the basis for NHTSA's revised range of values, because Stern's study has not yet been subjected to formal peer review.

NHTSA notes that the Stern Report's estimate of the SCC employs a low value for the discount rate it applies to future economic damages from climate change, and that this assumption is largely responsible for its high estimate of the SCC. Hope and Newbury demonstrate that substituting a more conventional discount rate would reduce Stern's estimate of the benefits from reducing emissions to the range of $20–25 per ton of CO_2, which is well within the range of other estimates summarized in Tol's 2008 survey, and significantly *below* the $33 equivalent of the mean of peer-reviewed estimates Tol reports.[329]

Other commenters noted that EPA has recently developed preliminary estimates of the value of reducing CO_2 emissions, and recommended that NHTSA employ these values in its analysis of alternative CAFE standards. EPA's estimates are reported in that agency's Technical Support Document on Benefits of Reducing GHG Emissions (GHG Benefits TSD) accompanying its Advance Notice of Proposed Rulemaking on motor vehicle CO_2 emissions.[330] In that document, EPA derives estimates of the SCC using the subset of estimates included in Tol's 2008 survey drawn from peer-reviewed studies published after 1995 that do not employ so-called equity weighting.[331] Updated from their original mid-1990s values to reflect increases in the marginal damage costs of emissions at growing atmospheric concentrations of CO_2 and expressed in 2006 dollars, EPA reports average values of $40 per ton of CO_2 for studies using a 3 percent discount rate, and $68 per ton for studies using a 2 percent discount rate.[332] (The discount rates employed in developing the 125 peer-reviewed estimates surveyed by Tol ranged from 1 to 10 percent.[333])

NHTSA recognizes that in a recent rulemaking, DOE used a range of values from $0 to $20 (in 2007 dollars) per ton to estimate the benefits of reductions in CO_2 emissions resulting from new energy conservation standards for commercial air conditioning equipment.[334] DOE derived the upper bound of this range from the mean of published estimates of the SCC reported in the same earlier survey by Tol (2005) that NHTSA relied upon for the value it used to analyze the CAFE standards proposed in the NPRM, and the lower bound from the assumption that reducing CO_2 emissions would produce no economic benefit. However, NHTSA believes that the estimates of the mean and standard deviation derived from Tol's more recent (2008) and comprehensive survey of published estimates of the SCC provides a more up-to-date range of values for reductions in CO_2 emissions resulting from higher CAFE standards, primarily because Tol's 2008 survey includes a larger number of estimates of the SCC, as well as more recently-published estimates.

The agency is aware that rapid advances in modeling climate change and its potential economic damages have occurred over the past decade, and that the choice of discount rates has an important influence on estimates of the SCC. In its next CAFE rulemaking, NHTSA will be working closely with EPA and other federal agencies to review the arguments for more selective use of published estimates of the SCC advocated by the EPA. However, based on the information gathered and analysis performed by the agency through last fall, and in view of the fact that this is a one model year rulemaking and the agency will review matters in considerable detail for the post MY 2011 proposal to be issued later this year, NHTSA is not now taking that step. Thus, for the purposes of this final rule, NHTSA has elected to use all 125 SCC estimates from peer-reviewed studies reported by Tol, instead of the more limited subset of these estimates relied upon by EPA. Including the full array of studies provides a reasonable basis for valuing reductions in CO_2 emissions. Specifically, NHTSA believes that there is still value at this time in considering pre-1995 studies and those that employ equity weighting (which account for 58 of the 125 peer-reviewed estimates included in Tol's survey), particularly recognizing that those studies have been published in peer-reviewed journals.[335]

[326] Tol (2008), Table 1, p. 16.

[327] As noted in an earlier footnote, carbon itself accounts for 12/44, or about 27 percent, of the mass of carbon dioxide (12/44 is the ratio of the molecular weight of carbon to that of carbon dioxide). Thus, each ton of carbon emitted is associated with 44/12, or 3.67, tons of carbon dioxide emissions. Estimates of the SCC are typically reported in dollars per ton of carbon, and must be divided by 3.67 to determine their equivalent value per ton of carbon dioxide emissions.

[328] Stern, N.H., S.Peters, V.Bakhshi, A.Bowen, C.Cameron, S.Catovsky, D.Crane, S.Cruickshank, S.Dietz, N.Edmonson, S.-L.Garbett, L.Hamid, G.Hoffman, D.Ingram, B.Jones, N.Patmore, H.Radcliffe, R.Sathiyarajah, M.Stock, C.Taylor, T.Vernon, H.Wanjie, and D.Zenghelis (2006), *Stern Review: The Economics of Climate Change* Cambridge University Press, Cambridge, England.

[329] See Hope, Chris, and David Newbery, ''Calculating the Social Cost of Carbon,'' unpublished paper, Cambridge University, May 2006, p. 15.

[330] U.S. EPA, Technical Support Document on Benefits of Reducing GHG Emissions, EPA–HQ–OAR–2008–318–0078.pdf, June 12, 2008.

[331] Equity weighting assigns higher weights per dollar of economic damage from climate change that are expected to be borne by lower-income regions of the globe, in an attempt to make the welfare changes corresponding to those damages more comparable to the damages expected to be sustained by higher-income world regions.

[332] These values are reported in EPA, Table 1. p. 12. Using the original estimates included in Tol's 2008 survey, which were supplied to NHTSA by the author, the agency calculates these values at $38 per ton and $62 per ton for 3% and 2% discount rates, slightly below the estimates reported by EPA. These differences may be attributable to the two agencies' use of different measures of inflation to update the original estimates from mid-1990s to 2007 price levels (NHTSA employs the Implicit Price Deflator for U.S. GDP, generally considered to be an accurate index of economy-wide price inflation).

[333] Tol (2008), Table A1.

[334] Department of Energy, 10 CFR Part 431, Energy Conservation Program for Commercial and Industrial Equipment: Packaged Terminal Air Conditioner and Packaged Terminal Heat Pump Energy Conservation Standards: Final Rule, **Federal Register**, October 7, 2008, pp. 58813–58814.

[335] Again using the original estimates from Tol's 2008 survey supplied by the author, NHTSA estimates that excluding the 18 pre-1995 estimates from the 125 used to develop the $33 per ton mean estimate would increase it to $36 per ton, while excluding the 40 estimates that employ equity

Continued

For the purpose of this rulemaking, NHTSA has also elected not to base its estimates of the value of reducing CO_2 emissions solely on estimates that utilize a single discount rate. NHTSA acknowledges that the varying discount rates employed by different researchers are an important source of the significant differences in their resulting estimates of the SCC. However, the agency believes that the appropriate rate at which to discount economic damages occurring in the distant future is an economic parameter whose correct value for the purpose of analyzing future climate change and the resulting economic damages is subject to significant uncertainty, analogous to that surrounding other critical scientific and economic parameters in climate analysis. In the agency's view, it is reasonable to consider estimates based on different discount rates at the present time instead of attempting to resolve this uncertainty in the time left to complete this one-year rulemaking by limiting the sample of estimates to those that employ the single discount rate it regards as most appropriate. In its next CAFE rulemaking, NHTSA will work with EPA, DOE and other federal agencies to consider anew the issue of whether to rely exclusively on values of the SCC that are developed using discount rates that are consistent with the rate the agency uses to discount the value of reductions in future GHG emissions reductions to their present values.[336]

As some commenters pointed out, another approach NHTSA could rely on to estimate the value of reducing GHG emissions would be to use actual or projected prices for CO_2 emission permits in nations that have adopted or proposed GHG emission cap and trade systems. In theory, permit prices would reflect the incremental costs for achieving the last emissions reductions necessary to comply with the overall emissions cap. If this cap were based on an estimate of the level of global emissions required to prevent an unacceptable degree of climate change, permit prices could provide an estimate of the benefits of reducing GHG emissions to a level that forestalls unacceptable climate change. A related approach would be to use estimates of the cost of reducing emissions from specific sources other than passenger cars or light trucks to estimate the value of reducing CO_2 emissions via higher CAFE standards, under the reasoning that requiring higher fuel economy for cars and light trucks would allow these costs to be avoided or saved.

NHTSA considered the use of CO_2 permit prices to measure the benefits from reducing emissions via higher CAFE standards, but did not select this approach primarily because of the current difficulty in deciding what is considered an ''acceptable'' degree of climate change. The answer to that question cannot be provided by environmental, technological or economic analyses alone or even in combination; answering that question also involves policy judgment. The agency also notes that there would also be considerable scientific uncertainty in determining the level of emissions reduction that would be necessary to limit climate change to any degree that was deemed acceptable, even if agreement on the latter could be achieved. Since permit prices would depend on the level of emission reduction that is required, they are likely to reflect this uncertainty. Additionally, as a general matter, permit prices reflect avoided costs of emission reductions and there is no direct or necessary relationship between avoided costs and benefits.

Finally, still other commenters urged the agency to take into account the economic value of any reduction in the risk of catastrophic climate events resulting from lower GHG emissions when estimating the benefits from reducing emissions. Most of the estimates of the SCC that are included in Tol's updated review treat the risks and potential damages from catastrophic events using conventional probabilistic methods to compute the ''expected'' value of a wide range of potential changes in climate and associated economic damages. However, few studies of the SCC attempt to include explicit premiums that measure the population's aversion to accepting the risks of catastrophic climate damages.[337] Further, most published studies of climate damages report insufficiently detailed results to allow the calculation of appropriate risk premiums.

NHTSA acknowledges that including an appropriate premium to reflect the value of reducing the risks of catastrophic climate events could significantly increase its estimate of the value of reducing CO_2 emissions, but it has not attempted to do so at this time.[338] (For discussion of NHTSA's consideration of abrupt climate change, see § 3.4.3.2.4 of the FEIS.) However, the agency is aware of recent research suggesting that including an appropriate risk premium can significantly increase estimates of the SCC, and by implication increase the estimated value of reducing CO_2 emissions.[339] In working with EPA, DOE and other federal agencies in the development of revised estimates of the benefits from reducing CO_2 emissions that could be used in the next CAFE rulemaking, NHTSA will carefully consider any new research that explicitly estimates risk premiums, and evaluate their applicability to the issue of estimating economic benefits from reductions in CO_2 emissions resulting from future CAFE standards. The agency will also work with those agencies and departments in exploring the possibility

weighting would reduce the mean estimate to $23 per ton. Excluding both pre-1995 estimates and those that employ equity weighting would eliminate a total of 58 of the 125 peer-reviewed estimates, and reduce their mean value to $20 per ton.

[336] Climate economic studies report estimates of the SCC for specific future years, often in the form of a value for some stated base year and an estimate of the annual rate at which it will grow, as total atmospheric concentrations of GHGs are assumed to increase. These studies use some assumed rate to discount economic damages that are projected to occur over a very long span of future years to their present values as of the future year when emissions increases are assumed to occur. These estimates of the SCC during specific future years are used to value the reductions in GHG emissions that would result each year over the lifetimes of vehicles affected by CAFE standards; for example, higher CAFE standards for model year 2011 cars and light trucks would reduce GHG emissions each year from 2011 through approximately 2047, and the value of reducing those emissions by one ton will rise each year over that span. The estimated economic values of the reductions in GHG emissions during each of those future years must in turn be discounted to their present values as of today, so that they can be compared with the present values of other benefits and with vehicle manufacturers' costs for meeting higher CAFE standards. The rate used to perform this latter discounting must be selected by NHTSA, and the choice of its value is discussed in detail in Section V.B.14.

[337] Under the conventional assumption that successive increases in consumption produce progressively smaller improvements in economic welfare, the welfare level associated with the mean of a range of possible consumption levels is higher than the mean of the welfare levels associated with each possible level of consumption. Moreover, the difference between these welfare levels increases as the span of possible consumption levels is broadened, as would occur if increased GHG emissions have the potential to cause drastic climate changes and result in similarly drastic economic damages. In this situation, the true economic costs of increased emissions include not only the resulting increase in the probabilistic expected value of climate-related economic damages, but also the compensation that those suffering these damages would require in order to willingly accept the increased risk of catastrophic damages, even if that risk is extremely small. Conversely, the value of reducing GHG emissions should include not only the resulting reduction in the expected value of future climate-related economic damages, but also the added amount people would be willing to pay for the associated reduction in the risk that such catastrophic damage might occur.

[338] Tol estimates that including an appropriate risk premium would increase the mean estimate of the SCC included in his more recent survey by 15–27%; see Tol (2008), Table 2.

[339] Hope, Chris, and David Newbery (2006), Calculating the social cost of carbon, University of Cambridge, May 2, 2006.

of calculating an appropriate risk premium using results reported in published studies of the SCC together with any necessary assumptions about the underlying economic behavior, such as the response of welfare to successive increases in consumption levels.

Domestic Value of Reducing CO_2 Emissions

The agency was able to develop a domestic value by using the mean estimate of the global value of reduced economic damages from climate change resulting from reducing CO_2 emissions as a starting point; estimating the fraction of the reduction in global damages that is likely to be experienced within the U.S.; and applying this fraction to the mean estimate of global benefits from reducing emissions to obtain an estimate of the U.S. domestic benefits from lower GHG emissions.

The agency constructed an estimate of the U.S. domestic benefits from reducing CO_2 emissions using estimates of U.S. domestic and global benefits from reducing greenhouse gas emissions developed by EPA and reported in that agency's Technical Support Document accompanying its advance notice of proposed rulemaking on motor vehicle CO_2 emissions.[340] Specifically, NHTSA calculated the ratio of domestic to global values of reducing CO_2 emissions estimated by EPA using the Climate Framework for Uncertainty, Negotiation, and Distribution (FUND) integrated assessment model.

EPA's central estimates of domestic and global values for reducing GHG emissions during 2007 using the FUND model using a 3 percent discount rate were $1 and $17 per metric ton (in 2006$), which suggests that benefits to the U.S. from reducing CO_2 emissions are likely to represent about 6 percent of their global total. The comparable figures derived using a 2 percent discount rate are $4 and $88 for 2007, suggesting that U.S. domestic benefits from reductions in CO_2 emissions would amount to less than 5 percent of their global total. EPA's results also suggest that these fractions are likely to remain roughly constant over future decades.[341] Applying the 5–6 percent figure to the $33 per metric ton mean estimate of the global value of reducing CO_2 emissions derived previously yields an estimate of approximately $2 per metric ton for the domestic benefit from reducing U.S. CO_2 emissions in 2007.

NHTSA also constructed a second estimate of the fraction of global economic damages from climate change likely to be borne by the U.S., using the procedure described by Delucchi in his comments on the NPRM.[342] Delucchi noted that the fraction of global damages from climate change borne within the U.S. can be estimated by adjusting the U.S. share of world economic output, measured by the ratio of U.S. GDP to gross world product, by the relative sensitivity of U.S. and world economic output to damages resulting from climate change. Using data on the U.S. share of world economic output (which ranges from 20–28 percent) and published estimates of the relative sensitivity of the U.S. economy to climate damages compared to the world economy as a whole, Delucchi estimated that the U.S. fraction of global economic damages from climate change is likely to range from 0–14 percent. Applying the midpoint of this range (7 percent) to the $33 per ton mean estimate of the global value of reducing CO_2 emissions also yields an estimate of approximately $2 per metric ton for the domestic benefit from reducing U.S. CO_2 emissions in 2007.

Choosing Between a Global Value and a Domestic Value, and Estimating the Global Values

As the IPCC has noted, CO_2 and other GHGs are chemically stable, and thus remain in the atmosphere for periods of a decade to centuries or even longer, becoming well-mixed throughout the earth's atmosphere. As a consequence, emissions of these gases have extremely long-term effects on the global climate. Further, emissions from any particular geographic area (for example, the U.S.) are expected to contribute to changes in the global climate that will affect many other countries around the world. Similarly, emissions occurring in other countries will contribute to changes in the earth's future climate that are expected to affect the well-being of the U.S. The long-lived nature of atmospheric GHGs means that emissions of these gases from any location or source can affect the global climate over a prolonged period, and can thus result in economic damages to many other nations as well as over subsequent generations.

In view of the global effects of GHG emissions, reducing those emissions to an economically efficient level, i.e., one that maximizes the difference between the total benefits from limiting the extent of climate change and the total costs of achieving the reduction in emissions necessary to do so, would require each individual nation to limit its own domestic emissions to the point where its domestic costs for further reducing emissions within its borders equal the global value of reduced economic damages that result from limiting climate change. NHTSA believes that this argument has considerable merit from the standpoint of economic theory.

If individual nations were instead to consider only the domestic benefits they receive from limiting the pace or extent of climate change, each nation would reduce emissions only to the point where its costs for achieving further reductions equal the benefits to its domestic economy from limiting the impacts of climate change. As a result, the combined global reduction in emissions resulting from individual nations' comparisons of their domestic benefits from limiting climate change to their domestic costs for reducing emissions might be inadequate to slow or limit climate change.

At the same time, however, the agency must also consider the economic, environmental and other effects on the U.S. that a choice of a global value in this rulemaking might have, given the current stage of ongoing domestic legislative activity and negotiations regarding effective international cooperation and coordination. NHTSA notes that there might be risks to nations that unilaterally attempt to reduce their emissions by adopting policies or regulations whose domestic marginal costs equal the global marginal benefits from reducing the threat of climate change. Such actions could induce economic activity within their borders—particularly production by emissions-intensive industries—to shift to nations that adopt less stringent regulations or lower economic penalties on emissions within their respective borders. Such a shift would cause emissions abroad to increase, offsetting at least some of the benefits of domestic emissions reductions.

The agency recognizes that the arguments for using global versus domestic values of reducing GHG emissions are complex, and cannot be resolved satisfactorily by the unilateral actions of any single federal agency. Instead, resolution of whether to use a domestic or global value for reducing

[340] U.S. EPA, Technical Support Document on Benefits of Reducing GHG Emissions, June 12, 2008.

[341] These values are reported in EPA, Table 1. p. 12.

[342] Mark A. Delucchi, Summary of the Non-Monetary Externalities of Motor Vehicle Use, UCD–ITS–RR–96–3 (9) rev. 1, Institute of Transportation Studies, University of California, Davis, originally published September 1998, revised October 2004, pp. 49–51. Available at *http://www.its.ucdavis.edu/publications/2004/UCD-ITS-RR-96-03(09)_rev1.pdf* (last accessed March 23, 2009).

emissions, and developing reliable estimates of those values, as relevant, will require active participation by all federal agencies whose regulatory and policy-making activities will be affected by this decision, as well as leadership from the Administration. In reaching such a consensus, participants will need to assess not only the economic arguments favoring global versus domestic values of reducing emissions, but also the prospects for effective international cooperation to reduce global GHG emissions, the likelihood that leadership by the U.S. in seeking emissions reductions would spur international efforts to reduce emissions, and the precedents established by federal agencies that have previously evaluated benefits from regulations that lower GHG emissions. They will also need to consider arguments that U.S. citizens may attach some value to reductions in the threat of climate impacts occurring in other regions of the globe, and that reducing the impacts of climate change on other nations may have important ''spillover'' benefits to the U.S. itself. A position has not been adopted by the relevant entities.

In these circumstances, NHTSA decided to take a pragmatic approach to estimating the value of reducing GHG emissions for the immediate and limited purpose of this rulemaking. As noted above, we used the mean value in Tol (2008). To develop a reasonable upper-bound estimate of that value for purposes of this rule, the agency used a value one standard deviation above the $33 mean value.[343] As also noted above, the standard deviation of peer-reviewed estimates from Tol's 2008 survey is $47 per ton when expressed in comparable terms, which yields an upper-bound estimate of $80 per ton (equal to $33 plus $47) of CO_2 emissions avoided.[344] Because the $80 per ton value is higher than those corresponding to nearly 90% of the 125 peer-reviewed estimates of the SCC included in the survey, the agency views it as a reasonable upper bound on the likely global value of reducing CO_2 emissions.[345] For the purposes of this rulemaking, NHTSA believes that the range extending from the $2 per ton estimate of the domestic value of reducing CO_2 emissions to the $80 per ton estimate of the global value is sufficiently broad to illustrate the sensitivity of alternative MY 2011 CAFE standards and the resulting fuel savings and emissions reductions to plausible differences in the SCC.

Rate of Growth of SCC

The marginal cost per ton of additional CO_2 emissions is generally expected to rise over time, because the increased pace and degree of climate change—and thus the resulting economic damages—caused by additional emissions are both expected to rise in proportion to the existing concentration of CO_2 in the earth's atmosphere. The IPCC Fourth Assessment Report variously reported that the climate-related economic damages resulting from an additional ton of carbon emissions are likely to grow at a rate of 2.4 percent annually, and at a rate of 2–4 percent annually.[346] Virtually all commenters who addressed this issue indicated that the IPCC intended the 2.4 percent growth rate it reported for the SCC in one passage to instead read ''2–4 percent,'' and many urged NHTSA to apply a 3 percent or higher growth rate to determine the future value of the SCC.

NHTSA staff reviewed the underlying references from which the disputed figure was derived, and those sources clearly report the growth rate implied by their estimates of the future value of the SCC for different future years as 2.4 percent, instead of the 2–4 percent asserted by commenters.[347] Although most studies that estimate economic damages caused by increased GHG emissions in future years produce an implied growth rate in the SCC, neither the rate itself nor the information necessary to derive its implied value is commonly reported. NHTSA has been unable to locate other published research that reports the likely future rate of growth in damage costs from CO_2 emissions or the information required to derive it. NHTSA understands that other researchers may be using alternative growth rates. The agency may revise the estimated rate of growth it uses in its future analyses based on emerging estimates in the literature and on interagency coordination with the EPA, DOE and other federal agencies.

For the purposes of this rulemaking, NHTSA used the 2.4 percent annual growth rate to calculate the future increases in its estimates of both the domestic ($2/metric ton in 2007) and global ($33/metric ton and $80/metric ton in 2007) values of reducing CO_2 emissions. Over the lifetimes of cars and light trucks subject to the CAFE standards it is establishing for model year 2011, these values average nearly $4, $61, and $157 per ton of CO_2 emissions, approximately twice their estimated values during 2007. The agency is unaware of the basis for EDF's assertion that the 2.4 percent growth rate is to be used only in conjunction with an intergenerational discount rate with a maximum of 3 percent. Although the agency's analysis did follow EDF's suggestion in any case, NHTSA selected the growth rate in the future value of reducing CO_2 emissions and the discount rate applied to these benefits for separate reasons, as discussed in detail previously.

Insensitivity of MY 2011 Standards to Different Values of SCC

NHTSA examined the sensitivity of alternative CAFE standards for MY 2011 to the choice among three different estimates of the value of reducing CO_2 emissions from fuel production and use: (1) The mean estimate of the global value of reducing emissions derived as discussed previously from Tol's 2008 survey—$33 per ton; (2) a value one standard deviation above this mean estimate—$80 per ton; and (3) the estimate of the value of U.S. domestic benefits from lower emissions derived as discussed above—$2 per ton.[348]

The agency tested the sensitivity of its ''optimized'' CAFE standards for MY 2011 passenger cars and light trucks to

[343] A two-standard deviation range around the agency's $33 per ton central estimate would extend from minus $59 to $126 per ton of CO_2 emissions. The agency notes that the lower end of this range implies economic benefits of $59 for each additional ton of CO_2 emissions during 2007, while its upper end significantly exceeds all but two of the 125 peer-reviewed estimates included in Tol's 2008 survey.

[344] A value one standard deviation below the $33 mean would be −$14 per ton, which implies economic benefits of $14 for each additional ton of emissions. Because of this implication, NHTSA regards the $2 per ton estimate of the domestic value of reducing emissions as a more plausible lower bound on the value of reducing emissions than the $−14 per ton figure.

[345] Tol reports that the 90% confidence limit of the distribution of peer-reviewed values is $170 per ton, while adding one standard deviation to his reported mean yields a value of $169; see Tol (2008), Table 1.

[346] Yohe et al. (2007), p. 13 reports that ''* * * it is very likely that the rate of increase [in the social cost of carbon] will be 2% to 4% per year.'' However, p. 822 states that ''* * * the SCC will increase over time; current knowledge suggests a 2.4% per year rate of growth.''

[347] Hope, C.W. (2006), The Marginal Impact of CO_2 from PAGE2002: An Integrated Assessment Model Incorporating the IPCC's Five Reasons for Concern, Integrated Assessment Journal, 6, (1), 19–56; and Hope, Chris, and David Newbery (2006), Calculating the social cost of carbon, University of Cambridge, May 2, 2006.

[348] In all analyses that employ its estimated value of the global benefits from reducing CO_2 emissions, NHTSA reduces the value of the savings in monopsony costs from lower U.S. petroleum consumption and imports to zero. This is consistent with the fact that when viewed from the same global perspective that justifies the use of a global value for reducing emissions, these monopsony payments represent a transfer of economic resources from consumers of petroleum products to petroleum producers, rather than an actual savings in economic resources, and thus do not constitute a real economic benefit.

the choice among those three alternative values for reducing CO_2 emissions. The agency's analysis revealed that the optimized CAFE standards for MY 2011 cars and light trucks were unaffected by the choice among those values for reducing CO_2 emissions from fuel production and use. The detailed results of this analysis are reported in the agency's previously-released Final Environmental Impact Statement for MY 2011–15 CAFE standards.

There are several reasons for the insensitivity of the MY 2011 standards to the different values of the SCC. First, not more than 15 percent of all models are being redesigned for MY 2011, thus limiting the changes that can be made. Second, in any year, the value of gasoline has a far greater effect on the potential level of the CAFE standards than the SCC. Third, in the analyses that employ the $33 or $80 per ton global values of the benefits from reducing CO_2 emissions, NHTSA reduces the savings in monopsony costs from lower U.S. petroleum consumption and imports to zero.[349] This is done in order to be consistent with the fact that monopsony payments are a transfer rather than a real economic benefit when viewed from the same global perspective. This reduction partly offsets the effect of the higher CO_2 value on the optimized CAFE standards and resulting benefits. It does not do so completely, however, because the value of reducing CO_2 emissions continues to grow at the assumed 2.4 percent rate over the period spanned by the analysis, nearly doubling over the lifetimes of MY 2011 vehicles.

Decision Regarding the Value of SCC

Given the insensitivity of the potential standards to the various values of SCC used in the above analysis, NHTSA concludes that it is unnecessary for the agency to select a single estimate of the value of reducing CO_2 emissions for inclusion in its analysis as part of this rulemaking. For that reason and in view of the significance that announcing the selection of either a domestic or global value in this rulemaking might have in the context of ongoing legislative activities and international negotiations, we are deferring the choice between a domestic SCC and a global SCC and, for the appropriate choice, the monetized value for the benefit of reduction, until the next CAFE rulemaking. This will provide the time necessary for more refined analysis and for the various affected federal agencies to work together and identify a consistent value for use in their respective regulatory and policy-making activities. NHTSA expects to participate actively in the process of developing an appropriate range of estimates for that value. By the time we issue a proposal this summer for MY 2012 and beyond, we anticipate those activities and efforts will have progressed sufficiently to enable the federal agencies to make an informed choice that we can use as a basis for that rulemaking. NHTSA expects that the economic value of reducing CO_2 emissions will play an important role in developing and analyzing standards in the next CAFE rulemaking which, unlike this rulemaking, we expect to be a five-year rulemaking.

13. The Value of Increased Driving Range

NHTSA also considered the fact that improving vehicles' fuel economy may increase their driving range before they require refueling. By reducing the frequency with which drivers typically refuel their vehicles, and by extending the upper limit of the range they can travel before requiring refueling, improving fuel economy provides some additional benefits to drivers. Alternatively, if manufacturers respond to improved fuel economy by reducing the size of fuel tanks to maintain a constant driving range, the resulting savings in manufacturing costs will presumably be reflected in lower vehicle sales prices.

NHTSA stated in the NPRM that no direct estimates of the value of extended vehicle range are readily available, so NHTSA's analysis calculates the reduction in the annual number of refueling cycles that results from improved fuel economy, and applies DOT-recommended values of travel time savings to convert the resulting time savings to their economic value.[350] The NPRM provided the following illustration of how the value of extended refueling range is estimated: A typical small light truck model has an average fuel tank size of approximately 20 gallons. Assuming that drivers typically refuel when their tanks are 20 percent full (i.e., 4 gallons in reserve), increasing this model's actual on-road fuel economy from 24 to 25 mpg would extend its driving range from 384 miles (16 gallons × 24 mpg = 384 miles) to 400 miles (16 gallons × 25 mpg = 400 miles). Assuming that the truck is driven 12,000 miles per year, this reduces the number of times it needs to be refueled from 31.3 (12,000 miles per year ÷ 384 miles per refueling) to 30.0 (12,000 miles per year ÷ 400 miles per refueling), or by 1.3 refuelings per year.

Weighted by the nationwide mix of urban (about 2/3) and rural (about 1/3) driving and average vehicle occupancy for all driving trips (1.6 persons), the DOT-recommended value of travel time per vehicle-hour is slightly below $24.00 (in 2006 dollars).[351] Assuming that locating a station and filling up requires ten minutes, the annual value of time saved as a result of less frequent refueling amounts to $5.20 (calculated as 1.3 refuelings/year × 10/60 hours/refueling × $24.00/hour). This calculation is repeated for each future calendar year that vehicles affected by the alternative CAFE standards evaluated in this rule would remain in service. Like fuel savings and other benefits, however, the total value of this benefit for vehicles produced during a model year declines over their expected lifetime, because a smaller number of those vehicles remain in service each year, and those remaining in service are driven fewer miles.

NHTSA received comments only from the Alliance regarding the benefits that drivers receive from increased driving range. The Alliance stated that ''NHTSA incorrectly assumes that its new fuel economy standards will improve vehicle range and thus reduce the number of times a vehicle owner would have to refill the tank (creating consumer benefits).'' The Alliance comments focused on two points: first, that analysis by Sierra Research demonstrates ''the complete absence of

[349] As noted above earlier in the discussion of SCC, NHTSA plans to review this practice in the next CAFE rulemaking.

[350] See Department of Transportation, Guidance Memorandum, ''The Value of Saving Travel Time: Departmental Guidance for Conducting Economic Evaluations,'' Apr. 9, 1997. Available at *http://ostpxweb.dot.gov/policy/Data/VOT97guid.pdf* (last accessed August 20, 2008); update available at *http://ostpxweb.dot.gov/policy/Data/VOTrevision1_2-11-03.pdf* (last accessed August 20, 2008).

[351] The average hourly wage rate during 2006 was estimated to be approximately $25.00 per hour. For urban travel, the DOT guidance recommends that personal travel (which accounts for 94.4 percent of urban automobile travel) be valued at 50 percent of the hourly wage rate, while business travel (5.6 percent of urban auto travel) should be valued at 100 percent of the hourly wage rate. For intercity travel, personal travel (which represents 87 percent of intercity automobile travel) is valued at 70 percent of the wage rate, while business travel (the remaining 13 percent) is valued at 100 percent of the wage rate. The resulting average values of travel time are $13.20 for urban travel and $18.48 for intercity travel. Multiplying these by average vehicle occupancy (1.6) produces estimates of $21.12 and $29.56 for the value of time per vehicle-hour in urban and rural travel. Using the fractions of urban and rural travel reported above, the weighted average of these values is $23.91 per hour. Departmental Guidance for Valuation of Travel Time in Economic Analysis, 1997. Available at *http://ostpxweb.dot.gov/policy/Data/VOT97guid.pdf* (last accessed Nov. 2, 2008).

any relationship between fuel economy and range in the light truck fleet,'' and second, that manufacturers ''design fuel-storage capacity to achieve the basic range requirements consumers demand,'' and will reduce the space necessary for fuel tanks in order to devote it to other uses (such as increasing cargo space) if fuel economy levels rise. The Alliance argued that NHTSA's assumption that raising fuel economy levels will improve vehicle range and thus result in more miles driven (i.e., the rebound effect) are ''not supported by existing data'' and contradicted by the Sierra Research analysis. For example, Sierra Research found that the driving range for the Chevrolet Suburban has decreased from 588 to 527 miles as its fuel economy has improved from 1992 to 1999, because the gas tank capacity was decreased in the new body from 42 gallons to 31 gallons.

Agency response: In response to the Alliance's comments, NHTSA notes that the most likely explanation for the absence of a relationship between fuel economy and refueling range is that manufacturers adjust fuel tank size to achieve some target level of refueling range. If by doing so, manufacturers are able to reduce the space occupied by fuel tanks and devote it to increased passenger or cargo carrying capacity, as the Alliance asserts, this presumably reflects manufacturers' view that those attributes are more valuable to vehicle owners than increased refueling range, or that the resulting savings in vehicle production costs are more valuable to buyers than extended refueling range. If manufacturers respond in either of these ways, they apparently estimate that the resulting increase in the vehicle's utility to potential buyers is more valuable than the increase in refueling range that would result from holding tank size fixed. Thus, NHTSA's estimate of the value of increased refueling range is likely to underestimate the true benefits from the resulting changes in vehicle attributes or prices. As a consequence, the agency has chosen not to modify the procedure it uses to estimate the economic value of this benefit.

14. Discounting Future Benefits and Costs

The discount rate applied to future benefits and costs of reduced fuel consumption has a significant effect on the stringency of the final standards. Discounting converts the economic values of benefits and costs that are expected to occur in the future to their equivalent values today (or present values), to account for the reduction in their value when they are deferred until some later date rather than received immediately. Discounting reflects the fact that most people view economic outcomes that are not expected to occur until some future date as less valuable than equivalent outcomes that occur sooner. Discounting is particularly important to enable consistent comparison of economic costs and benefits that are expected to occur in the future to those occurring in the present, or when the future time profiles of benefits and costs are not expected to be similar. The discount rate expresses the percent decline in the value of future benefits or costs—as viewed from today's perspective—for each year they are deferred into the future.

In the NPRM, NHTSA proposed to use a rate of 7 percent per year to discount the value of future fuel savings and other benefits when analyzing the potential impacts of alternative CAFE standards. NHTSA relied primarily on the 7 percent discount rate for two reasons. First, OMB guidance states that 7 percent reflects the economy-wide opportunity cost of capital, and that it ''is the appropriate discount rate whenever the main effect of a regulation is to displace or alter the use of capital in the private sector.'' [352] NHTSA believes that much of the cost of CAFE compliance to manufacturers is likely to come at the expense of other investments the auto manufacturers might otherwise make, for example, in research and development of new technologies. Second, NHTSA's analysis in the NPRM determined that 7 percent is a reasonable estimate of the interest rate that vehicle buyers who finance their purchases are currently willing to pay to defer the added costs of purchasing vehicles with higher fuel economy.[353]

However, the agency also performed an analysis of benefits from alternative increases in CAFE standards using a 3 percent discount rate, and sought comment on whether the final rule standards should be set using a 3 percent rate instead of a 7 percent rate. OMB guidance also states that when a regulation primarily and directly affects private consumption (e.g., through higher consumer prices for goods and services), instead of primarily affecting the allocation of capital, a lower discount rate may be more appropriate. OMB argues that the consumption rate of time preference would be the most appropriate discount rate in this situation, since it reflects the rate at which consumers discount future consumption to determine its value at the present time. One measure of the consumption rate of time preference is the rate at which savers are willing to defer consumption into the future when there is no risk that the borrower will fail to repay them, and a readily available source of this measure is the real rate of return on long-term government debt. After adjusting to remove the effect of inflation, OMB reports that this rate has averaged about 3 percent over the past 30 years.

The NPRM analyzed and sought comment on both the 7 percent and 3 percent discount rates because in the context of CAFE standards for motor vehicles, the appropriate discount rate depends on one's view of how the costs of complying with more stringent standards are ultimately distributed between vehicle manufacturers and consumers. Compared to the proposed standards set with the 7 percent discount rate, NHTSA determined that using a 3 percent discount rate would raise the combined passenger car and light truck standards by about 2 mpg in MY 2015 (to 33.6 mpg from 31.6 mpg), and would reduce lifetime CO_2 emissions of the vehicles affected by the proposed standards for MY 2011–15 by an additional 29 percent (to 672 mmt, instead of 521 mmt). However, NHTSA estimated that complying with the higher standards would cost an additional 89 percent more in technology outlays over the five model years ($85 billion versus of $45 billion).

Commenters Calling for NHTSA To Use a Lower Discount Rate

Several commenters, including environmental and consumer groups, state agencies and Attorneys General, and three individuals, called for lower discount rates than 7 percent. The commenters' argument for lower discount rates is essentially two-fold. First, commenters argued that the proposed CAFE standards actually affect private consumption and not capital investments, so consistency with OMB guidance requires NHTSA to use a discount rate lower than 7 percent. Second, commenters argued that because reducing CO_2 emissions and thus the pace or degree of climate change is an important component of the benefits from higher CAFE standards, the fact that these benefits are likely to occur in the distant future—and thus to be experienced by future generations—requires NHTSA to apply a lower ''intergenerational'' discount rate. Commenters were unclear about

[352] Office of Management and Budget, Circular A–4, ''Regulatory Analysis,'' September 17, 2003, at 33. Available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf* (last accessed November 13, 2008).

[353] See NPRM discussion at 73 FR 24415–16 (May 2, 2008).

whether this lower discount rate should also be applied to the other components of benefits resulting from higher CAFE standards, which are expected to occur within 25–35 years.

UCS, EDF, NRDC, CARB, and the Attorneys General commented that NHTSA should use a discount rate of 3 percent or less for setting the CAFE standards. Some commenters, like UCS, based their comments on OMB Circular A–4. UCS commented that although manufacturers will absorb some of the costs of the standards by reallocating capital from other potential uses, ''the amounts involved will be markedly smaller than the benefits realized by private consumers,'' specifically, the benefits due to reduced ''private consumption of vehicle fuels.'' Thus, UCS argued, the standards ''primarily and directly affect private consumption'' much more than the allocation of capital, so a discount rate of 3 percent should be used. CARB similarly stated that the fuel economy standards will affect private consumption over the long-term, so OMB guidance indicates that 3 percent is a more appropriate discount rate. EDF also drew on OMB guidance, but emphasized the increased costs to consumers of more-expensive passenger cars and light trucks as justification for using a 3 percent discount rate, rather than the benefits from reduced fuel consumption. Comments from the Attorneys General included both points in favor of a 3 percent discount rate according to OMB guidance—that consumers would face higher vehicle costs, but also gain benefits like reduced fuel consumption, a better environment, and a more secure energy future.

Other comments made in favor of a 3 percent discount rate focused on the ''intergenerational benefits'' of reducing climate change by raising fuel economy standards. OMB Circular A–4 suggests that it may be appropriate to use a lower discount rate than those used for intra-generational analysis when comparing costs and benefits that are likely to be experienced by different generations. Specifically, Circular A–4 notes that ''Special ethical considerations arise when comparing benefits and costs across generations. Although most people demonstrate time preference in their own consumption behavior, it may not be appropriate for society to demonstrate a similar preference when deciding between the well-being of current and future generations.'' (p. 35) On this basis, OMB advises that ''If your rule will have important intergenerational benefits or costs you might consider a further sensitivity analysis using a lower but positive discount rate in addition to calculating net benefits using discount rates of 3 and 7 percent.'' (p. 36)

EDF commented that ''The benefits from mitigating climate change will occur over decades or even centuries; as a result, CAFE's implications for carbon dioxide emissions should trigger EPA and OMB guidelines for estimating costs or benefits that affect multiple generations.'' EDF cited EPA's draft ANPRM on greenhouse gas regulation under the Clean Air Act as stating that ''[w]hen there are important benefits or costs that affect multiple generations of the population, EPA and the Office of Management and Budget (OMB) allow for low but positive discount rates (e.g. 0.5–3 percent noted by US EPA, 1–3 percent by OMB). Rates of three percent or lower are consistent with long-run uncertainty in economic growth and interest rates, considerations of issues associated with the transfer of wealth between generations, and the risk of high impact climate damages.'' [354] EDF also stated that using a discount rate of 3 percent or lower ''is also in full agreement with the guidance with the blue ribbon panel of economists, including a Nobel laureate, who recommended that the rate at which future benefits and costs should be discounted to present values will generally not equal the rate of return on private investment.'' [355] Thus, EDF argued that NHTSA should use a 3 percent discount rate, with a sensitivity analysis using 0.5 and 1 percent.

NRDC offered a similar comment, arguing that this is a multi-generational rulemaking because it impacts climate change, and that therefore an ''intergenerational discount rate'' must be used of not more than 3 percent. NRDC argued that ''The discount rate is often the single most important parameter in benefit cost analyses of environmental regulations, due to the fact that high discount rates disadvantage projects whose benefits accrue in the future but whose costs are borne up front.'' NRDC's comment included four reasons why the intergenerational discount rate must be 3 percent or less. First, NRDC argued that a ''social'' discount rate must be used when there are ''social (i.e., non-private) costs and benefits.'' The CAFE standards will reduce fuel consumption, which means that society will experience the benefits of reduced global warming and other air pollution. Second, NRDC stated that the proper rate is the ''net national welfare'' or NNW, which represents ''the real rate of growth in the economy, which takes GDP and subtracts from it depreciation of natural and man made capital, pollution abatement expenses, and negative externalities, and then adds to it the value of non-market goods, such as household labor.'' NRDC asserted that this rate is likely to range from 0 to 1 percent. Third, NRDC argued that because CAFE standards are ''precautionary'' in nature and ''reduce the likelihood of potentially catastrophic climate change or serious military security costs,'' society may be willing to pay more to avoid these extreme risks, such that a negative social discount rate may be appropriate. And finally, NRDC argued that ''the use of a declining discount rate is the newly supported method for climate damages.'' For these reasons, NRDC argued that NHTSA should use a discount rate no higher than 3 percent for setting CAFE standards, and should conduct a sensitivity analysis using lower rates.

An individual commenter, Mark Eads, also stated that the choices made primarily involve long-term inter-generational environmental benefits and costs rather than intra-generational benefits and costs. Mr. Eads presented his summary and comparison of a number of scholarly papers considering discount rate over the past several years, and suggested that NHTSA apply a declining discount rate that begins at 2.6 percent in year one and declines to 0.6 percent in year 300.

UCS, EDF, NRDC, CARB, the Attorneys General, and Mr. Eads did not address the issue of whether a lower intergenerational discount rate should also be applied to the other components of benefits resulting from higher CAFE standards, which are likely to be experienced by current generations.

Other commenters urged NHTSA to use discount rates besides 7 or 3 percent. CBD commented that both 7 percent and 3 percent are too high, arguing that they ''artificially reduce'' the value of future benefits from improved fuel efficiency, and that using a lower discount rate will result in higher standards. Although CBD did not specify what discount rate would be preferable, other than to recommend a lower one, CBD appeared to approve of Stern's use of a discount rate below 1 percent. CFA and NESCAUM, in contrast, both supported NHTSA's use

[354] EPA's ANPRM is available at 73 FR 44354 (July 30, 2008). EDF also cited OMB Circular A–4 and EPA ''Guidelines for Preparing Economic Analyses,'' EPA 240–R–00–003 (2000), available at *http://yosemite.epa.gov/EE/epa/eed.nsf/pages/Guidelines.html* (last accessed August 6, 2008).

[355] EDF cited Kenneth J. Arrow et al., Is there a Role for Benefit-Cost Analysis in Environmental, Health, and Safety Regulation?, 272 Science 173, 221–222 (April 12, 1996).

of a 5 percent discount rate. CFA argued that NHTSA should have ''picked the middle road'' between 3 percent and 7 percent, to avoid ''emphasizing the importance of economic factors and capital goods at the expense of the need to conserve energy,'' and used 3 and 7 percent for sensitivity analyses. NESCAUM argued that a 7 percent discount rate ''inappropriately devalues the technologies designed to achieve increased fuel economy,'' and stated that EPA had used a 5 percent discount rate in its 2000 rulemaking on Tier 2 emissions standards.[356]

Professor Michael Hanemann commented that NHTSA's decision to use a discount rate of 7 percent was ''utterly unfounded in the climate change context,'' and that NHTSA should use a discount rate of no higher than 4 percent, although even 4 percent had been criticized in recent articles on climate change economics. Thus, Prof. Hanemann argued, NHTSA should use a discount rate of no higher than 4 percent, and conduct sensitivity analyses with lower numbers, like 2 percent. The Attorneys General commented that NHTSA should take account of Professor Hanemann's suggestion of 4 percent as an example of ''the discount rates that scholars and economists are using to evaluate the costs and benefits related to global warming.''

Professor Gary Yohe commented that the appropriate discount rate for benefits from public investments in an economy where returns to private capital investment are taxed should be *lower* than the rate of return on private capital, in order to reflect the fact that public investment can increase returns to private investment by reducing distortions caused by the corporate profits tax. Although they are not specifically public investments, Prof. Yohe noted that investments that reduce GHG emissions by improving vehicle fuel economy are likely to increase returns to a broad range of private investments, including investments in mechanisms that facilitate adaptation to climate change. Although he did not recommend a specific discount rate, Prof. Yohe clearly suggested that the appropriate rate should be below 7 percent. He also noted that OMB's definition and 3 percent estimate of the social rate of time preference did not correspond to the conventional definition of that concept, which is a constant-utility rather than a constant-consumption discount rate.

Commenters Calling for NHTSA To Use a 7 Percent or Higher Discount Rate

Other commenters, including manufacturers and dealers, as well as one individual, called for NHTSA to use a discount rate of 7 percent or higher. AIAM commented simply that it ''support[s] the discount rates used by NHTSA as reasonable for analytical purposes.'' David Montgomery of CRA International also commented that NHTSA's use of a 7 percent discount rate was reasonable, arguing that ''the correct discount rate to use [for CAFE purposes] is the marginal social return on investment, which measures what society would have earned on other investment foregone in order to make the investment in more costly motor vehicles with higher fuel economy.'' Mr. Montgomery stated that ''The chosen 7% real discount is a reasonable, and probably conservative, estimate of the long run, real, pre-tax return on investment in the U.S.''

Ford commented that the discount rate ''should represent society's opportunity cost of money, which should be close to a 'risk-free' rate such as that of the U.S. Treasury.'' However, Ford then argued that the short-term costs to invest in technology are very high for domestic manufacturers, and that manufacturers must ''borrow the necessary capital for such investment.'' Thus, Ford stated, it did not support the use of a 3 percent discount rate, although it did not recommend an alternative discount rate.

NADA commented that NHTSA should use a discount rate of at least 7 percent or higher to estimate the future costs and benefits of the proposed standards. NADA stated that ''financing rates on motor vehicle loans are indicative of appropriate discount rates since they reflect the real-world opportunity costs faced by consumers when buying vehicles'' with higher fuel economy, but argued that NHTSA had not ''generated accurate historical loan rates, let alone justified projections for what those rates will be in MY 2015.'' NADA further stated that a too-low discount rate ''will result in overly costly CAFE standards, decreased new motor vehicle sales, and lower than projected fuel savings and greenhouse gas reduction benefits.''

The Alliance commented that NHTSA should use a discount rate closer to 12 percent, although it urged NHTSA to rely on a ''nested logit'' model developed by NERA for ''modeling consumer behavior instead of the ad hoc analysis NHTSA performs of private benefits without attempting to explain whether there is a market failure.'' The Alliance argued that OMB Circular A–4 allows the use of a higher discount rate than 7 percent in certain cases if appropriate, and that ''other prominent studies relevant to this issue have settled on much higher interest rates than seven percent,'' including the Congressional Budget Office, which ''discounts consumers' fuel savings at a rate of 12 percent per year,'' and Sierra Research's study submitted by the Alliance in support of its comments, which used a rate of 12.4 percent. A discount rate of 12 percent makes sense, the Alliance argued, because ''Consumers can be expected to discount the value of future fuel savings at a rate at least as high as their cost of borrowing funds,'' so they ''would be unwilling to spend an extra dollar on fuel economy improvements that would lower their fuel costs by ten cents per year because the cost savings would be less than the annual interest on that dollar.''

Responding to the Alliance's assertion that rates as high as 12 percent might be appropriate for discounting future benefits from fuel savings, the Attorneys General noted in a supplemental comment that a more recent study of vehicle buyer's tradeoffs between higher purchase prices and savings in operating expenses than that relied upon by NERA estimates that buyers discount future fuel savings using nominal rates that average 9 percent. After adjusting it to remove the effect of expected future inflation, the Attorneys General estimated that the corresponding real discount rate was 5.4 percent, and urged NHTSA to use this rate in its analysis of future benefits from fuel savings and other consequences of higher CAFE standards.[357]

Agency response: In response to the extensive comments it received to the NPRM and the DEIS on this issue, NHTSA has carefully reviewed published research and OMB guidance on appropriate discount rates, including discount rates that should be applied to benefits that are expected to occur in the distant future and thus be experienced

[356] EPA calculated the value of a statistical life year for the Tier 2 benefits analysis by amortizing the $5.9 million mean value of a statistical life (VSL) estimate over the 35 years of life expectancy associated with subjects in the labor market studies, discounting it at 5 percent to get $360,000 per life-year saved in 1999 dollars. See 68 FR 6698, 6784, fn. 107 (Feb. 10, 2000).

[357] The agency has reviewed the study relied upon by the Attorneys General in its comment recommending a 5.4 percent discount rate, and notes that the estimates of vehicle buyers' implicit discount rates it reports average 10.2 percent before adjusting for inflation, rather than the 9 percent reported by the Attorneys General. Adjusting this average rate to remove the effects of actual inflation over the most recent decade produced a value of 7.5 percent, rather than the 5.4 percent reported in the recent comment by the Attorneys General.

mainly by future generations, and discount rates that buyers of new vehicles apply to savings in fuel costs from higher fuel economy. For purposes of this final rule, the agency has elected to apply separate discount rates to the benefits resulting from reduced CO_2 emissions, which are expected to reduce the rate or intensity of climate change that will occur in the distant future, and the economic value of fuel savings and other benefits resulting from lower fuel consumption, which will be experienced over the limited lifetimes of newly purchased vehicles. Specifically, NHTSA has decided to discount future benefits from reducing CO_2 emissions using a 3 percent rate, but to discount all other benefits resulting from higher CAFE standards for MY 2011 cars and light trucks at 7 percent.

As some commenters pointed out, OMB guidance on discounting permits the use of lower rates to discount benefits that are expected to occur in the distant future, and will thus be experienced by future generations.[358] The main rationale for doing so is that although most individuals demonstrate a strong preference for current consumption over consumption they expect to occur later within their own lifetimes, it may not be appropriate for society to exercise a similarly strong preference for consumption by current generations over consumption opportunities for future generations, particularly when it is contemplating actions that affect the relative income levels of current and future generations. In addition, while market interest rates provide useful guidance about the rates that should be used to discount future benefits that will be experienced by current generations, no comparable market rates are available to guide the choice of rates for discounting benefits that will be received by future generations.

For this final rule, NHTSA has elected to use a rate of 3 percent to discount the future economic benefits from reduced emissions of CO_2 that are projected to result from decreased fuel production and consumption. These benefits, which include reductions in the expected future economic damages caused by increased global temperatures, a rise in sea levels, and other projected impacts of climate change, are anticipated to extend over a period from approximately fifty to two hundred or more years after the impact of this rule on emissions by MY 2011 cars and light trucks occurs, and will thus be experienced primarily by generations that are not now living. As indicated previously, studies of the economic cost of GHG emissions select a rate to discount economic damages from increased emissions. These damages are typically projected to occur over an extended time span beginning many years after the future date when emissions increase, and the chosen rate is used to discount these distant future damages to their present values as of the date when the increased emissions that cause them were assumed to occur.

This procedure yields estimates of the damage costs from increased GHG emissions during specific future years, which NHTSA uses to value the reductions in emissions that would occur each year over the lifetimes of vehicles affected by higher CAFE standards. For example, higher CAFE standards for MY 2011 cars and light trucks would reduce GHG emissions each year from 2011 through approximately 2047, and the estimated value of avoiding each ton of emissions rises each year over that span. In turn, the estimated economic values of the reductions in GHG emissions during each of those future years must be discounted to their present values as of today, so that they can be compared with the present values of other benefits from higher CAFE standards, and with vehicle manufacturers' costs for meeting higher CAFE standards.

The 3 percent rate is consistent with OMB guidance on appropriate discount rates for benefits experienced by future generations, as well as with those used to develop many of the estimates of the economic costs of future climate change that form the basis for NHTSA's estimate of economic value of reducing CO_2 emissions.[359] Of the 125 peer-reviewed estimates of the social cost of carbon included in Tol's 2008 survey, which provides the basis for NHTSA's estimated value of reducing CO_2 emissions, 83 used assumptions that imply discount rates of 3 percent or higher.

Moreover, the 3 percent rate is consistent with widely-used estimates in economic analysis of climate change of the appropriate rate of time preference for current versus distant future consumption, expected future growth in real incomes, and the rate at which the additional utility provided by increased consumption declines as income increases.[360] The Ramsey discounting rule is widely employed in studies of potential economic damages from climate changes in the distant future. The Ramsey rule states that $-r = \delta + \eta g$, where r is the consumption discount rate, δ is the pure rate of time preference (or the marginal rate of substitution between current and future consumption under the assumption that they are initially equal), g is the expected (percentage) rate of growth in future consumption, and η is the elasticity of the marginal utility of consumption with respect to changes in the level of consumption itself. Commonly used values of these parameters in climate studies are $\delta = -1$ percent per year, $\eta = -1$, and $g = 2$ percent per year, which yield a value for r of 3 percent per year.[361]

The remaining future benefits and costs anticipated to result from higher fuel economy are projected to occur within the lifetimes of vehicles affected by the CAFE standards for MY 2011, which extend up to a maximum of 35 years from the dates those vehicles that are produced and sold. Because the vehicles originally produced during this model year will gradually be retired from service as they age, and those that remain in service will be driven progressively less, most of these benefits will occur over the period from 2011 through approximately 2025. Thus, a conventional or ''intra-generational'' discount rate is appropriate to use in discounting these benefits and costs to their present value when analyzing the economic impacts of establishing higher CAFE standards.[362]

The correct discount rate to apply to these nearer-term benefits and costs depends partly on how costs to vehicle manufacturers for improving fuel economy to comply with higher CAFE standards will ultimately be distributed. If manufacturers are unable to recover their costs for increasing fuel economy in the form of higher selling prices for new vehicles, those outlays will

[358] White House Office of Management and Budget, Circular A–4, September 17, 2003, pp. 35–36.

[359] Richard S.J. Tol, The social cost of carbon: trends, outliers, and catastrophes, *Economics Discussion Papers*, July 23, 2008.

[360] EPA notes that ''In this inter-generational context, a three percent discount rate is consistent with observed interest rates from long-term intra-generational investments (net of risk premiums) as well as interest rates relevant for monetary estimates of the impacts of climate change that are primarily consumption effects.'' See U.S. EPA, Technical Support Document on Benefits of Reducing GHG Emissions, June 12, 2008, p. 9.

[361] See Tol (2008), p. 3.

[362] NHTSA acknowledges that using different rates to discount the distant and nearer-term future benefits from higher CAFE standards presents a potential problem of time inconsistency, which arises from the much greater uncertainty that surrounds long-term future rates of growth in investment, economic output, and consumption than is associated with near-term estimates of these variables. However, the agency believes that this problem is less serious than those that would result from using a single rate to discount benefits that occur over the next 25–35 year sand those that are likely to occur over a 100–200 year time frame.

displace or alter other productive investments that manufacturers could make, and the appropriate discount rate is their opportunity cost of capital investment. In contrast, if manufacturers are able to raise selling prices for new vehicles sufficiently to recover all their costs for improving fuel economy, those costs will ultimately affect private consumption decisions rather than capital investment opportunities. Under this second assumption, economic theory and OMB guidance suggest that a consumption discount rate, which reflects the time preferences of consumers rather than those of lenders or investors, is appropriate for discounting future benefits. Since the time preferences of savers and investors are probably similar, financial intermediation would be expected to equalize investment and consumption discount rates. In the presence of corporate income taxation, however, consumption discount rates are generally thought to be lower than the opportunity cost of investment capital. Finally, if competitive conditions in the new vehicle market manufacturers and potential buyers' valuation of higher fuel economy permit manufacturers to recover only part of their costs for meeting higher CAFE standards through higher prices for new vehicles, a rate between an investment discount rate and the lower consumption discount rate may be appropriate, with the exact rate depending on the distribution of compliance costs between vehicle manufacturers and buyers.

OMB estimates that the real before-tax rate of return on private capital investment in the U.S. economy averages approximately 7 percent per year, and generally recommends this figure for use as a real discount rate in cases where the primary effect of a regulation is to displace private capital investment.[363] However, this figure represents an economy-wide average estimate of the return on private investment, which incorporates no risk premium other than that associated with uncertainty about future growth in total economic output. As a consequence, it may understate the opportunity cost of capital for corporations facing firm- or market-specific risks on future investment returns. In addition, domestic motor vehicle manufacturers currently have little or no accumulated earnings available to re-invest, and may be required to enter private capital markets to finance the investments necessary to allow them to comply with higher CAFE standards.

OMB guidance estimates that an appropriate current value for the consumer rate of time preference—and thus the discount rate that should be used if the costs of complying with a regulation are borne by consumers—is approximately 3 percent. However, this estimate is derived from rates of return demanded by consumers on highly liquid investments, and is intended to apply to situations where there is little or no risk that consumers will actually realize the future benefits resulting from a proposed regulation. In the case of CAFE standards, buyers face considerable uncertainty about future fuel prices, and thus about the value of fuel savings resulting from higher fuel economy. Uncertainty about their future levels of vehicle use and the actual lifetimes of new vehicles also contribute to buyers' uncertainty about the value of future fuel savings that is likely to result from purchasing a vehicle with higher fuel economy. In addition, buyers' initial investments in higher fuel economy are illiquid, and the extent to which they will be able recover the remaining value of an initial investment in a new vehicle that achieves higher fuel economy in the used vehicle market is uncertain. Finally, unlike most of the regulations that OMB Circular A–4 is intended to address, most (75–80 percent) of the benefits from higher CAFE standards accrue directly to the parties they affect—vehicle buyers—rather than to society at large. Taken together, these circumstances may make the use of a riskless consumption discount rate, which is intended for use in discounting the economy-wide effects of a proposed regulation on consumption, inappropriate for discounting the future benefits that result from requiring higher fuel economy.

Empirical studies of the discount rates that new vehicle buyers reveal by trading off the higher purchase prices for more fuel-efficient vehicles against future savings in fuel costs resulting from higher fuel economy, which capture the effects of these uncertainties, conclude that buyers apply real discount rates well above the 3 percent rate recommended by OMB for riskless situations. Dreyfus and Viscusi estimate that, when adjusted to reflect differences between the current interest rate environment and rates at the time the data for their study were drawn, U.S. buyers apply real discount rates in the range of 12 percent when weighing expected future fuel savings against higher purchase prices.[364] Verboven estimates that European buyers' nominal discount rates for fuel savings resulting from buying more fuel-efficient new vehicle models range from 5 to 13 percent, with an average estimate of slightly above 10 percent. Verboven's estimate corresponds to a real discount rate of approximately 7 percent when adjusted to reflect current and recent U.S. inflation rates.[365] These studies may provide more reliable estimates of the appropriate consumption rate for discounting benefits from higher fuel economy than the 3 percent figure recommended in OMB guidance.

Uncertainty about future developments in the international oil market, the U.S. economy, and the U.S. market for new cars and light trucks make it extremely difficult to anticipate the extent to which vehicle manufacturers will be able to recover costs for complying with higher CAFE standards in the form of higher selling prices for new vehicles. If new vehicle buyers expect fuel prices to remain higher than those used by NHTSA to establish CAFE standards for MY 2011, they may be willing to pay the higher prices necessary for manufacturers to recover their costs for complying with those standards.[366] However, potential buyers who expect future fuel prices to be lower than the forecast NHTSA relies upon are likely to resist manufacturers' efforts to raise new vehicle prices sufficiently to recover all of their CAFE compliance costs, since those buyers' assessment of the value of higher fuel economy will be lower than that reflected in the CAFE standards NHTSA establishes.

From the manufacturer perspective, the current financial condition of some car and light truck producers suggests

[363] White House Office of Management and Budget, Circular A–4, September 17, 2003, p. 33.

[364] See Dreyfus, Mark K. and W. Kip Viscusi. 1995. ''Rates of Time Preference and Consumer Valuations of Automobile Safety and Fuel Efficiency.'' Journal of Law and Economics. 38: 79–98; and the adjustment of discount rates reported in that source discussed in NERA, ''Discount Rates for Private Costs,'' pp. 4–5, attachment to Alliance of Automobile Manufacturers comment on NPRM, Docket Item NHTSA–2008–0089–50.

[365] See Verboven, Frank, ''Implicit Interest Rates in Consumer Durables Purchasing Decisions—Evidence for Automobiles,'' p. 22, attachment to California Department of Justice, comment on NPRM, Docket Item NHTSA–2008–0089–0495.

[366] Whether they will be willing to do so, however, depends partly on how the combined value of the economic and environmental externalities used to determine CAFE standards compares to current fuel taxes. It also depends on whether new vehicle buyers take account of the value of fuel savings resulting from higher fuel economy over the entire expected lifetimes of the vehicles they purchase, or over only some part of that lifetime (such as the period they expect to own new vehicles).

that they are likely to find it difficult to absorb the full cost of complying with higher CAFE standards. Because CAFE standards apply to all manufacturers, establishing higher standards may provide a ready opportunity for all producers to raise car and light truck prices. However, this opportunity may be restricted if producers that face very low incremental costs for complying with higher CAFE standards because of higher fuel economy levels in their planned model offerings compete aggressively with others that face significant costs for increasing fuel economy levels in their product plans to comply with higher CAFE standards.

After considering the comments received and various arguments about the ultimate incidence of manufacturers' costs for complying with higher CAFE standards, NHTSA has concluded that the costs for complying with higher MY 2011 CAFE standards are likely to be shared by manufacturers and purchasers of new vehicles, but that the exact distribution fraction of these costs between manufacturers and buyers is extremely difficult to anticipate. Generally, NHTSA believes that manufacturers are likely to be able to raise prices only to the extent justified by potential buyers' assessments of the value of future fuel savings that will result from higher fuel economy, but the agency recognizes that buyers' valuations of fuel savings are inherently uncertain, and undoubtedly vary widely among individual buyers. As a consequence, price increases for new cars and light trucks are likely to allow manufacturers to recoup some fraction of their costs for complying with higher CAFE standards, while the remainder of those costs are likely to displace other investment opportunities that would otherwise be available to them.

Regardless of the ultimate incidence of costs for complying with higher CAFE standards, however, both manufacturers' opportunity costs for capital investment and empirical estimates of the discount rates that buyers of new vehicles apply to future fuel savings suggest that a rate in the range of 7 percent is an appropriate rate for discounting the nearer-term benefits from increased fuel economy that will occur over the lifetimes of MY 2011 cars and light trucks. Thus for purposes of establishing the CAFE standards adopted in this final rule and estimating their economic benefits, NHTSA has continued to employ a 7 percent rate to discount future benefits from higher CAFE standards *other than those resulting from reduced CO_2 emissions*. Recognizing the uncertainty surrounding this assumption, NHTSA has also tested the sensitivity of the level of the optimized CAFE standards and their resulting economic benefits to the use of a 3 percent discount rate for all categories of benefits.

NHTSA will consider whether to revise the discount rates used in this analysis when it analyzes the consequences of future CAFE standards. At that time, the agency will consider whether to apply a lower discount rate than 3 percent to the benefits from reducing future emissions of CO_2 and other greenhouse gases, as well as whether to use a rate different from 7 percent to discount the nearer-term benefits from raising CAFE standards. In making these decisions, the agency will consider guidance on discounting future benefits—particularly those from reducing the threat of climate-related economic damages—issued by OMB, EPA, and other government agencies, and will also consider the discount rates used by other federal agencies in similar regulatory proceedings. NHTSA will also consider recent research on appropriate rates for discounting future benefits from reducing the threat of climate-related economic damages, as well as on the discount rates that buyers of new vehicles apply to the fuel savings they obtain from purchasing models with higher fuel economy, since such research is particularly relevant to its choice of discount rates. Beyond these things, the agency will also review the discount rate issue for future rulemakings in light of the changing economic situation, in terms of manufacturers' capabilities and consumers' preferences as fuel prices fluctuate and concern for the effects of climate change increases.

15. Accounting for Uncertainty in Benefits and Costs

NHTSA explained in the NPRM that in analyzing the uncertainty surrounding its estimates of benefits and costs from alternative CAFE standards, NHTSA considered alternative estimates of those assumptions and parameters likely to have the largest effect. NHTSA stated that these include the projected costs of fuel economy-improving technologies and their expected effectiveness in reducing vehicle fuel consumption, forecasts of future fuel prices, the magnitude of the rebound effect, the reduction in external economic costs resulting from lower U.S. oil imports, the value to the U.S. economy of reducing carbon dioxide emissions, and the discount rate applied to future benefits and costs. The range for each of these variables employed in the agency's uncertainty analysis is presented in the section of the NPRM discussing each variable.

NHTSA explained that the uncertainty analysis was conducted by assuming independent normal probability distributions for each of these variables, using the low and high estimates for each variable as the values below which 5 percent and 95 percent of observed values are believed to fall. Each trial of the uncertainty analysis employed a set of values randomly drawn from each of these probability distributions, assuming that the value of each variable is independent of the others. Benefits and costs of each alternative standard were estimated using each combination of variables. A total of 1,000 trials were used to establish the likely probability distributions of estimated benefits and costs for each alternative standard.

NHTSA received only one comment on its methodology for accounting for uncertainty in benefits and costs. The Alliance commented that the results presented by NHTSA of its sensitivity analysis indicated increasing levels of certainty in the ability of the proposed standards to create net benefits—specifically, NHTSA concluded that there was at least a 99.3 percent certainty that changes made to MY 2011 vehicles to achieve the higher CAFE standards would produce a net benefit; at least a 99.6 percent certainty for MY 2012 vehicles; and 100 percent certainty for MY 2014–15 vehicles. The Alliance argued that ''Traditional discounting analysis indicates that the effects of policy changes are more uncertain at points far into the future,'' and that ''NHTSA should recognize that its predictive abilities in the area of automotive technology dim the farther it attempts to peer out into the future.'' The Alliance commented that NHTSA should ''reevaluate its statistical model in this light.''

Agency response: NHTSA agrees that uncertainty regarding both costs and benefits from fuel enhancing technologies increases at points farther into the future. The Alliance comment seems to suggest the application of an increasingly wide spread of high and low value parameters for technology costs and effectiveness rates for each successive model year. However, recognizing this increasing uncertainty could either increase or decrease the probability that increases in CAFE standards will produce net benefits. The agency has no basis for determining whether this increased uncertainty would be likely to result in a higher probability of net benefits or a higher probability of net costs. A variety of factors such as unforeseen technology

breakthroughs or fluctuations in energy and materials prices could influence benefits and costs in the distant future, and we see little merit in adding additional assumptions about conditions distant in time without a reasonably solid basis for selecting such assumptions.

We could simply increase the range symmetrically by some arbitrary factor, but, assuming the same normal distribution that is employed for most of the variables in our uncertainty analysis, increasing the range of both costs and benefits proportionally would be unlikely to significantly impact the conclusions of the uncertainty analysis. Thus, the agency would not increase this range of uncertainty by progressively more for successive model years, were this a multi-year rulemaking. As it is not, the issue of changing levels of uncertainty over time is largely academic for purposes of this rulemaking.

VI. How NHTSA Sets the CAFE Standards

A. Which attributes does NHTSA use to determine the standards?

NHTSA explained in the NPRM that it had taken a fresh look for purposes of this rulemaking at the question of which attribute or attributes would be most appropriate for setting CAFE standards. NHTSA preliminarily concluded that a footprint-based function would be the most effective and efficient for both passenger car and light truck standards. NHTSA explained that unlike a weight-based function, a footprint-based function helps achieve greater fuel economy/emissions reductions without having a potentially negative impact on safety and is more difficult to modify than other attributes because it cannot be easily altered outside the design cycle in order to move a vehicle to a point at which it is subject to a lower fuel economy target. NHTSA also discussed other attributes on which functions could be based, including curb weight, engine displacement, interior volume, passenger capacity, and towing or cargo-hauling capability, but tentatively rejected those other attributes as being generally easier to game than footprint. NHTSA nevertheless sought comment on whether the proposed standard should be based on vehicle footprint alone, or whether other attributes such as the ones described above should be considered. NHTSA requested that if any commenters advocated one or more additional attributes, that they supply a specific, objective measure for each attribute that is accepted within the industry and that can be applied to the full range of light-duty vehicles covered by this rulemaking. NHTSA noted that in addition to being able to be objectively measured on all light-duty vehicles, any attribute-based system needs to (1) minimize the potential for gaming (artificial manipulation of the attribute(s) to achieve a more favorable fuel economy target), (2) have an observable relationship to fuel economy, and (3) avoid adverse safety consequences and undue relative burden on full-line manufacturers.

The agency received many comments on its choice of attribute. The Aluminum Association, Honda, IIHS, and UCS supported NHTSA's proposal of attribute-based standards depending upon footprint alone. Honda cited the use of footprint as a means of maintaining consumer choice and maintaining an incentive to make use of lightweight materials. The Aluminum Association indicated that footprint-based standards would assure stability between model years. UCS claimed that footprint compared favorably to other attributes. Honda, the Aluminum Association, and IIHS all argued that footprint-based standards would provide incentives well-aligned with highway safety objectives. Honda commented that incentives provided by a footprint-based system are such that footprint-based standards would be, from a public policy perspective, preferable to weight-based standards, even though fuel economy is more strongly related to weight.

On the other hand, some organizations questioned the agency's proposal to continue basing light truck CAFE standards on footprint and to adopt new footprint-based standards for passenger cars. Subaru (a subsidiary of Fuji Heavy Industries) and BMW expressed concern that footprint-based standards discourage the introduction of new ''small vehicle concepts'' encouraged by weight-based standards under development in Europe and Japan. Porsche suggested that rapid changes in the light vehicle fleet call into question the use of footprint as the basis for CAFE standards. Porsche also argued that footprint is not an ideal attribute for passenger car standards because passenger cars are less prone to rollover than light trucks and the steepness of the curves NHTSA proposed for passenger cars would provide an incentive for gaming. Ferrari also expressed concern regarding the potential to increase footprint by mounting larger wheels, but did not compare this risk to the risk of, for example, increasing vehicle weight under a weight-based standard. Wenzel and Ross questioned the agency's judgment regarding the safety benefits of discouraging manufacturers from responding to CAFE standards by selling smaller vehicles. Cummins argued that other attributes, in particular weight, would provide a better engineering relationship to fuel economy, but acknowledged that NHTSA proposed to rely on footprint as a means to best ''balance public policy concerns.''

GM expressed general support for footprint-based standards, but also proposed that the agency adopt a two-attribute system that would adjust targets applicable to vehicles capable of towing heavy loads. The Alliance, which also supported this concept, indicated that such vehicles ''generally achieve about five percent lower fuel economy than similar vehicles not designed for such duty cycles.'' Other commenters supporting adjustments for ''tow-capable'' vehicles included Chrysler, Cummins, Ford, NADA, RVIA, and several members of Congress. RVIA suggested that without such an adjustment, RV owners will ''have no choice but to attempt to pull travel trailers with undersize vehicles,'' thereby compromising highway safety. Honda and Toyota both opposed the concept based on concerns that such adjustments would compromise progress toward EISA's requirement that NHTSA ensure the new vehicle fleet reaches an average of at least 35 mpg by MY 2020.

Similarly, the Alliance, Chrysler, and NADA proposed that the agency adjust targets for ''off-road capable'' vehicles including, but not limited to vehicles with four-wheel drive. The Alliance and Chrysler proposed downward adjustments of 10 percent and 1 mpg, respectively, based on past performance of such vehicles. Toyota expressed concern regarding the competitive effects of such an adjustment.

In addition to these two-attribute proposals, the agency also received a proposal from Porsche for a three-attribute concept under which vehicle targets would depend on footprint, weight, and maximum torque. Subaru and Volkswagen expressed support for this concept. Porsche and Subaru argued that this three-attribute concept would provide a better statistical relationship to fuel economy and would help to reduce the steepness of the curves NHTSA proposed for passenger cars. Volkswagen indicated that the concept would be less burdensome for manufacturers with fleet mix ''challenged by'' a footprint-based system. Ferrari also commented that, considering the characteristics and fuel

economy of performance vehicles, the agency should adopt a two- or three-attribute system that also incorporates curb weight, maximum power, maximum torque, and/or engine displacement.

Conversely, some organizations expressed strong opposition regarding standards that would rely on more than one attribute. UCS questioned whether any dual-attribute approach could ''deliver the benefits'' of a system based on footprint alone. Honda argued that NHTSA should ''automatically reject'' the inclusion of any additional attribute that could decrease overall fuel savings achieved by CAFE standards. Similarly, as mentioned above, Toyota expressed concern that inclusion of additional attributes could compromise progress toward EISA's requirements.

Agency response: Having considered the comments submitted to the agency on what attribute(s) should be included in attribute-based CAFE standards for passenger cars and light trucks, NHTSA is promulgating MY 2011 standards that depend on vehicle footprint.

As discussed in Section VIII, in the agency's judgment, from the standpoint of highway safety, it is important that the agency promulgate CAFE standards that do not encourage manufacturers to respond by selling vehicles that are in any way less safe. While the agency's research also indicates that reductions in vehicle mass tend to compromise highway safety, footprint-based standards provide an incentive to use advanced lightweight materials and structures that would be discouraged by weight-based standards.

Further, although NHTSA recognizes that weight is better correlated with fuel economy than is footprint, the agency continues to believe that there is less risk of ''gaming'' by increasing footprint under footprint-based CAFE standards than by increasing vehicle mass under weight-based CAFE standards. The agency also agrees with concerns raised by some commenters that there would be greater potential for gaming under multi-attribute CAFE standards, such as standards under which targets would also depend on attributes such as weight, torque, power, towing capability, and/or off-road capability. Standards that incorporate such attributes in conjunction with footprint would not only be significantly more complex, but by providing degrees of freedom with respect to more easily-adjusted attributes, they would make it less certain that the future fleet would actually achieve the average fuel economy levels projected by the agency.

Although NHTSA recognizes that any change in the structure of the CAFE standards changes the relative challenge posed by those standards to each manufacturer, the agency notes that compliance with CAFE standards is determined based on average performance, such that no specific vehicle model need necessarily achieve its fuel economy target. NHTSA disagrees, therefore, that RV owners will be forced to use ''undersize'' vehicles as suggested by RVIA; rather, the agency expects that manufacturers will continue to provide a range of vehicles with capabilities sought by vehicle buyers.[367]

Furthermore, changes—discussed below—to NHTSA's procedure for determining the shape and stringency of CAFE standards for MY 2011 more fully incorporate the capabilities of high-performance vehicles, tow-capable vehicles, and off-road-capable vehicles. In developing the CAFE standards promulgated today, the agency has included *all* vehicles produced by *all* manufacturers, including the high-performance vehicles produced by companies such as Ferrari and Porsche. Also, as discussed in Section IV, for purposes of analyzing potential fuel economy improvements to specific vehicle models, the agency has developed estimates specific to performance vehicles of the availability, cost, and effectiveness of different fuel-saving technologies. The final passenger car standards thus give appropriate weight to the capabilities of these vehicles.

Also, as discussed below and in sections III and XI, the agency is tightening its definition of ''nonpassenger automobile'' such that many vehicles will be newly classified as passenger cars. Most of these changes involve two-wheel drive vehicles with relatively modest towing capacity, such that vehicles with off-road capabilities and/or more substantial towing capacity comprise an even greater share of the vehicles that will still be classified as light trucks. Therefore, NHTSA has established final light truck CAFE standards that appropriately account for the capabilities of such vehicles.

B. Which mathematical function does NHTSA use to set the standards?

As discussed above, Congress also recently mandated that NHTSA set attribute-based fuel economy standards ''and express each standard in the form of a mathematical function.''[368] As proposed in the NPRM, NHTSA is finalizing CAFE standards that use a continuous, constrained logistic function for expressing the MY 2011 passenger car and light truck standards, which takes the form of an S-curve, and is defined according to the following formula:

$$TARGET = \frac{1}{\frac{1}{a} + \left(\frac{1}{b} - \frac{1}{a}\right)\frac{e^{(FOOTPRINT-c)/d}}{1+e^{(FOOTPRINT-c)/d}}}$$

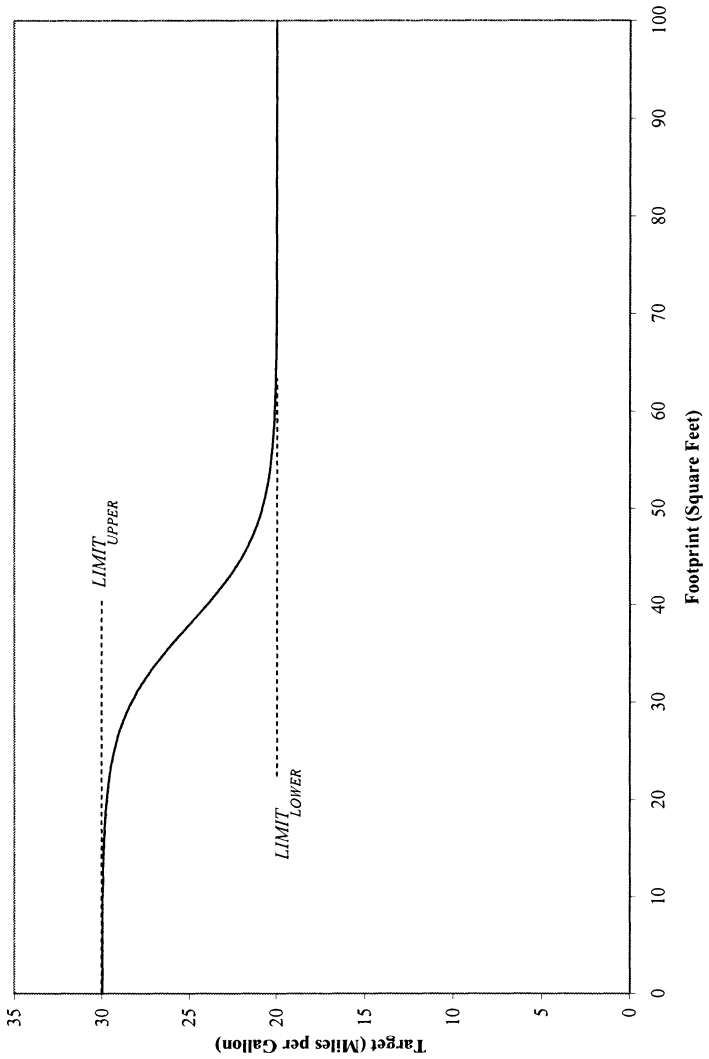
Here, *TARGET* is the fuel economy target (in mpg) applicable to vehicles of a given footprint (*FOOTPRINT*, in square feet), b and a are the function's lower and upper asymptotes (also in mpg), e is approximately equal to 2.718,[369] c is the footprint (in square feet) at which the inverse of the fuel economy target falls halfway between the inverses of the lower and upper asymptotes, and d is a parameter (in square feet) that determines how gradually the fuel economy target transitions from the upper toward the lower asymptote as the footprint increases. Figure VI–1 below shows an example of a logistic target function, where b = 20 mpg, a = 30 mpg, c = 40 square feet, and d = 5 square feet:

[367] In any event, the agency doubts that RV owners would, as asserted by RVIA, be likely to violate guidelines and laws concerning towing capacity.

[368] 49 U.S.C. 32902(a)(3)(A).

[369] e is the irrational *number* for which the slope of the function $y = number^x$ is equal to 1 when x is equal to zero. The first 8 digits of e are 2.7182818.

Figure VI-1. Sample Logistic Curve



NHTSA is not required to use a constrained logistic function and, as discussed below, the agency may consider defining future CAFE standards in terms of a different mathematical function.

Continuous function:

NHTSA explained in the NPRM that it examined the relative merits of both step functions and continuous functions in its rulemaking for MY 2008–2011 light trucks, and described the agency's rationale for choosing a continuous function for the CAFE program. A step function, in the CAFE context, would separate the vehicle models along the spectrum of attribute magnitudes into discrete groups, and each group would be assigned a single fuel economy target, so that the average of the groups would be the average fleet fuel economy. A continuous function, in contrast, would assign each vehicle model (and indeed, any potential vehicle model at any point along the spectrum) its own unique fuel economy target, based on its particular attribute magnitude. Thus, two vehicle models built by different manufacturers could have the same fuel economy target, but only if they had identical magnitudes of the relevant attribute. In other words, a continuous function is a mathematical function that defines attribute-based targets across the entire range of possible attribute values. These targets are then applied through a harmonically-weighted formula to derive regulatory obligations for fleet averages.

NHTSA decided against a step function for several reasons. First, there would be a strong incentive for manufacturers to game the system at the ''edges'' of the steps, by increasing the magnitude of a vehicle model's attribute only slightly in order to receive the lower target of the next step. A continuous function tends to reduce this incentive because on an uninterrupted spectrum, the vehicle model's magnitude of the attribute must be increased much more in order to gain a significantly lower fuel economy target—i.e., the necessary change in the vehicle model must be greater in order to receive the same level of benefit. Second, the continuous function minimizes the incentive to downsize a vehicle, since any downsizing would result in higher (or the same, at the upper end of the curve) targets being applicable. And finally, the continuous function provides manufacturers with greater regulatory certainty, since under a step function, the boundaries of categories (i.e., the size of the steps) could be redefined in future rulemakings. Thus, NHTSA tentatively concluded that a continuous function was the best choice for setting CAFE standards.

NHTSA received only three comments regarding its use of the continuous function. Ferrari commented that it supports ''the choice to use a continuous function instead of a step function, because for each vehicle model is associated the corresponding fuel economy target, regardless of whether the attribute is the footprint alone or another one or a combination of two or more.''

Fuji/Subaru commented that ''In general, Subaru conceptually supports the NHTSA proposal to carryover the attribute and continuous logistic function structure from the prior 2008–2011 light truck fuel economy rulemaking.''

IIHS commented that it ''strongly supports the extension of an attribute-based system to cars and the agency's proposal to index fuel economy to a continuous function.'' IIHS stated that a step function gives manufacturers an incentive ''to redesign vehicles with minimally larger footprints to achieve lower fuel economy targets or to downsize vehicles to achieve weight reductions within footprint categories.'' This incentive exists, IIHS argued, because of the fact that ''By minimally boosting the footprint of a vehicle near an upper boundary, an automaker can gain a large benefit in meeting fuel economy targets,'' and that ''By the same token, an automaker can significantly decrease a vehicle's size and weight as long as the changes do not place the vehicle below the lower boundary of its current step,'' which IIHS argued presented significant safety concerns. IIHS further stated that the continuous function presented an added benefit over a step function insofar as ''car buyers would be more likely to notice design changes incorporated to achieve a substantial CAFE benefit in a continuous function system.''

Agency response: Notwithstanding concerns regarding the steepness of an attribute-based function—concerns that are addressed below in Section VI.E—these comments support the agency's decision to promulgate a final rule that uses a continuous function to specify fuel economy targets that depend on a vehicle attribute.

Constrained Logistic Function

NHTSA explained in the NPRM that there are a variety of mathematical forms available to estimate the relationship between an attribute and fuel economy that could be used as a continuous function, including simple linear (straight-line) functions, quadratic (U-shaped) functions, exponential (curves that continuously become steeper or shallower) functions, and unconstrained logistic (S-shaped) functions. NHTSA examined these alternative mathematical forms in the MY 2008–2011 light truck CAFE rulemaking,[370] but concluded that none of those functional forms as presented would be appropriate for the CAFE program because they tended toward excessively high stringency levels at the smaller end of the footprint range, excessively low stringency levels at the larger end of the footprint range, or both. Too-high stringency levels for smaller vehicles could potentially result in target values beyond the technological capabilities of manufacturers, while too-low levels for larger vehicles would reduce fuel savings below that of the optimized fleet. NHTSA determined that a constrained logistic function, shaped like an S-curve with plateaus at the top and bottom rather than increasing/decreasing to infinity, provided a relatively good fit to the data points without creating problems associated with some or all of the other forms. The constrained logistic function also limited the potential for the curve to be disproportionately influenced by outlier vehicles.

NHTSA defined the constrained logistic functions for the CAFE standards using four parameters. Two parameters, a and b, established the function's upper and lower bounds (asymptotes), respectively. A third parameter, c, specified the footprint at which the function was halfway between the upper and lower bounds. The last parameter, d, established the rate or ''steepness'' of the function's transition between the upper (at low footprint) and lower (at high footprint) boundaries. The resulting curve was an elongated reverse ''S'' shape, with fuel economy targets decreasing as footprint increased. The definitions of the constrained logistic functions and NHTSA's process for fitting the curves is described in much more detail in Section VI.E below.

NHTSA tentatively concluded in the NPRM that a constrained logistic function was appropriate for setting CAFE standards for both passenger cars and light trucks, but sought comment on whether another mathematical function might result in improved standards consistent with EPCA and EISA.

Although NHTSA received a number of comments requesting alternative standards for certain manufacturers, which are discussed in Section VI.D, only Ferrari commented specifically regarding the constrained logistic function. Ferrari stated that it agreed with NHTSA ''about the use of a constrained logistic function to avoid a too high standard for smaller vehicles, and too low for larger vehicles, being the attribute the footprint.'' Ferrari further stated that ''the almost flattened tails of the curve (i.e., asymptotes) are helpful to avoid either vehicle downsizing or over sizing which could produce negative effects for safety and vehicle compatibility in case of accidents.''

Agency response: As a potential alternative to the constrained logistic function, NHTSA did also present information regarding a constrained linear function. As shown in the NPRM, a constrained linear function has the potential to avoid creating a localized region (in terms of vehicle footprint) over which the slope of the function is relatively steep. However, NHTSA did not receive comments on this option, and the agency remains concerned about possible unintended consequences of the ''corners'' in such a function. Therefore, the agency is promulgating standards for MY 2011 that, as proposed in the NPRM, use a constrained logistic function to specify attribute-based fuel economy targets. The agency still believes a linear function constrained by upper (on a gpm basis) and possibly lower limits may merit reconsideration in future CAFE rulemakings.

C. What other types of standards did commenters propose?

In the NPRM, NHTSA explained that it is obligated under 49 U.S.C. 32902(a)(3)(A), recently added by Congress, to set attribute-based fuel economy standards for passenger cars and light trucks.[371] NHTSA stated that it welcomed Congress' affirmation through EISA of the value of setting attribute-based fuel economy standards, because the agency believes that an attribute-based structure is preferable to a single-industry-wide average standard in the context of CAFE for several reasons. First, attribute-based standards increase fuel savings and reduce emissions when compared to an equivalent industry-wide standard under which each manufacturer is subject to the same numerical

[370] See 71 FR 17600–17607 (Apr. 6, 2007) for a fuller discussion of the agency's analysis in that rule.

[371] The statutory section states as follows:

(3) Authority of the Secretary.—The Secretary shall—

(A) prescribe by regulation separate average fuel economy standards for passenger and non-passenger automobiles based on 1 or more vehicle attributes related to fuel economy and express each standard in the form of a mathematical function * * *.

requirement. Under such a single industry-wide average standard, there are always some manufacturers that are not required to make any improvements for the given year because they already exceed the standard. Under an attribute-based system, in contrast, every manufacturer is more likely to be required to continue improving each year. Because each manufacturer produces a different mix of vehicles, attribute-based standards are individualized for each manufacturer's different product mix. All manufacturers must ensure that they have used available technologies to enhance the fuel economy levels of the vehicles they sell. Therefore, fuel savings and CO_2 emissions reductions will always be higher under an attribute-based system than under a comparable industry-wide standard.

Second, attribute-based standards eliminate the incentive for manufacturers to respond to CAFE standards in ways harmful to safety.[372] Because each vehicle model has its own target (based on the attribute chosen), attribute-based standards provide no incentive to build smaller vehicles simply to meet a fleet-wide average, because the smaller vehicles will be subject to more stringent fuel economy targets.

Third, attribute-based standards provide a more equitable regulatory framework for different vehicle manufacturers.[373] A single industry-wide average standard imposes disproportionate cost burdens and compliance difficulties on the manufacturers that need to change their product plans and no obligation on those manufacturers that have no need to change their plans. Attribute-based standards spread the regulatory cost burden for fuel economy more broadly across all of the vehicle manufacturers within the industry.

And fourth, attribute-based standards respect economic conditions and consumer choice, instead of having the government mandate a certain fleet mix. Manufacturers are required to invest in technologies that improve the fuel economy of the vehicles they sell, regardless of size.

All commenters recognized that NHTSA must set attribute-based standards per Congress' mandate in EISA, but several commenters, mostly small and limited-line manufacturers, requested that NHTSA develop some kind of alternative standard besides the attribute-based passenger car and light truck standards proposed in the NPRM.[374] These manufacturers generally argued that the proposed passenger car standards were set without regard to 15 percent of the passenger car market and were disproportionately burdensome to them (NHTSA notes, however, that full-line manufacturers argued to the contrary that the proposed standards were disproportionately burdensome to them). Most requested that the agency set an alternative standard that required them to raise their CAFE levels by a certain set percentage each year, rather than at the rate required by the proposed standards. Commenters generally reasoned that these alternative standards would improve fuel savings, because otherwise small and limited-line manufacturers will be unable to meet the proposed standards and will just pay fines.

Several manufacturers suggested alternative standards that increase at set percentages each year. BMW suggested, and Mitsubishi supported, an alternative passenger car standard allowing manufacturers for which the ratio of the fleet standard to the manufacturer's average footprint is higher than average to have the option of using a flat standard. This flat standard would increase at 4.5 percent per year, which was the same annualized increase as NHTSA's proposed passenger car standards. BMW argued that the suggested approach would be consistent with EISA because it would be derived from the attribute-based standards.

Ferrari also suggested that small manufacturers (which it argued should be re-defined as either producing less than 5,000 vehicles annually for sale in the U.S. or selling less than 15,000 vehicles annually in the U.S.) should be provided an option to improve their fuel economy by a certain percentage each year. Ferrari did not suggest a particular percentage by which standards should increase. At the very least, Ferrari argued that small manufacturers should be given more lead-time than full-line manufacturers for making CAFE improvements.

Volkswagen also commented that NHTSA should consider a percent increase option for the manufacturers (like Volkswagen) with fleets that ''exhibit an unbalanced correlation to the footprint attribute,'' a concept which Volkswagen suggested could be applied to both passenger cars and light trucks. If NHTSA declined to adopt such a suggestion, Volkswagen requested that manufacturers be allowed to comply with the industry average target for each model year.

Ford also argued in favor of passenger car and light truck standards that increase at a set percentage each year, specifically at 3.8 percent per year, which Ford estimated would achieve similar CAFE levels by MY 2015. Ford's comment was based on its construction of the EISA requirement that standards ''increase ratably'' between MY 2011 and MY 2020, and was discussed in the section above addressing other comments made regarding that requirement.

Fuji/Subaru suggested that smaller-volume manufacturers should have the option of either meeting the average on the proposed passenger car curve for the fleet as a whole, or paying civil penalties based on the target assigned through the proposed passenger car curve. These alternative options would be available in the early years of the rulemaking for manufacturers not able to meet rapidly-increasing standards. Fuji/Subaru argued that smaller manufacturers could not feasibly meet the proposed standards and that an alternative option would be consistent with EISA, because the fleet average would be derived from the attribute-based standards.

Similar to Fuji/Subaru, Porsche argued that smaller limited-line manufacturers should be allowed the option to meet a fleet average equivalent to the midpoint of the compliance curve for the overall fleet in a given model year, ''rather than being forced to leave the market, restrict product or pay exorbitant civil penalties.'' Porsche argued that such a CAFE obligation would be ''challenging but achievable,'' and given the rate of increase in passenger car CAFE standards between 2007 and 2011, would be preferable to paying ''skyrocketing civil penalties.'' Porsche additionally argued that EPCA/EISA prohibits NHTSA from excluding manufacturers in setting the CAFE standards, because NHTSA must ''prescribe by regulation average fuel economy standards for automobiles manufactured by a manufacturer in that model year'' according to 49 U.S.C. § 32902(a). Porsche argued that NHTSA cannot set standards without reference to a manufacturer's fleet, and then subject that manufacturer to

[372] The 2002 NAS Report described at length and quantified the potential safety problem with average fuel economy standards that specify a single numerical requirement for the entire industry. See NAS Report at 5, finding 12.

[373] Id. at 4–5, finding 10.

[374] The Alliance comment on this issue simply stated that ''For some manufacturers, whose model proliferation may not correlate well with footprint-based CAFE standards, the burden of required fuel economy increases is particularly high,'' and suggested that ''NHTSA should consider the appropriateness of implementing an alternative fuel economy standard option'' for those manufacturers, but left it to the individual manufacturers to comment further.

enforcement penalties under those standards.

Mercedes Benz also argued that ''manufacturers not included in the analysis'' for passenger car standards, i.e., limited-line manufacturers, should be allowed either to meet the average fuel economy specified for the vehicle fleet, or ''to improve their fleet fuel economy by a percentage equal to the percentage improvement NHTSA estimates for the fleet as a whole.'' Mercedes Benz suggested that NHTSA could require manufacturers to comply with the higher of the two options. The commenter further argued that such an approach would be legal under EPCA/EISA because it ''would be based on the attribute based continuous function curve,'' and would be fairer because the proposed attribute-based standards did not take into account what the fleet as a whole could achieve in terms of fuel economy.

Agency response: NHTSA disagrees that it has the authority to set such suggested standards for any manufacturers under EPCA and EISA for purposes of this rulemaking. An average standard that is ''based on'' an attribute-based standard is not itself attribute-based, as required by EISA. Many of the manufacturers arguing for an alternative standard were concerned that the agency had excluded them from consideration in developing the proposed standards. In response, the agency included all manufacturers subject to the standards (excluding low-volume manufacturers), to ensure that the curves reflected the capabilities of the entire fleet, and not just the seven largest manufacturers. NHTSA believes that this addresses many of the commenters' concerns.

D. How does NHTSA fit the curve and estimate the stringency that maximizes net benefits to society?

In the NPRM, NHTSA proposed attribute-based passenger car and light truck CAFE standards under which each vehicle model has a fuel economy target that is based on the vehicle model's footprint, and the CAFE levels required of each manufacturer's passenger car and light truck fleets are determined by calculating the sales-weighted harmonic averages of those targets. NHTSA proposed the following mathematical function relating fuel economy targets to footprint:

$$T(x) = \frac{1}{f(x)}$$

where

$$f(x) = \frac{1}{A} + \left(\frac{1}{B} - \frac{1}{A}\right)\frac{e^{(x-C)/D}}{1+e^{(x-C)/D}}$$

and

$T(x)$ = fuel economy target (mpg)
x = footprint (square feet)
A = highest mpg value of fuel economy target
B = lowest mpg value of fuel economy target
C = coefficient (in square feet) determining horizontal midpoint of f(x)
D = coefficient (in square feet) determining width of transition between A and B.

In the NPRM, NHTSA determined the curves relating footprint to fuel economy for a given model year and vehicle type (passenger car or light truck) for which the harmonic average of the functional values are the manufacturers' fuel economy targets, using the following five-step process. (In the discussion below, we shall refer to these ten curves—one for each model year and vehicle type—as the ''fuel economy curves.'')

In Step 1, NHTSA determined the ''manufacturer-optimized'' fuel economies for each vehicle in the product plans, submitted to NHTSA prior to the NPRM, of the seven largest manufacturers (Chrysler, Ford, General Motors, Honda, Hyundai, Nissan, Toyota). The ''manufacturer-optimized'' fuel economies were obtained by applying fuel economy technologies to a given manufacturer's fleet of a given vehicle type (cars or trucks) and model year, until the incremental benefits are equal to the incremental costs. The resulting fuel economies were ''manufacturer-optimized'' in the sense that they maximize societal net benefits at the level of the manufacturer, model year, and vehicle type. This approach was used to push each manufacturer's fleet to a point of equal effort. NHTSA restricted data to the seven largest manufacturers because those manufacturers accounted for most of the market and because a number of other manufacturers did not submit product plan data and/or had histories of paying civil penalties rather than complying with CAFE standards.

In Step 2, NHTSA determined initial values for parameters A and B (values revised in steps 4 and 5, described below) for each vehicle class (passenger car and light truck) and model year as follows. For passenger cars (and light trucks, respectively) in a given model year, NHTSA set the initial value of the parameter A to be the harmonic average fuel economy among the vehicles of the given model year and vehicle type (produced by the seven largest manufacturers) comprising the lower third (respectively, eleventh) percentile of footprint values. NHTSA set the initial value of B to be the harmonic average fuel economy among the vehicles of the given model year and vehicle type (produced by the seven largest manufacturers) comprising the upper fourth (respectively, sixth) percentile of footprint values. NHTSA set A and B in this manner, rather than fitting them, for example, through regression, in order to ensure that the upper and lower fuel economy values reflect the smallest and largest models in the fleet. NHTSA chose the percentile values it used by examining the fuel economies of the largest and smallest car and truck models, and determining its best assessment of appropriate cohorts, acknowledging that there are no canonical choices for the cohorts.

In Step 3, NHTSA determined initial values for parameters C and D for each vehicle type and model year as follows. (Their values were revised for MYs 2012–2014 in Step 5.) For a given model year and vehicle type, NHTSA set the initial values of C and D to be the values for which the average (equivalently, sum) of the absolute values of the differences between the manufacturer-optimized fuel consumptions for the given model year and vehicle type and the values obtained by applying the function $f(x)$ (defined above) to the corresponding vehicle footprints is minimal, where the values of A and B

are taken from those determined in Step 2 and where *e* denotes the base of the natural logarithm (which is approximately equal to 2.71828). That is, NHTSA determined *C* and *D* by minimizing the average absolute residual, commonly known as the MAD (Mean Absolute Deviation) approach, of the corresponding constrained logistic curve. NHTSA fit the curve in fuel consumption space rather than fuel economy space because the manufacturer targets are in terms of the harmonic average fuel economy, and so it is more important that the curve fit the fuel consumption data well than that it fit the fuel economy data well. NHTSA also explained in the NPRM that it chose to use MAD in this Step instead of minimizing the sum of the square errors (''least squares,'' another common approach in curve fitting) in order to lessen the influence of outliers. NHTSA believed that it was more appropriate to use unweighted data in fitting the curve rather than weighting the data by sales because of large variations in model sales.

In Step 4, NHTSA determined for each model year and vehicle class the integer value of *t* that maximized the societal net benefits (considering the seven largest manufacturers) achieved by a fuel economy standard under which fuel consumption targets were defined by the function

$$g(x) = \frac{1}{A} + \left(\frac{1}{B} - \frac{1}{A}\right)\frac{e^{(x-C)/D}}{1+e^{(x-C)/D}} = 0.0001t$$

using the values of *A* and *B* determined in Step 2, and the values of *C* and *D* determined in Step 3.[375] NHTSA reset the values of $1/A$ and $1/B$ to be $1/A + 0.0001t$ and $1/B + 0.0001t$, respectively. (These were not the final values of *A* and *B* for model years 2012–2014, which were further adjusted in Step 5.) That is, NHTSA initially set the stringency of the curves to maximize societal net benefits.

In Step 5, NHTSA adjusted the values of *A*, *B*, *C*, and *D* for passenger cars and light trucks in MYs 2012–2014 as follows. NHTSA replaced the values of *A*, *B*, *C*, *D* for passenger cars (respectively, light trucks) in MYs 2012–2014 with the values obtained by making even annual steps between the values obtained for MYs 2011 and 2015 under Step 4. For *A* and *B*, these steps were made evenly on a gallon per mile basis. For *C* and *D*, these steps were made evenly on a square foot basis. Having done so, NHTSA then repeated Step 4 beginning with these adjusted coefficients.

NHTSA explained in the NPRM that it performed Step 5 because the MY 2011 car curve crossed the MY 2012 car curve and the MY 2011 truck curve crossed the MY 2012 truck curve. This is undesirable because it implies that the fuel economy target for a MY 2012 car in a certain range of footprint values is lower than that for a MY 2011 car of the same size (and likewise with trucks). We note that no further curve crossings occurred. That is, the passenger car (respectively, light truck) curves for MYs 2011–2015 that resulted upon the completion of Step 5 were mutually non-intersecting.

NHTSA thus set the fuel economy curve for a given model year and vehicle type to be

$$T(x) = \frac{1}{f(x)} = \frac{1}{\frac{1}{A} + \left(\frac{1}{B} - \frac{1}{A}\right)\frac{e^{(x-C)/D}}{1+e^{(x-C)/D}}}$$

where *A*, *B*, *C*, and *D* assume the final values determined in Steps 1–5. (Recall that the function *f(x)* above is in fuel consumption space, not fuel economy space.) The values of *A*, *B*, *C*, and *D* in the NPRM for each vehicle type and model year were as follows.

Parameter Values of the Fuel Economy Curves in the NPRM

	Parameter Values for Passenger Cars				Parameter Values for Light Trucks			
	A	**B**	**C**	**D**	**A**	**B**	**C**	**D**
2011	38.20	25.80	45.88	1.60	30.90	21.50	51.94	3.80
2012	40.00	27.40	45.79	1.54	32.70	22.80	51.98	3.82
2013	40.80	28.70	45.70	1.48	34.10	23.80	52.02	3.84
2014	41.20	29.90	45.61	1.42	34.10	24.30	52.06	3.86
2015	41.70	31.20	45.51	1.36	34.30	24.80	52.11	3.87

NHTSA noted in the NPRM that a manufacturer's CAFE standard may decrease in a given year, compared to the prior year, even though the passenger car (respectively, light truck) fuel economy curves increase in functional values with increasing model year. A manufacturer's standard may decrease as a result of increasing the

[375] This procedure uniformly shifts the upward and downward (depending on whether *t* is positive or negative), but on the same gallon per mile basis corresponding to the harmonic averaging of fuel economy values.

footprints of the vehicles it produces in the later of the two years by a sufficiently large amount. (In the NPRM, NHTSA referred to the decrease in vehicle or manufacturer fuel economy targets from one year to the next as ''backsliding.'') However, as explained in the NPRM, NHTSA believes it is unlikely that any manufacturer would take such a step in the final rule time frame, given what appears to be a growing consumer preference for smaller, higher-fuel economy vehicles.

NHTSA noted in the NPRM that the curves obtained for passenger cars might be undesirably steep near the inflection point, where small changes in footprint can lead to not so small changes in target fuel economy. NHTSA requested particular comment on this issue and a number of other issues, including the determination of cohorts used to set values for the asymptotes *A* and *B*, the manner in which *C* and *D* are determined, the treatment of outliers, and curve crossing.

NHTSA received several comments concerning the manner in which it fit the fuel economy curves.

Comments Regarding the Fact That the Car and Truck Curves Are Set Independently

Three commenters (Honda, Wenzel and Ross, and Public Citizen) stated it would or might be better if rather than setting the car and truck curves independently, the car and truck fuel consumption data were pooled and a single curve fit to the pooled data. Honda commented that this would result in standards that treat cars and trucks more equally and could fix the steepness problem with the car curve. Wenzel and Ross argued that setting the same standards for passenger cars and light trucks would lead to manufacturers producing relatively fewer pickups and truck-based SUVs, compared to cars and crossover SUVs, and this would result in fewer deaths and injuries resulting from crashes of incompatibly-sized vehicles and greater fuel savings. Public Citizen simply stated that NHTSA failed to set ''one continuous standard for passenger cars and light trucks.''

Agency response: In the NPRM, NHTSA did examine the standards that would result from pooling the data in this manner. However, NHTSA is required by statute to set separate average fuel economy standards for cars and trucks, and upon further reflection we believe this requirement extends to how the agency develops the curves. Pooling data for both fleets would mean applying to passenger cars a standard based, in part, on the technological capabilities of light trucks, and vice versa. NHTSA is promulgating final standards for MY 2011 that, as proposed, base the curve applied to each fleet only on the capabilities of vehicles that would be covered the curve.

Comments Concerning the Manufacturers Whose Data to Which the Curves Were Fit

BMW, Mercedes, Mitsubishi, Porsche, Subaru, and the Alliance commented that the fuel economy curves should be fit to data from all manufacturers to which the fuel economy standards apply, and not just to data from the seven largest manufacturers. Some commenters (BMW, Mercedes, Mitsubishi, Porsche) argued that limiting to data from the seven largest manufacturers results in disproportionate burdens to other manufacturers subject to the standards. Mitsubishi stated that all manufacturers need to be included in setting the standards in order for the standards to comprehensively reflect the technological and economic feasibility for the U.S. auto industry.

Agency response: Upon further consideration, NHTSA agrees with the commenters and has revised its methodology to include all manufacturers to which the MY 2011 standards apply: BMW, Chrysler, Daimler, Ferrari, Ford, General Motors, Honda, Hyundai, Maserati, Mitsubishi, Nissan, Porsche, Subaru, Suzuki, Tata, Toyota, Volkswagen. That is, NHTSA has revised Step 1 above to include the vehicles of the given model year and vehicle type for all 17 of these manufacturers.[376]

In developing the standards promulgated today, NHTSA included all manufacturers both in the curve fitting process and in the process by which the agency determined the final stringency of the standards. In addition, NHTSA has used the manufacturers' updated product plan submissions in Step 1 for the final rule, as opposed to the 2007 product plans used in the NPRM.

Comments Concerning the Steepness of the Car Curve

Several commenters (Chrysler, Honda, Nissan, Ferrari, Porsche, Subaru, Toyota, Volkswagen, the Union of Concerned Scientists, AIAM, ACEEE) expressed concern that the car curve was too steep and that this could lead to manufacturers to artificially increase the footprint of car models they produce near the point of inflection in order to reduce their fuel economy targets. In addition, Volkswagen and AIAM commented that the steepness of the car curve could pose inequitable burdens to manufacturers. ACEEE stated that the steepness of the car curve could lead to gaming of the classification of vehicles as passenger cars or light trucks. Chrysler argued that the steepness problem could become more serious in the face of changing consumer preferences.

Conversely, the Alliance expressed concern that flattening the curves might unjustifiably lower the fuel economy targets for the smallest vehicles and raise the targets for the largest vehicles.

ACEEE suggested that the steepness of the car curve is explained largely by the fact that larger cars have more horsepower on average than smaller cars, over and above what is needed for comparable performance. ACEEE argued that excessive horsepower has adverse effects on safety and that NHTSA should consider ways to discourage the continued growth in horsepower in the U.S. car market.

Commenters suggested a number of potential solutions to flatten the car curve. Honda suggested pooling the car and truck data when fitting the curves. Nissan suggested increasing *D* by a factor between 0.6 and 0.9. Ferrari suggested employing additional attributes besides footprint to set the curves. AIAM suggested using a variant of ''shadow size'' instead of footprint, changing the methodology used to determine the value of the parameter *D*, adding data from more companies, using additional attributes, or adding an alternative compliance option. ACEEE suggested revisiting the idea of normalizing car footprint to reduce the steepness of the car curve. Toyota suggested determining the value of the parameter *D* before determining the values of *A* and *B*. Chrysler suggested reducing the value of A or increasing the value of D.

Agency response: NHTSA is incorporating AIAM's suggestion to include data from more manufacturers, as discussed in the section ''Comments concerning the manufacturers whose data to which the curves were fit'' above. NHTSA reviewed the methods it presented in the NPRM for flattening the curve and the commenters' response to these methods. NHTSA has substantially revised its approach to mitigating the curve steepness issue, and believes that this revised approach provides a more rational solution than those presented either by NHTSA in the NPRM or by commenters in response to the NPRM.

[376] However, Ferrari and Maserati are not expected to manufacturer light trucks for sale in the United States in MY 2011.

Specifically, for the final rule, NHTSA has revised Step 1 as follows: First, rather than limiting this Step solely to the seven largest manufacturers, NHTSA included all manufacturers. Second, rather than identifying CAFE levels that maximized net societal benefits attributable (separately) to each individual manufacturer, the agency identified CAFE levels that cause each manufacturer to exhaust available technologies. In doing so, the agency has focused this Step on the engineering aspects of available technologies, essentially setting aside economic considerations at this point.

The agency believes that using this technology exhaustion approach and pooling product plan data from all model years better equalizes the effort, or fuel saving potential, for each manufacturer's fleet and provides a better estimation of the statistical relationship between vehicle size and fuel economy.

As mentioned above, NHTSA's NPRM discussed a constrained linear function as a possible alternative to the constrained logistic function used in today's final rule. Although the agency has concluded that, for this rulemaking, the risks of unintended consequences near the ''kinks'' in a constrained linear function outweigh that function's lesser tendency toward steepness, the agency believes that this function may warrant further consideration in future CAFE rulemakings.

Comments Concerning the Determination of the Asymptotes (*A* and *B*)

Chrysler, GM, Honda, and Toyota expressed a variety of concerns about the manner in which the values of the parameters A and B were determined.

GM commented that the values of *A* and *B* in the NPRM could discourage the production of larger vehicles. In addition, GM argued that the cohort used to determine the value of A for cars did not contain sufficiently many domestic cars to provide a value for *A* that reflects small cars as a whole (both foreign and domestic). GM suggested increasing *A* by 10 percent and decreasing *B* by 5 percent.

Chrysler suggested reducing the value of *A* in a manner that reflects lower consumer tolerance for fuel economy technologies on the least expensive vehicles.

Honda and Toyota argued that *A* and *B* should not be set as the average fuel economies of cohort sets of vehicles, but rather be determined in a metric-optimizing way similar to the determination of *C* and *D*. Both manufacturers suggested setting D first through some means, followed by determining *A*, *B*, and *C* by optimizing a curve-fitting metric. Toyota suggested this would help with the steepness problem for cars. In addition, Toyota stated that the process used to select the cohorts in the NPRM appeared to lack a clear technical or empirical basis.

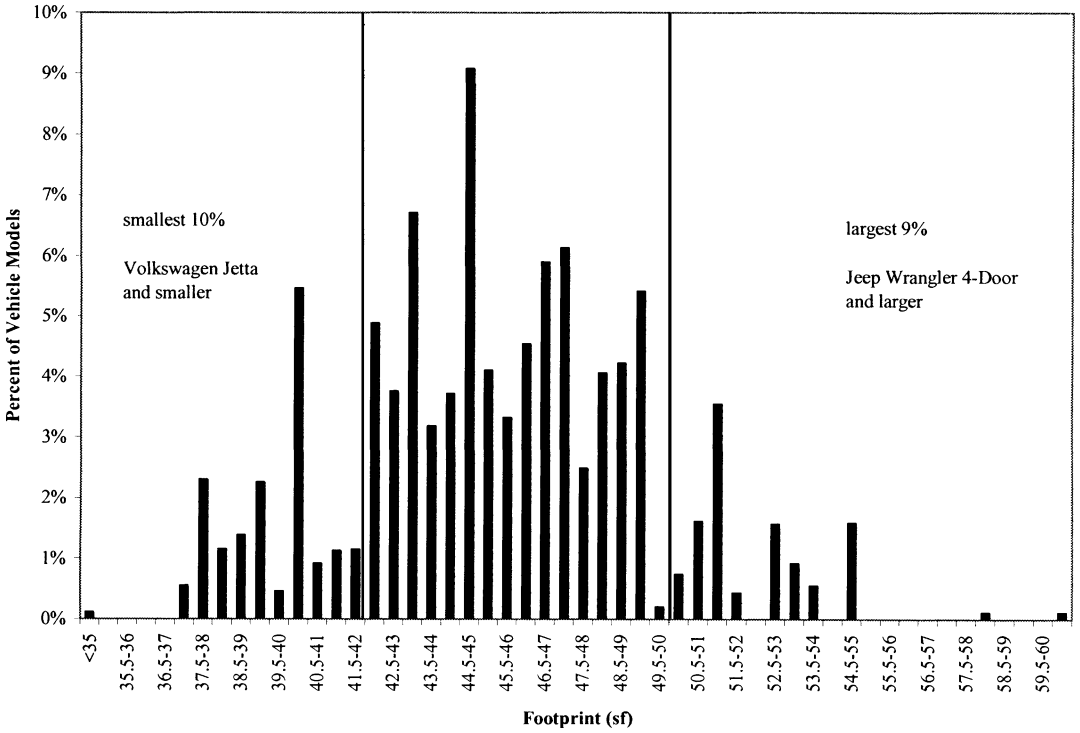
Agency response: NHTSA continues to believe that the values of *A* and *B* should be set as the average values of cohorts, rather than to optimize a curve-fitting metric. NHTSA believes that it is more important that the largest and smallest target values for the fuel economies of individual vehicle models reflect the smallest and largest vehicles in the fleet, and do so in a manner that is relatively stable, than that their values freely optimize a curve-fitting metric. The analysis presented in NHTSA's 2006 final rule establishing standards for MY 2008–2011 light trucks demonstrated that freely fitting all four constants of the logistic curve produces unstable and potentially extreme functional limits.[377] As the agency explained in that notice, such results can produce impossibly stringent standards for manufacturers that only produce small vehicles, and/or unduly low targets for large vehicles. These problems led the agency to conclude then, as it concludes today, that the limits of the logistic curve must be constrained, and that the constraints should be based on the potential performance of identified cohorts of vehicles with the smallest and largest footprints.

Given a cohort setting approach, NHTSA agrees with GM's comment to enlarge the cohort used to determine the value of *A* for cars to include more domestic small cars. NHTSA enlarged this cohort to comprise the lower tenth percentile of footprints (based now on the data from the seventeen manufacturers to which the standards apply). In addition, upon reviewing the updated product plans from the seventeen manufacturers, all of whose product plans we now use to determine cohorts, NHTSA has slightly changed the percentiles used to determine the remaining cohorts as follows: the percentile used to determine the value of *A* for light trucks was changed to 10 from 11, while that used to determine *B* for passenger cars (respectively, light trucks) was changed from 4 (respectively, 6) to 9 (respectively, 6). Again, the agency recognizes that there are no canonical choices for the percentiles used to determine the cohorts. The cohorts NHTSA has set for the final rule reflect the agency's best assessment of the passenger car and light truck fleets. Also, because the agency is now pooling data from five model years when fitting the fuel economy curves for MY 2011, as described below in ''Comments concerning curve crossing,'' these percentiles are applied to the pooled model year data, rather than to each model year's dataset.

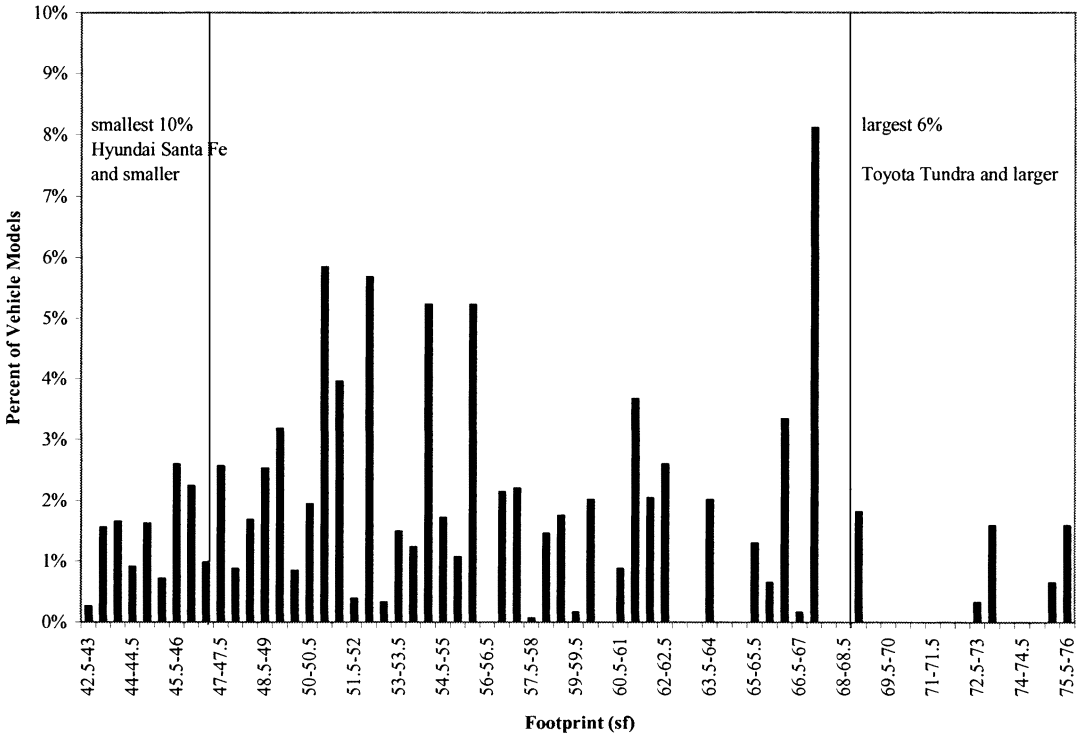
That is, for the final rule, NHTSA has revised Step 2 as follows. For passenger cars (respectively, light trucks), NHTSA set the initial value of the parameter *A* to be the harmonic average fuel economy among the vehicles of the given vehicle type (produced by the seventeen manufacturers used in Step 1) comprising the lower tenth (respectively, tenth) percentile of footprint values. NHTSA set the initial value of *B* to be the harmonic average fuel economy among the vehicles of the given vehicle type (produced by the seventeen manufacturers) comprising the upper ninth (respectively, sixth) percentile of footprint values. (As with the NPRM, these harmonic averages constitute the initial values of *A* and *B*, which will later be revised in Step 4.) Note that the revised Step 2 fits only two values for *A* (one for cars and one for trucks), and likewise two values for *B*, whereas the version of Step 2 applied in the NPRM fitted 10 values for each (one for each vehicle type and model year).

[377] 71 FR 17600–06 (Apr. 6, 2006).

Distribution of Passenger Car Footprint Values in the Final Rule



Distribution of Light Truck Footprint Values in the Final Rule



Comments Concerning the Curve-Fitting Metric and Treatment of Outliers

Honda expressed concern about NHTSA's use of unweighted data (i.e., data not weighted by sales) in the curve-fitting metric, stating that vehicle models that are similar to a number of other vehicle models would have an undue influence on the curve under an unweighted curve-fitting metric.

Subaru suggested that the initial curves should be fit to each manufacturer separately and then the results pooled in some fashion.

Commenters expressed differing views regarding how outliers should be treated. Public Citizen stated that removing outliers has the effect of reducing the stringency of the standards, and so all outliers should be included when fitting the curve. Conversely, Honda stated that outliers should be eliminated, presumably because of a concern that they have an undue influence on the standards.

Agency response: NHTSA further considered the potential to exclude outliers from the curve fitting and/or stringency determination processes. However, even considering all related comments, the agency has been unable to arrive at a definition of ''outlier'' as it would apply to these processes. Even after the maximal application of technology (described above) to manufacturers' fleets, some vehicle models have fuel economy values well below or well above those of other vehicle models with similar footprint. However, these vehicles contain information about the capability of some types of vehicles. Similarly, some vehicles with considerable quantities of technology do not achieve unusually high fuel economy values. Therefore, NHTSA finds that neither performance- nor technology-based outliers can be definitively, objectively identified. Furthermore, because NHTSA is using the minimization of mean absolute deviation (MAD) for curve fitting in this final rule, outliers have far less influence on the solution than they would had the agency relied on conventional least-square regression.

NHTSA has also continued to use an unweighted curve-fitting metric, rather than weighting the data by sales. Each vehicle model provides an equal amount of information concerning the underlying relationship between footprint and fuel economy. As explained in the NPRM, sales-weighted regression would give some vehicle models vastly more emphasis than other vehicle models. On the other hand, Honda expressed concern that, under unweighted regression, vehicle models that have been disaggregated into multiple virtually identical ''models.'' To address this concern, the agency has attempted to identify such models (e.g., vehicle models that appear to differ only in trim level), and to consolidate them into single entries. Even so, the potential distortions by such disaggregation are far smaller than the potential distortions associated with sales-weighted analysis.

In response to Subaru's suggestion, NHTSA believes that there is an insufficient amount of data at the manufacturer level (particularly in light of NHTSA's decision to use data from all manufacturers, including a number of smaller manufacturers) to generate reliable curves at an individual-manufacturer level.

As explained above, NHTSA has concluded, based on further analysis and taking into account all related comments, that unweighted MAD provides a better approach for setting the MY 2011 standards. However we note that because we pool the model year data when fitting the curve in the final rule, for reasons described in ''Comments concerning curve crossing'' below, unweighted MAD will be applied to the pooled model year data for a given vehicle class.

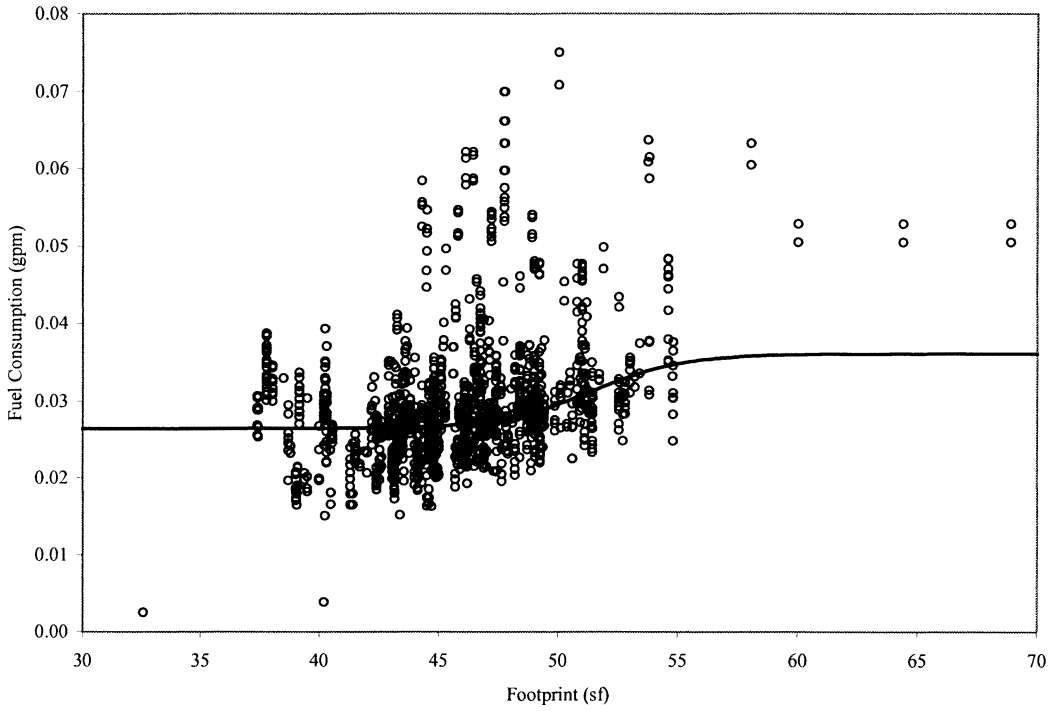
That is, for the final rule, NHTSA has revised Step 3 as follows: NHTSA determined values for parameters *C* and *D* for each vehicle type as follows. For a given vehicle type, NHTSA set the initial values of *C* and *D* to be the values for which the average (equivalently, sum) of the absolute values of the differences between the optimized fuel consumption from Step 1 for the given vehicle type (all model years) and the values obtained by applying the following function

$$f(x) = \frac{1}{A} + \left(\frac{1}{B} - \frac{1}{A}\right)\frac{e^{(x-C)/D}}{1+e^{(x-C)/D}}$$

to the corresponding vehicle footprints is minimal, where the values of A and B are taken from those determined in Step 2 and where e denotes the base of the natural logarithm (which is approximately equal to 2.71828). That is, NHTSA determined *C* and *D* by minimizing the average absolute residual of the *pooled* MY 2011–2015 data under the corresponding constrained logistic curve. Note that the revised Step 3 fits only two values for *C* (one for cars and one for trucks), and likewise two values for *D*, whereas the version of Step 3 applied in the NPRM fitted 10 values for each (one for each vehicle type and model year). We also note that because Step 5 has been eliminated in this final rule, for reasons described in ''Comments concerning curve crossing'' below, the values of *C* and *D* determined in Step 3 are the final values of these parameters.

For passenger cars, this procedure yielded a curve with the following coefficients: $A = 37.82$ mpg, $B = 27.70$ mpg, $C = 51.41$ square feet, $D = 1.91$ square feet. This curve, shown below on a fuel consumption (i.e., gpm) basis, produced an average absolute difference of 18 percent.

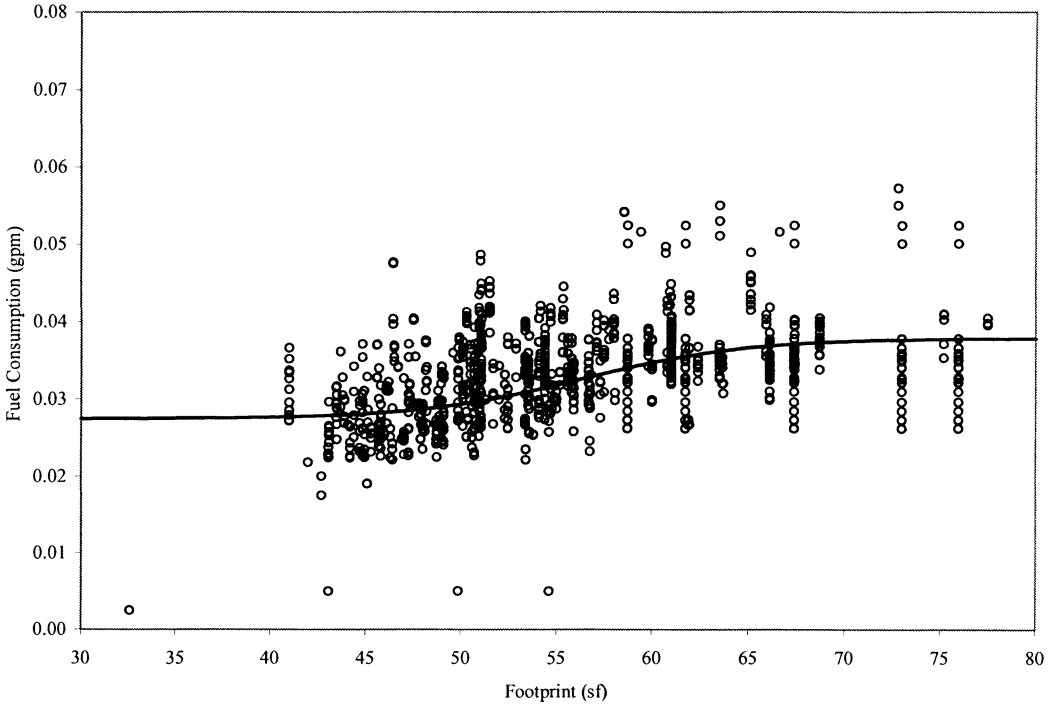
Fitted Curve for Passenger Cars in the Final Rule



Each data point in this graph represents a car model in the updated (May 2008) product plans, and the fuel consumption values for these data points reflect the ''technology exhaustion'' fuel consumption (i.e., the lowest fuel consumption achievable using technologies known about today). The curve in this graph is the constrained logistic curve defined by the parameters determined in Step 3. Step 4 has not yet been applied. Note that the corresponding chart in the NPRM (Figure V–7 in the NPRM) presented five curves, instead of one, since Steps 2 and 3 in the NPRM fit five car curves (one for each model year) instead of one. The sole curve in the above chart reflects the underlying relationship between the footprint of cars and the fuel economy achievable in them using technologies we know of today.

For light trucks, the same procedure yielded a curve with the following coefficients: A = 36.43 mpg, B = 26.43 mpg, C = 56.41 square feet, and D = 4.28 square feet. This curve, shown below on a fuel consumption (i.e., gpm) basis, produced an average absolute difference of 14 percent.

Fitted Curve for Light Trucks in the Final Rule



Comments Concerning Curve-Crossing

NHTSA received comments on both sides of the curve-crossing issue. While Nissan shared NHTSA's concern about curve crossing, Toyota commented that curve crossing did not necessarily pose a problem because it believed that manufacturers were not likely to reduce a vehicle's fuel economy in a year in which its target fuel economy declined from the previous year. Additionally, Toyota argued that NHTSA's means of addressing curve crossing lacked an empirical basis and clear objective factors.

Nissan and Toyota proposed different solutions to address the curve crossing issue: Nissan suggested increasing *D* by a factor between 0.6 and 0.9. Although it did not feel that curve crossing was necessarily problematic, Toyota presented an alternative methodology for addressing the curve crossing issue by smoothing the rate of increase between model years.

Agency response: NHTSA agrees with Nissan that curve crossing is problematic, since it makes little sense for a vehicle's fuel economy target to decrease from one model year to the next. However, NHTSA disagrees with the solutions proposed to address curve crossing for the following reasons. Nissan's suggestion to increase *D* by a factor between 0.6 and 0.9 appears to have no rational basis for choosing such a factor. Toyota's proposed alternative methodology, on the other hand, is designed to produce standards that align with historic planning cycles and allocation of engineering resources. While it is desirable for the fuel economy standards to be consistent with historic planning cycles and resource allocation, NHTSA believes that it is more important that the standards are the maximum feasible, and artificially ''smoothing'' the rate of increase could not guarantee that standards are the maximum feasible in each model year.

Given that NHTSA is now applying maximized fuel economies in Step 1, NHTSA has concluded that it is beneficial to include data from all model years (for the given vehicle type) in fitting the curve, as the underlying relationship between fuel economy and footprint should not change from one year to the next. (However, the relationship can change as new technologies develop to improve fuel economy.) That is, we now determine *A* and *B* using pooled model year data in Step 2, and fit *C* and *D* using pooled model year data in Step 3. As a consequence of eliminating Step 5, the values of *C* and *D* for cars (and likewise trucks) agree in each model year. (Step 4 remains unchanged in this final rule.) The inclusion of data from all model years eliminates the possibility of curve crossing, and so NHTSA is eliminating Step 5 in this final rule.

With regard to Toyota's comment, the agency believes that the revised approach to curve fitting significantly improves the objectivity of the process for determining maximum feasible standards.

The parameter values in this final rule are as follows.

	MY 2011 Parameter Values			
	A	B	C	D
Passenger Cars	31.20	24.00	51.41	1.91
Light Trucks	27.10	21.10	56.41	4.28

E. Why has NHTSA used the Volpe model to support its analysis?

In developing today's final CAFE standards, NHTSA has made significant use of results produced by the CAFE Compliance and Effects Model (commonly referred to as the Volpe model), which DOT's Volpe National Transportation Systems Center developed specifically to support NHTSA's CAFE rulemakings.

As discussed above, the agency uses the Volpe model to estimate the extent to which manufacturers could attempt to comply with a given CAFE standard by adding technology to fleets that the agency anticipates they will produce in future model years. This exercise constitutes a simulation of manufacturers' decisions regarding compliance with CAFE standards.

The model also calculates the costs, effects, and benefits of technologies it estimates could be added in response to a given CAFE standard. It calculates costs by applying the cost estimation techniques discussed above in Section IV and by accounting for the number of affected vehicles. It accounts for effects such as changes in vehicle travel, changes in fuel consumption, and changes in greenhouse gas and criteria pollutant emissions. It does so by applying the fuel consumption estimation techniques also discussed in Section IV, and the vehicle survival and mileage accumulation forecasts, the rebound effect estimate and the fuel properties and emission factors discussed in discussed in Section V. Considering changes in travel demand and fuel consumption, the model estimates the monetized value of accompanying benefits to society, as discussed in Section V. The model calculates both the current (i.e., undiscounted) and present (i.e., discounted) value of these benefits.

The Volpe model has other capabilities that facilitate the development of a CAFE standard. It can be used to fit a mathematical function forming the basis for an attribute-based CAFE standard, following the steps described below. It can also be used to evaluate many (e.g., 200 per model year) potential levels of stringency sequentially, and identify the stringency at which specific criteria are met. For example, it can identify the stringency at which net benefits to society are maximized, the stringency at which a specified total cost is reached, or the stringency at which a given average required fuel economy level is attained. The model can also be used to perform uncertainty analysis (i.e., Monte Carlo simulation), in which input estimates are varied randomly according to specified probability distributions, such that the uncertainty of key measures (e.g., fuel consumption, costs, benefits) can be evaluated.

Nothing in EPCA requires NHTSA to use the Volpe model. In principle, NHTSA could perform all of these tasks through other means. For example, in developing the MY 2011 standards promulgated today, the agency did not use the Volpe model's curve fitting routines, because they could not be modified in time to implement the changes discussed below to this aspect of the agency's analysis. In general, though, these model capabilities greatly increase the agency's ability to rapidly, systematically, and reproducibly conduct key analyses relevant to the formulation and evaluation of new CAFE standards.

NHTSA received comments from the Alliance and CARB encouraging NHTSA to examine the usefulness of other models. Examples of other models and analyses that NHTSA and Volpe Center staff have considered for the final rule include DOE's NEMS, Oak Ridge National Laboratory's (ORNL) Transitional Alternative Fuels and Vehicles (TAFV) model, Sierra Research's VEHSIM model and the California Air Resources Board's (CARB) analysis supporting California's adopted greenhouse gas emissions standards for light vehicles.

DOE's NEMS represents the light-duty fleet in terms of five car ''manufacturers'' and four truck ''manufacturers,'' twelve vehicle market classes (e.g., ''standard pickup''), and sixteen powertrain/fuel combinations (e.g., methanol fuel-cell vehicle). Therefore, as currently structured, NEMS is unable to estimate manufacturer-specific implications of attribute-based CAFE standards. The analysis of manufacturer-specific implications is useful in setting the standard, because any given standard will have differential impacts on individual manufacturers, depending on the composition of their vehicle fleets. In order to balance national-level costs and benefits, assessment of individual manufacturer's costs and compliance strategies is appropriate.[378]

TAFV accounts for many powertrain/fuel combinations, having been originally designed to aid understanding of possible transitions to alternative fueled vehicles, but it also represents the light duty fleet as four aggregated (i.e., industry-wide) categories of vehicles: Small cars, large cars, small light trucks, and large light trucks. Thus, again, as currently structured, TAFV is unable to estimate manufacturer-specific implications of attribute-based CAFE standards.

Sierra Research's vehicle simulation model, VEHSIM, which was originally developed by General Motors, calculates the fuel economy for a specified vehicle design over a specified driving cycle. Despite theoretical advantages in terms of explicit representation of physical phenomena underlying fuel consumption, VEHSIM has significant shortcomings as a tool for model-by-model evaluation of the entire future light vehicle fleet. Although submitted after the close of the comment period specified in the NPRM, comments by several state Attorneys General and other state and local official questioned the need and merits of full vehicle simulation within the context of CAFE analysis, stating that

> Computer simulation models such as VEHSIM are not practical except perhaps during vehicle development to determine the performance of specific vehicle models where all vehicle engineering parameters are known and can be accounted for in the inputs to the model. Such an exercise is extremely data intensive, and extending it to the entire fleet makes it subject to multiple errors unless the specific parameters for each vehicle model are known and accounted for in the model inputs.[379]

Nevertheless, the Volpe model could, in principle, be modified to use VEHSIM or any other vehicle simulation tool to estimate fuel consumption. However, in practice, NHTSA and Volpe Center staff are skeptical that doing so will be either feasible or meaningful as long as CAFE analysis continues to be informed by forecasts of the future vehicle market—forecasts that, though detailed, will not foreseeably contain the extensive information needed to perform full vehicle simulation. The information required for full vehicle simulation is

[378] In principle, if all manufacturers freely traded fuel economy credits among themselves, fleetwide estimates of compliance costs and benefits would approximate the sum of individual manufacturer costs and benefits. However, major manufacturers have repeatedly indicated that they do not intend to trade credits, and statutory language prohibits NHTSA from considering the benefits of trading in setting standards.

[379] Attorneys General of the States of California, Arizona, Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New Mexico, Oregon, and Vermont, the Executive Officer of the California Air Resources Board, the Commissioner of the New Jersey Department of Environmental Protection, the Secretary of the New Mexico Environment Department, the Secretary of the Commonwealth of Pennsylvania Department of Environmental Protection, and the Corporation Counsel of the City of New York, Supplemental Comments Regarding Alliance of Automobile Manufacturers Comments, Docket No. NHTSA–2008–0089–0495, October 8, 2008, p. 3.

not only exponentially greater than NHTSA currently requests of manufacturers, but for future vehicles, the information may not yet exist, as manufacturers may not have completed the design of future vehicles. See Section IV.C.8 for a fuller discussion of full vehicle simulation in the context of CAFE.

CARB's analysis of light vehicle GHG emissions standards uses two levels of accounting. First, based on a report prepared for NESCCAF, CARB represents the light-duty fleet in terms of five ''representative'' vehicles, each with engineering properties estimated by CARB to meaningfully typify the engineering characteristics of a given type of vehicle (e.g., small cars). NHTSA is concerned that such a limited a number of such vehicles does not reasonably represent the engineering properties of individual vehicle models that vary widely both among manufacturers and within manufacturers' individual fleets. This concern was reflected in comments by the Alliance. For each of these five vehicles, NESCCAF's report contains the results of full vehicle simulation given several pre-specified technology ''packages.'' Second, to evaluate manufacturer-specific regulatory costs, CARB represents each manufacturer's fleet as two average test weights, one for each of California's two proposed regulatory classes. Even for a flat standard such as that considered by California, NHTSA is concerned that this level of aggregation would hinder reasonable estimation of compliance costs faced by individual manufacturers. Further, use of CARB's methods would not enable NHTSA to estimate manufacturer-specific implications of the attribute-based CAFE standards. Under an attribute-based standard, the CAFE level required of a given manufacturer depends on the specific mix of vehicles sold by that manufacturer, not the average properties of that manufacturers' fleet. As noted above, it is useful to estimate national level costs and benefits of a standard applied at the level of individual manufacturer's fleets by assessing individual manufacturer's costs and compliance strategies.

On the other hand, NHTSA recognizes that a more aggregated representation of the fleet—such as CARB's five-vehicle approach—may be the only way that full vehicle simulation could be integrated into CAFE analysis. Although NHTSA has not yet been able to conduct an analysis with the advantages of both detailed representation of manufacturers' fleets and full integration of full vehicle simulation, the agency cannot rule out the possibility of such an analysis in the future.

Although the Volpe model has limitations, having considered other tools and analytical approaches, NHTSA concludes that for this final rule, the Volpe model is a sound and reliable tool for the development and evaluation of potential CAFE standards. However, the agency will continue to consider other methods for evaluating potential CAFE standards in the future as well as to examine ways to improve the Volpe model.

NHTSA notes that some commenters questioned the transparency of the Volpe model, which Public Citizen and the Center for Biological Diversity (CBD) referred to as a ''black box.'' In response to these comments, the agency notes that model documentation, which is publicly available in the rulemaking docket, explains how the model is installed, how the model inputs (all of which, except for manufacturers' confidential product plans, are available to the public) and outputs are structured, and how the model is used. The model can be used on any Windows-based personal computer with Microsoft Office 2003 and the Microsoft .NET framework installed (the latter available without charge from Microsoft). The executable version of the model is available upon request, and has been provided to manufacturers, consulting firms, academic institutions, governmental and nongovernmental organizations, research institutes, foreign government officials, and a variety of other organizations. The current version of the model was developed using Microsoft Development Environment 2003, and every line of computer code (primarily in C#.NET) has been made available to individuals who have requested the code. With the code, anyone is capable of running the model using market forecast data that they obtain or estimate on their own. Given the comprehensive disclosure of information about the Volpe model and the fact that many entities and individuals have made use of it, the characterization of the Volpe model as a ''black box'' is not accurate.

Although NHTSA currently uses the Volpe model as a tool to inform its consideration of potential CAFE standards, contrary to the assertions of some commenters, the Volpe model does not determine the CAFE standards NHTSA proposes or promulgates as final regulations. The results it produces are completely dependent on inputs selected by NHTSA, based on the best available information and data available in the agency's estimation at the time standards are set. In addition to identifying the input assumptions underlying its decisions, NHTSA provides the rationale and justification for selecting those inputs as described in Sections III through V of this notice. NHTSA also determines whether to use the model to estimate at what stringency net benefits are maximized, or to estimate other stringency levels, such as the point where total costs equal total benefits. NHTSA also determines whether to use the model to evaluate the costs and effects of stringencies that fall outside of the scope of maximum feasible. For example, the standards for the ''Technology Exhaustion'' Alternative examined by NHTSA and discussed later in this section, were estimated outside the model, which was subsequently used to estimate corresponding costs and effects.[380] Finally, NHTSA is guided by the statutory requirements of EPCA as amended by EISA in the ultimate selection of a CAFE standard.

NHTSA does not agree with Public Citizen that the agency ''does not establish what is technologically feasible and economically practicable based on an independent assessment of the current vehicle fleet and the available technology to improve the fleet, but rather accepts industry inputs, which are run through the black box of the Volpe model and a variety of 'optimization' factors, which are tied to maximizing industry-wide benefits.'' The manufacturers' plans are only the starting point for the agency's determination of how much technology can and should be required consistent with the statutory factors, and the Volpe model is often tested using inputs developed without reliance on manufacturers' product plans. NHTSA considers the results of analyses conducted by the Volpe model and analyses conducted outside of the Volpe model, including analysis of the impacts of carbon dioxide and criteria pollutant emissions, analysis of technologies that may be available in the long term and whether NHTSA could expedite their entry into the market through these standards, and analysis of the extent to which changes in vehicle prices and fuel economy might affect vehicle production and sales. Using all of this information—not solely that from the Volpe model—the agency considers the governing statutory factors, along with environmental issues and other relevant societal issues such as safety, and promulgates the maximum feasible

[380] By definition, the ''maximum technology'' scenario far exceeds the maximum feasible CAFE standard.

standards based on its best judgment on how to balance these factors.

This is why the agency considered seven regulatory alternatives, only one of which maximizes net benefits based on the agency's determinations and assumptions. The others assess alternative standards that in many cases exceed the point at which net benefits are maximized. These comprehensive analyses, which also included scenarios with different economic input assumptions as presented in the FEIS and FRIA, are intended to inform and contribute to the agency's consideration of the ''need of the United States to conserve energy,'' as well as the other statutory factors. 49 U.S.C. 32902(f). Additionally, the agency's analysis considers the need of the nation to conserve energy by accounting for economic externalities of petroleum consumption and monetizing the economic costs of incremental CO_2 emissions in the social cost of carbon. As mentioned above, NHTSA will continue to consider other methods for determining future CAFE standards in future rulemakings.

VII. Determining the Appropriate Level of the Standards

A. Analyzing the Preferred Alternative

As discussed above, EPCA requires the agency to determine what level of CAFE stringency would be ''maximum feasible'' for each model year by considering the four factors of technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy. NEPA directs that environmental considerations be integrated into that process. To accomplish that purpose, NEPA requires an agency to compare the potential environmental impacts of its proposed action to those of a reasonable range of alternatives. NHTSA compared and analyzed these impacts in the DEIS and the FEIS. The proposed standards for passenger cars and light trucks were set at the point where societal net benefits were maximized in the agency's analysis. NHTSA referred to those standards as the ''Optimized'' Alternative in the NPRM, DEIS, and FEIS. In the DEIS and the FEIS, the agency identified the Optimized Alternative (maximizing societal net benefits) as NHTSA's Preferred Alternative. The agency carefully considered and analyzed each of the individual economic assumptions to determine which assumptions most accurately represent future economic conditions. For a discussion of the economic assumptions relied on by the agency in this final rule, see Section V above. The economic assumptions used by the agency in this final rule correspond to the ''Mid-2 Scenario'' set of assumptions identified in the FEIS. See FEIS § 2.2. The Optimized Alternative utilizing the Mid-2 Scenario economic assumptions, which were prompted in part by public comments, is squarely within the spectrum of alternatives set forth in the DEIS and the FEIS, and all relevant environmental impacts associated with the Optimized Alternative have been presented in the DEIS and FEIS, and considered by NHTSA.

B. Alternative Levels of Stringency Considered for Establishment as the Maximum Feasible Level of Average Fuel Economy

NHTSA recognizes that alternative stringencies are possible, depending on how the agency balances the four factors underlying the selection of maximum feasible level of average fuel economy and the attendant environmental concerns. To aid it in determining the maximum feasible level, NHTSA chose six alternative regulatory actions. Each alternative reflects a balancing of the four factors that differs from the balancing on which the agency's Preferred Alternative is based. In *CBD* v. *NHTSA,* the Ninth Circuit recognized that EPCA gives ''NHTSA discretion to decide how to balance the statutory factors—as long as NHTSA's balancing does not undermine the fundamental purpose of EPCA: energy conservation.'' 538 F.3d 1172, 1195 (9th Cir. 2008). The Court also raised the possibility that NHTSA's current balancing of the statutory factors might be different from the agency's balancing in the past, given the greater importance today of the need to conserve energy and the more advanced understanding of climate change. Id. at 1197–98. In the rulemaking for MY 2012 and beyond, NHTSA will carefully re-evaluate the facts relevant to assessing the need to conserve energy, including the latest developments in the understanding of climate change and its effects, and will balance the factors accordingly.

CEQ regulations state that consideration of alternatives is the ''heart'' of an EIS. 40 CFR 1502.14. However, under CEQ regulations, NHTSA is not required to include every conceivable ''alternative'' in an EIS. Rather, an agency is to consider ''reasonable'' alternatives. See id. CEQ guidance also instructs that ''[w]hen there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS.'' *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,* 46 FR 18026, 18027 (March 23, 1981).

Here, an infinite number of alternatives could theoretically have been defined along a continuum of potential CAFE standards. Given the infinite number of alternatives, and informed by CEQ regulations and guidance, NHTSA's Environmental Impact Statement identifies and analyzes six alternatives. Specifically, NHTSA evaluates the six alternatives proposed in the NPRM as its reasonable range of alternatives. The agency examined the six specific alternatives described below to illustrate the effect of balancing the four factors differently on the range of potential stringency levels, the relationship of economic benefits to compliance costs, and the resulting environmental impacts. These alternatives capture a full spectrum of potential environmental impacts, ranging from vehicles continuing to maintain their MY 2010 fuel economy to standards based on the maximum technology expected to be available over the five-year period proposed in the NPRM (i.e., MYs 2011–2015).

The six alternatives considered in this rulemaking, and analyzed in NHTSA's the Environmental Impact Statement, are described as follows:

- The ''no increase'' or ''baseline'' alternative assumes that NHTSA would not issue a rule regarding CAFE standards, or alternatively, that NHTSA would issue a rule continuing current standards during the time frame of the final rule standards. Either way, the ''baseline'' alternative thus assumes that average fuel economy levels in the absence of CAFE standards beyond 2010 would equal the higher of a manufacturer's product plans or the manufacturer's required level of average fuel economy for MY 2010. The MY 2010 fuel economy standards in mpg (27.5 mpg for cars and 23.3 mpg for light trucks) represent the average fuel economy levels the agency believes manufacturers would continue to achieve, assuming the agency does not issue a rule.[381] The baseline alternative provides a useful reference point for measuring the impact of the new authorities granted to NHTSA under EISA. The agency uses this baseline in both its NEPA and EPCA analyses.

[381] In the FEIS, NHTSA refers to this alternative as the ''No Action'' alternative. CEQ regulations require agencies to consider a no action alternative as part of their NEPA analysis. See 40 CFR 1502.2(e) and 1502.14(d).

• The ''25 percent below optimized'' alternative reflects standards that are more stringent than the ''baseline'' alternative, but less stringent than the ''optimized'' alternative. The required average CAFE levels under this alternative are less stringent than those under the optimized alternative by 25 percent of the difference in required fuel economy between the optimized alternative and the ''total costs equal total benefits'' alternative. For purposes of comparison, we note that the average fuel economy levels required by this alternative fall below those under the optimized alternative by the same absolute amount by which the levels under the ''25 percent above optimized'' alternative exceed those under the optimized alternative.

• The ''25 percent above optimized'' alternative reflects standards that exceed the required average fuel economy levels of the optimized alternative by 25 percent of the difference between the average fuel economy levels required by the optimized alternative and those required by the total costs equal total benefits alternative.

• The ''50 percent above optimized'' alternative reflects standards that exceed the required average fuel economy levels of the optimized alternative by 50 percent of the difference between the average fuel economy levels required by the optimized alternative and those required by the total costs equal total benefits alternative.

• The ''total costs equal total benefits'' alternative requires average fuel economy levels that result from increasing fuel economy targets until the total cost of all applied technologies equals the total benefits of all applied technologies. Adopting this alternative would result in zero net benefits in the agency's analysis because the benefits to society are completely offset by the costs.[382]

• The ''technology exhaustion'' alternative reflects standards that are based on progressively increasing stringency in a given model year until every manufacturer without a history of paying civil penalties has exhausted all technologies estimated to be available during that model year. Except for phase-in constraints, this analysis was performed using the same technology-related estimates (e.g., incremental costs, incremental fuel savings, availability, applicability, and dependency on vehicle redesign and refresh cycles) as used for the other alternatives. For the technology exhaustion alternative, NHTSA removed phase-in constraints in order to develop an estimate of the effects of fuel economy increases that might be achieved if manufacturers could apply as much technology as theoretically possible, while recognizing that some technologies require major changes to vehicle architecture and can therefore be applied only as part of a redesign or refresh. Thus, in each year, NHTSA increased the stringency until the first manufacturer exhausted available technologies; beyond this stringency, NHTSA estimated that the manufacturer would be unable to comply (NHTSA is precluded from considering manufacturers' ability to use CAFE credits in setting standards) and would be forced to pay civil penalties. NHTSA then increased the stringency until the next manufacturer was unable to comply, and continued to increase the stringency of the standard until every manufacturer was unable to apply enough technology to comply.

C. EPCA Provisions Relevant to the Selection of the Final Standards

1. 35 in 2020

Section 102(a)(2) of EISA adds to 49 U.S.C. § 32902(b) a requirement that states as follows:

> (A) AUTOMOBILE FUEL ECONOMY AVERAGE FOR MODEL YEARS 2011 THROUGH 2020—The Secretary shall prescribe a separate fuel economy standard for passenger automobiles and a separate average fuel economy standard for non-passenger automobiles for each model year beginning with model year 2011 to *achieve a combined fuel economy average for model year 2020 of at least 35 miles per gallon for the total fleet* of passenger and non-passenger automobiles manufactured for sale in the United States for that model year.

(Emphasis added.) As discussed, this requirement is one of several that EISA mandated for CAFE standards between MY 2011 and MY 2020. Subsection 32902(a) contains a general requirement, not limited to any particular model year or period of model years, that the standards for a model year must be the ''maximum feasible'' standards for that model year. Subsections 32902(b)(2)(A) and (C) set forth three requirements specific to MYs 2011–2020. The standards for those years must be sufficiently high to result in a combined (passenger car and light truck) fleet fuel economy of at least 35 mpg by MY 2020, they must increase annually, and they must increase ratably. Each of these general and specific requirements must be interpreted in light of the other requirements.[383]

In the NPRM, NHTSA explained that the 35 mpg figure is not a standard and is not a requirement applicable to any individual manufacturer or group of manufacturers. Instead, it is a requirement applicable to the agency regarding the combined effect of the separate standards for passenger cars and light trucks that NHTSA is to establish for the years leading up to MY 2020 and most particularly for MY 2020 itself. EISA does not specify precisely how compliance with this requirement is to be ensured or how or when the CAFE of the industry-wide combined fleet for MY 2020 is to be calculated for purposes of determining compliance. As a practical matter, to ensure that an industry-wide combined average fuel economy for passenger cars and light trucks of at least 35 mpg is achieved, the standard for MY 2020 passenger cars would have to produce an industry-wide average for passenger cars that is significantly above 35 mpg and the one for MY 2020 light trucks in an industry-wide average for light trucks that might or might not be below 35 mpg. Similarly, the CAFE of some manufacturers' combined fleet of MY 2020 passenger cars and light trucks would be above 35 mpg, while the combined fleet of others might or might not be below 35 mpg.

NHTSA received numerous comments regarding the 35 mpg-in-2020 requirement referring to the 35 mpg requirement as a floor and not a ceiling and urging the agency to set standards that raise the industry-wide combined average to 35 mpg sooner, as early as MY 2015.

On the other hand, many manufacturers commented that the proposed standards were too aggressive in the first couple of years and even overall for the full 5-year period. They argued that there was insufficient lead time. Some manufacturers said NHTSA should revert to setting standards based

[382] This analysis produced stringencies at which benefits were approximately, but not necessarily exactly, equal to costs. The precision of this exercise is limited by several factors, including (1) the discrete amounts by which NHTSA varied stringency levels under consideration, (2) ''carrying over'' of technologies between model years, and (3) rounding of fuel economy levels, CAFE levels, and required CAFE levels.

[383] We note that the requirement in subsection 32902(b)(2)(B) specific to the MY 2021–2030 standards is markedly different from the requirements in subsections 32902(b)(2)(A) and (C) specific to the MY 2011–2020 standards. The single model year specific requirement in subsection 32902(b)(2)(B) simply repeats the general requirement in subsection 32902(a), i.e., that the standards must be set at the maximum feasible level. In contrast, the model year-specific requirements in subsections 32902(b)(2(A) and (C) do not repeat the general requirement. Instead, they constitute separate and additional requirements regarding the stringency of the MY 2011–2020 standards.

on the capabilities of the least capable manufacturer.

NHTSA is well aware that the 35 mpg-in-2020 requirement is a floor and not a ceiling. EISA specifically states that the industry-wide combined average must be at least 35 mpg. However, the agency must also issue standards at the maximum feasible level in each model year, as discussed below. The agency has discretion as to how it makes that determination, with due regard to the 35 mpg-in-2020 requirement, and has done so based on the best available information and data and with full awareness of the three obligations under EISA (maximum feasible standards for each model year, annual ratable increases and a combined fleet average of at least 35 mpg in 2020) and environmental concerns under NEPA. The standards for MY 2010 are 27.5 mpg for passenger cars and 23.5 mpg for light trucks. The final standards for MY 2011 are 30.2 mpg for passenger cars and 24.1 mpg for light trucks, which represents a rise of 2.7 mpg and 0.6 mpg, respectively, over the standards for MY 2010. NHTSA is confident that the final MY 2011 standards represent full compliance with these obligations and will continue to monitor manufacturers' achieved average fuel economy levels and capabilities to ensure that the minimum 35 mpg fleet requirement will be met as expeditiously as possible.

2. Annual Ratable Increase

Section 102(a)(2) of EISA also adds to 49 U.S.C. § 32902(b) a requirement that states as follows:

> (C) PROGRESS TOWARD STANDARD REQUIRED—In prescribing average fuel economy standards under subparagraph (A), the Secretary shall prescribe annual fuel economy standard increases that *increase the applicable average fuel economy standard ratably* beginning with model year 2011 and ending with model year 2020.

(Emphasis added.) Congress gave no indication in EISA itself as to what it meant by the term ''ratably,'' but NHTSA notes that Representative Markey inserted an extension of remarks into the Congressional Record stating as follows:

> In asking for ''ratable'' progress, the intent of Congress is to seek relatively proportional increases in fuel economy standards each year, such that no single year through 2020 should experience a significantly higher increase than the previous year.[384]

In the NPRM, NHTSA stated that ''EPCA requires that the MY 2011–2019 CAFE standards for passenger cars and for light trucks must both increase ratably to at least the levels necessary to meet [the] 35 mpg requirement for MY 2020.'' [385] NHTSA interpreted the ''increase ratably'' requirement ''to mean that the standards must make steady progress toward the levels necessary for the average fuel economy of the combined industry wide fleet of all new passenger cars and light trucks sold in the United States during MY 2020 to reach at least 35 mpg.'' [386]

Several commenters argued that NHTSA had interpreted the ''increase ratably'' requirement incorrectly, frequently linking this argument to a criticism of the front-loading of the proposed standards as inconsistent with the ''increase ratably'' requirement.

The Alliance commented that NHTSA had provided insufficient explanation or analysis of its interpretation that ''ratable'' meant ''steady progress'' within the context of EISA. The Alliance speculated that NHTSA may have based its interpretation on the title of the EISA section adding the ''increase ratably'' requirement, ''Progress Toward Standard Required,'' but argued that titles of sections should only be used for interpretive clues if the text of the section is ambiguous, and that NHTSA should undertake a full definitional analysis of ''ratably'' in order to determine its meaning in the context of EISA.

The Alliance commented that the two primary dictionary definitions of ''ratable'' are ''capable of being rated, estimated, or appraised,'' and ''proportional.'' [387] The Alliance argued that the meaning of ''proportionally'' made more sense in the context of EISA, without providing any particular explanation of why it believed that that definition made more sense, but citing NHTSA's use of the term ''diminishes ratably'' later in the NPRM with reference to the proportional phase-out of the AMFA credit.[388]

The Alliance further argued that NHTSA appeared to be incorrect in equating ''ratable increase'' with ''steady progress,'' since the term ''steady progress'' appeared in an earlier version of EPCA and there is a presumption against equating different statutory words chosen by Congress. However, the Alliance commented that if NHTSA is indeed correct that ''ratable increase'' meant ''steady progress,'' then NHTSA should consider how it interpreted ''steady progress'' in prior rulemakings—that is, as requiring ''annual increases in average fuel economy, but with none of the annual increments varying dramatically from the other annual increases.'' [389]

The Alliance concluded by arguing that whether ''ratably'' means ''steady progress'' or ''proportionally,'' ''it seems clear that 'ratably' is intended to impose some limitation on the variability in the rate of increase of CAFE standards over time.'' [390] The Alliance stated that NHTSA should undertake a more complete analysis of the ''increase ratably'' requirement for the final rule, and address how the ''front-loaded'' proposed standards ''square with EISA's directive.'' [391]

GM supported the Alliance comments, and further urged NHTSA to consider a more gradual, less ''front loaded'' increase in the CAFE standards adopted in the final rule. GM argued that ''standards [should be] more aligned with the ratable levels of increase noted in [EISA], i.e., a progression that is more even, less aggressive than the proposed aggressive and front loaded 4.5%/yr rate, and more in line with the approximately 3%/yr rates needed to achieve the goal of EISA.'' [392]

Ford also supported the Alliance comments, and commented that the dictionary definition of ''ratable'' must be ''proportional'' in the context of EISA, because ''capable of being rated'' ''does not make sense in the context of CAFE standard setting.'' [393] Thus, Ford argued, the ''current, front-loaded proposal does not appear to reflect a series of 'ratable' increases,'' if ''the rate of increase [should be] roughly constant from year to year.'' [394] Ford additionally commented that NHTSA had provided no justification for how the proposed standards reflected a ''ratable increase.'' Ford suggested that to solve this problem of the proposed standards not being ''ratable,'' NHTSA should determine fuel economy targets for passenger cars and light trucks for MY 2015, and then set footprint-based constrained logistic function standards for MY 2011–2014 at approximately a 3.8 percent per year increase to reach the calculated MY 2015 levels. Ford stated that the 3.8 percent per year

[384] 153 CONG. REC. H14253 (editor's note) and H14444 (daily ed. Dec. 6, 2007) (statement of Rep. Markey).

[385] 73 FR 24364 (May 2, 2008).

[386] Id.

[387] Alliance comment at 45, Docket No. NHTSA–2008–0089–0179.1, citing American Heritage Dictionary 1027 (2d college ed. 1991).

[388] 73 FR 24456 (May 2, 2008).

[389] Alliance comments at 48, citing 42 FR 33537 (June 30, 1977).

[390] *Id.* at 49.

[391] *Id.*

[392] GM comments at 8 of 10, Docket No. NHTSA–2008–0089–0182.

[393] Ford comments at 11, fn 1, Docket No. NHTSA–2008–0089–0202.1.

[394] *Id.*

increase would be ''more equalized ('ratable').'' [395]

Toyota also combined its comments on the ''increase ratably'' requirement with criticism of the rate of increase in the stringency of the proposed standards. Toyota argued that ''While the term 'ratable' was not defined in EISA, Toyota believes this language was intended to recognize that large and/or inconsistent jumps in fuel economy targets are difficult for manufacturers to plan for because of product cycles and the lead time needed to incorporate technology throughout the fleet consistent with these product cycles.'' [396] Toyota further argued that the 4.5 percent average rate of increase in the proposed standards was far greater than the ''nominal 3.3% implied by the term 'ratable' in EISA.'' [397] Toyota added, however, with reference to the rate of increase in stringency of targets for smaller-footprint light trucks, that nothing in EISA suggested that ''ratable'' applied to individual footprint targets.[398] Toyota urged NHTSA to ''reduce the disparity in year-to-year fuel economy increases to be more 'ratable.' ''

Other commenters on the ''increase ratably'' requirement included the Washington Legal Foundation (WLF) and the American Council for an Energy Efficient Economy (ACEEE). WLF stated that it agreed with the Alliance comments that the ''front-loading approach is inconsistent with EISA, which requires the yearly standards to be set 'ratably' over the ten-year period,'' although it did not explain further what it thought the ''increase ratably'' requirement meant.[399] ACEEE made no attempt to define or interpret ''ratable,'' but commented that NHTSA should ensure ''ratable'' progress toward an average of at least 35 mpg in MY 2020 by including in the final rule ''an express provision requiring NHTSA to periodically review progress toward the required fuel economy level and revise the standards accordingly.'' [400] This provision would mandate ''mid-course corrections'' in the standards if necessary.

NHTSA has further considered the ''increase ratably'' requirement in light of the comments received, bearing in mind that the three basic requirements of EISA for the MY 2011–2020 standards—35 mpg in 2020, increase annually and ratably, and maximum feasible—must be interpreted together so as to best achieve EPCA and EISA's overarching goal of energy conservation. NHTSA does not believe that the 35 mpg-in-2020 requirement implies any intent by Congress to limit ''ratable'' increases to a particular percentage as suggested by several commenters. As discussed above, 35 mpg in 2020 is a floor, not a ceiling, and increasing standards at the percentage rate required just to meet the 35-in-2020 target would not necessarily be consistent with the agency's assessment of what standards will be maximum feasible in future model years.

NHTSA does agree with the commenters, however, that Congress' use of the term ''ratably'' appears to be intended to impose some limitation on the variability in the rate of increase of CAFE standards over time. Given the other statutory requirements of EPCA and EISA, NHTSA currently concludes that the best interpretation of the ''increase ratably'' requirement remains similar to the 1980s requirement that CAFE standards increase annually, but with none of the annual increments varying disproportionately from the other annual increases. This interpretation is consistent with Representative Markey's views expressed in his extension of remarks. From MY 1978 to MY 1985, for example, passenger car standards increased anywhere from 0.5 to 2.0 mpg per year, a range of 1.5 mpg. The ratio of the smallest to largest increase was 1 to 4.

While it is difficult in setting only one year of CAFE standards to demonstrate that the increase is ''ratable,'' the final combined standards for MY 2011 are 27.3 mpg, which represents a rise of 2 mpg over the combined standards for MY 2010. This is consistent with both historical increases in CAFE and with Congress' other requirements in EISA. NHTSA believes, therefore, that the MY 2011 standards represent a ''ratable'' increase over the MY 2010 standards.

With regard to the comment by ACEEE that NHTSA should include an express provision in the final rule that NHTSA must undertake ''mid-course corrections'' to ensure ''ratable'' progress toward the 35 mpg requirement in 2020, NHTSA does not believe that such an addition is necessary. The agency is required to set standards at the maximum feasible level for each model year, and has the authority under 49 U.S.C. § 32902(g) to revise standards upward if necessary to reflect a new determination of maximum feasible, as long as it does so 18 months before the beginning of the model year whose standards are in question. NHTSA will carefully monitor manufacturers' achieved levels of average fuel economy, as well as changes in their capabilities, and set standards accordingly.

3. Maximum Feasibility and the Four Underlying EPCA Considerations

As explained above, EPCA requires the agency to set fuel economy standards for each model year and for each fleet separately at the ''maximum feasible'' level for that model year and fleet. 49 U.S.C. § 32902(a). In determining the maximum feasible level of average fuel economy, the agency considers four statutory factors as required by 49 U.S.C. 32902(f): technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy, which includes environmental considerations, along with additional relevant factors such as safety. In balancing these considerations, we are also mindful of EPCA's overarching purpose of energy conservation, as well as the requirements that standards must increase ratably to at least the level at which the combined U.S. fleet achieves 35 mpg in MY 2020. We are also mindful that environmental concerns are important to making the correct decision in this rulemaking. NHTSA's NEPA analysis for this rulemaking has informed the agency's final action.

Section VI discussed how the agency fits the target curves and analyzes different levels of CAFE stringency. This section sets forth the agency's interpretation of the four EPCA statutory factors, and how NHTSA has balanced the factors with NEPA considerations in deciding what final standards would be the maximum feasible ones for MY 2011.

(a) Technological Feasibility

NHTSA defines ''technological feasibility'' as pertaining to whether a particular method of improving fuel economy can be available for commercial application in the model year for which a standard is being established. NHTSA explained in the NPRM that whether a technology may be feasibly applied in a given model year is not simply a function of whether the technology will exist in some form in that model year, but also whether the data sources reviewed by the agency support a conclusion that the technology will be mature enough to be commercially applied in that model year, whether it will conflict with other

[395] *Id.* at 11–12.

[396] Toyota comments at 2 of 15, Docket No. NHTSA–2008–0089–0212.

[397] *Id.*

[398] *Id.* at 8 of 15.

[399] WLF comments at 4, Docket No. NHTSA–2008–0089–0228.1.

[400] ACEEE comments at 5, Docket No. NHTSA–2008–0089–0211.1.

technologies being applied, etc. Many commenters stated that ''the technology is available to make all cars go farther on a gallon of gas—farther than NHTSA proposes.'' [401] According to NHTSA's final rule analysis, manufacturers overall will likely need to apply advanced fuel-saving technologies at significantly higher levels in order to meet the standards than NHTSA estimated in the NPRM,[402] although we note that manufacturers are free to meet the standards using whatever technologies they choose.

However, as NHTSA described in Chapter IV above, simply because a technology exists does not make it feasible to apply it to all vehicles during MY 2011. While NHTSA recognizes, for example, that hybrid vehicles like the Toyota Prius are very popular currently with many American consumers, and that diesel vehicles on the road in Europe generally achieve higher fuel economy levels than otherwise-equivalent gasoline-engine vehicles here, it would still not be technologically feasible for NHTSA to set standards at the level that require all vehicles sold in the U.S. to be either hybrids or diesels by MY 2011. As discussed at much greater length in Chapter IV, component supply issues, engineering resource issues, federal emissions regulation issues (in the case of diesels), etc., together make such a level of technology application infeasible in the time frame covered by the rulemaking.

NHTSA also recognizes, however, that there are potentially levels of technological feasibility between the level at which NHTSA has set the standards and the hypothetical example given above of a completely dieselized-hybridized MY 2011 fleet. Nevertheless, technological feasibility is but one of four EPCA factors that the agency must balance. While higher stringency levels might still be technologically feasible, they might not be consistent with the demands of the other factors, and in fact might be outweighed by those factors.

(b) Economic Practicability

As explained in the NPRM, NHTSA has historically assessed whether a potential CAFE standard is economically practicable in terms of whether the standard is one ''within the financial capability of the industry, but not so stringent as to threaten substantial economic hardship for the industry.'' See, e.g., Public Citizen v. NHTSA, 848 F.2d 256, 264 (DC Cir. 1988).

As has been widely reported in the public domain throughout this rulemaking, and as shown in public comments, the national and global economies are in crisis. Even before those recent developments, the automobile manufacturers were already facing substantial difficulties. Together, these problems have made NHTSA's economic practicability analysis particularly important and challenging in this rulemaking.

Automobile sales have dropped significantly. U.S. motor vehicle sales in 2008 were 18 percent below 2007 levels. January 2009 industry sales were 37 percent lower than in January 2008.[403] The sales of every major manufacturer declined. Vehicle manufacturers have not been able to raise prices to offset declining unit sales.[404]

The financial state of the major U.S. automotive manufacturers is particularly difficult. General Motors' 2008 U.S. vehicle sales were down 23 percent, and January 2009 sales were down 51 percent.[405] GM last earned an accounting profit in 2004, and has lost a cumulative $72 billion between 2005 and the third quarter of 2008.[406] GM has a negative net worth of $60 billion, and consumed more than $3.5 billion in cash in the third quarter. GM is largely unable to borrow additional funds in capital markets, and must rely on a dwindling pool of cash to fund any further operating losses and capital investments.

Ford Motor Company's 2008 sales declined 20 percent.[407] The firm has lost nearly $30 billion since 2006. The firm has a negative net worth of $2 billion, and consumed some $5.5 billion in cash in the fourth quarter of 2008.[408] Ford is also largely unable to borrow additional funds in capital markets, and must also rely on a dwindling pool of cash to fund any further operating losses and capital investments.

Chrysler is closely held, and consequently does not publish financial statements. However, Chrysler's 2008 unit sales were 30 percent below last year's sales, and January 2009 sales were off 55 percent.[409] In a report submitted to the Senate Banking Committee in December 2008, Chrysler indicated that, if the Federal Government provided $13 billion in financing, Chrysler expected to end 2009 with some $6.7 billion in net cash.[410] However, absent federal intervention, it is not clear that Chrysler would be able to survive 2009 in one piece.

As the figures set forth above demonstrate, the automobile industry is already experiencing substantial economic hardship, even in the absence of new fuel economy standards. All three firms have announced a steady stream of plant closings, layoffs, and employment of new employees at reduced wages.

NHTSA believes these hardships have much to do with the condition of the national economy and perhaps the price of gasoline, and little, if anything, to do with the stringency of CAFE standards for the current or recent model years. We believe that given the scale of the recent decline in industry sales, and the restrictiveness of private credit markets, that near-term developments will be compelled by the industry's immediate financial situation, rather than by the long-term financial consequences of this rulemaking.

Market forces are already requiring manufacturers to improve the fuel economy of their vehicles, as shown both by changes in product plans reported to NHTSA, and by automaker announcements in recent weeks. The improvements in fleet fuel economy required by this rule are consistent with the pressure induced by changing consumer preferences.

The various compliance flexibility mechanisms permitted by EISA, including flexible and alternative fuel vehicles, banking, averaging, and trading of fuel economy credits will also reduce compliance costs to some degree. By statute, NHTSA is not permitted to consider the benefits of flexibility

[401] See, e.g., Docket No. NHTSA–2008–0089–0192.1.

[402] See Tables IX–3 and IX–4 below.

[403] Ward's Automotive, ''Ward's U.S. Light Vehicle Sales Summary,'' December 2008. Available at: *http://wardsauto.com/keydata/USSalesSummary0812.xls* / (Last accessed February 6, 2008).

[404] Commerce Department data indicates no apparent change in nominal prices of new vehicle sales over the past few years.

[405] General Motors Corp, monthly sales report for December 2008. Available at: *http://www.gm.com/corporate/investor_information/sales_prod/hist_sales.jsp* (last accessed February 6, 2009).

[406] General Motors Corp. annual report for 2007, quarterly earnings announcement for the third quarter of 2008. Available at *http://www.gm.com/corporate/investor_information/earnings/index.jsp* (last accessed November 12, 2008).

[407] Ford Motor Company, Fourth quarter 2008 financial results. Available at: *http://www.ford.com/about-ford/investor-relations/company-reports/financial-results* (last accessed February 6, 2009).

[408] Ford Motor Company, Annual Report 2007, p. 121 and fourth quarter 2008 earning release, Slide 26.

[409] Ward's Automotive, op. cit.

[410] Robert Nardelli, ''Chrysler's Plan for Short-Term and Long-Term Viability,'' submitted to Senate Committee on Banking, Housing, and Urban Affairs, December 2, 2008. Available at: *http://banking.senate.gov/public/files/ChryslerUSSenateViabilityPlan.pdf* (last accessed February 6, 2009).

mechanisms in assessing the costs and benefits of the rule.

On the other hand, the agency is mindful that CAFE standards do affect the relative competitiveness of different vehicle manufacturers, and recognizes that standards more stringent than those promulgated here could have a more detrimental effect.

However, the core of the problem for the agency is to determine what new standards might be economically practicable within the MY 2011 time frame, given the state of both the domestic and the international auto industries. The complexity of an economic practicability determination has been materially increased by the decision of GM and Chrysler to seek, and the U.S. Government to provide, substantial financial assistance. Congress has appropriated $7.5 billion (to support a maximum of $25 billion in loans under Section 136 of EISA to support the development of advanced technology vehicles and components in the United States.[411] DOE reports that 75 requests for funding, totaling some $38 billion have been received by the deadline date, of which 23 requests were deemed ''substantially complete,'' and hence eligible for further consideration among the initial tranche of projects.

The Treasury Department has also advanced substantial funding to GM, Chrysler and GMAC under the Troubled Asset Relief Program (TARP). (Ford elected not to accept public funding under the TARP). GM received a loan of $13.4 billion, while Chrysler received $4 billion.[412] GM and Chrysler have also submitted restructuring plans to the Treasury Department in February 2009 requesting additional Federal assistance to ''achieve and sustain long-term viability'' while ''comply[ing] with applicable Federal fuel efficiency and emission requirements.'' Since this rule had not been promulgated at the time the report was submitted, GM and Chrysler were left with a degree of doubt about exactly what CAFE standards would apply to MYs 2011 and thereafter.

Given the foregoing, therefore, the agency has decided that in this exceptional situation, economic practicability must be determined based on whether the expenditures needed to achieve compliance with the final MY 2011 standards are ''within the financial capability of the industry, but not so stringent as to threaten substantial economic hardship for the industry,'' no matter who contributes the funds. This is an operational definition of a standard set using cost-benefit analysis. We have attempted to set the MY 2011 CAFE standards so that they are both technologically and economically feasible while providing the maximum national public social benefit. In principle, most vehicles meeting the standard will provide social benefits to the public at large and private benefits to automobile owners greater than their extra cost.

One of the primary ways in which the agency seeks to ensure that its standards are within the financial capability of the industry is to attempt to ensure that manufacturers have sufficient lead time to modify their manufacturing plans to comply with the final standards in the model years covered by them. Employing appropriate assumptions about lead time in our analysis helps to avoid applying technologies before they are ready to be applied, or when their benefits are insufficient to justify their costs. It also helps avoid basing standards on the assumption that technologies could be applied more rapidly than practically achievable by manufacturers. NHTSA considers these matters in its analysis of issues including refresh and redesign schedules, phase-in caps, and learning rates.

A number of manufacturers commented that the proposed standards were too stringent in the early years and were therefore not economically practicable. In reevaluating the range of fuel-saving technologies expected to be available in MY 2011, the agency has developed more realistic estimates of the set of technologies available, the extent to which these technologies are most likely to be applied either at a vehicle freshening or redesign, and the limits (i.e., caps) that should be applied to the rates at which these technologies can be phased in. NHTSA believes the resultant MY 2011 standards, which also reflect all other inputs to NHTSA analysis, are not inappropriately ''front loaded,'' particularly given that they cover only one model year.

NHTSA also considers the potential impact on employment. There are three potential areas of employment that fuel economy standards could affect employment. The first is the hiring of additional engineers by automobile companies and their suppliers to do research and development and testing on new technologies to determine their capabilities, durability, platform introduction, etc. The second area is the impact that new technologies would have on the production line. The third area is the potential impact that sales gains or losses could have on production employment.

Chapter VII of the FRIA contains estimates of employment impacts. The calculations assume that compliance costs are passed onto consumers in the form of higher prices. These higher vehicle prices (net of the benefits of added fuel savings and added resale value) lead to reduced demand for vehicles. Estimates of sales losses are made using the price changes and the elasticity of demand for new vehicles (−1.0). Losses in sales are translated into losses in jobs by dividing through by the average number of vehicles produced per full time jobs in the automotive industry (approximately 10.5 vehicles per job). In some rare cases, the fuel savings benefits exceed the compliance costs leading a reduction in price, and increase in sales, and an increase in employment.

The estimated job losses in 2011 for the six alternatives appear in Table VII–1 for the passenger car and light truck fleets. The first two alternatives (25 Percent Below Optimized, Optimized) have roughly similar losses in employment: 714 to 1,024 jobs lost in 2011. The next most stringent alternative (25 Percent Above Optimized) results in job losses that are triple the losses in the Optimized alternative. Job losses from the next two alternatives (50 Percent Above Optimized and TC = TB) are 4.5 times and 8 times higher than the Optimized alternative, but are still not a large number (8,232 for TC= TB). The Technology Exhaustion alternative would result in significant impacts on employment (55,740).

[411] The authorizing language for this provision is in Section 136 of EISA. This language is amended and funds are appropriated in the Emergency Economic Stabilization Act of 2008 (H.R. 1424, Pub. L. 110–343). See also the DOE Advanced Technology Vehicle Manufacturing Loan Program Web site: *http://www.atvmloan.energy.gov/* (last accessed February 6, 2009).

[412] U.S. Department of the Treasury, ''Indicative Summary of Terms for Secured Term Loan Facility,'' December 19, 2008, for Chrsyler and GM. *Available at http://www.treasury.gov/press/releases/hp1333.htm* (last accessed February 6, 2009).

Table VII-1. Impact on Auto Industry Employment by Alternative for the Combined Light Truck and Passenger Car Fleet

	MY 2011
25% Below Optimized	-714
Optimized	-1,024
25% Above Optimized	-3,079
50% Above Optimized	-4,638
TC = TB	-8,232
Technology Exhaustion	-55,740

(c) Effect of Other Motor Vehicle Standards of the Government on Fuel Economy

This EPCA statutory factor constitutes an express recognition that fuel economy standards should not be set without giving due consideration to the effects of efforts to address other regulatory concerns, such as motor vehicle safety and pollutant emissions. The primary influence of many of these regulations is the addition of weight to the vehicle, with the commensurate reduction in fuel economy. Manufacturers incorporate this added weight in their product plans, which have informed the market forecast the agency has used as a starting point for analysis that the agency has conducted to set the standards. Because the addition of weight to the vehicle is only relevant if it occurs within the time frame of the regulations, i.e., during MY 2011, we consider the Federal Motor Vehicle Safety Standards set by NHTSA and the Federal motor vehicle emissions standards set by EPA which become effective during the time frame.

Federal Motor Vehicle Safety Standards

NHTSA has evaluated the impact of the Federal Motor Vehicle Safety Standards (FMVSS) using MY 2010 vehicles as a baseline. NHTSA has issued or proposed to issue a number of FMVSSs or amendments to FMVSSs scheduled to become effective between the baseline year and MY 2011. These have been analyzed for their potential impact on vehicle weight for vehicles manufactured in these years—as noted above, the fuel economy impact, if any, of these new requirements will take the form of increased vehicle weight resulting from the design changes needed to meet the new FMVSSs.

Weight Impacts of Required Safety Standards (Final Rules)

NHTSA has issued two final rules on safety standards that become effective for passenger cars and light trucks for MY 2011. These have been analyzed for their potential impact on passenger car and light truck weights, using manufacturers' voluntary plans as a baseline.

1. FMVSS No. 126, Electronic Stability Control
2. FMVSS No. 214, Side Impact Oblique Pole Test

FMVSS No. 126, Electronic Stability Control

The phase-in schedule for vehicle manufacturers is as follows:

Model Year	Production Beginning Date	Requirement
2009	September 1, 2008	55% with carryover credit
2010	September 1, 2009	75% with carryover credit
2011	September 1, 2010	95% with carryover credit
2012	September 1, 2011	All light vehicles

The final rule requires 75 percent of all light vehicles to meet the ESC requirement for MY 2010, 95 percent of all light vehicles to meet the ESC requirements by MY 2011, and all light vehicles must meet the requirements by MY 2012.

The agency's analysis of weight impacts found that ABS adds 10.7 lbs. and ESC adds 1.8 lbs. per vehicle for a total of 12.5 lbs. Based on manufacturers' plans for voluntary installation of ESC, 85 percent of passenger cars in MY 2010 would have ABS and 52 percent would have ESC. Thus, the total incremental added weight over manufacturers' plans in MY 2011 for passenger cars would be about 1.8 lbs. (0.10*10.7 + 0.43*1.8). Light trucks manufacturers' plans show that 99 percent of all light trucks would have ABS and that 74 percent would have ESC by MY 2010. Thus, for light trucks the incremental weight impacts of adding ESC would be 0.4 lbs. (0.21*1.8) in MY 2011.

FMVSS No. 214, Oblique Pole Side Impact Test

The phase-in requirements for the side impact test are as follows:

Phase-in Date	Percent of each manufacturer's light vehicles that must comply during the production period
September 1, 2010 to August 31, 2011	20 percent (excluding vehicles GVWR > 8,500 lbs.)
September 1, 2011 to August 31, 2012	40 percent vehicles (excluding vehicles GVWR > 8,500 lbs.)
September 1, 2012 to August 31, 2013	60 percent vehicles (excluding vehicles GVWR > 8,500 lbs.)
September 1, 2013 to August 31, 2014	80 percent vehicles (excluding vehicles GVWR > 8,500 lbs.)
On or after September 1, 2014	All vehicles including limited line vehicles, except vehicles with GVWR > 8,500 lbs., alterers, and multi-stage manufacturers
On or after September 1, 2015	All vehicles, including vehicles with GVWR > 8,500 lbs., excluding alterers and multi-stage manufacturers
On or after September 1, 2016	All vehicles, including vehicles with GVWR > 8,500 lbs., alterers and multi-stage manufacturers

A teardown study of 5 thorax air bags resulted in an average weight increase per vehicle of 4.77 pounds (2.17 kg).[413] A second study[414] performed teardowns of 5 window curtain systems. One of the window curtain systems was very heavy (23.45 pounds). The other four window curtain systems had an average weight increase per vehicle of 6.78 pounds (3.08 kg), a figure which is assumed to be average for all vehicles in the future.

Based on manufacturers' plans to voluntarily provide window curtains and torso bags, we estimate that 90 percent of passenger cars and light trucks would have window curtains for MY 2010 and 72 percent would have torso bags. A very similar percentage is estimated for MY 2011. Thus, the final rule requiring 20 percent compliance is not likely to impact manufacturers' weights in MY 2011.

Weight Impacts of Proposed/Planned Safety Standards

Proposed FMVSS No. 216, Roof Crush

On August 23, 2005, NHTSA proposed amending the roof crush standard to increase the roof crush standard from 1.5 times the vehicle weight to 2.5 times the vehicle weight.[415] The NPRM proposed to extend the standard to vehicles with a GVWR of 10,000 pounds or less, thus including many light trucks that had not been required to meet the standard in the past. The proposed effective date was the first September 1 occurring three years after publication of the final rule. A Supplemental NPRM was published by the agency in January 2008, asking for public comment on a number of issues that may affect the content of the final rule, including possible variations in the proposed requirements. In the PRIA, the average passenger car weight was estimated to increase by 4.0 pounds and the average light truck weight was estimated to increase by 6.1 pounds for a 2.5 strength to weight ratio. Based on comments to the NPRM, the agency believes that this weight estimate is likely to increase. However, the agency does not yet have an estimate for the final rule. Regardless, the final rule will not be effective for MY 2011 vehicles.

Planned NHTSA Initiative on Ejection Mitigation

The agency is planning on issuing a proposal on ejection mitigation. The likely result of the planned proposal is for window curtain side air bags (likely to be used to meet the FMVSS No. 214 oblique pole test in all vehicles) to be larger and for a rollover sensor to be installed. Preliminary agency estimates are that current curtain bags need be widened by 28 percent to fully cover the window opening area. According to a cost and weight analysis (DOT HS 809 842), head air bags (loomed cloth) installed in a vehicle weigh 2.59 lbs and the inflators weigh 4.73 lbs. Thus, the incremental weight would be about 2 lbs. (2.59 lbs + 4.73 lbs) x 0.28 = 2 lbs. However, this analysis is not complete at this time and will not be effective for MY 2011 vehicles.

Summary—Overview of Anticipated Weight Increases

The table below summarizes estimates made by NHTSA regarding the weight added by the above discussed standards or likely rulemakings. NHTSA estimates that weight additions required by final rules and likely NHTSA regulations effective in MY 2011, compared to the MY 2010 fleet and manufacturers' plans, will increase passenger car weight by at least 10.4 lbs. and light truck weight by at least 10.6 lbs.

[413] Khadilkar, et al. ''Teardown Cost Estimates of Automotive Equipment Manufactured to Comply with Motor Vehicle Standard—FMVSS 214(D)—Side Impact Protection, Side Air Bag Features'', April 2003, DOT HS 809 809.

[414] Ludtke & Associates, ''Perform Cost and Weight Analysis, Head Protection Air Bag Systems, FMVSS 201'', page 4–3 to 4–5, DOT HS 809 842.

[415] See 70 FR 53753, the PRIA is in Docket No. 22143, entry #2 ''Preliminary Regulatory Impact Analysis, FMVSS 216, Roof Crush Resistance,'' August 2005.

NHTSA Estimates of Weight Additions Due to Final Rules or Likely NHTSA Regulations for MY 2011 Compared to Manufacturers' Plans

Standard	Added Weight in pounds Passenger Car	Added Weight in kilograms Passenger Car	Added Weight in pounds Light Trucks	Added Weight in kilograms Light Trucks
126 – ESC	1.8	0.8	0.4	0.2

Based on NHTSA's weight-versus-fuel-economy algorithms, a 3–4 pound increase in weight equates to a loss of 0.01 mpg in fuel economy. Thus, the agency's estimate of the safety/weight effects for cars is 0.006 mpg or less and for light trucks is 0.001 mpg or less for already-issued or likely future safety standards.

Federal Motor Vehicle Emissions Standards

As discussed above, because the addition of weight to a vehicle is only relevant to its ability to achieve the MY 2011 CAFE standards if it occurs in that time frame, NHTSA only considers Federal motor vehicle emissions standards that become effective during the time frame.

In the NPRM, NHTSA explained that on December 27, 2007, EPA published a final rule for fuel economy labeling that employs a new vehicle-specific, 5-cycle approach to calculating fuel economy labels which incorporates estimates of the fuel efficiency of each vehicle during high speed, aggressive driving, air conditioning operation and cold temperatures into each vehicle's fuel economy label.[416] The rule took effect starting with MY 2008, and will not impact CAFE standards or test procedures, or add weight to a vehicle or directly impact a manufacturer's ability to meet the CAFE standards. It will, however, allow for the collection of appropriate fuel economy data to ensure that existing test procedures better represent real-world conditions, and provide consumers with a more accurate estimate of fuel economy based on more comprehensive factors reflecting real-world driving use.

CARB commented that the NPRM had not addressed certain federal and California emissions regulations that NHTSA had analyzed in previous rulemakings, and stated that ''NHTSA must analyze the potential effect of these emissions regulations on its proposed standards.'' CARB further stated that ''the NPRM must analyze the impact of California's ZEV regulations through at least MY 2011,'' which the commenter stated would ''require NHTSA to consider the impact of rapidly shifting technologies that manufacturers will apply to meet a combination of government mandates and market conditions, most notably the electrification of vehicle drivetrains.''[417]

In response, NHTSA reiterates that emissions standards that are completely phased in before MY 2011 are already accounted for in the agency's baseline for this rulemaking. EPA's ''Tier 2'' standards, which apply to all vehicles currently subject to CAFE and are designed to focus on reducing the emissions most responsible for the ozone and particulate matter (PM) impact from these vehicles, are scheduled to be completely phased in by 2009.[418] EPA's onboard vapor recovery (ORVR) system standards, which apply to all passenger cars and light trucks below 8,500 pounds GVWR, were completely phased in by MY 2008.[419] Thus, there is no additional effect of these emissions regulations on MY 2011 vehicles for NHTSA to analyze, beyond what manufacturers have already included in their product plans in order to comply with these regulations, which NHTSA already accounts for.[420]

NHTSA agrees with CARB, however, that portions of the ZEV standards come into effect during MY 2011, although compliance with these standards is also already accounted for in manufacturers' product plans and thus forms part of NHTSA's baseline analysis. The State of California has established several emission requirements under section 209(b) of the Clean Air Act as part of its Low Emission Vehicle (LEV) program. California initially promulgated these section 209(b) standards in its LEV I standards, and has subsequently adopted more stringent LEV II standards, also under section 209(b). The relevant LEV II regulations have been completely phased in for passenger cars and light trucks as of MY 2007.

The LEV II Program has requirements for ''zero emission vehicles'' (ZEVs) that apply to passenger cars and light trucks up to 3,750 pounds loaded vehicle weight (LVW) beginning in MY 2005, while trucks between 3,750 and 8,500 pounds are phased in to the ZEV regulation from 2007–2012. The ZEV requirements begin at 10 percent of vehicles sold by a manufacturer in California in 2005, and ramp up to 16 percent for 2018 under different paths. California will allow the 16 percent requirement to be met by greater numbers of ''partial ZEVs'' until 2018, which include ultra-clean gasoline-engine vehicles and hybrids.

Compliance with the ZEV standards is most often achieved through more sophisticated combustion management, frequently involving some of the technologies considered by NHTSA in its analysis. The associated improvements and refinement in engine controls generally improve fuel efficiency and have a positive impact on fuel economy.[421] However, such gains may be diminished because the advanced technologies required by the program can affect the impact of other fuel economy improvements, primarily due to increased weight. The agency has considered this potential impact in our evaluation of manufacturer product plans, many of which voluntarily identified particular models as ZEV or PZEV-compliant. This indicates to NHTSA that the manufacturers have already included compliance with these

[416] See 71 FR 77872 (Dec. 27, 2006).

[417] CARB comments at 10–11, Docket No. NHTSA–2008–0089–0173.

[418] See 65 FR 6698 (Feb. 10, 2000).

[419] See 59 FR 16262 (Apr. 6, 1994).

[420] Additionally, in calculating criteria pollutant emissions factors for analyzing air quality impacts, MOBILE6.2 accounted for EPA's emission control requirements for passenger cars and light trucks, including exhaust (tailpipe) emissions, evaporative emissions, and the Tier 2 program. See FEIS § 3.3.2.

[421] NESCAUM, ''White Paper: Comparing the Emissions Reductions of the LEV II Program to the Tier 2 Program,'' October, 2003.

standards in their product plans, which in turn indicates that compliance with these standards is already accounted for in the agency's baseline.

CARB also commented that ''NHTSA will need to consider the impact of California and other adopting states' motor vehicle GHG emission standard when those standards receive a waiver of preemption under the Clean Air Act; this may require reopening this rulemaking or starting a new one.'' In response, NHTSA notes again that EPA denied California's request for a waiver, and while NHTSA recognizes that EPA is seeking comment anew on the waiver issue, the agency cannot prejudge how it would respond to any EPA decision until EPA makes a decision. Thus, NHTSA need not determine at this time that it should reopen the rulemaking or begin a new one in the event that EPA decided to grant the waiver.

(d) Need of the United States to Conserve Energy

Congress' requirement to set standards at the maximum feasible level and inclusion of the need of the nation to conserve energy as a factor to consider in setting CAFE standards ensures that standard setting decisions are made with this purpose and all of the associated benefits in mind. As discussed above, ''the need of the United States to conserve energy'' is a broad concept encompassing ''the consumer cost, national balance of payments, environmental, and foreign policy implications of our need for large quantities of petroleum, especially imported petroleum.'' [422] Due to the breadth and scope of these issues, NHTSA does not believe that the need of the United States to conserve energy need be limited to consideration of purely domestic effects. While the overarching goal of EPCA is energy conservation, this energy savings factor (and related environmental concerns in connection with climate change) must nonetheless be balanced with the other EPCA factors. EPCA does not require or authorize the issuance of standards that require the reducing of fuel consumption regardless of cost. The benefits of the energy savings from overly high standards would not outweigh countervailing severe economic costs. See, e.g., *Public Citizen* v. *NHTSA*, 248 F.2d 256, 265 (DC Cir. 1988). Environmental implications principally include reductions in emissions of criteria pollutants and carbon dioxide and the associated public health and climate effects.

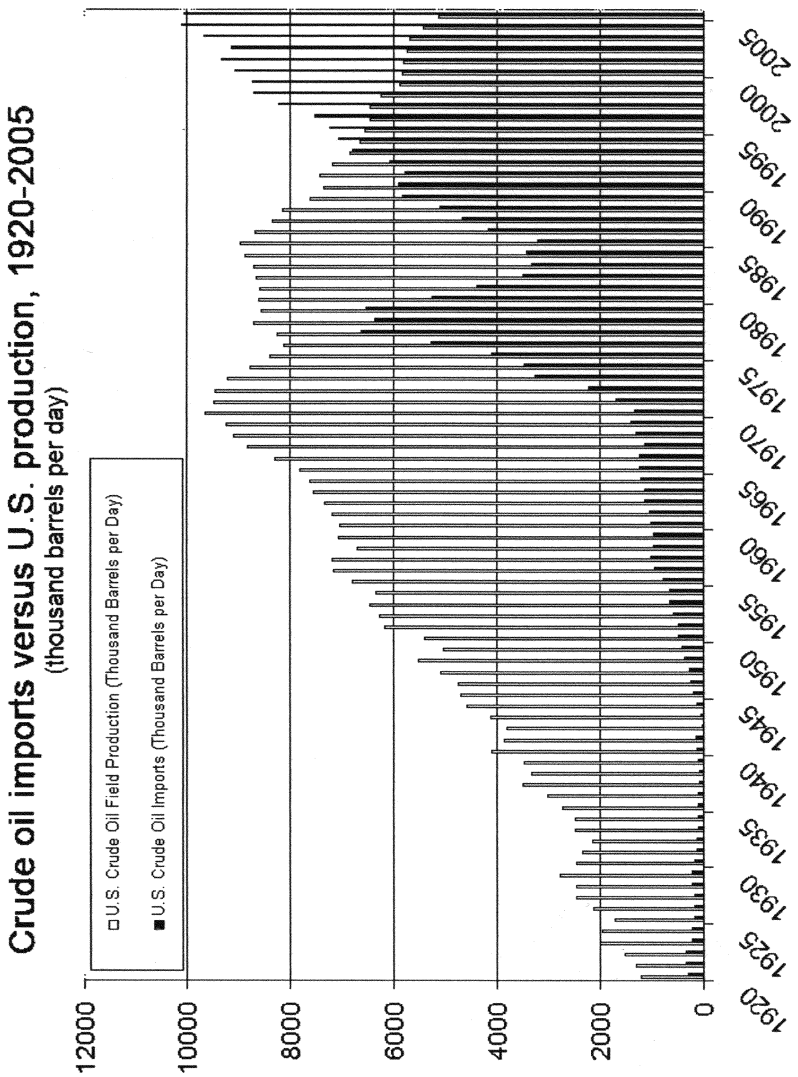
The need to reduce energy consumption is, from several different standpoints, more crucial today than it was at the time of EPCA's enactment in the late 1970s. U.S. energy consumption has been outstripping U.S. energy production at an increasing rate. At the time of this final rule, crude oil prices are currently around $40 per barrel, having peaked at $134 in mid-July 2008, despite having averaged about $13 per barrel as recently as 1998, and gasoline prices have doubled in this period.[423] Net petroleum imports now account for 60 percent of U.S. domestic petroleum consumption.[424] World crude oil production continues to be highly concentrated, exacerbating the risks of supply disruptions and their negative effects on both the U.S. and global economies. Figure VII–1 below shows the increase of crude oil imports and the decline of U.S. oil production since 1920.

[422] 42 FR 63184, 63188 (Dec. 15, 1977).

[423] Energy Information Administration, Annual Energy Review 2006, Table 5.21, p. 171. Available at *http://www.eia.doe.gov/emeu/aer/pdf/pages/sec5_51.pdf* (last accessed Nov. 29, 2007).

[424] Energy Information Administration, *Annual Energy Review 2006*, Table 5.1, p. 125. Available at *http://www.eia.doe.gov/emeu/aer/pdf/pages/sec5_5.pdf* (last accessed Nov. 29, 2007).

Figure VII-1



Source: DOE/EIA

The need of the nation to reduce energy consumption would be reflected in the buying decisions of vehicle purchasers, if:

- Vehicle buyers behaved as if they had unbiased expectations of their future driving patterns and fuel prices;
- The public social, economic, security, and environmental impacts of petroleum consumption were fully identified, quantified and reflected in current and future gasoline prices; and
- Vehicle buyers behaved as if they accounted for the impact of fuel economy on their future driving costs in their purchasing decisions.

Basic economic theory suggests that the price of vehicles should reflect the value that the consumer places on the fuel economy attribute of his or her vehicle. It is not clear that consumers have the information or inclination to value the impact of fuel economy in their vehicle purchasing decisions. Consumers generally have no direct incentive to value benefits that are not included in the price of fuel—for example, benefits such as energy security and limiting global climate change. These are the market failures that EPCA requires NHTSA to address as part of considering the need of the nation to conserve energy.

In this rulemkaing, NHTSA quantifies the need of the nation to conserve energy by calculating how much a vehicle buyer ought to value fuel economy, based both on fuel prices and potentially estimable externalities (including energy security, the benefits of mitigating a ton of CO_2 emissions, criteria pollutant emissions, noise, safety, and others). NHTSA discusses the specific issues related to the need of the United States to conserve energy in more detail below.

(i) Consumer Cost

The Bureau of Labor Statistics estimates that about 4.9 percent of personal consumption expenditures in 2006 were accounted for by vehicle fuel and oil.[425] Given much higher gasoline prices since, the figure will certainly be higher in 2007–2008. Historically, gasoline consumption has been relatively insensitive to fluctuations in both price and consumer income, in large part because consumers are largely ''locked in'' in the short run to particular travel patterns by their choice of job, housing, schools, and lifestyle. People in most parts of the country tend

[425] Bureau of Labor Statistics, 2006 Consumer Expenditure Survey, *http://www.bls.gov/cex/#tables* (last accessed Oct. 23, 2008).

to view gasoline consumption as a non-discretionary expense.

Other non-discretionary expenses such as housing (34 percent of expenditures) and insurance/social security (11 percent), and health expenditures (6 percent) are larger, but more predictable. The mirror image of the relative stability in gasoline consumption is instability in the amount of money available in household budgets for everything else, and particularly for savings and discretionary expenses. When gasoline's share in consumer expenditures rises, the public experiences fiscal distress. This fiscal distress can, in some cases, have macroeconomic consequences for the economy at large.

NHTSA incorporates the impacts of consumer cost into its analysis through the use of fuel price projections in setting fuel economy standards. It should be noted that fuel economy is not free for consumers: consumers must ''pay'' for fuel economy through some combination of higher vehicle prices or loss of valued vehicle attributes. Vehicle purchases accounted for 7 percent of consumer expenditures in 2006. NHTSA uses cost-benefit analysis to help ensure that consumers do not lose more through higher vehicle costs than they gain through lower fuel consumption.

(ii) National Balance of Payments

According to EIA, imports of crude oil and petroleum products accounted for about 65 percent of U.S. petroleum consumption in 2007.[426] Since U.S. crude oil and liquids production is only affected by fluctuations in crude oil prices over a period of years, any changes in petroleum consumption largely flow into changes in the quantity of imports; and any changes in crude oil or wholesale products prices directly flow into changes in the value of imports. Thus, any improvement in light duty vehicle fuel economy will flow into a corresponding reduction in merchandise imports, just as higher prices flow into an increase in the value of imports.

According to the Census, in 2007, the United States imported $293 billion in crude oil and petroleum products, accounting for 36 percent of the dollar value of U.S. imports of goods.[427] In the first eight months of 2008, petroleum accounted for 49 percent of the dollar value of U.S. merchandise imports. The United States gross domestic product is about $14 trillion per year, so petroleum imports only account for about 2 percent of GDP. Nonetheless, petroleum imports are large enough to create a discernable fiscal drag, particularly since the usual macroeconomic adjustment mechanisms, such as price or income elasticity, or offsetting changes in currency valuation, are not very effective in reducing petroleum imports. Hence, most of the burden for any necessary macroeconomic adjustment will be borne by other sectors of the economy, and unrelated imports. Conversely, however, measures that reduce petroleum consumption, such as fuel economy standards, will flow directly into the balance-of-payments account, and strengthen the domestic economy to some degree.

(iii) Environmental Implications

The need to conserve energy is also more crucial today because of growing greenhouse gas emissions from growing petroleum consumption by the on-the-road fleet of motor vehicles, and growing concerns about the climate effects of those emissions. Since 1999, the transportation sector has led all U.S. end-use sectors in emissions of CO_2. Transportation sector CO_2 emissions in 2006 were 407.5 million metric tons higher than in 1990, an increase that represents 46.4 percent of the growth in unadjusted energy related CO_2 emissions from all sectors over the period. Petroleum consumption, which is directly and substantially related to fuel economy, is the largest source of CO_2 emissions in the transportation sector.[428] Moreover, transportation sector emissions from gasoline and diesel fuel combustion generally parallel total vehicle miles traveled. The need of the nation to conserve energy encompasses all of these issues, since CO_2 emissions from passenger cars and light trucks decrease as fuel economy improves and more energy is conserved.[429] Indeed, the only way to make the substantial necessary reductions in CO_2 tailpipe emissions is to improve fuel economy.

These MY 2011 CAFE standards will reduce passenger car and light truck fuel consumption and CO_2 tailpipe emissions over the next several decades, responding to the need of the nation to conserve energy, as EPCA intended. More specifically, the final standards will save over 9 billion gallons of fuel and avoid over 8 million metric tons of CO_2 tailpipe emissions over the lifetime of the regulated vehicles.

NHTSA evaluated in great detail the potential environmental impacts associated with such CO_2 emissions reductions and other environmental impacts of the proposed standards through the Final Environmental Impact Statement prepared in conjunction with this rulemaking.[430] They take the form of unambiguous reductions in emissions of CO_2, and very small and uncertain changes in emissions of urban air pollutants and toxic pollutants, with reductions in emissions of most pollutants.

(iv) Foreign Policy Considerations

Fuel economy standards have only an indirect and general impact on U.S. foreign policy. U.S. foreign policy has been affected for decades by rising U.S. and world dependency of crude oil as the basis for modern transportation systems. In general, the United States and oil exporting states have a powerful long-term mutual interest in a smoothly functioning international oil market. However, other governments sometimes behave erratically, and, on occasion, will pursue short-term benefits at the expense of long-term advantage.

- The political stability of major oil exporting states and states controlling petroleum transportation routes is important to the United States, because chaos could lead to an interruption of oil production or shipments and worldwide increases in oil prices affecting the U.S. and world economy. Physical shortages of petroleum would be even more disruptive than high prices.
- The United States may give additional consideration to the political views of the governments of current or potential future oil exporting states, because the United States would like to influence these governments to invest in increased oil production capacity, to produce more oil, to sell their oil at reasonable prices, and to encourage other oil exporters to do the same.

[426] Energy Information Administration, Petroleum Supply Annual 2007, *http://tonto.eia.doe.gov/dnav/pet/pet_sum_snd_d_nus_mbbl_a_cur.htm* (last accessed Oct. 23, 2008).

[427] U.S. Department of Commerce, Bureau of the Census, FT900, U.S. International Trade in Goods and Services, August 2008. *http://www.census.gov/foreign-trade/Press-Release/current_press_release/press.html* (last accessed October 21, 2008).

[428] However, increases in ethanol fuel consumption have mitigated the growth in transportation-related emissions somewhat (emissions from energy inputs to ethanol production plants are counted in the industrial sector).

[429] The above statistics are derived from Energy Information Administration, ''Emissions of Greenhouse Gases Report,'' Report # DOE/EIA–0573 (2006), released November 28, 2007. Available at *http://www.eia.doe.gov/oiaf/1605/ggrpt/carbon.html* (last accessed Oct. 23, 2008).

[430] The Final Environmental Impact Statement (FEIS) is available on NHTSA's Web site at *http://www.nhtsa.gov*, under ''Fuel Economy.'' On October 17, 2008, EPA published a notice announcing the availability of NHTSA's EIS for this rulemaking. 73 FR 61859.

• The United States may, under some circumstances, be prepared to overlook otherwise objectionable behavior by actual or potential oil exporters.

• The United States must take an interest in the military security of major foreign oil production, refining, export, and transportation facilities because damage to these facilities could affect the U.S. and world economy, even if the affected facilities do not produce or ship petroleum for the U.S. market.

• To the extent that oil exporting states accumulate large foreign currency reserves as a result of cumulative balance-of-payments surpluses, the United States may have additional reasons for giving such states additional consideration.

NHTSA considers oil price externalities that cover the benefits associated with reduced risk of an oil price spike, possibly induced by foreign political developments. However, other externalities in connection with foreign policy considerations such as those set forth above are exceedingly difficult to quantify, much less monetize as a discrete economic value. No commenter set forth a methodology by which NHTSA could reasonably quantify this particular set of externalities, and NHTSA is unaware of literature which addresses quantifying these considerations. Nevertheless, in considering the need of the nation to conserve energy, NHTSA has taken foreign policy considerations into account as a part of its qualitative analysis. For further discussion of how NHTSA accounts for petroleum consumption and import externalities in its analysis, see section V.B.11 above.

Accordingly, upon consideration of the entire record, and on the basis of all public comments and applicable law, NHTSA has considered the need of the nation to conserve energy.

4. Comparison of Alternatives

NHTSA's analyses of the levels of CAFE that would be required under the alternatives considered by the agency and the associated costs are described below and then summarized in Tables VII–2 through VII–6:

VII–2. Average Required CAFE Levels: Under an attribute-based CAFE standard, the CAFE level required of each manufacturer depends on the distribution of footprint values and projected sales of individual models comprising the fleet of vehicles it produces. Table VII–2 contains a sales-weighted harmonic average of these requirements.

VII–3. Average CAFE Shortfall: If a manufacturer is not expected to achieve the required CAFE level, either because of an expected economic decision or because all opportunities to add technology are expected to be exhausted, the manufacturer is expected to have a shortfall that will result in civil penalties (unless sufficient CAFE credits are available to offset the shortfall). Table VII–3 summarizes these shortfalls (where they exist) at the industry-wide level.

VII–4. Total Benefits (versus Baseline): The societal benefits resulting from each alternative are calculated relative to the baseline CAFE standards. Section V discusses the components of these benefits. Table VII–4 shows the discounted present value of benefits accrued over the useful life of vehicles sold in MY 2011.

VII–5. Total Costs (versus Baseline): The total costs of each alternative are measured by the estimated industry-wide increase in technology outlays from those under baseline CAFE standards.

VII–6. Net Benefits (versus Baseline): Net benefits reflect the amount by which total benefits exceed total costs. In Table VII–6, negative values (in parentheses) indicate instances in which total costs exceed total benefits.

Table VII-2. Average Required CAFE Levels (mpg) for MY 2011

	Baseline	25% Below	Optimized	25% Above	50% Above	TC = TB	Technology Exhaust
Passenger Car	27.5	29.9	30.2	30.5	30.9	31.5	35.5
Light Truck	23.3	24.1	24.1	24.2	24.2	24.3	29.0
Combined	25.5	25.2	27.3	27.5	27.7	28.0	32.4

Table VII-3. Average CAFE Shortfall (mpg)

	Baseline	25% Below	Optimized	25% Above	50% Above	TC = TB	Technology Exhaust
Passenger Car						0.4	3.1
Light Truck	0.3	1.0	1.0	1.1	1.1	1.1	5.4
Combined		0.2	0.3	0.4	0.6	0.8	4.4

Table VII-4. Total Benefits (versus Baseline) Over Model Year 2011 Lifetime – Present Value (Millions of 2007 Dollars)

	25% Below	Optimized	25% Above	50% Above	TC = TB	Technology Exhaust
Passenger Car	786	1,027	1,332	1,773	2,487	6,406
Light Truck	921	921	989	989	1,189	2,950
Combined	1,707	1,948	2,321	2,763	3,676	9,356

Table VII-5. Total Costs (versus Baseline) (Millions of 2007 Dollars)

	25% Below	Optimized	25% Above	50% Above	TC = TB	Technology Exhaust
Passenger Car	291	496	1,003	1,630	2,619	11,907
Light Truck	649	649	915	915	1,391	6,214
Combined	940	1,145	1,918	2,545	4,009	18,120

Table VII-6. Net[431] Benefits (versus Baseline) Over the Vehicle's Lifetime – Present Value (Millions of 2007 Dollars)

	25% Below	Optimized	25% Above	50% Above	TC = TB	Technology Exhaust
Passenger Car	496	531	329	143	(132)	(5,501)
Light Truck	272	272	75	75	(202)	(3,264)
Combined	767	802	403	218	(334)	(8,765)

NHTSA believes that some differences among specific alternatives analyzed are worth noting here. As Tables VII–4 and VII–5 reveal, costs increase more rapidly than do benefits as required CAFE levels increase, particularly beyond the level at which total costs equal total benefits. Increasing compliance costs reduce both new vehicle sales and employment. Each of the alternatives that is more stringent than the Optimized Alternative will reduce sales and employment from the levels observed under the Optimized Alternative, as documented in the FRIA in Chapter VII. Additionally, under the more stringent alternatives, the agency predicts that increasing numbers of manufacturers will run out of technology to apply, and potentially resort to paying statutory penalties. The CAFE shortfalls shown in Table VII–3 measure how widespread this outcome could become. Underlying the differences in costs, benefits, and net benefits among the alternatives are differences in the extent to which NHTSA has estimated that fuel economy technologies would be applied in response to the standards

[431] Negative values mean that costs exceed benefits.

corresponding to each of these alternatives.

Along the continuum, each alternative represents a different way in which NHTSA could conceivably balance the four EPCA factors and the attendant environmental concerns. The alternatives that fall above the Optimized Alternative (the +25, +50, TC = TB, and Technology Exhaustion alternatives), if chosen, would represent an agency decision to put progressively more emphasis on reducing energy consumption and CO_2 emissions, due to the need of the nation to conserve energy, and less on the other factors, such as economic practicability and the impacts of higher stringencies on the industry. The −25% alternative, in contrast, would represent an agency decision to put more emphasis on the economic situation of the industry and its ability to apply advanced technologies in the relevant timeframe, while placing less on the other factors, such as the need of the nation to conserve energy.

5. Other Considerations Under EPCA

(a) Safety

NHTSA explains in Section VIII below that it has historically considered safety in setting the CAFE standards. NHTSA refers the reader to that discussion.

(b) AMFA Credits

49 U.S.C. § 32902(h) expressly prohibits NHTSA from considering the fuel economy of ''dedicated'' automobiles in setting CAFE standards. Dedicated automobiles are those that operate only on an alternative fuel, like all-electric or natural gas vehicles.[432] Dedicated vehicles often achieve higher mile per gallon (or equivalent) ratings than regular gasoline vehicles, so this prohibition prevents NHTSA from raising CAFE standards by averaging these vehicles into our determination of a manufacturer's maximum feasible fuel economy level.

Section 32902(h) also directs NHTSA to ignore the fuel economy incentives for dual-fueled (e.g., E85-capable) automobiles in setting CAFE standards. § 32905(b) and (d) use special calculations for determining the fuel economy of dual-fueled automobiles that give those vehicles higher fuel economy ratings than otherwise-identical regular automobiles. Through MY 2014, manufacturers may use this ''dual-fuel'' incentive to raise their average fuel economy up to 1.2 miles per gallon higher than it would otherwise be. After MY 2014, Congress has set a schedule by which the dual-fuel incentive diminishes partially each year until it is extinguished after MY 2019.[433] This issue is discussed further in Section XII.C below.

Although manufacturers may use this additional credit for their CAFE compliance, NHTSA may not consider it in setting standards. As above, this prohibition prevents NHTSA from raising CAFE standards by averaging these vehicles into our determination of a manufacturer's maximum feasible fuel economy level.

No comments were received regarding the statutory prohibition on NHTSA's consideration of these alternative-fuel vehicle incentives, but the agency notes that given that the MY 2011 standards increase more rapidly vis-à-vis the MY 2010 standards than any CAFE standards since the inception of the CAFE program, we believe it likely that manufacturers will use the incentive to a considerable degree.

(c) Flexibility Mechanisms: Credits, Fines

As discussed at length below in Chapter XII, EPCA and EISA also allow manufacturers to use credits (either earned or purchased) and to pay fines in order to meet CAFE standards. However, 49 U.S.C. 32902(h)(3) expressly states that NHTSA ''may not consider, when prescribing a fuel economy standard, the trading, transferring, or availability of credits under section 32903.'' Thus, NHTSA may not raise CAFE standards because manufacturers have enough credits to meet higher standards, nor may NHTSA lower standards because manufacturers do not have enough credits to meet existing standards.

A number of commenters, including AIAM, Mercedes, Ferrari, NADA, and ACEEE, suggested that the use of the credit trading system which NHTSA proposed to develop under the new authority given by EISA would not likely be very extensive, at least initially, due to competitive concerns among manufacturers. Whether this prediction will be borne out remains to be seen, but the agency notes that credit trading gives more flexibility and could potentially lower compliance costs for manufacturers, which should provide an incentive for manufacturers to engage in trading.

As for fines, CFA commented that ''NHTSA allows the historical desire of automakers to avoid paying fines to pull down the level of the standard, by assuming that setting standards at a level that might cause automakers to pay fines does no good.'' CFA suggested that fines are ''not only punitive; they are motivational.''

NHTSA considers the levels of stringency at which different manufacturers are estimated to run out of technology and begin paying fines. NHTSA agrees that fines may be motivational, but believes that CFA misunderstands how fines function in standard setting. All manufacturers (except the few that have paid fines historically) are assumed to be willing to pay any price, no matter how high, in order to avoid paying fines. In the agency's analysis, as implemented using the Volpe model, manufacturers cease adding technology to achieve compliance only when there are no more technologies available to add.

This is not because NHTSA wishes to protect the manufacturers from having to pay fines, but for the following two reasons: First, because the point at which manufacturers run out of technology gives NHTSA a strong indication of what would be economically practicable and technologically feasible, and second, because if manufacturers are paying fines instead of meeting the CAFE standards, the projected level of fuel savings is not being achieved. NHTSA recognizes that fines are motivational for manufacturers, particularly for the U.S. domestic manufacturers, but continues to believe that setting standards above the levels achievable through fuel saving technologies at reasonable cost because we think that manufacturers might be motivated to avoid paying fines would only result in higher standards, without resulting in additional fuel savings.

D. Analysis of Environmental Consequences in Selecting the Final Standards

The FEIS analyzes in detail the potential direct, indirect, and cumulative impacts of the alternatives. NHTSA's Preferred Alternative, the Optimized CAFE Standards, was one of the alternatives that was explicitly evaluated in the FEIS.[434] As discussed in Section XVI.B of this Final Rule, the FEIS evaluates the aggregate environmental impacts associated with each alternative for the entire five-year period (i.e., the environmental impacts that would result if MY 2011–2015 passenger cars and light trucks met the

[432] 49 U.S.C. 32901(a)(7). ''All-electric'' would thus not include a plug-in hybrid (PHEV), since that vehicle is also capable of operating on gasoline.

[433] 49 U.S.C. 32906(a). NHTSA notes that if there is any possible misinterpretation of this table, the schedule laid out by Congress in EISA controls.

[434] See generally FEIS, available at Docket No. NHTSA–2008–0060–0605.

higher, proposed CAFE standards for those years). In this section we also present selected consequences associated with each alternative's CAFE standards for MY 2011 passenger cars and light trucks. These consequences include the effects of alternative standards on fuel consumption and associated emissions of greenhouse gases, as well as on emissions of criteria and hazardous air pollutants. Environmental impacts associated with the alternative CAFE standards for MY 2011 passenger cars and light trucks remain aggregated for MYs 2011–2015, and are reported in the FEIS. See Chapter 3, Chapter 4 and Appendix B of the FEIS. The aggregate impacts analyzed in the FEIS remain relevant, since the MY 2011 impacts associated with the CAFE standards fall within the spectrum of those aggregated impacts.

The Technology Exhaustion Alternative is the overall Environmentally Preferable Alternative. Specifically, the Technology Exhaustion Alternative is the Environmentally Preferable Alternative in terms of the following reductions: Fuel use, CO_2 emissions, criteria air pollutant emissions, and their resulting health impacts, and emissions of almost all mobile source air toxics (MSATs).

Because it would impose the highest car and light truck CAFE standards for MY 2011 among the alternatives considered, the Technology Exhaustion Alternative would result in the largest reductions in fuel use and GHG emissions. As explained in Chapter 5 of the FEIS, the reductions in fuel consumption resulting from higher fuel economy cause emissions during fuel refining and distribution to decline. For most pollutants, this decline is more than sufficient to offset the increase in tailpipe emissions that results from increased driving due to the rebound effect of higher fuel economy, leading to a net reduction in total emissions from fuel production, distribution, and use. Because of this effect, the Technology Exhaustion Alternative would also lead to the largest reductions in emissions of criteria air pollutants and their resulting health impacts, as well as the largest reductions in emissions of almost all mobile source air toxics (MSATs).

NHTSA's environmental analysis indicates that emissions of the MSATs acrolein would increase under some alternatives, with the largest increases in emissions of these MSATs projected to occur under the Technology Exhaustion Alternative. The analysis of acrolein emissions presented in the FEIS, however, is incomplete, because emissions factors for acrolein during fuel production and distribution are unavailable, so that the agency is thus unable to estimate the net change in total acrolein emissions likely to result under each alternative. If the agency had been able to estimate reductions in ''upstream'' emissions of acrolein as part of its analysis, total acrolein emissions under each alternative would increase by smaller amounts than those amounts reported in the EIS, or even decline. However, given that the agency is unable to estimate the net change in total acrolein emissions, the agency is unable to conclude which alternative is environmentally preferable with respect to acrolein emissions.

Overall, however, the Technology Exhaustion alternative is the agency's Environmentally Preferable Alternative. For additional discussion regarding the alternatives considered by the agency in reaching its decision, including the Environmentally Preferable Alternative, see Section VII of this Final Rule. For a discussion of the environmental impacts associated with each alternative, see Chapter 3, Chapter 4 and Appendix B of the FEIS.

The effects of the alternative's CAFE standards on the global climate—including temperatures, precipitation, and sea-level—have been the subject of particular public interest and comment. Reducing the effects of fuel use and GHG emissions on the global climate can translate into impacts on key resources, including freshwater resources, terrestrial ecosystems, coastal ecosystems, land use, human health, and environmental justice. Although some of the alternative's CAFE standards considered for MY 2011 have the potential to substantially reduce future GHG emissions from cars and light trucks, none of them would reduce emissions sufficiently to reverse projected future growth in total U.S. transportation-sector emissions, or to avoid the projected effects of climate change caused by manmade emissions.

As noted in the FEIS, even for those alternatives that would lead to the largest reductions in GHG emissions, however, the magnitudes of any changes in projected climate effects that could be forestalled are likely to be on the order of one one-hundredth of a degree Celsius in surface temperatures, a reduction of 0.02 percent to 0.03 percent in the rate of precipitation increase, and 1 millimeter or less of sea-level change. The potential impacts on key resources that might be avoided if these changes in climate could be forestalled are too small to meaningfully address quantitatively in terms of their impacts on resources. Given the enormous global values of these resources, these distinctions are nevertheless likely to be important, but they are simply too small for current quantitative techniques to resolve. Consequently, the discussion of resource impacts does not distinguish among the CAFE alternatives, but rather provides a qualitative review of the benefits of reducing GHG emissions and the magnitude of the risks involved in climate change.

Table VII–9 compares fuel consumption by the entire U.S. passenger car fleet during selected future years under alternative CAFE standards for MY 2011.[435] Each of these estimates assumes that the standard established for MY 2011 would apply to all subsequent model years.[436] As the table shows, total fuel consumption by passenger cars would increase over the period from 2020–2060 under each alternative. Table VII–9 also reports the reduction in fuel use under each alternative from the level that would result if the MY 2010 CAFE standard for passenger cars instead remained in effect indefinitely (the ''No Action'' alternative). Fuel savings under each alternative increase in CAFE standards would rise progressively over the period shown, as an increasing fraction of passenger cars in use complied with the standard established for MY 2011.

Table VII–10 reports estimated fuel consumption by the U.S. light truck fleet during future years under alternative CAFE standards for MY 2011, as well as the reductions in fuel use that would result under each alternative that would raise CAFE standards for MY 2011. As with the previous table, the estimates of fuel use reported in Table VII–10 assume that the light truck CAFE standard established for MY 2011 would apply to all subsequent model years, and these estimates show that total fuel use by light trucks would increase over the foreseeable future under each alternative. As with passenger cars, the reductions in fuel consumption by the U.S. light trucks fleet under each alternative increase in CAFE standards would rise progressively through 2060, as an increasing fraction of light trucks in use complied with the standard established for MY 2011.

[435] The estimates of fuel consumption and fuel savings presented in Table VII–9 correspond to the ''Mid-2'' case described in the Final EIS.

[436] However, this assumption overstates impacts, because EISA requires standards to increase each model year between MY 2011 and MY 2020.

Table VII-9

Passenger Car Fuel Consumption and Fuel Savings with Alternative CAFE Standards for MY 2011 (billion gallons)

	Alt. 1	Alt. 2	Alt. 3	Alt. 4	Alt. 5	Alt. 6	Alt. 7
	No Action	25% Below Optimized	Optimized	25% Above Optimized	50% Above Optimized	Total Cost Equal Total Benefit	Technology Exhaustion
				Fuel Consumption			
2020	64.4	64.1	64.0	63.9	63.7	63.4	61.6
2030	75.1	74.7	74.5	74.3	74.1	73.7	70.8
2040	86.2	85.7	85.5	85.3	85.0	84.5	81.2
2050	98.7	98.1	97.9	97.7	97.3	96.8	93.0
2060	112.3	111.7	111.5	111.2	110.8	110.2	105.8
				Fuel Savings from No Action			
2020	--	0.3	0.4	0.5	0.6	0.9	2.8
2030	--	0.4	0.6	0.8	1.0	1.4	4.3
2040	--	0.5	0.7	0.9	1.2	1.7	5.0
2050	--	0.6	0.8	1.0	1.3	1.9	5.7
2060 a/	--	0.7	0.9	1.1	1.5	2.2	6.5

a/ Uncertainties in the growth of VMT and number of vehicles in operation make forecasts past 2060 uncertain.

Table VII-10

Light Truck Fuel Consumption and Fuel Savings with Alternative CAFE Standards for MY 2011 (billion gallons)

	Alt. 1	Alt. 2	Alt. 3	Alt. 4	Alt. 5	Alt. 6	Alt. 7
	No Action	25% Below Optimized	Optimized	25% Above Optimized	50% Above Optimized	Total Cost Equal Total Benefit	Technology Exhaustion
				Fuel Consumption			
2020	81.1	80.8	80.8	80.8	80.8	80.7	79.7
2030	92.0	91.5	91.5	91.4	91.4	91.3	89.7
2040	105.5	104.8	104.8	104.7	104.7	104.6	102.6
2050	120.7	119.9	119.9	119.9	119.9	119.6	117.4
2060	137.5	136.6	136.6	136.6	136.6	136.3	133.8
				Fuel Savings from No Action			
2020	--	0.3	0.3	0.4	0.4	0.5	1.4
2030	--	0.5	0.5	0.6	0.6	0.7	2.3
2040	--	0.7	0.7	0.7	0.7	0.9	2.8
2050	--	0.8	0.8	0.8	0.8	1.0	3.3
2060 a/	--	0.9	0.9	0.9	0.9	1.2	3.7

a/ Uncertainties in the growth of VMT and number of vehicles in operation make forecasts past 2060 uncertain.

Table VII–11 projects cumulative total emissions of CO_2 by all U.S. passenger cars and light trucks over the period from 2010 through 2100 under each alternative for MY 2011 CAFE standards. As in the preceding tables, these estimates assume that the CAFE standards established for MY 2011 under each alternative would apply to

all subsequent model years, and include emissions occurring during fuel production, distribution, and use. Table VII–11 also reports the reductions in cumulative CO_2 emissions from 2010–2100 under each alternative that would increase passenger car and light truck CAFE standards for MY 2011 (the ''Action'' alternatives); these reductions are measured from the level of emissions that would occur if the MY 2010 car and light truck CAFE standards were extended to MY 2011 and remained in effect throughout this period (the ''No Action'' alternative).

The reductions in cumulative CO_2 emissions over an extended period such as that shown in Table VII–11 (2010–2100) provide a more meaningful comparison of the impacts of alternative CAFE standards for MY 2011 on the potential for global climate change than would the reductions in CO_2 emissions for individual future years. This is because CO_2 remains in the earth's atmosphere for a prolonged period once it has been emitted, and the likely increase in future global temperatures is determined by the cumulative atmospheric concentration of CO_2 (and other GHGs). Thus the most accurate measure of the impact of higher CAFE standards on the potential for global climate change is the resulting reduction in cumulative CO_2 emissions by cars and light trucks over an extended period, as vehicles meeting those higher standards are gradually incorporated into the U.S. vehicle fleet.

Table VII-11

Cumulative CO_2 Emissions by Passenger Cars and Light Trucks for 2010-2100 with Alternative CAFE Standards for MY 2011 (MMTCO2)

Alternative	Emissions	Emission Reductions Compared to No Action Alternative
No Action	210,279	0
25 Percent Below Optimized	209,076	1,203
Optimized	208,932	1,347
25 Percent Above Optimized	208,743	1,536
50 Percent Above Optimized	208,440	1,839
Total Costs Equal Total Benefits	208,015	2,265
Technology Exhaustion	204,228	6,052

NHTSA's Final EIS presented a detailed analysis of the potential effects of alternative car and light truck CAFE standards for MY 2011–2015 on anticipated future changes in the global climate. This analysis was based on estimates of the effects of alternative increases in CAFE standards for those model years on fuel consumption and emissions of greenhouse gases (GHG), analogous to those reported in Tables VII–9 through VII–11 for the MY 2011 CAFE standards. The agency projected the extent to which these projected reductions in GHG emissions might lower future atmospheric concentrations of GHGs, and utilized a global climate modeling system to simulate the consequences of reduced GHG concentrations for future increases in mean surface temperatures, the projected future rise in sea levels, and regional precipitation patterns. For additional discussion of the FEIS climate analysis, see FEIS § 3.4 and 4.4.

NHTSA analyzed the air quality impacts of alternative CAFE standards for MY 2011 cars and light trucks by estimating the changes in total emissions of criteria air pollutants and selected mobile source air toxics (MSATs) from their Baseline levels that would occur under each Action alternative. The agency's analysis considered emissions of these pollutants during vehicle use (''tailpipe'' emissions), as well as emissions throughout the processes of producing and distributing fuel (''upstream'' emissions).[437] Because improving fuel economy results in an increase in the number of miles passenger cars and light trucks are driven (the ''rebound'' effect), tailpipe emissions of each pollutant are projected to increase by progressively larger amounts under alternatives that require higher fuel economy levels. In contrast, higher CAFE standards reduce the volume of fuel supplied, thus reducing emissions throughout the fuel production and distribution process.

The net effect of each alternative is equal to the increase in tailpipe emissions resulting from added rebound-effect driving, minus the reduction in upstream emissions resulting from the lower volume of fuel that must be supplied. Although the relative magnitude of these two effects differs among individual pollutants, the reduction in upstream emissions of most (but not all) pollutants outweighs the increase in tailpipe emissions, leading to a net reduction in their total emissions. Similarly, the net reduction in total emissions of each pollutant is usually—although not always—larger for alternatives that require higher fuel economy levels. For further explanation of the air quality methodology, see FEIS § 3.3.2.

Table VII–12 reports total emissions of criteria air pollutants from passenger cars and light trucks during selected future years with alternative CAFE standards for MY 2011.[438] Total emissions of each pollutant include those that occur during vehicle use, as well as from fuel production and distribution. These emissions estimates assume that each alternative CAFE standard for MY 2011 cars and light trucks would remain in effect during subsequent model years, so that over time an increasing fraction of all cars and light trucks in use will have met those standards. As the table indicates, emissions of carbon monoxide (CO), nitrogen oxides (NO_x), and volatile organic compounds (VOC) are projected to decline over the future as

[437] Emissions of volatile organic compounds (VOC) during vehicle operation include evaporative emissions that occur when vehicles are parked or stored, and while they are being refueled at retail stations.

[438] Unlike GHGs, criteria and hazardous air pollutants are relatively short-lived; thus their concentrations in the atmosphere and the resulting impacts on human health depend primarily on emissions during the immediate period being analyzed, rather than on their cumulative emissions over an extended period.

improvements in emissions controls offset the effect of increasing vehicle use, while emissions of fine particulates ($PM_{2.5}$) and sulfur oxides (SO_x) are projected to increase.

Table VII-12

Emissions of Criteria Air Pollutants from Passenger Cars and Light Trucks Under Alternative CAFÉ Standards (thousand tons/year)

	Alt. 1	Alt. 2	Alt. 3	Alt. 4	Alt. 5	Alt. 6	Alt. 7
	No Action	25% Below Optimized	Optimized	25% Above Optimized	50% Above Optimized	Total Cost Equal Total Benefit	Technology Exhaustion
				Carbon Monoxide (CO)			
2015	18,863	18,865	18,862	18,855	18,856	18,825	18,609
2020	16,628	16,632	16,623	16,603	16,605	16,524	15,925
2025	16,418	16,425	16,411	16,377	16,381	16,249	15,267
2035	17,738	17,748	17,729	17,684	17,688	17,496	16,121
				Nitrogen Oxides (NOx)			
2015	2,154	2,153	2,153	2,153	2,152	2,152	2,146
2020	1,546	1,544	1,544	1,543	1,543	1,541	1,522
2025	1,315	1,313	1,313	1,311	1,311	1,307	1,273
2035	1,260	1,258	1,257	1,255	1,254	1,247	1,196
				Particulate Matter (PM2.5)			
2015	75.5	75.5	75.5	75.5	75.4	75.4	75.2
2020	77.2	77.0	77.0	77.0	77.0	76.9	76.5
2025	81.7	81.5	81.5	81.5	81.4	81.3	80.8
2035	92.8	92.5	92.5	92.5	92.5	92.3	91.6
				Sulfur Oxides (SOx)			
2015	197.5	197.2	197.1	197.0	196.9	196.5	193.7
2020	207.1	206.4	206.2	206.0	205.8	205.1	199.7
2025	222.1	221.1	220.9	220.6	220.3	219.3	212.0
2035	254.6	253.3	253.1	252.7	252.3	251.0	241.8
				Volatile Organic Compounds (VOC)			
2015	2,115	2,114	2,113	2,112	2,112	2,109	2,088
2020	1,758	1,756	1,755	1,753	1,753	1,746	1,700
2025	1,676	1,674	1,672	1,669	1,669	1,659	1,584
2035	1,750	1,748	1,746	1,741	1,741	1,724	1,609

Table VII–13 shows that emissions of each criteria pollutant are projected to decline from their levels under the No Action Alternative by progressively larger amounts as CAFE standards for MY 2011 cars and light trucks become more stringent. This occurs because the reductions in emissions from fuel production and distribution grow in proportion to the larger fuel savings that result from more stringent standards, and more than offset the larger increases in tailpipe emissions from additional driving that result from increased fuel economy. The table also shows that the reductions in emissions are projected to grow over the future under each alternative, as an increasing fraction of cars and light trucks in service consists of those required to meet the alternative CAFE standards considered for MY 2011.

Table VII-13

Changes in Emissions of Criteria Air Pollutants from Passenger Cars and Light Trucks Under Alternative CAFÉ Standards (thousand tons/year)

	Alt. 1	Alt. 2	Alt. 3	Alt. 4	Alt. 5	Alt. 6	Alt. 7
	No Action	25% Below Optimized	Optimized	25% Above Optimized	50% Above Optimized	Total Cost Equal Total Benefit	Technology Exhaustion
				Carbon Monoxide (CO)			
2015	--	2	-1	-8	-8	-38	-255
2020	--	4	-4	-25	-23	-104	-703
2025	--	7	-7	-41	-38	-169	-1,151
2035	--	9	-9	-54	-50	-243	-1,618
				Nitrogen Oxides (NOx)			
2015	--	-1	-1	-1	-1	-2	-8
2020	--	-1	-2	-2	-3	-5	-24
2025	--	-2	-2	-4	-4	-8	-42
2035	--	-2	-3	-5	-5	-12	-64
				Particulate Matter (PM2.5)			
2015	--	-0.1	-0.1	-0.1	-0.1	-0.2	-0.3
2020	--	-0.1	-0.1	-0.1	-0.2	-0.3	-0.6
2025	--	-0.2	-0.2	-0.2	-0.2	-0.4	-0.9
2035	--	-0.2	-0.2	-0.2	-0.3	-0.5	-1.2
				Sulfur Oxides (SOx)			
2015	--	-0.4	-0.5	-0.6	-0.7	-1.1	-3.9
2020	--	-0.7	-0.9	-1.1	-1.3	-2.1	-7.4
2025	--	-1.0	-1.2	-1.5	-1.8	-2.8	-10.1
2035	--	-1.3	-1.5	-2.0	-2.3	-3.6	-12.8
				Volatile Organic Compounds (VOC)			
2015	--	-1	-1	-2	-2	-5	-26
2020	--	-2	-3	-5	-5	-11	-58
2025	--	-2	-4	-7	-7	-17	-92
2035	--	-3	-5	-9	-10	-26	-141

Establishing higher CAFE standards for MY 2011 cars and light trucks is also expected to affect emissions of some hazardous air pollutants (also known as mobile source air toxics, or MSATs) that occur during fuel production and use. NHTSA examined the effect of alternative CAFE standards on emissions of the MSATs acetaldehyde, acrolein, benzene, 1, 3-butadiene, diesel particulate matter (DPM), and formaldehyde, which EPA and the Federal Highway Administration have identified as a primary concern when assessing the environmental impacts of motor vehicle use.

Table VII–14 reports total emissions of these air toxics by passenger cars and light trucks during selected future years under alternative CAFE standards for MY 2011. As in the agency's analysis of criteria air pollutant emissions, these estimates include emissions during vehicle use as well as from fuel production and distribution, and also assume that each alternative CAFE standard for MY 2011 cars and light trucks would remain in effect for subsequent model years. The table indicates that emissions of acetaldehyde, acrolein, benzene, 1,3-Butadiene, and formaldehyde are projected to decline significantly in future years under each alternative, including the Baseline or No Action alternative. This occurs because the rates at which these MSATs are emitted during vehicle operation, fuel production, and fuel distribution are projected to decline steadily throughout the future. In contrast, future emissions of diesel particulate matter (DPM) are projected to increase under each alternative standard, as manufacturers increasingly rely on converting gasoline models to diesel power in order to achieve higher fuel economy.

Table VII-14

Emissions of Selected Mobile Source Air Toxics (MSATs) from Passenger Cars and Light Trucks Under Alternative CAFÉ Standards (tons/year)

	Alt. 1	Alt. 2	Alt. 3	Alt. 4	Alt. 5	Alt. 6	Alt. 7
	No Action	25% Below Optimized	Optimized	25% Above Optimized	50% Above Optimized	Total Cost Equal Total Benefit	Technology Exhaustion
				Acetaldehyde			
2015	11,180	11,179	11,179	11,178	11,177	11,182	11,187
2020	8,672	8,671	8,669	8,666	8,666	8,669	8,636
2025	7,670	7,669	7,667	7,661	7,661	7,658	7,569
2035	7,444	7,444	7,440	7,432	7,432	7,420	7,262
				Acrolein			
2015	530.2	530.3	530.5	531.0	531.0	533.1	547.2
2020	393.3	393.6	394.0	395.1	395.1	399.3	428.8
2025	335.6	336.0	336.7	338.4	338.4	344.3	387.1
2035	314.6	315.2	316.1	318.2	318.3	325.8	381.1
				Benzene			
2015	60,222	60,212	60,204	60,187	60,185	60,122	59,674
2020	47,721	47,703	47,685	47,643	47,640	47,481	46,341
2025	43,332	43,310	43,280	43,211	43,207	42,945	41,047
2035	43,189	43,163	43,121	43,024	43,021	42,606	39,756
				1,3-Butadiene			
2015	6,139	6,139	6,139	6,139	6,139	6,138	6,137
2020	4,711	4,711	4,711	4,710	4,710	4,706	4,682
2025	4,112	4,112	4,112	4,110	4,110	4,101	4,042
2035	3,914	3,914	3,913	3,911	3,911	3,893	3,787
				Diesel Particulate Matter (DPM)			
2015	89,964	89,753	89,735	89,717	89,661	89,559	89,183
2020	94,198	93,797	93,761	93,727	93,622	93,429	92,715
2025	100,975	100,428	100,379	100,333	100,190	99,926	98,954
2035	115,724	115,021	114,961	114,903	114,726	114,389	113,114
				Formaldehyde			
2015	16,258	16,253	16,253	16,254	16,252	16,280	16,404
2020	13,087	13,077	13,077	13,080	13,077	13,126	13,356
2025	11,955	11,942	11,943	11,947	11,943	12,007	12,314
2035	12,022	12,007	12,008	12,014	12,008	12,087	12,465

Table VII–15 reports the changes in emissions of each MSAT from their levels under the Baseline or No Action alternative that are projected to occur under alternative CAFE standards for MY 2011 cars and light trucks. The table shows that in most future years future emissions of acetaldehyde, benzene, 1,3-butadiene, and DPM would decline from their Baseline levels under each alternative CAFE standard considered for MY 2011. The reductions in emissions of these MSATs would generally increase over the future, as an increasing fraction of cars and light trucks in use met the MY 2011 CAFE standards. As with criteria pollutants, the reductions in emissions of these MSATs are expected to be larger under alternatives that would impose higher CAFE standards, because the declines in emissions resulting from reduced fuel production and distribution grow in proportion to the larger fuel savings that result from more stringent standards, and more than offset the larger increases in tailpipe emissions from additional driving that result from increased fuel economy. In contrast, emissions of acrolein and, under some alternatives, formaldehyde are projected to increase slightly from their levels under the Baseline alternative, since the increases in tailpipe emissions of these MSATs outweigh the reductions in emissions

from fuel refining and distribution.[439] For additional detail on this analysis see FEIS § 3.3.3; Chapter 5.

For additional detail on this analysis see FEIS § 3.3.3; Chapter 5.

Table VII-15

Changes in Emissions of Selected Mobile Source Air Toxics (MSATs) from Passenger Cars and Light Trucks Under Alternative CAFÉ Standards (thousand tons/year)

	Alt. 1	Alt. 2	Alt. 3	Alt. 4	Alt. 5	Alt. 6	Alt. 7
	No Action	25% Below Optimized	Optimized	25% Above Optimized	50% Above Optimized	Total Cost Equal Total Benefit	Technology Exhaustion
				Acetaldehyde			
2015	--	-1	-1	-2	-2	2	7
2020	--	-1	-2	-5	-6	-3	-35
2025	--	-1	-3	-9	-9	-12	-101
2035	--	0	-4	-11	-12	-24	-182
				Acrolein			
2015	--	0.1	0.3	0.8	0.8	3.0	17.0
2020	--	0.3	0.8	1.8	1.8	6.1	35.6
2025	--	0.4	1.1	2.8	2.8	8.7	51.4
2035	--	0.6	1.5	3.6	3.7	11.2	66.5
				Benzene			
2015	--	-11	-18	-35	-37	-100	-548
2020	--	-18	-37	-78	-82	-241	-1,381
2025	--	-22	-53	-121	-125	-387	-2,285
2035	--	-26	-68	-164	-168	-583	-3,433
				1,3-Butadiene			
2015	--	0	0	0	0	-1	-2
2020	--	0	0	-1	-1	-5	-30
2025	--	0	-1	-2	-2	-11	-70
2035	--	0	-1	-3	-3	-21	-126
				Diesel Particulate Matter (DPM)			
2015	--	-211	-230	-248	-303	-405	-782
2020	--	-401	-436	-470	-575	-769	-1,483
2025	--	-547	-595	-641	-784	-1,049	-2,021
2035	--	-702	-762	-821	-998	-1,334	-2,609
				Formaldehyde			
2015	--	-5	-5	-4	-6	22	146
2020	--	-10	-9	-6	-10	40	270
2025	--	-13	-12	-7	-12	52	359
2035	--	-16	-14	-8	-14	65	443

The declines in future emissions of criteria air pollutants and MSATs resulting from the final MY 2011 CAFE standards would be expected to reduce the adverse health effects stemming from population exposure to harmful accumulations of these pollutants. In the Final EIS, the agency presented a detailed analysis of the air quality and

[439] The projected increases in future emissions of acrolein may result from the agency's inability to obtain ''upstream'' emission factors for this pollutant, which prevented it from estimating the reduction in acrolein emissions resulting from lower fuel production and distribution. It is possible that if the agency had been able to do so, lower acrolein emissions during fuel production and distribution would have more than offset the increase in emissions from fuel use by cars and light trucks, causing total acrolein emissions to decline.

health effects of reductions in population exposure to criteria air pollutants and MSATs that were projected to result from alternative CAFE standards for MY 2011–15. That analysis suggested that significant reductions in adverse health effects and economic damages caused by exposure to these pollutants (primarily $PM_{2.5}$, the largest known contributor to adverse health effects) could result if higher CAFE standards were adopted for those model years. (See § 3.3.2.4.2 of the FEIS for a detailed description of NHTSA's approach for developing the quantitative estimates of changes in health effects from exposure to air pollution resulting from alternative CAFE standards for MY 2011–15.)

E. Picking the Final Standards

1. Eliminating the Alternatives Facially Inconsistent With EPCA

(a) No-Action Alternative

Two of the alternatives analyzed by NHTSA are facially inconsistent with EPCA. Regardless of how this alternative is defined, i.e., either in terms of setting no standard or setting the MY 2011 standards at the MY 2010 level, the ''no-action'' or ''baseline'' alternative violates EPCA. Under the former definition, the no-action alternative violates, among other EPCA provisions, subsections 32902(a) and (b)(1) and (2), each of which requires the Secretary to establish CAFE standards for each model year separately. Under the latter definition, the no-action alternative violates subsection 32902(b)(2)(A) which requires the MY 2011–2020 standards to be set high enough to ensure that the industry-wide fleet achieves a combined passenger car/light truck average fuel economy of at least 35 mpg. It also violates the requirement in subsection 32902(b)(2)(B) that the standards for MYs 2011–2020 increase annually and ratably.

(b) Technology Exhaustion Alternative

Although the technology exhaustion alternative is the environmentally preferable alternative for NEPA purposes, it does not reflect any consideration of economic practicability or technological feasibility. This omission violates subsections 32902(a) and (b), which require setting standards at the maximum feasible level, and subsection 32902(f), which requires that ''(w)hen deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider technological feasibility, *economic practicability*, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy.'' (Emphasis added.)

2. Choosing Among the Remaining Alternatives

(a) Difficulty and importance of Achieving a Reasonable Balancing of the Factors

Section 1(a) of E.O. 12866 provides that ''(i)n choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.'' The Ninth Circuit ruled in *CBD* v. *NHTSA*, 538 F.3d 1172, 1197, that EPCA does not require another regulatory approach.

We recognize that the Ninth Circuit coupled that ruling with the following cautionary statement about basing decisions about the stringency of CAFE standards on the principle of maximizing net benefits:

> (W)e reject only Petitioners' contention that EPCA prohibits NHTSA's use of marginal cost-benefit analysis to set CAFE standards. Whatever method it uses, NHTSA cannot set fuel economy standards that are contrary to Congress's purpose in enacting the EPCA-energy conservation. We must still review whether NHTSA's balancing of the statutory factors is arbitrary and capricious. Additionally, the persuasiveness of the analysis in Public Citizen and Center for Auto Safety is limited by the fact that they were decided two decades ago, when scientific knowledge of climate change and its causes were not as advanced as they are today. * * * The need of the nation to conserve energy is even more pressing today than it was at the time of EPCA's enactment. * * *
>
> What was a reasonable balancing of competing statutory priorities twenty years ago may not be a reasonable balancing of those priorities today. (footnotes omitted)

538 F.3d 1172, 1197–98.

As discussed below, achieving a reasonable balancing of the factors is critical. While, as the Court suggested, there are risks associated with setting standards that are too low, there are also considerable risks associated with setting standards that are too high. Both types of risks must be part of the balancing process.

We recognize that the on-road fleet of passenger cars and light trucks is one of largest consumers of petroleum and emitters of CO_2 in the U.S. economy. We recognize too that global CO_2 emissions have been exceeding the highest of the IPCC 2007 scenarios. We appreciate that, among the remaining alternatives, the total cost/total benefit alternative is the one that reduces those emissions the most.

At the same time, we cannot fail to recognize and fully take into account the very serious conditions of the automobile industry, the national economy, and even the global economy. We understand that some aid has been authorized and appropriated for the automobile industry and that the possibility of other aid has been broached, but the extent to which that aid will mitigate the industry's downward spiral is uncertain. What is certain is that the mere fact substantial aid is even being discussed is a reflection of the unusual and extremely serious conditions we face.

(b) The Correct Balancing of the Factors for Setting the MY 2011 Standards Is To Maximize Societal Net Benefits

We have discussed above how NHTSA considered and balanced the four statutory factors. This section discusses NHTSA's decision that the final standards are the maximum feasible for MY 2011.

Congress left the determination of what levels of CAFE standards are ''maximum feasible'' to NHTSA's discretion, requiring only that NHTSA consider the four statutory factors. 49 U.S.C. 32902. NEPA applies independently to require consideration of environmental factors in the decision-making process. The EPCA factors are in tension and tend to pull in opposite directions in terms of stringency, with technological feasibility and especially the need of the nation to conserve energy pointing toward higher standards and economic practicability pointing toward lower ones. Accordingly, NHTSA has historically considered the factors from the perspective of balancing them, given EPCA's overarching purpose of energy conservation.[440] Thus, NHTSA determines that standards are the maximum feasible if they represent the proper balancing of the four statutory factors, based on all the information before the agency and the entire record.

The ''need of the United States to conserve energy'' primarily functions to encourage NHTSA to set standards ever higher. Many commenters cast the need of the nation to conserve energy in terms of the impact of CAFE standards on global warming, and urged NHTSA to give this factor more weight than the others in its determination of the maximum feasible standards, in order to

[440] The Ninth Circuit in CBD agreed that NHTSA has discretion to balance the factors in determining what level of stringency is maximum feasible. CBD, 538 F.3d 1172, 1197 (9th Cir. 2008).

have the maximum possible beneficial impact. Many of these commenters suggested that if NHTSA gave more weight to the need of the nation to conserve energy, it would set standards at levels substantially higher, for example, than those necessary to raise the industry-wide combined average to 35 mpg by MY 2015, or at the level at which total costs equal total benefits, and so forth.

NHTSA recognizes that seriousness of the global warming problem facing the nation and the world today, and that CAFE is one of many actions needed around the world to address that problem. NHTSA also recognizes that the higher CAFE standards are, the less they add to global warming and other environmental impacts (as demonstrated in our FEIS), just as the higher CAFE standards are, the less oil the United States must purchase from abroad, with the corresponding impacts on consumer costs, national balance of payments, and foreign policy objectives. The final standards for MY 2011 push CAFE higher and faster than any set of standards since the earliest years of the program, and, we believe, likely put the agency on track to meet EISA's MY 2020 requirement of an industry-wide combined average of at least 35 mpg several years ahead of time.

However, NHTSA reiterates that it is required to consider and balance the other three factors in addition to the need of the nation to conserve energy in determining the maximum feasible level of the standards. While considering the need of the nation to conserve energy alone might counsel for setting the standards at the levels suggested by proponents of higher standards, NHTSA does not believe that those standards would be consistent with economic practicability or technological feasibility.

Manufacturers commented that even standards set at the proposed levels would be above the maximum feasible level because, in their view, NHTSA had overestimated benefits and underestimated costs of the fuel-saving technologies. Conversely, many other commenters argued that the proposed standards were below the maximum feasible level because, in their view, NHTSA had underestimated benefits and overestimated costs of the technologies.

To respond to these commenters, and aid in resolving their conflicting views and arguments, NHTSA re-examined all of its technology assumptions, with the assistance of Ricardo, as described in Chapter IV. This effort resulted in the agency's revising the methodology underlying the development of many of its technology assumptions in ways that the agency believes makes its final rule analysis substantially more robust than its NPRM analysis. NHTSA is confident that its revised analysis ensures that the standards adopted in this final rule are technologically feasible. The effect of other motor vehicle standards of the Government on fuel economy is incorporated into the agency's analysis through the baseline and the manufacturers' product plans.

Yet the question of economic practicability and what level of stringency would cause manufacturers substantial economic hardship must be considered not only in terms of technological feasibility, but also in terms of the economic situation today and as it is anticipated to be in the period leading up to and including MY 2011. The current economic realities are markedly different from those at the time of the NPRM; just several months later, the national and global economies are in crisis and by all accounts in recession. As the economy contracts and consumers reassess their personal spending priorities, manufacturers are increasingly less able to pass the costs of fuel economy-improving technologies on to consumers. As discussed above in the section on economic practicability, manufacturers have only so much ability to absorb those costs, especially given the financial difficulties of some of the larger manufacturers.

NHTSA additionally notes that the agency has the authority under 49 U.S.C. § 32902(c) to amend the standards for a model year to a level that the Secretary decides is the maximum feasible average fuel economy level for that model year. NHTSA has previously used this authority to lower the MY 1986 passenger car standards because they were deemed to be beyond maximum feasible. However, NHTSA believes that the authority to lower CAFE standards in MYs 2011–2020 has been constricted by the EISA requirements that standards increase annually and ratably and result in a combined fleetwide average fuel economy of at least 35 mpg in MY 2020. Thus, being unable to predict the economic situation in MY 2011, NHTSA is particularly mindful of economic practicability in establishing the current standards.

For this MY 2011 final rule, in balancing the EPCA factors against one another and carefully considering the environmental impacts associated with the various alternatives evaluated, NHTSA continues to believe that the proper overall balance of all relevant consideration is the point at which social net benefits are maximized, and results in CAFE standards that are the maximum feasible for MY 2011. As mentioned above, in identifying this point for this model year, NHTSA evaluated more than 100 alternative stringency levels, and for each one, calculated net benefits in a manner that explicitly accounted for the need of the nation to conserve energy, and for the benefits of reducing greenhouse gas emissions. EPCA's overarching purpose of energy conservation is met by setting standards at the maximum feasible level—EPCA does not require or even permit that standards be set beyond the maximum feasible level in order to achieve more energy conservation. NEPA's purpose is to integrate environmental considerations into that decision-making process. Setting standards at the point at which social net benefits are maximized in NHTSA's analysis results in standards that still increase higher and faster than any standards since the earliest years of the program, do not require the addition of technologies that the agency does not believe will pay for themselves, and result in measurable environmental benefits. The standards thus fulfill NEPA's objectives and, under EPCA, the need of the nation to conserve energy, while not imposing substantial economic hardship on the industry, while taking into account the feasibility of applying technologies appropriately and consistent with manufacturers' natural cycles, and the other motor vehicle standards of the government which manufacturers have to comply with. NHTSA is exercising its discretion and informed judgment, based upon the entire record and including the FEIS, as to the precise levels of CAFE that are the maximum feasible for MY 2011 passenger cars and light trucks, as mandated by 49 U.S.C. 32902. NHTSA emphasizes that it will continue to evaluate alternative approaches for determining the maximum feasible standards for future CAFE rulemakings, and is deciding no more than that the approach taken for MY 2011 is reasonable under the circumstances surrounding this rulemaking.

VIII. Safety

A. Summary of NHTSA's Approach in This Final Rule

NHTSA has devoted substantial efforts over the years studying the relationship between vehicle weight reductions and vehicle injuries and deaths based upon a broad base of available empirical data. More recently, NHTSA addressed these issues in a 1997 study, which was reviewed by the National Academy in its 2002 report.

This 1997 study, led by Dr. Charles Kahane of NHTSA, ''stands alone as a comprehensive, scientific analysis of the vehicle weight and safety issue.'' [441]

Thereafter, in a 2003 study, again led by Dr. Kahane, NHTSA analyzed historical fatality rates in crashes involving MY 1991–1999 vehicles, both passenger cars and light trucks. NHTSA's 2003 study built upon and updated the earlier 1997 study analyzed by the National Academy. Among other things, the 2003 study concluded that there is a ''crossover weight,'' a statistically derived weight above which vehicle weight reductions have a net benefit, instead of a net harm, in terms of reduced vehicle injuries and deaths to society. The 2003 study found that this crossover point occurs somewhere in the range of 4,224 pounds to 6,121 pounds. The 2003 study concluded that the most likely location of the crossover point is 5,085 pounds.

Based upon the findings of the 2003 study, in setting fuel economy levels in this final rule, NHTSA did not assume that manufacturers would reduce vehicle weight to improve fuel economy for vehicles of 5,000 pounds or less. NHTSA has taken this approach so that manufacturers are not encouraged to downsize vehicles in a way that would be likely to cause a significant number of deaths and injuries. Conversely, NHTSA has considered reduced vehicle weight in its standard-setting analysis for vehicles above 5,000 pounds, since the data indicates no safety penalty is likely for reducing weight for such vehicles. Nevertheless, the agency will continue to consider whether it should set future CAFE standards in a manner that assumes manufacturers may, without compromising highway safety, reduce the mass of vehicles below 5,000 pounds.

B. Background

As the courts have recognized, ''NHTSA has always examined the safety consequences of the CAFE standards in its overall consideration of relevant factors since its earliest rulemaking under the CAFE program.'' *Competitive Enterprise Institute* v. *NHTSA*, 901 F.2d 107, 120 n. 11 (D.C. Cir. 1990) (''CEI I'') (citing 42 FR 33534, 33551 (June 30, 1977)). The courts have consistently upheld NHTSA's implementation of EPCA in this manner. *See, e.g., Competitive Enterprise Institute* v. *NHTSA*, 956 F.2d 321, 322 (D.C. Cir. 1992) (''CEI II'') (in determining the maximum feasible fuel economy standard, ''NHTSA has always taken passenger safety into account.'') (citing CEI I, 901 F.2d at 120 n. 11); *Competitive Enterprise Institute* v. *NHTSA*, 45 F.3d 481, 482–83 (D.C. Cir. 1995) (''CEI III'') (same); *Center for Biological Diversity* v. *NHTSA*, 538 F.3d 1172, 1203–04 (9th Cir. 2008) (upholding NHTSA's analysis of vehicle safety issues associated with weight in connection with the MY 2008–11 light truck CAFE rule). As early as 1974, before Congress even enacted EPCA, the Department of Transportation and EPA warned Congress of potential adverse safety effects associated with increasing fuel economy requirements for vehicles. See CEI I, 901 F.2d at 120 n. 11 (citing 53 FR 39275, 39294 (1988), in turn citing a report from the Department of Transportation and EPA, ''Potential for Motor Vehicle Fuel Economy Improvements: Report to the Congress,'' (Oct. 24, 1974), which discussed ''the possible trade offs in the areas of improved fuel economy, lower emissions, and increased occupant safety,'' noting that ''a sustained or increased shift to small cars * * * would likely lead to an increase in the rate of highway deaths and serious injuries'').

The relationship of vehicle weight to safety has been a contentious issue for many years. This contentiousness arises, at least in part, from the difficulty of isolating vehicle weight from other confounding factors (e.g., driver factors, such as age and gender, other vehicle factors, such as engine size and wheelbase, and environmental factors, such as rural/urban). In addition, several vehicle factors are closely related, such as vehicle mass, wheelbase, track width, and structural integrity. (Historically, as vehicles got longer and wider, they also got heavier). The papers that were initially published addressing vehicle size and safety did not attempt to fully address all of these factors.

1. NHTSA's Early Studies

It was important for NHTSA to help move the debate forward with more serious analyses. After all, NHTSA must understand the relationship between vehicle factors and safety, both for establishing our safety standards and for establishing our CAFE standards. In July 1991, NHTSA published a study of the effects of passenger car downsizing during 1970–1982 titled *Effect of Car Size on Fatality and Injury Risk*. In this report, NHTSA concluded that changes in the size and weight composition of the new car fleet from 1970 to 1982 resulted in increases of nearly 2,000 deaths and 20,000 serious injuries per year over the number of deaths and serious injuries that would have occurred absent this downsizing.

Parties reviewing NHTSA's 1991 report identified a number of areas that could be improved. Suggestions included extending the analyses to include light trucks and vans, examining finer gradations to distinguish the relative impacts of weight reduction for the heavier cars from the lighter cars, analyzing all crash modes, and doing more to isolate the effects of vehicle mass from behavioral and environmental variables.

NHTSA agreed that these suggestions would make the study more useful as a tool for NHTSA decisions on safety and fuel economy standards. Accordingly, NHTSA developed a more comprehensive analytic model to encompass all light vehicles, and to allow a finer look at safety impacts in different segments of the light vehicle population. This study was NHTSA's first effort to estimate the effect of a 100-pound weight reduction in each of the important crash modes, and to do this separately for cars and light trucks. NHTSA recognized that the findings, whatever they were, would likely be controversial, so the agency chose to have the draft report peer-reviewed by the National Academy of Sciences before publishing the document. The Academy published its review on June 12, 1996.[442] The report expressed concerns about the methods used in the analyses and concluded, in part, ''the Committee finds itself unable to endorse the qualitative conclusions in the reports about projected highway fatalities and injuries because of large uncertainties associated with the results * * *.'' These reservations were principally concerned with the question of whether the NHTSA analyses had adequately controlled for confounding factors, such as driver age, gender, and aggressiveness.

NHTSA responded at length to the committee report, and revised its report to address the committee recommendations. The revised report was published as a finished document in 1997,[443] with a new Appendix F titled ''Summary and Response to TRB's Recommendations on the Draft Report.''

[441] *Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards* (NRC, 2002), at 118.

[442] Transportation Research Board, *Letter Report—Committee to Review Federal Estimates of the Relationship of Vehicle Weight to Fatality and Injury Risk*, Accession Number 00723787. See *http://onlinepubs.trb.org/onlinepubs/reports/letrept.html* (last accessed Nov. 11, 2008).

[443] Kahane, C. J., 1997. *Relationships Between Vehicle Size and Fatality Risk in Model Year 1985–93 Passenger Cars and Light Trucks*, NHTSA Technical Report, DOT HS 808 570. Springfield, VA: National Technical Information Services.

In this 1997 report, NHTSA concluded that, calibrated from 1985–93 cars and light trucks involved in crashes in calendar years 1989–1993, there was little overall effect for a 100-pound weight reduction in light trucks and vans, because increased fatalities of truck occupants were offset by a reduction of fatalities in the vehicles that collided with the lighter trucks, whereas a 100-pound reduction in cars was associated with an increase of about 300 fatalities per year. Based on this analysis and subsequent activities, the safety consequences of weight reduction have been considered by NHTSA in deciding upon the appropriate stringency of each of the new safety and fuel economy requirements since that time.

NHTSA's 1997 report did not end the public discussion of this issue. NHTSA followed its standard practice of publishing a notice announcing the report and inviting public comment on the 1997 report.[444] In addition to comments to NHTSA's docket, other papers analyzing the relationship of vehicle weight and safety were published. For instance, Dr. David L. Greene of the U.S. Department of Energy's Oak Ridge National Laboratory published a report titled Why CAFE Worked soon after NHTSA's 1997 report was released.[445] In section 5.2 of this report, Dr. Greene's introductory paragraph reads as follows:

> *Vehicle weight significantly affects the safety of the vehicle's occupants. Enough credible work has been done on this subject that this assertion cannot be seriously questioned (citations omitted).* On the other hand, the nature of the trade-off between vehicle mass and safety is often misunderstood, and the implications for fuel economy regulations are generally misinterpreted. *The relationship between fuel economy, mass, and public safety is complex, yet it is probably reasonable to conclude that reducing vehicle mass to improve fuel economy will require some trade-off with safety.* The rational person will realize that individuals, manufacturers, and governments are constantly making trade-offs between safety and cost, safety and other vehicle attributes, safety and convenience, etc. (citation omitted). *An essential feature of a rational economic consumer is the willingness to trade-off risk for money and, since fuel economy saves money, to trade-off safety for fuel economy.*

David L. Greene, 1997, Why CAFE Worked, ORNL/CP–94482, Oak Ridge National Laboratory, Oak Ridge, Tennessee, at 22 (Emphases added).

It is noteworthy that Dr. Greene's published work explicitly acknowledges the vehicle weight-safety trade-off documented by NHTSA's studies of the real world crash data. As to Dr. Greene's concerns that the trade-off will be misunderstood, NHTSA has been clear on this point. NHTSA wants to ensure that the public, manufacturers, and governments are aware of the empirical data that demonstrate that there is a trade-off between vehicle mass and safety. Parties must understand this trade-off exists and the size of the trade-off should be quantified as accurately as possible, so it can be considered as part of the decision on average fuel economy standards.

2. The 2002 National Academy of Sciences Study

The next significant event in the vehicle weight and safety discussion began in October 2000, when the Department of Transportation's Appropriations Act for fiscal year 2001 was signed into law. That appropriations law included a provision directing DOT to fund a National Academy of Sciences (NAS) study on the effectiveness and impacts of CAFE standards. NAS released its final study in January 2002 (hereafter, the 2002 NAS Report).[446]

As part of a comprehensive look at the impacts of CAFE standards, it was necessary for the 2002 NAS Report to address the safety impacts of CAFE standards. In Chapter 2 of the study, NAS looked back at the safety impacts of past CAFE standards. Among other observations, NAS recognized that much of the increase in fuel economy between 1975 and 1988 was due to reductions in the size and weight of vehicles, which led to increased safety risks.[447] In fact, NAS noted that ''the preponderance of evidence indicates that this downsizing of the vehicle fleet resulted in a hidden safety cost, namely travel safety would have improved even more had vehicles not been downsized.'' [448]

The committee then focused its analysis on the 1997 NHTSA analysis led by Dr. Kahane. Since there are many published papers on this subject in the literature, the question must be asked, ''Why did the National Academy of Sciences choose the NHTSA analyses out of all the published papers?'' The NAS committee clearly and unequivocally answered this in its report, where it found that ''NHTSA's fatality analyses are still the most complete available in that they accounted for all crash types in which vehicles might be involved, for all involved road users, and for changes in crash likelihood as well as crashworthiness.'' [449] The NAS committee went on to find that ''The April 1997 NHTSA analyses allow the committee to reestimate the approximate effect of downsizing the fleet between the mid-1970s and 1993.'' In other words, a committee of the National Academy of Sciences found that NHTSA's analyses were the most thorough of all the published papers, and that NHTSA's analyses were sufficiently persuasive and rigorous to permit a reasonable estimate of the safety penalty associated with downsizing the fleet. In the committee's words:

> Thus, the majority of this committee believes that the evidence is clear that past downweighting and downsizing of the light-duty vehicle fleet, while resulting in significant fuel savings, has also resulted in a safety penalty. In 1993, it would appear that the safety penalty included between 1,300 and 2,600 motor vehicle crash deaths that would not have occurred had vehicles been as large and heavy as in 1976.[450]

While this look back is informative, the greater challenge is to use this understanding of the past to guide future actions. Again the NAS committee offered clear guidance in this regard. The NAS Report said:

> In summary, the majority of the committee finds that the downsizing and weight reduction that occurred in the late 1970s and early 1980s most likely produced between 1,300 and 2,600 crash fatalities and between 13,000 and 26,000 serious injuries in 1993. The proportion of these casualties attributable to CAFE standards is uncertain. It is not clear that significant weight reduction can be achieved in the future without some downsizing, and similar downsizing would be expected to produce similar results. Even if weight reduction occurred without any downsizing, casualties would be expected to increase. Thus, any increase in CAFE as currently structured could produce additional road casualties, unless it is specifically targeted at the largest, heaviest light trucks.
>
> For fuel economy regulations not to have an adverse impact on safety, they must be implemented using more fuel-efficient technology. Current CAFE requirements are neutral with regard to whether fuel economy is improved by increasing efficiency or by decreasing vehicle weight. One way to reduce the adverse impact on safety would be to establish fuel economy requirements as a function of vehicle attributes, particularly vehicle weight (see Chapter 5). * * *

[444] See 62 FR 34491 (June 26, 1997).

[445] Dr. Greene's report is available online at *http://www.osti.gov/bridge/servlets/purl/625225–KPQDOu/webviewable/625225.pdf* (last accessed October 28, 2008).

[446] *Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards* (NRC, 2002).

[447] *Id.*, at 24.

[448] *Id.*, at 69–70.

[449] *Id.*, at 27.

[450] *Id.*, at 28.

If an increase in fuel economy is effected by a system that encourages either downweighting or the production and sale of more small cars, some additional traffic fatalities would be expected. Without a thoughtful restructuring of the program, that would be the trade-off that must be made if CAFE standards are increased by any significant amount.[451]

This discussion by the NAS committee was an impetus for NHTSA to use its existing statutory authority to reform its light truck CAFE program. This involved moving away from the single flat standard for light trucks, because those standards' neutrality with regard to decreasing vehicle weight, in lieu of increasing efficiency to improve fuel economy, means they necessarily have a potential safety trade-off. In place of the single flat standard, NHTSA established an attribute-based standard that is a function of the vehicle's footprint. Under this attribute-based standard, the fuel economy target for a vehicle increases as the vehicle is downsized. As long as vehicle manufacturers have to expend the same levels of advanced technology for each footprint size, there is no incentive to change the vehicle to get a less-demanding fuel economy target. Thus, the necessary safety trade-off under the single flat standard system does not arise under an attribute-based system. That is not to suggest there are no safety consequences if vehicle mass is reduced—there are, as documented by NHTSA and explained by the National Academy of Sciences. However, the standards are no longer structured to confer an advantage to a manufacturer that makes downsizing trade-offs. This is a key feature of the attribute-based fuel economy program NHTSA implemented for light trucks.

Two of the 13 NAS committee members dissented on the safety issues.[452] The dissent acknowledges that, ''Despite these limitations, Kahane's analysis is far and away the most comprehensive and thorough analysis'' of the safety issue.[453] The dissent's primary disagreement with the other 11 committee members centers on the large uncertainties associated with NHTSA's analyses. The dissent acknowledges NHTSA's efforts in the study led by Dr. Kahane to quantify the safety penalty, but concludes that the number of factors in real world crashes is so large and the controls used by the analytical models introduce so much uncertainty that it is not possible to definitively make any statements about a safety penalty.[454]

It should also be noted that the majority of the committee responded to the dissent by saying:

However, the committee does not agree that these concerns should prevent the use of NHTSA's careful analyses to provide some understanding of the likely effects of future improvements in fuel economy, if those improvements involve vehicle downsizing. The committee notes that many of the points raised in the dissent (for example, the dependence of the NHTSA results on specific estimates of age, sex, aggressive driving and urban vs. rural location) have been explicitly addressed in Kahane's response to the [NAS] review and were reflected in the final 1997 report. The estimated relationship between mass and safety were (sic) remarkably robust in response to changes in the estimated effects of these parameters. The committee also notes that the most recent NHTSA analyses yield results that are consistent with the agency's own prior estimates of the effect of vehicle downsizing (citations omitted) and with other studies of the likely effects of weight and size changes in the vehicle fleet (citation omitted). The consistency over time and methodology provides further evidence of the robustness of the adverse safety effects of vehicle size and weight reduction.[455]

In addition, the NAS Committee unanimously agreed that NHTSA should undertake additional research on the subject of fuel economy and safety, ''including (but not limited to) a replication, using current field data, of its 1997 analysis of the relationship between vehicle size and fatality risk.'' [456] NHTSA concurred with this recommendation, and thereafter, NHTSA undertook a replication of the 1997 study, using the additional field data that had become available: NHTSA's 2003 study, led again by Dr. Kahane.

As Congress was developing the bill that ultimately became EISA, Congress considered NHTSA's reformed light truck CAFE program established under existing NHTSA authority in deciding what additional CAFE authority NHTSA should be given and what constraints should be put on that authority. Ultimately, EISA was enacted, which mandates that NHTSA establish an attribute-based CAFE system for cars and light trucks.

3. NHTSA's Updated 2003 Study

In October 2003, NHTSA published its updated study.[457] NHTSA's update again used regression models to calibrate crash fatality rates per billion miles for model year 1991–1999 passenger cars, pickup trucks, SUVs, and vans during calendar years 1995–2000. These rates were calibrated separately by vehicle weight, vehicle type, driver age and gender, urban/rural and other vehicle, driver, and environmental factors. One major point of note is that, as the analyses get more sophisticated and able to differentiate the safety trade-off among different types of vehicles, each analysis NHTSA has ever conducted continues to show that there is a safety trade-off for the existing light vehicle fleet as vehicle mass is reduced.

After controlling for vehicle, driver and environmental factors, the new study found that:

- The association between vehicle weight and overall crash fatality rates in the heavier 1991–1999 light trucks and vans was not significant. Thus, there was no safety penalty for reducing weight in these vehicles.
- In the other three groups of 1991–1999 vehicles—the lighter light trucks and vans, the heavier cars, and especially the lighter cars—fatality rates increased as weights decreased.
  - Lighter light trucks and vans would have an increase of 234 fatalities per year per 100-pound weight reduction.
  - Heavier cars would have an increase of 216 fatalities per year per 100-pound weight reduction.
  - Lighter cars would have an increase of 597 fatalities per year per 100-pound weight reduction.
- There is a crossover weight, above which crash fatality rates increase for heavier light trucks and vans, because the added harm for other road users from the additional weight exceeds any benefits for the occupants of the vehicles. This occurs in the interval of 4,224 pounds to 6,121 pounds, with the most likely single point being 5,085 pounds. The fatality rate changes by less than ±1 percent per 100-pound weight increase over this range.

The draft report was reviewed before publication by experts in statistical analysis of crash data and related vehicle weight and safety issues: Drs. James H. Hedlund, Adrian K. Lund, and Donald W. Reinfurt. The review process is on record—the comments on the draft are available in Docket NHTSA–2003–16318–0004. Consistent with NHTSA's standard practice, NHTSA published its analysis and sought public comment on it.[458] NHTSA then docketed a response

[451] *Id.*, at 77.

[452] One of the two dissenters was Dr. David Greene, the author of the 1997 report *Why CAFE Worked*, discussed *supra*.

[453] *Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards,* at 118.

[454] 2002 NAS Report, at Appendix A.

[455] *Id.*, at 27–28.

[456] *Id.*, at 6.

[457] Charles J. Kahane, ''Vehicle Weight, Fatality Risk, and Crash Compatibility of Model Year 1991–99 Passenger Cars and Light Trucks,'' DOT HS 809 662, October 2003. This report is available online at *http://www.nhtsa.dot.gov/cars/rules/regrev/evaluate/pdf/809662.pdf* (last accessed Oct. 28, 2008).

[458] See 68 FR 66153 (Nov. 5, 2003).

to the public comments on November 9, 2004.[459] There were three principal criticisms of NHTSA's updated study, which are summarized below together with NHTSA's response.

(1) The analyses only considered the relationship of vehicle mass to fatality risk. It did not consider other attributes of vehicle size, such as track width and wheelbase. Dynamic Research Inc. (DRI) presented analyses that included all three of these variables, and its analysis indicated that mass was harmful (i.e., reducing it would be positive for safety) while track width and wheelbase were beneficial. If true, this meant that weight reduction would benefit safety if track width and wheelbase were maintained.

Agency response: The DRI results were strongly biased as a consequence of including 2-door cars in the analysis. Two-door muscle and sports cars stand apart from all other groups of cars by having a short wheelbase relative to their weight. They also have by far the highest fatality rates of all cars, for reasons mostly related to the drivers. The regression analysis immediately identifies short wheelbase with high weight as a disastrous combination. Being a regression, it tells you that you can make any car safer, including 4-door cars, by increasing wheelbase and/or reducing weight. This bias is amplified by treating highly correlated size attributes as independent factors in the model.

To clarify this latter concern, NHTSA's analyses are calibrating the historical relationship of vehicle mass and fatality risk. In this type of analysis, ''vehicle mass'' incorporates not only the effects of vehicle mass per se, but also the effects of many other size attributes that are historically and/or causally related to mass, such as wheelbase, track width, and structural integrity. If historical relationships between mass and these other size attributes continue, future changes in mass will continue to be associated with similar changes in fatality risk. If the historical relationships change, one will be able to analyze the mass and size attributes independently, but it will take some years to get such data.

However, as a check of DRI's suggestion that mass was not as significant as track width and wheelbase, NHTSA ran both its 1997 and 2003 analyses of 4-door cars only with mass, track width, and wheelbase as separate variables. When we did this, we saw that mass continued to have a substantial effect, even independent of track width and wheelbase in all crash modes except rollovers. In fact, only curb weight had a consistent, significant effect in both the data sets used in NHTSA's 1997 analyses and his 2003 analyses. This was publicly reported over four years ago, in NHTSA's November 2004 response to the comments on his 2003 analyses.

After considering the DRI submission, NHTSA made no change to the findings in its 2003 report.

(2) Marc Ross, of the University of Michigan, and Tom Wenzel, of Lawrence Berkeley National Laboratory, commented that vehicle ''quality'' has a much stronger relationship with fatality risk than vehicle mass. They suggest that lighter cars have a higher fatality risk on average because they are usually the least expensive cars and, in many cases, the ''poorest quality'' cars. If true, weight reduction is fairly harmless, as long as the lighter cars are of the same ''quality'' as the heavier cars they replace.

Agency response: In their analyses, Ross and Wenzel did not adjust their rates for driver age and gender. Absent those adjustments, the analysis mingles the effects of what sort of people buy and drive the car with the intrinsic safety of the car, making its conclusions about the intrinsic safety of the car suspect, at best. On average, and considering all crash modes as well as both weight groups of cars, controlling for price has little effect on the weight-safety coefficients in NHTSA's analyses. As a final check, NHTSA ran an analysis of head-on collisions of two 1991–99 cars, since this is a pure measure of the vehicle's performance. The results were that the more expensive vehicle's driver had a slightly higher fatality risk than the less expensive vehicle's driver, although the difference was not statistically significant. This indicates that the lower fatality rates for more expensive cars in Ross and Wenzel's study are not due to expensive cars' superior performance in crashes.

Accordingly, NHTSA the Ross and Wenzel comment did not warrant a change in NHTSA's report.

(3) The Alliance of Automobile Manufacturers, DaimlerChrysler, William E. Wecker Associates, and Environmental Defense all question the accuracy and robustness of the report's calculation of a ''crossover weight,'' above which weight reductions have a net benefit, instead of harm. NHTSA's report said that this crossover point occurs somewhere in the range of 4,224 pounds to 6,121 pounds (this is the ''interval estimate''); with the most likely location of the crossover point at 5,085 pounds (this is the ''point estimate''). Wecker suggested that NHTSA's interval estimate of from 4,224 to 6,121 pounds only takes sampling error into account. Wecker identified additional factors that make this estimate not robust, and suggests that the interval estimate should be wider. The Alliance and DaimlerChrysler suggested that the crossover weight could be substantially greater than 5,085 pounds, in which case weight reductions for light trucks and vans in the 5–6,000 pound range would have detrimental net effects on safety. Conversely, Environmental Defense believes the crossover weight is well below 5,085 pounds, in which case there would be opportunities to reduce vehicle mass in many light trucks and vans without any safety penalty.

Agency response: While NHTSA's report estimates the crossover weight, the report expressly acknowledged the uncertainty about the exact location of the crossover weight. That is why the report highlighted the interval estimate, instead of the point estimate. It is important to note that the net weight-safety relationship remains close to zero for many hundreds of pounds above and below the point estimate for the crossover weight. As shown on pages 163–166 of NHTSA's 2003 report, the crash fatality rate changes by less than ±1 percent per 100-pound weight increase over a 1,200 pound range on either side of the point estimate for the crossover weight. The data and analysis in the report will not show a statistically significant relationship, in either direction, between weight and safety for the heavier light trucks and vans. That is the important information the report puts in front of the decision maker—that the robust relationship between weight and safety that exists for most vehicles does not exist for the heavier light trucks and vans. With the available data, one cannot develop a precise point estimate for this crossover weight.

Thus, NHTSA determined that its report did not require changes in response to these comments.

4. Summary of Studies Prior to This Rulemaking

Several important observations can be made based on the various studies performed in the years preceding this rulemaking on the relationship between safety and vehicle weight in the context of fuel economy:

1. The question of the effect of weight on vehicle safety is a complex question that poses serious analytic challenges. The issue has been addressed in the literature for more than two decades.

2. NHTSA has been actively engaged in this discussion.

3. All of NHTSA's analyses have found that there is a strong correlation

[459] Docket No. NHTSA–2003–16318–0016.

between vehicle mass and vehicle safety for cars and light trucks, up to a certain weight range.

a. Given the historic fact that vehicles have been made primarily of steel, there are a number of other parameters that are highly correlated with vehicle mass. These factors include vehicle size (e.g., track width and wheelbase).

b. The precise weight point at which the safety penalty ends is difficult to pinpoint, because the fatality rate curve is so flat at that point. NHTSA can say with high confidence that the crossover point is in the range of 4,224 to 6,121 pounds. There are safety penalties for reductions of weight below this crossover weight. There is no reduced societal safety for reducing weight on vehicles that weigh more than this crossover point, because the reduced risk for other road users would exceed any reduced benefits for the occupants of the heavy vehicle.

4. The National Academy of Sciences has twice peer-reviewed NHTSA's work in this area. The 2002 NAS Report found that there was a safety penalty for reducing weight in all but the heaviest light trucks. The study stated that ''the downsizing and weight reduction that occurred in the late 1970s and early 1980s most likely produced between 1,300 and 2,600 crash fatalities in 1993.''

a. Neither the Academy nor NHTSA is suggesting that all of the downsizing and weight reduction were a direct response to the CAFE standards. It is difficult to objectively quantify what amount of downsizing was a response to CAFE standards, and what was a response to other real or perceived market forces. However, the Academy stated that some of the downsizing was in response to CAFE standards.

b. NHTSA does not accord the safety dissent, which represented the views of two of the 13 committee members, the same stature as the views expressed in the body of the report, which represents the views of 11 of the 13 committee members.

5. In response to the National Academy's unanimous 2002 recommendation, NHTSA updated its previous work on weight and safety in 2003 to reflect the most recent data. This update found that the trends were similar, and if anything the safety penalty was now higher for reducing weight in small cars. This update also found that there is a crossover weight, which occurs somewhere between 4,264 and 6,121 pounds, with a point estimate at 5,085 pounds, above which there is no safety penalty for reducing vehicle weight. This is because the added harm for other road users from the additional weight exceeds any benefits for the occupants of the vehicles. NHTSA embodied this finding in its CAFE rulemaking by restricting materials substitution in its development of stringency levels to vehicles over 5,000 pounds.

6. NHTSA published its update and asked for public comments on the updated document.

7. In response to the request for comments, NHTSA received two recent studies to review. After reviewing these studies, NHTSA concluded that both studies had inadvertently introduced significant biases in their analyses. NHTSA made public its review of these studies in November 2004.

a. One of these studies was a 2002 study by DRI that purported to analyze mass, track width, and wheelbase as independent variables. DRI's 2002 paper indicated that reducing mass would be beneficial, while reducing track width and wheelbase would be harmful. If true, this meant that weight reduction would benefit safety if track width and wheelbase were maintained. As discussed above, NHTSA concluded that the DRI results were strongly biased as a consequence of including 2-door cars in the analysis and explained why this was so.[460]

b. The other of these studies was a 2002 analysis by Ross and Wenzel that suggested that lighter cars have a higher fatality risk because they are the least expensive and, in many cases, the poorest quality cars. The implication of this analysis was that weight reduction is fairly harmless, as long as the lighter cars are of the same ''quality'' as the heavier cars they replace. NHTSA noted that the Ross and Wenzel analyses did not adjust for driver age and gender. Absent those adjustments, the analysis mingles the effects of what sort of people buy and drive the car with the intrinsic safety of the car, making its conclusions about the intrinsic safety of the car suspect, at best.

B. Response to Comments in This Rulemaking on Safety and Vehicle Weight

With this background, NHTSA will now address the comments it received on safety in response to its NPRM. First, however, it is important to understand how NHTSA has embodied the accumulated knowledge and expertise from the studies explained above in this final rule. The rule is a performance standard that does not dictate the way manufacturers satisfy the standard. It does not preclude manufacturers from reducing the weight of future vehicles. Instead, in calculating its stringency standards, NHTSA has not considered weight-reducing materials substitution as a methodology for improving fuel economy of vehicles of 5,000 pounds or less. NHTSA has done so based on available data in order not to encourage downsizing of vehicles in a way that would be likely to cause a significant number of deaths and injuries. At the same time, for vehicles above 5,000 pounds, where the data indicate no safety penalty is likely for reducing weight, NHTSA has considered materials substitution in its standard-setting analysis. The effect of this is to encourage weight reductions to improve fuel economy where doing so is not likely to endanger lives. We believe this careful drawing of a data-based line in our analysis is the best way to serve both safety and fuel economy.

As an overview, many commenters questioned the continuing validity of the 2002 NAS Report, the 2003 NHTSA study led by Dr. Kahane, or both. NHTSA notes both these reports were based on considerable empirical data and thoroughly peer-reviewed. More recent studies will need to be of a very high quality for NHTSA to adopt them in lieu of the the 2002 NAS Report and the 2003 NHTSA analyses.

1. Views of Other Government Agencies

After our proposed rule was published and after the comment period had closed for the proposal, EPA published an Advance Notice of Proposed Rulemaking (ANPRM) on regulating greenhouse gas emissions under the Clean Air Act.[461] The ANPRM was accompanied by a Vehicle Technical Support Document—Mobile Source.[462] The Technical Support Document contains a discussion on pp. 15–17 of the safety issues. EPA provided a brief summary of the issues involved and cited no new work in that area.

Agency response: The work cited by EPA has already been addressed by NHTSA within the discussion of the 2002 NAS study and within NHTSA's responses to other comments to the NPRM docket regarding the Wenzel and Ross study.

CARB also commented on the relationship between vehicle weight and safety. CARB stated that the NHTSA study led by Dr. Kahane ''assumed that weight and size are completely correlated,'' and argued that NHTSA should have focused more closely on

[460] As discussed below, DRI acknowledged this observation to be accurate and submitted a new 2005 analysis that excludes 2-door cars in response to NHTSA's suggestions.

[461] 73 FR 44354 (July 30, 2008).

[462] Docket No. EPA–HQ–OAR–2008–0318–0084.

the DRI reports and other recent studies, which it said concluded that ''safety is primarily a design issue, not a weight issue.'' CARB included with its comments an ''expert report by David Greene,'' which it said concluded after reviewing the existing research that ''there has been no relationship between fuel economy and traffic fatalities and that there should be none in the future.''

CARB also commented that it believed that NHTSA was inconsistent by restricting materials substitution in its analysis to only vehicles over 5,000 pounds, but also stating in the NPRM that footprint-based standards would facilitate the use of lightweight materials that are not yet cost-effective, which could eventually improve both safety and fuel economy. CARB argued that ''NHTSA should expand the applicability of weight reduction technologies to vehicles under 5,000 pounds,'' because weight reduction can be ''a viable technology if accompanied by proper vehicle design to assure vehicle safety is not compromised.''

Agency response: The available empirical data are derived from vehicles that are in use on the public roads, and weight and size are highly correlated in those vehicles. Underlying this, larger vehicles contain more steel and weigh more. NHTSA has not and is not now claiming that weight and size are completely correlated. Thus, for any given curb weight, there may not be some variations in the track widths and wheelbases of vehicle make-models at that curb weight. However, these variations are not random—they are nearly always correlated with the vehicle's market class or design group.

NHTSA agrees that, conceptually, substitution of strong, lightweight materials should be a less harmful way to downweight than reducing the size of the vehicle. CARB has not supported its concept by presenting information on how this would be achieved or the consequences on the feasibility and practicability of doing so. There is not yet sufficient empirical evidence to conclude that material substitution is harmless, let alone beneficial to safety. NHTSA is proceeding cautiously and erring on the side of the safety of the public until there is more convincing evidence that requiring investments by vehicle makers in greater fuel efficiency through use of lightweight materials will not have the significant unintended consequence of simultaneously reducing the safety protection afforded to the American people, and attendant deaths as have occurred in the past.

As for the DRI reports, NHTSA reviewed its 2002 report and publicly responded in 2004 that the DRI results were strongly biased as a result of including 2-door cars in the analysis. To DRI's credit, they reviewed their report and agreed that this flaw needed to be corrected. DRI submitted a new study which, they say, limited some of their analyses to 4-door cars excluding police cars. DRI further claimed that it could now mimic NHTSA's logistic regression approach for an analysis of model year 1991–98 4-door cars in calendar year 1995–1999 crashes. DRI claims that its new analysis still shows results directionally similar to its earlier work—increased risk for lower track width and wheelbase, reduced risk for lower mass—although DRI acknowledges that the wheelbase and mass effects are no longer statistically significant after removing the 2-door cars from the analysis.

NHTSA does not accept the updated DRI analysis because it contains results that are inconsistent with results NHTSA has seen and, in light of this, DRI has not justified its results. For example in MY 1991–1998, the average car weighing x + 100 pounds had a track width that was 0.34 inches larger and a wheelbase that was 1.01 inch longer. Thus, we could say that a ''historical'' 100-pound weight reduction would have been accompanied by a 0.34 inch track width reduction and a 1.01 inch wheelbase reduction. However, using a reasonable check, if one dissociates weight, track width, and wheelbase and treats them as independent parameters, DRI's logistic regression of model year 1991–1998 4-door cars excluding police cars attributes the following effects:

DRI – Parameter	Effect on Fatalities
Reduce mass by 100 pounds	379 fewer deaths
Reduce track width by 0.34 inches	1,000 more deaths
Reduce wheelbase by 1.01 inches	207 more deaths
Reduce mass by 100 lb., track by 0.34, and WB by 1.01 inches	828 more deaths

Now if we apply NHTSA's logistic regression analyses to NHTSA's database, exactly as described in the agency's response to comments on its 2003 report, except for limiting the data to model years 1991–98, instead of 1991–99, the results are not at all like DRI's. For NHTSA, mass still has the largest effect, exceeding track width, and it moves in the expected direction.

NHTSA – Parameter	Effect on Fatalities
Reduce mass by 100 pounds	485 more deaths
Reduce track width by 0.34 inches	334 more deaths
Reduce wheelbase by 1.01 inches	9 more deaths
Reduce mass by 100 lb., track by 0.34, and WB by 1.01 inches	828 more deaths

NHTSA obtains its estimates by adding the results from 12 individual logistic regressions: six types of crashes multiplied by two car-weight groups (less than 2,950 pounds; 2,950 pounds or more).[463] DRI has apparently not followed the same procedures, based on the widely differing results.

Based on the evidence before us now, NHTSA is not persuaded by the DRI analysis. Even though NHTSA's analyses continue to attribute a much larger effect for mass than for track width or wheelbase in small cars, NHTSA has never said that mass alone is the single factor that increases or decreases fatality risk. There may not be a single factor, but rather it may be that mass and some of the other factors that are historically correlated with mass, such as wheelbase and track width, together are the factors. We can say that NHTSA's analyses do not corroborate the 2005 DRI analysis, suggesting that mass can be reduced without safety harm and perhaps with safety benefit.

We would note that comparatively, it would seem the least harmful way to reduce mass would be from materials substitution, where one replaces a heavy material with a lighter one that delivers the same performance, or other designs that reduce mass while maintaining wheelbase and track width. There is an absence of supporting data for the thrust of the 2005 DRI analysis. We cannot analyze data on that yet, because those changes have not happened to any substantial number of vehicles. We do know that mass has historically been correlated with wheelbase and track width, and that reductions in mass have also reduced those other factors. Until there is a more credible analysis than the 2005 DRI study that demonstrates that mass does not matter for safety, NHTSA concludes it should be guided by the decades' worth of studies suggesting that mass is the most important of the related factors.

The report by Dr. David Greene that was submitted by CARB as part of its comments is a document submitted by Dr. Greene when he was an expert witness in a lawsuit.[464] We note that Dr. Greene was one of the two dissenters to the 2002 NAS report. Dr. Greene reiterates the arguments in his dissent to the 2002 NAS Report; namely, mass alone should not have any safety effect except in crashes where two vehicles collide with each other (which undisputedly occurs, with fatal results). In light of this view, all the empirical data showing higher fatality rates for lighter vehicles in single-vehicle crashes and elsewhere are due to something other than mass. Therefore, we conclude mass may be reduced without harming safety. But, as explained above, mass has been historically correlated with other factors, such as size and structural integrity. Unless NHTSA can determine based on data what the significant parameters are and demonstrate ways to reduce mass without affecting the significant parameters, NHTSA cannot simply ignore the empirical data showing higher fatality rates for lighter vehicles.

Dr. Greene's expert report refers to the Ross and Wenzel and DRI studies, which have been discussed at length above. Dr. Greene also refers to a study titled ''The Effect of Fuel Economy on Automobile Safety: A Reexamination.''[465] This report is a long-term (1966–2002) time-series analysis of the annual number of crash fatalities in the United States, the average fuel economy of the vehicles on the road that year, and some other factors such as the price of fuel, the national speed limit, population, and annual vehicle miles traveled. The conclusion is that national fatalities did not increase, in fact tended to decrease, from the early 1970s forward, while fuel economy improved. Therefore, fuel economy has not had an adverse effect on safety. Suffice it to say that this is an exceedingly ''macro'' level to examine the relationships between fuel economy and fatality risk. Long-term time-series analyses are unlikely to separate the effects of downsizing for the other demographic, economic, and technological trends that have had an impact on fatality rates over the period. For instance, seat belt use has risen from 14 percent to 82 percent, many life-saving safety features (e.g., front and side airbags) have been added to vehicles, impaired driving is not as accepted, and so forth. It is general knowledge that traffic fatalities are now lower than 1970, primarily as a result of the major safety advances just mentioned. The reexamination ignores the effects of these variables and leaps to the conclusion that fuel economy did not have an adverse effect on safety—a conclusion that is at odds with the 2002 NAS study. But the relevant question in the safety/fuel economy context is, ''Would fatalities have been even lower if cars had not been downsized?'' To analyze that relationship accurately, it would be necessary to compare the fatality risk of small and large vehicles, not just the trend in total fatalities, over this long period.

With respect to CARB's suggestion that NHTSA expand the applicability of weight reduction technologies to vehicles under 5,000 pounds, because weight reduction can be accompanied by proper vehicle design to assure vehicle safety is not compromised, the agency repeats its general view that there may be possibilities in the use materials substitution and other processes to reduce weight without reducing vehicle safety. This should be explored. However, there are no data or analyses that show this to be true today. NHTSA specifically does not find either the 2002 or 2005 DRI analyses to be demonstrative, since the former study was strongly biased by including 2-door cars and the latter study says it mimicked NHTSA's database and NHTSA's analysis method, but got results that are substantially different. Until NHTSA can see thorough evidence using a significant and valid empirical data set, which is yet to be presented, that weight reduction can be accomplished without safety trade-offs, the agency will continue to set its CAFE standards at levels that do not encourage weight reduction in vehicles that weigh less than the safety crossover identified in NHTSA's 2003 analyses. We recognize that given the lives at stake, this reflects caution, but we believe it is also prudent.

We also note that the California CO_2 emissions standards for which California requested a waiver under the Clean Air Act sets up a program that uses the same ''flat standards'' approach for its standards that the 2002 NAS Report found gives rise to the safety concerns identified in that report. The consequences of this structure for the program have been identified by 2002 report: ''If an increase in fuel economy is effected by a system that encourages either downweighting or the production and sale of more small cars, some additional traffic fatalities would be expected. Without a thoughtful restructuring of the program, that would be the trade-off that must be made if CAFE standards are increased by any significant amount.''[466]

2. Comments From Other Parties

Several comments were received from parties other than government agencies on the weight-safety issue. NRDC argued that NHTSA should not have relied on

[463] See, e.g., Kahane (2003), Table 2 on P. xi.

[464] This is the same Dr. Greene who concluded in his 1997 report, cited above, that ''it is probably reasonable to conclude that reducing vehicle mass to improve vehicle economy will require some trade-off with safety.''

[465] Sanjana Ahmad and David L. Greene, 2005, ''Effect of Fuel Economy on Automobile Safety: A Reexamination,'' Transportation Research Record 1941, Transportation Research Board of the National Academy of Sciences.

[466] 2002 NAS Report at 77.

only on its 2003 study led by Dr. Kahane, because Wenzel and Ross had commented to NHTSA's 2005 light truck CAFE NPRM that ''the relationship between car weight and safety is tenuous at best,'' and because Dr. Kahane himself stated that his study

> ''does not claim that mass per se is the specific factor that increases or decreases fatality risk* * *'' ''In that sense, it is irrelevant whether mass, wheelbase, track width or some other attribute is the principal causal factor on fatality risk. If you decrease mass, you will also tend to reduce wheelbase, track width and other dimensions of size.''

NRDC stated that this may no longer be correct for future vehicle designs, and argued that NHTSA had recognized as much in the NPRM by stating that high-strength, light-weight materials may help manufacturers reduce vehicle weight without reducing size or safety. NRDC further argued that vehicle design, ''which could in fact be enhanced with lightweight materials,'' is much more relevant to safety. Thus, NRDC concluded that NHTSA should apply material substitution to lighter vehicles in its analysis.

The comments received from Wenzel and Ross stand in direct contradiction to the 2002 NAS Report, which said, ''Thus, the majority of this committee believes that the evidence is clear that past downweighting and downsizing of the light-duty vehicle fleet, while resulting in significant fuel savings, has also resulted in a safety penalty.'' The Wenzel and Ross comment was also based on their study, discussed earlier, which NHTSA said in 2004 is flawed, since it did not control for driver age and gender. Thus, the findings of Wenzel and Ross are not helpful since they mingle the effects of what sort of people buy and drive the car with the intrinsic safety of the car, making its conclusions about the intrinsic safety of the car suspect, at best.

NRDC is correct insofar as NHTSA has not claimed that mass alone is the single factor that is entirely responsible for the safety factor, and in the future there may be demonstrations that weight (the amount has not been identified) can be removed without adversely affecting safety. However, as we said in response to the same point from CARB, when setting CAFE standards, NHTSA will continue to limit its consideration of weight reduction to vehicles over 5,000 pounds until there is convincing empirical evidence that there are no negative safety consequences from removing weight from lighter vehicles.

Sierra Club et al. also commented that vehicle design is more important than weight to vehicle safety. This is largely the same point made by other commenters. The point is very general, and there are no analyses that demonstrate this proposition is true. Sierra Club also argued that NHTSA should not use its retrospective 2003 study to analyze future standards, because of the design improvements and because ''[s]ubstitution of light weight, high strength materials such as low alloy steels and aluminum will decrease both primary and secondary vehicle weight while maintaining vehicle size and increasing crashworthiness.'' NHTSA believes that it would be irresponsible to set standards by ignoring the available data, based on the hope that a promising development will come to fruition. The available data indicate that there is a safety penalty for weight reductions in vehicles under a certain weight.

Sierra Club et al. also stated that ''The industry's long history of consistent opposition to the CAFE law has relied on a flawed size/safety argument,'' which it suggested also affected Congress' action in establishing EISA. Sierra Club argued, however, that that argument was disproven by the fact that manufacturers can obviously build vehicles that ''demonstrate size, safety, and fuel economy performance'' such as the Prius or the hybrid Escape. These vehicles tend to be cited for use of hybrid propulsion systems. They often have heavy battery systems but lighter engines. In any event, manufacturers continue to offer a full range of vehicles, and they strive to deliver safety, fuel economy, and value in all of their vehicles. However, the available data at the level of the entire fleet demonstrate that, below a certain weight range, there has been a safety penalty from downweighting vehicles. The introduction of new vehicle models does nothing to change that historical record and it is unknown how the new models will affect the fleet wide fatality risk in future years.

Sierra Club additionally repeated the oft-stated assertion that smaller cars continue to become safer as manufacturers ''apply side airbags, design vehicles to better protect occupants, and utilize light weight materials that enhance safety.'' It is of course true that, with the advent of important safety features like side air bags and Electronic Stability Control, combined with higher levels of seat belt use, today's small vehicles should have a better safety record than those produced a decade ago. However, that is not really the question that is being considered in deciding on the safety penalty for weight reduction—the question is whether today's small vehicles have a safety penalty compared to today's vehicles that weigh 100 pounds more. Unless there are some safety technologies that are offered only on small cars, or that are more effective on small cars, the additional safety technologies will not affect the relative safety performance between vehicles with a 100-pound weight difference. It is proper to compare vehicles of the same time period, not a light vehicle today with air bags and a heavy vehicle of years ago without air bags. If offered today, the heavy vehicle would have air bags and better safety performance.

Sierra Club also argued that a study by the Center for Auto Safety and UCS ''found that applying existing fuel-saving and safety technology to a conventional Ford Explorer would result in a 71 percent improvement in fuel economy and 2,900 fewer traffic fatalities if all SUVs met equivalent safety standards,'' while ''At the same time, the redesigned vehicle resulted in greater consumer savings and lower global warming emissions as a result of the improved fuel economy.'' [467] The document generated by the Center for Auto Safety and UCS does not address the safety penalty as weight is reduced. This document asserts that if several safety and fuel-savings technologies were used on a 2001 Ford Explorer, it would achieve greater fuel economy and have a better safety record. The safety and fuel savings benefits, along with the costs, are extrapolated from different sources. The paper does state that the redesign would reduce the test weight of the vehicle by 10 percent, to 4100 pounds (p. 10). However, the question of the safety consequences of reducing the vehicle mass by 400 pounds is not answered by any data, since the redesigned vehicle does not exist. As such, this document is not persuasive.

Sierra Club additionally cited studies on materials by the Aluminum Association's Auto and Light Truck Group, Automotive Composites Alliance, and World Autosteel as offering ''evidence that proper application of weight saving materials from engine blocks to hoods and beyond provide opportunities for broader consideration of weight reduction.'' NHTSA understands that materials substitution is possible. The question here is whether weight reduction through materials substitution should be considered in establishing the CAFE standards. As explained previously,

[467] Sierra Club et al. cited ''Building a Better SUV: A Blueprint for Saving Lives, Money and Gasoline,'' by CAS and UCS. This 2003 pamphlet is accessible online at *http://www.ucsusa.org/assets/documents/clean_vehicles/building_a_better_suv_web.pdf* (last accessed October 28, 2008).

NHTSA is not considering weight reduction for vehicles below 5,000 pounds in this round of CAFE rulemaking, because there has been no demonstration that there would not be an adverse safety effect from doing so. In subsequent CAFE rulemakings, NHTSA will re-examine what has been demonstrated and decide whether its previous position should be adjusted. However, based on the data and analyses available now, NHTSA has decided not to consider weight reduction for vehicles below 5,000 pounds in setting the standards. Sierra Club specifically identified the Jaguar XJ as an ''[a]luminum intensive vehicle'' that ''demonstrate[s] that properly designed lighter weight vehicles can excel at safety.'' This is a restatement of Sierra Club's prior comment that the Toyota Prius and the hybrid Ford Escape show there is no safety penalty, and NHTSA's response is the same as shown above. Sierra Club concluded that ''Since vehicle safety is an important consideration in and of itself, NHTSA should use its legal authority to set tighter safety standards for the purpose of addressing important public safety considerations.'' This is an argument put forward with the best of intentions, but it is not germane to the safety penalty issue. If all vehicles have new safety standard requirements, they would all have a somewhat reduced absolute fatality risk. However, the safety penalty arises relative to peer vehicles. Unless there is some safety standard that is most effective for small vehicles and less effective for larger vehicles, new safety standards will not affect the relative safety risk between larger and smaller vehicles.

The Aluminum Association also commented that vehicle safety is more tied to vehicle design (using aluminum) than to vehicle weight. The Aluminum Association suggested that NHTSA's 2003 study is outdated, as it ''was retrospective and looked at 1990-era vehicles,'' and not predictive of the future. The Aluminum Association argued that vehicles in the MY 2011–2015 time frame will be much safer, subject to increasing numbers of safety standards and new safety initiatives for rollover and compatibility, and subject also to attribute-based CAFE standards, which the NPRM had suggested would improve vehicle safety. The Aluminum Association argued that the vehicles evaluated in the 2003 NHTSA study were not subject to these factors, and thus concluded that ''the historical proposition that lighter vehicles must be smaller (and potentially less safe) is no longer valid.'' To repeat, until there is an analysis showing this to be true, NHTSA will not consider weight reductions for vehicles below 5,000 pounds, since the data show that there has been a safety penalty for those vehicles from weight reduction in the past.

C. Comments on Other Issues Related to Safety

1. Vehicle Compatibility Design Issues

Other commenters addressed vehicle compatibility design specifically, rather than design overall. Public Citizen, Sierra Club et al., and the Aluminum Association commented that NHTSA should consider vehicle safety and downweighting in terms of compatibility in multi-vehicle crashes, rather than in terms of individual vehicle weight. Public Citizen suggested that NHTSA's decision not to include downweighting for lighter vehicles was ''inconsistent with its own research on incompatibility,'' and stated that because Senator Feinstein had attempted to include provisions in EISA requiring NHTSA to undertake rulemakings to improve vehicle compatibility but had not been successful, NHTSA should initiate such rulemaking on its own.

Agency response: Compatibility is a safety concern that NHTSA has been investigating for some time now. Moreover, the commenters' point that any compatibility benefits should be weighed against any disbenefits associated with downweighting is logically correct. However, NHTSA research on compatibility has shown that compatibility is substantially influenced by factors other than mass, including vehicle geometry, stiffness, and crush space. For example, full size pick-up trucks are higher and stiffer than subcompact cars.

While we do not know the precise effect of these factors, it is fair to say that simply downweighting heavier vehicles would not effectively address the compatibility issue. Thus, there are no currently available analyses that would allow NHTSA or anyone to quantify the compatibility benefits simply from weight reduction. In addition, NHTSA has taken action to address compatibility for existing vehicles. Beginning September 1, 2010, new requirements for head protection in side impact crashes will start being phased-in for all light vehicles sold in the United States. This will require a first-in-the-world pole test, and become the first side impact standard in the world to require that performance be assessed with both a mid-sized adult male and a small adult female. Even with the huge benefits of Electronic Stability Control factored into the analysis, NHTSA estimates this technology will save 1,029 lives each year once implemented on the fleet.[468] However, as explained above, these absolute benefits do not change the higher relative safety risk lighter vehicles have in collisions with heavier vehicles.

Sierra Club et al. commented that ''the disparity in the weights of vehicles is much more important to occupant safety than the average weight of all vehicles sharing the road.'' Sierra Club stated that the disparity in vehicle weight among passenger cars has decreased since 1975, and that ''[o]verall the passenger fleet has homogenized toward a 3,500 pound vehicle.'' Sierra Club then argued that relative upweighting with improvements in fuel economy among small cars have provided a net safety gain in the vehicle fleet, which would be even greater ''but for the super-sizing of pickups and SUVs in this time frame.'' However, Sierra Club argued that ''[t]he days of the supersized SUVs and pickups are over due to higher fuel prices,'' and that ''[w]hen the next EPA Trends Report comes out, the light duty truck fleet will have been homogenized to a safer, more fuel efficient fleet as was the passenger car fleet earlier, eliminating the more severe crashes.'' Sierra Club concluded that NHTSA should have accounted for the safety benefits of this mix shift in its analysis. These assertions were not supported by data or analyses. Moreover, Sierra Club has not explained why a parent of a large family would buy a subcompact instead of a minivan, or a contractor or tradesman would not buy a full size pick-up truck or van.

The Aluminum Association cited the DRI analysis with regard to vehicle compatibility, which it described as showing ''that vehicle crash compatibility can be improved by providing increased crush space and better energy management; and with the size-based approach, if there was a 20% weight reduction across the vehicle size classes, heavier vehicles would shed significantly more weight than smaller vehicles, also improving fleet compatibility.'' As explained above, the DRI analyses are not persuasive.

[468] *Final Regulatory Impact Analysis, FMVSS 214 Amending Side Impact Dynamic Test Adding Oblique Pole Test,* Docket No. NHTSA–2007–29134–0004, Table V–A on p. V–2.

2. Whether Manufacturers Downweight in Response to Increased CAFE Stringency

The Alliance, Subaru, Washington Legal Foundation, and the American Iron and Steel Institute suggested that the stringency of the standards, as measured by their rate of increase (particularly in the earlier years covered by the rulemaking), could encourage manufacturers to employ downweighting as a means of compliance, which could lead to adverse safety consequences. Thus, even though NHTSA did not include material substitution or downweighting for lighter vehicles in its analysis, commenters indicated that downweighting was nonetheless a likely response to the proposed standards.

The CAFE standards are now established as a continuous function varying according to the size of the vehicle's footprint. To the extent the vehicle manufacturers choose to downweight their vehicles by making them smaller, they are faced with a higher CAFE target. To the extent the function is not artificially constrained, it will require approximately equal amounts of additional technology for each point on the curve. For example, if an additional $200 worth of fuel savings technology have to be added to a vehicle to meet its fuel economy target, then downsizing it will still require at least $200 in additional fuel savings technology. In the latter case, the manufacturer would also have the cost of downsizing the model. Accordingly, NHTSA is confident that the attribute-based system is oriented not to bestow benefits for downsizing a vehicle model.

The CAFE program is a performance-based program. NHTSA does not dictate the design of a particular passenger car or light truck. The program is not intended to ensure that no vehicle maker ever downsizes a vehicle. If a vehicle maker decides to downsize a model, it would be because the manufacturer perceives that to be more effective, taking all factors into account, than other strategies for increasing fuel economy in that model.

We understand that this leaves open the possibility that manufacturers could reduce the vehicle weight, but keep the vehicle size constant. In theory, the way to do this would be through materials substitution, where one replaces a heavy material with a lighter one. NHTSA is intentionally not discouraging materials substitution, because we agree that this approach is conceptually appealing as long as safety is not compromised.

Public Citizen argued, in contrast, that downweighting of lighter vehicles is not a common compliance strategy, and that manufacturers had primarily responded to NHTSA's earliest CAFE standards in the 1980s by applying technologies, with ''only 15 percent came from weight reductions, and then weight was only removed from the heaviest vehicles.'' NHTSA notes that the 1992 study cited by Public Citizen concerning manufacturers' reactions to the early 1980s passenger car standards is now 16 years old. Since that date, the 2002 NAS Report concluded a decade later that some of the downsizing and downweighting that occurred between the late 1970s and 1993 was due to CAFE standards and that ''the evidence is clear that past downweighting and downsizing of the light-duty vehicle fleet, while resulting in significant fuel savings, has also resulted in a safety penalty. In 1993, it would appear that the safety penalty included between 1,300 and 2,600 motor vehicle crash deaths that would not have occurred had vehicles been as large and heavy as in 1976.'' We find the NAS report more persuasive than the 1992 study cited by Public Citizen.

Public Citizen went on to suggest that NHTSA was ''reinforc[ing] the common myth that fuel economy standards reduce vehicle safety by promoting downweighting.'' Again NHTSA notes the findings of the 2002 NAS report on the adverse safety impact of downsizing and that Public Citizen provides no evidence to support its view that this is a ''myth.''

3. Whether Flat Standards Are More or Less Harmful to Safety Than Footprint-Based Standards

The Alliance, the Aluminum Association, and the Washington Legal Foundation agreed with the agency's assessment that a footprint-based standard is safer than a flat standard. Public Citizen, in contrast, suggested that under the flat standards of the 1980s, manufacturers primarily responded by applying additional technologies, and only reduced weight from the heaviest vehicles, which would suggest no safety risk from downweighting due to flat standards.

Public Citizen's repeated citations of a 1992 study do not make it more persuasive. A decade after that study, a NAS panel found that manufacturers downweighted and downsized the fleet, partly in response to the CAFE standards. This directly contradicts the 1992 study cited by Public Citizen. As of this rulemaking, the National Academy of Sciences has published a seminal report stating that there is a safety concern with flat standards. The fact that two of the 13 members dissented does not diminish the import of that. Informed by this conclusion, EPCA, as amended by EISA, now prohibits NHTSA from establishing flat CAFE standards, subject to required minimum standard for domestic passenger cars. With the passage of this law, for the purposes of this rule, the debate is resolved and Federal fuel economy regulations will be attribute-based, not flat standards.

4. Whether NHTSA Should Set Identical Targets for Passenger Cars and Light Trucks for Safety Reasons

Public Citizen suggested that the fact that fuel economy targets may be different for identical-footprint cars and light trucks encourages manufacturers to build a vehicle as a truck instead of as a car, and argued that NHTSA should change the regulatory definitions of passenger cars and light trucks to improve safety. Public Citizen also argued that the attribute-based CAFE standards ''eliminate[] the leveling effect of the corporate average (that is, balancing lighter vehicles against heavier ones).''

Regardless of the merits of Public Citizen's comment, the law specifies that NHTSA must establish separate standards for cars and light trucks. The agency believes that this requirement also mandates that the agency consider the capabilities of the car and light truck fleets separately. The standards for the light truck fleet (and thus the footprint/mpg targets for that fleet) tend to be lower than those of the passenger car fleet because light trucks simply do not have the capability to reach standards as high as the passenger car standards. NHTSA does not believe it could establish identical separate standards, because identical standards would not be ''maximum feasible'' for both cars and light trucks. See 49 USC 32902(a), (b), and (f). NHTSA has addressed the regulatory definitions for passenger cars and light trucks in Section XI.

5. Whether NHTSA Should Have Considered the 2002 NAS Report Dissent in Deciding Not To Apply Material Substitution for Vehicles Under 5,000 Pounds

CBD stated that NHTSA had ''misrepresented'' the findings of the 2002 NAS Report by stating only the conclusion of the majority and not additionally stating the finding of two dissenting members ''that weight reduction for vehicles greater than 4,000 lbs. curb weight would result in a safety benefit, as was discussed in detail in the recent Ninth Circuit opinion.'' Public

Citizen also referred to the NAS dissent in arguing that ''Kahane's study oversimplifies the relationship between weight and safety, obfuscates findings which show that reducing weight from only the heaviest vehicles actually improves safety, and overlooks the relationship between the difference in vehicle weight, rather than simply the weight of the vehicle.'' Sierra Club et al. also referred to the NAS dissent in stating that ''According to K.G. Duleep, who served as a consultant to the NAS Committee, had the NAS incorporated appropriate weight reductions into the ranges of possible fuel economy improvements, in addition to the NAS report's mostly drive train improvements, its total fuel economy recommendations would have been 20% higher.''

The reason NHTSA does not accord the same significance to the dissent as to the majority is explained above. Essentially, when 11 members of a committee support a position and present it in the body of the report, that is given more weight than the opinion of two dissenting members that appears in an appendix to the report. NHTSA believes that the information in the report is the information that is put out with the full imprimatur of the National Academy committee.

IX. The Final Fuel Economy Standards for MY 2011

For both passenger cars and light trucks, the agency is determining final CAFE standards estimated, as for the previously-promulgated reformed MY 2008–2011 light truck standards, to maximize net benefits to society. Before setting these final standards the agency also considered under NEPA the environmental impacts of these standards, as detailed in the FEIS.

A. Final Passenger Car Standard

We have determined that the final standard for MY 2011 passenger cars result in a required fuel economy level that is technologically feasible, economically practicable, and set by taking into account the effect of other motor vehicle standards of the Government on fuel economy, the need of the United States to conserve energy, and additional environmental considerations under NEPA. Values for the parameters defining the target function for this final standard for cars are as follows:

	A	B	C	D
MY 2011	31.20	24.00	51.41	1.91

Where, per the adjusted continuous function formula above in Section VI:

A = the maximum fuel economy target (in mpg)

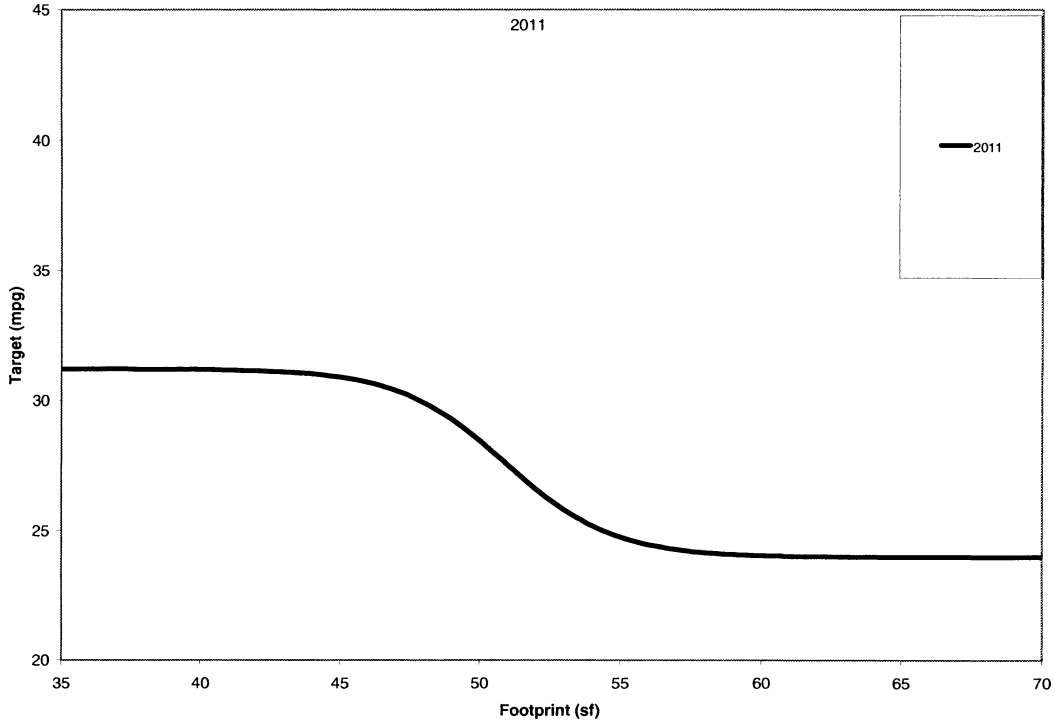
B = the minimum fuel economy target (in mpg)

C = the footprint value (in square feet) at which the fuel economy target is midway between *a* and *b*

D = the parameter (in square feet) defining the rate at which the value of targets decline from the largest to smallest values

The resultant target function has the following shape:

Figure IX-1. Passenger Car Curve Target Function



Based on the product plan information provided by manufacturers in response to the May 2008 request for information and the incorporation of publicly available supplemental data and information, NHTSA has estimated the required average fuel economy levels under the final standard for MY 2011 passenger cars as follows:

Table IX-1. Required MY 2011 CAFE Levels (mpg) for Passenger Cars

Manufacturer	MY 2011
BMW	30.2
Chrysler	28.6
Daimler	28.9
Ferrari	30.7
Ford	30.1
General Motors	30.0
Honda	30.6
Hyundai	30.3
Maserati	27.5
Mitsubishi	30.9
Nissan	30.5
Porsche	31.2
Subaru	30.9
Suzuki	31.0
Tata	27.5
Toyota	30.6
Volkswagen	30.9
Total/Average	30.2

B. Final Light Truck Standard

NHTSA is also finalizing the light truck fuel economy standard for MY 2011. In taking a fresh look at what truck standard should be established for MY 2011, as required by EISA, NHTSA used the newer set of assumptions that it had developed for the final standards. The agency used the EIA High Price Case projections for available gasoline prices, which are on average approximately $0.40 per gallon higher than the projections used in the NPRM. Other differences in assumptions include more current product plan information, an updated technology list and updated costs and effectiveness estimates and penetration rates for technologies, and updated values for externalities such as carbon dioxide emission reductions.

The final standard is ''optimized'' for MY 2011 light trucks—the process for establishing it is described at length above, but it may be briefly described as maximizing net social benefits plus anti-backsliding measures. We have determined that the final light truck standard for MY 2011 represents the maximum feasible fuel economy level for that approach. In reaching this conclusion, we have balanced the express statutory factors and other relevant considerations, such as safety and effects on employment, and have considered the NEPA analysis and conclusions in the FEIS with regard to the chosen agency action.

The final standard is determined by a continuous function specifying fuel economy targets applicable at different vehicle footprint sizes, the equation for which is given above in Section VI. Values for the parameters defining the final standard target function for light trucks are as follows:

	A	B	C	D
MY 2011	27.10	21.10	56.41	4.28

Where:

A = the maximum fuel economy target (in mpg)

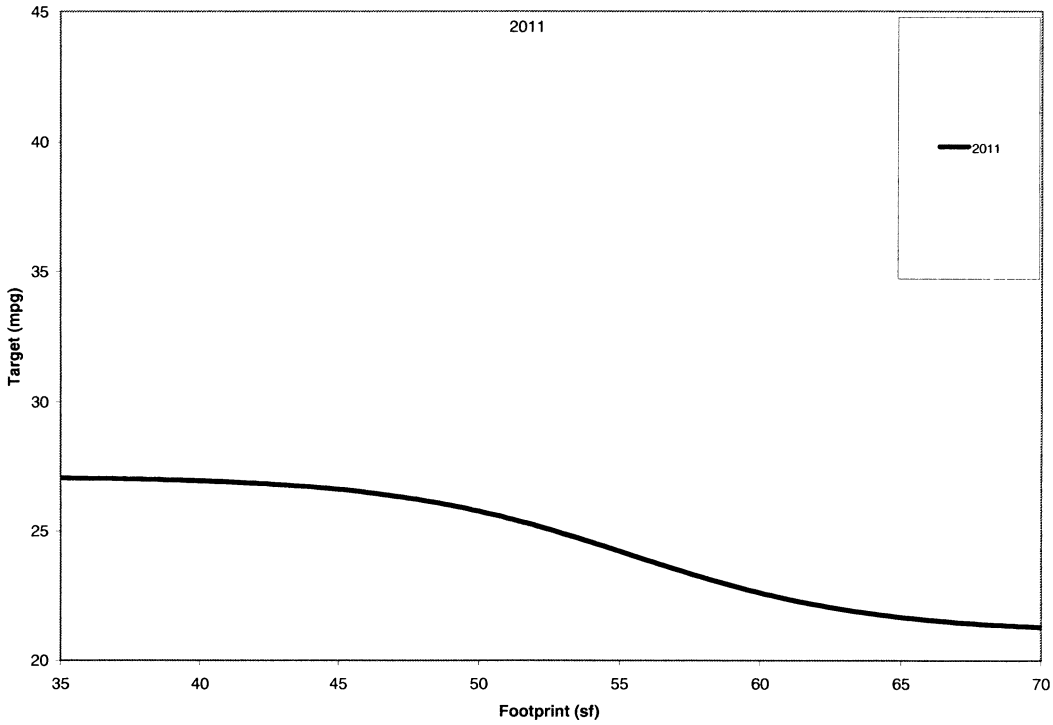
B = the minimum fuel economy target (in mpg)

C = the footprint value (in square feet) at which the fuel economy target is midway between *a* and *b*

D = the parameter (in square feet) defining the rate at which the value of targets decline from the largest to smallest values

The resultant target function has the following shape:

Figure IX-2. Light Truck Curve Target Function



Based on the product plans provided by manufacturers in response to the May 2008 request for information and the incorporation of publicly available supplemental data and information, the agency has estimated the required average fuel economy levels under the final optimized standard for MY 2011 as follows:

Table IX-2. Required CAFE Levels (mpg) for Light Trucks

Manufacturer	MY 2011
BMW	25.7
Chrysler	24.2
Daimler	24.5
Ford	23.6
General Motors	23.3
Honda	25.4
Hyundai	25.3
Mitsubishi	26.7
Nissan	24.0
Porsche	25.5
Subaru	26.6
Suzuki	26.4
Tata	26.1
Toyota	24.8
Volkswagen	24.9
Total/Average	24.1

We note that a manufacturer's required fuel economy level for a model year under the final standards would be based on its actual production numbers in that model year. Therefore, its official required fuel economy level would not be known until the end of that model year. However, because the targets for each vehicle footprint would be established in advance of the model year, a manufacturer should be able to estimate its required level accurately.

C. Energy and Environmental Backstop

As discussed in the NPRM, EISA expressly requires each manufacturer to meet a minimum fuel economy standard for domestically manufactured passenger cars in addition to meeting

the standards set by NHTSA. The minimum standard ''shall be the greater of (A) 27.5 miles per gallon; or (B) 92 percent of the average fuel economy projected by the Secretary for the combined domestic and non-domestic passenger automobile fleets manufactured for sale in the United States by all manufacturers in the model year. * * *'' [469] The agency must publish the projected minimum standards in the **Federal Register** when the passenger car standards for the model year in question are promulgated.

NHTSA calculated 92 percent of the final projected passenger car standards as the minimum standard, which for MY 2011 is 27.8. The final calculated minimum standards will be updated to reflect any changes in the projected passenger car standards.

In *CBD* v *NHTSA*, the Ninth Circuit agreed with the agency that EPCA, as it was then written, did not explicitly require the adoption of a backstop, i.e., a minimum CAFE standard that is fixed. A fixed minimum standard is one that does not change in response to changes in a manufacturer's vehicle mix.

The Court said, however, that the issue was not whether the adoption was expressly required, but whether it was arbitrary and capricious for the agency to decline to adopt a backstop. The Court said that Congress was silent in EPCA on this issue. The Court concluded that it was arbitrary and capricious for the agency to decline to adopt a backstop because it did not, in the view of the Court, address the statutory factors for determining the maximum feasible level of average fuel economy. The Court remanded the matter back to NHTSA to reconsider the issue under the appropriate standard.

NHTSA explained in the NPRM that it believes that it considered and discussed the express statutory factors such as technological feasibility and economic practicability and related factors such as safety in deciding not to adopt a backstop. The agency stated that further discussion is not warranted because Congress has spoken directly on this issue since the Ninth Circuit's decision by enacting EISA. Congress expressly mandated that CAFE standards for automobiles be attribute-based and they must adjust in response to changes in vehicle mix. NHTSA suggested that this mandate precludes the agency from adopting a fixed minimum standard, except in the one case in which Congress mandated a fixed and flat [470] minimum standard for domestic passenger cars—not in the cases of nondomestic passenger cars or light trucks.

Given the requirement for attribute-based standards and the limited express exception to that requirement, NHTSA tentatively concluded in the NPRM that had Congress intended backstops to be established for either of the other two compliance categories, it would have required them. Absent explicit statutory language that provides the agency authority to set flat standards, the agency suggested that the setting of a supplementary minimum flat standard for the other two compliance categories would be contrary to the requirement to set an attribute-based standard under EISA.

The agency noted, however, that the curve of an attribute-based standard has several features that limit backsliding, some of which NHTSA added as it refined the Volpe model for the purpose of this rulemaking, and some of which (such as the lower asymptote, which serves as a backstop) are inherent in the logistic function. NHTSA stated that it believed that these features help address the concern that has been expressed regarding the possibility of vehicle upsizing without compromising the benefits of reform. NHTSA also noted that the 35 mpg requirement in and of itself serves as a backstop, because the agency must set the standards high enough to ensure that the average fuel economy level of the combined car and light fleet is making steady progress toward and achieves the statutory requirement of at least 35 mpg by 2020. NHTSA explained that if the agency finds that this requirement might not be achieved, it will consider setting standards for model years 2016 through 2020 early enough and in any event high enough to ensure reaching the 35 mpg requirement.

The Attorneys General, Sierra Club et al., UCS, and ACEEE opposed NHTSA's view not to adopt a backstop for imported passenger cars and light trucks and argued that the agency must adopt backstop standards, while AIAM and NADA supported the agency's decision. The Attorneys General argued that because Congress had not changed the definition of ''maximum feasible fuel economy,'' NHTSA remained ''obligated'' by the Ninth Circuit opinion to consider a backstop for those additional fleets. The Attorneys General stated that the possibility that attribute-based standards ''will cause a 'race to the bottom' '' still existed, and that the agency must therefore consider a backstop.

Sierra Club et al. also argued that NHTSA had misinterpreted Congress' intent in EISA. Sierra Club stated that Congressman Markey's extended remarks inserted into the Congressional Record were clear evidence of Congress' intent with regard to the backstop. Sierra Club also argued that a September 2007 letter from the United Auto Workers to Speaker Nancy Pelosi and Majority Leader Harry Reid, which suggested that the domestic minimum passenger car standard was intended to protect jobs in the U.S., was evidence that ''the provision in EISA is tied to employment, not oil conservation.'' Sierra Club concluded that NHTSA is not precluded from adopting backstop standards for imported passenger cars and light trucks, and is required to do so by the Ninth Circuit opinion. Sierra Club additionally cited EPA's ANPRM, which it stated indicates that EPA will pursue an ''environmental backstop.''

UCS agreed that the 35-in-2020 requirement is a kind of backstop, and that the ratable-increase requirement between MY 2011 and 2020 is an ''implied'' backstop, but nevertheless argued that NHTSA should implement a regulated backstop for the other fleets. UCS commented that ''the same concerns of the Ninth Circuit court persist,'' because ''there is no mechanism to ensure the market does not undermine [the proposed] standards.'' UCS stated that this could occur because ''if maximum feasible fuel economy levels are found to exceed 35 mpg, the legislated minimum will not ensure those levels (and, thus, maximum feasible energy savings) are achieved.''

ACEEE commented that the lower asymptote is not an adequate backstop, because the lower asymptote in 2015 resulted in ''a combined value of 27.5 mpg, assuming a 48% sales share for cars,'' which ACEEE said ''is scarcely higher than today's combined standard and certainly does not constitute ratable progress toward achieving 35 mpg in 2020.'' ACEEE argued that the lower asymptotes could not guarantee that ''oil savings from the CAFE program will not fall short of the savings anticipated with the passage of the law.'' ACEEE stated that to ensure ratable progress toward an average of at least 35 mpg in 2020 and to mitigate ''the dangers of upsizing and otherwise gaming the standards,'' NHTSA should commit to ''mid-course corrections'' between MY 2011 and 2020 as necessary.

In contrast, AIAM supported NHTSA's decision not to adopt a

[469] 49 U.S.C. 32902(b)(4).

[470] A flat standard is one that requires each manufacturer to achieve the same numerical level of CAFE.

backstop for imported passenger cars and light trucks. AIAM argued that a backstop for those fleets would ''defeat the purpose of the attribute format by limiting the flexibility of manufacturers to respond to shifts in market demand,'' and that the lower asymptote ''provides a disincentive to upsizing of vehicles [in that footprint range], since the standard would become increasingly difficult to meet.'' AIAM also suggested that a backstop would not likely increase fuel savings since consumers appear to be moving away from large cars and trucks.

While NADA agreed with NHTSA regarding the clarity of Congress' decision not to adopt backstops, it also argued that NHTSA ''should not attempt to artificially create backstops'' through the lower asymptotes of the car and light truck curves. NADA stated that NHTSA should instead ''let the curves end in conformance with the largest vehicle's footprint.''

NHTSA respectfully disagrees with the characterization raised by the Attorneys General and other commenters that it ''did not consider'' a backstop in the NPRM. As made clear by the NPRM and as discussed above, the opposite is true. The agency also respectfully disagrees with UCS' characterization of the Ninth Circuit CBD opinion as it concerns the backstop issue. As discussed in the NPRM, Congress' enactment of EISA addressed the backstop issue by clearly specifying a flat minimum standard for domestic passenger cars, and by not clearly specifying a flat minimum standard for imported passenger cars and light trucks. Congress was aware of this issue from the 2006 light truck final rule and the *CBD* decision, but expressly required a backstop for only one fleet of vehicles.

NHTSA notes the very limited nature of EISA's legislative history with regard to the backstop issue. No Senate, House, or conference reports were created during the legislative process that culminated in EISA. The floor statements during Congressional consideration of EISA are also sparse. In any event, however, floor statements, regardless of who made them, are entitled to less weight than conference reports because, in the views of many courts, they do not represent statements on the final terms of a bill agreed to by both houses. *See, e.g., In re Burns*, 887 F.2d 1541 (11th Cir. 1989), in which the Court of Appeals was called upon to interpret provisions of the Bankruptcy Act which were arguably ambiguous. The Court noted that ''[w]hatever degree of solicitude is due to legislative history materials in the usual cast, '[s]trict adherence to the language and structure of the Act is particularly appropriate where, as here, a statute is the result of a series of carefully crafted compromises.' '' Id. at 1545 (citing *Community for Creative Non-Violence* v. *Reid*, 490 U.S. 730, n. 14 (1989)). ''Accordingly, the best indicators of congressional intent in this narrow instance are the language and structure of the Code itself, not the accompanying statements of legislators that carry the potential for reclaiming that which was yielded in the actual drafting compromise.'' *Id. See also In re Kelly*, 841 F.2d 908, 913 n. 3 (9th Cir. 1988) (''Stray comments by individual legislators, not otherwise supported by statutory language or committee reports, cannot be attributed to the full body that voted on the bill. The opposite inference is far more likely.'')

Here, there are no floor statements to provide guidance on the backstop issue. Rather, various members, including Representative Markey, inserted material into the *Congressional Record* after floor action. There is no indication that the material inserted into the record was raised, debated, or otherwise before the full House or Senate during floor consideration. Materials inserted by members after congressional action are not indicative of congressional intent. Instead, ''[t]he intent of Congress as a whole is more apparent from the words of the statute itself than from a patchwork record of statements inserted by individual legislators and proposals that may never have been adopted by a committee, much less an entire legislative body—a truth which gives rise to 'the strong presumption that Congress expresses its intent through the language it chooses.' '' *Sigmon Coal Co., Inc.* v. *Apfel*, 226 F.3d 291, 304–05 (4th Cir 2000) (quoting *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 432 n. 12 (1987)), *aff'd sub. nom., Barnhart* v. *Sigmon Coal Co., Inc.*, 534 U.S. 438 (2002). The Supreme Court in *Sigmon* similarly held that ''[f]loor statements from two Senators cannot amend the clear and unambiguous language of a statute.'' Guided by the Supreme Court's guidance on this issue, ''[w]e see no reason to give greater weight to the views of two Senators than to the collective votes of both Houses, which are memorialized in the unambiguous statutory text.'' 534 U.S. at 457. ''We are not aware of any case * * * in which we have given authoritative weight to a single passage of legislative history that is in no way anchored in the text of the statute.'' *Shannon* v. *United States*, 512 U.S. 573, 583 (1994).

The agency disagrees that there is any indication that the September 2007 UAW letter to Speaker Pelosi and Majority Leader Reid, relied upon by the Sierra Club, constitutes the legislative intent for including the EISA backstop requirement for domestically-manufactured passenger cars in addition to meeting the standards set by NHTSA, i.e., tied to employment concerns and not energy conservation. The UAW's letter, by itself and without any supporting statement or information in the legislative history, cannot reasonably be presumed to constitute that the intent of the backstop was employment.

Thus, consistent with applicable case law, NHTSA must interpret the words of EISA itself. NHTSA continues to believe that the 35 mpg requirement of EISA is an inherent backstop, as UCS noted in its comments. NHTSA also agrees with the ACEEE comment insofar as the agency will continue to monitor manufacturer progress toward meeting the required fuel economy stringencies. The agency must set the standards high enough to ensure that the average fuel economy level of the combined car and light truck fleet is increasing ratably toward and achieves the statutory requirement of at least 35 mpg by 2020. If the agency finds that this requirement might not be achieved, it will consider setting standards for model years up to and including MY 2020 early enough and in any event high enough to ensure reaching the 35 mpg requirement.

However, NHTSA disagrees with the AIAM comments that a backstop standard would defeat the purpose of the attribute-based CAFE system by limiting the flexibility of manufacturers to respond to shifts in market demand. NHTSA also disagrees with NADA's comment that, beyond Congress explicitly enacting a backstop for domestically-manufactured passenger cars at 27.5 mpg or 92 percent of the industry-wide domestic passenger car fleet in any given model year, whichever is higher, the agency cannot impose additional anti-backsliding measures. EPCA requires the agency to balance the four statutory factors when determining maximum feasible CAFE standards, and the agency has considered these factors—particularly the need of the nation to conserve energy—in deciding whether to adopt additional measures that operate as ''backstops.'' Thus, in balancing the four EPCA factors under 49 U.S.C. § 32902(f), the agency has adopted in these standards additional measures which operate as ''backstops'' applicable to all CAFE-regulated vehicles. First, as set forth in Section VI above, the MY 2011 curves have features that limit backsliding, some of which were added by NHTSA as the agency refined and

modified the Volpe model for purposes of this rulemaking. Second, the lower asymptote, which serves as a backstop, is inherent in the logistic function. While the agency respectfully disagrees with ACEEE's comment regarding the sufficiency of the lower asymptote as a backstop, as discussed above, it is not the only ''backstop'' embodied in this rule.

In having considered carefully the comments to the NPRM, however, NHTSA nonetheless accepts at least the possibility that Congress' silence in EISA regarding backstops for imported passenger cars and light trucks could be reasonably interpreted as permissive rather than restrictive. For purposes of the MY 2011 standards, however, and upon consideration of the entire record, NHTSA declines to adopt ''backstops'' beyond that set forth in this section. The ''race to the bottom'' feared by commenters seems unlikely as a result of the MY 2011 standards, particularly given the lack of lead time available to manufacturers to change their MY 2011 vehicles and the public's apparently growing preference for smaller vehicles. Moreover, the backstop and anti-backsliding mechanisms described above not only address the ''race to the bottom'' concern, but are also consistent with the attribute-based approach of Reformed CAFE. NHTSA continues to believe that backstop standards for imported passenger cars and light trucks are neither legally required nor necessary at this time to ensure fuel savings. However, the agency will continue to monitor manufacturers' product plans and CAFE compliance, and will revisit the backstop issue in subsequent rulemakings if it becomes necessary to ensure that expected fuel savings are ultimately realized.

D. Combined Fleet Performance

The combined industry wide average fuel economy (in mpg) levels for both cars and light trucks, if each manufacturer just met its obligations under the final ''optimized'' standards for MY 2011, would be 27.3 mpg, or 325.5 grams CO_2 per mile. This represents an increase of approximately 7.9 percent over the previous model year's standards.

E. Costs and Benefits of Final Standards

1. Benefits

NHTSA estimates that the final standard for MY 2011 passenger cars would save approximately 0.5 billion gallons of fuel and prevent 4.3 million metric tons of tailpipe CO_2 emissions over the lifetime of the passenger cars sold during that model year, compared to the fuel savings and emissions reductions that would occur if the standards remained at the adjusted baseline (i.e., the higher of manufacturer's plans and the manufacturer's required level of average fuel economy for MY 2010).

NHTSA also estimates that the value of the total benefits of the final standard for MY 2011 passenger cars would be $1.03 billion [471] over the lifetime of the vehicles manufactured in that model year. This estimate of societal benefits includes direct impacts from lower fuel consumption as well as externalities, and also reflects offsetting societal costs resulting from the rebound effect. Direct benefits to consumers, including fuel savings, consumer surplus from additional driving, and reduced refueling time, account for 88 percent ($1.0 billion) of the $1.1 billion in gross [472] consumer benefits resulting from increased passenger car CAFE. Petroleum market externalities account for roughly 10 percent ($0.1 billion). Environmental externalities, i.e., reduction of air pollutants, account for roughly 2 percent ($0.03 billion), about 31 percent ($0.01 billion) of which is the result of greenhouse gas (primarily CO_2) reduction. Increased congestion, noise and accidents from increased driving will offset approximately $0.1 billion of the $1.1 billion in consumer benefits, leaving net consumer benefits of $1.0 billion.

The following table sets out the relative dollar value of the various benefits of this rulemaking on a per gallon saved basis and averaging across the passenger car and light truck fleets:

[471] The $1.0 billion estimate is based on a 7 percent discount rate for valuing future impacts. NHTSA estimated stringencies that would maximize net societal benefits using both 7 percent and 3 percent discount rates. For the reader's reference, total consumer benefits for passenger car CAFE improvements total $2.6 billion using a 3 percent discount rate.

[472] Gross consumer benefits are benefits measured prior to accounting for the negative impacts of the rebound effect. They include fuel savings, consumer surplus from additional driving, reduced refueling time, reduced petroleum market externalities, reduced criteria pollutants, and reduced greenhouse gas production. Negative impacts from the rebound effect include added congestion, noise, and crash costs due to additional driving.

[473] Based on a value of $2.00 per ton of carbon dioxide. At a value of $33.00 per ton of carbon dioxide, the benefit per gallon of reducing in CO_2 emissions would be $0.29; and at a value of $80.00 per ton of carbon dioxide, the benefit per gallon would be $0.71. However, to calculate the gross and net benefits per gallon of fuel saved using global SCC values, one would need to remove monopsony costs, which would make the value per gallon of ''Reduction in Oil Import Externalities'' equal to $0.11.

Table IX-3. Economic Benefits and Costs per Gallon of Fuel Saved (Undiscounted)

Category	Variable	Value (2007 $ per gallon)
Benefits	Savings in Fuel Production Cost	$2.82
	Reduction in Oil Import Externalities	$ .38
	Value of Additional Rebound-Effect Driving	$ .34
	Net Reduction in Criteria Pollutant Emissions	$ .06
	Value of Reduced Refueling Time	$ .11
	Reduction in CO_2 Emissions	$ .02[473]
	Gross Benefits	**$3.73**
Costs	Externalities from Additional Rebound-Effect Driving	$0.27
Net Benefits	**Net Benefits**	**$3.45**

NHTSA further estimates that the final standard for light trucks would save approximately 0.42 billion gallons of fuel and prevent 4.03 million metric tons of tailpipe CO_2 emissions over the lifetime of the light trucks sold during MY 2011, compared to the fuel savings and emissions reductions that would occur if the standards remained at the adjusted baseline.

For light trucks, NHTSA estimates that the value of the total benefits of the final MY 2011 standard would be $0.92 billion [474] over the lifetime of the light trucks sold in that year. This estimate of societal benefits includes direct impacts from lower fuel consumption as well as externalities and also reflects offsetting societal costs resulting from the rebound effect. Direct benefits to consumers, including fuel savings, consumer surplus from additional driving, and reduced refueling time, account for 88 percent ($0.9 billion) of the $1.0 billion in gross consumer benefits resulting from increased light truck CAFE. Petroleum market externalities account for roughly 10 percent ($0.1 billion). Environmental externalities, i.e., reduction of air pollutants, account for roughly 2 percent ($0.02 billion), about 32 percent of which is the result of greenhouse gas (primarily CO_2) reduction ($0.01 billion). Increased congestion, noise and accidents from increased driving will offset roughly $0.07 billion of the $1.0 billion in consumer benefits, leaving net consumer benefits of $0.9 billion.

2. Costs

The total costs for manufacturers just complying with the standard for MY 2011 passenger cars would be approximately $0.5 billion, compared to the costs they would incur if the standard remained at the adjusted baseline. The resulting vehicle price increases to buyers of MY 2011 passenger cars would be recovered or paid back [475] in additional fuel savings in an average of 4.4 years (average 2011 per car price increase, excluding civil penalties owed by manufacturers estimated to owe them, was $64), assuming fuel prices ranging from $2.97 per gallon in 2016 to $3.62 per gallon in 2030.[476]

The total costs for manufacturers just complying with the standard for MY 2011 light trucks would be approximately $0.65 billion, compared to the costs they would incur if the standard remained at the adjusted baseline. The resulting vehicle price increases to buyers of MY 2011 light trucks would be paid back in additional fuel savings in an average of 7.7 years (average 2011 per truck price increase, excluding civil penalties owed by manufacturers estimated to owe them, is $126) assuming fuel prices ranging from $2.97 to $3.62 per gallon.

Table IX-4. Average Costs per Vehicle for Added Fuel Economy Technology to Comply with CAFE Standards

	Passenger Cars	Light Trucks	Combined Fleet
Costs ($)	64	126	91

Comparison of estimated benefits to estimated costs

The table below compares the incremental benefits and costs for the car and light truck CAFE standards, in millions of dollars.

[474] The $0.9 billion estimate is based on a 7 percent discount rate for valuing future impacts. NHTSA estimated stringencies that would maximize net societal benefits using both 7 percent and 3 percent discount rates. For the reader's reference, total consumer benefits for light truck CAFE improvements are $1.2 billion under a 3 percent discount rate.

[475] See Section V.B.5 above for discussion of payback period.

[476] The fuel prices (shown here in 2006 dollars) used to calculate the length of the payback period are those projected (Annual Energy Outlook 2008, final release) by the Energy Information Administration over the life of the MY 2011–2015 light trucks, not current fuel prices.

Table IX-5. Incremental Benefits and Costs ($ million) for MY 2011 Passenger Car and Light Truck Standards

	Benefits	Costs	Net Benefits
Passenger Cars	1,027	496	531
Light Trucks	921	649	272

The average annual per vehicle cost increases are shown in the FRIA.

F. Environmental Impacts of Final Standards

On October 17, 2008, the EPA published a Notice of Availability of NHTSA's Final Environmental Impact Statement (FEIS), which, as required by the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., analyzed the potential environmental impacts of alternative CAFE standards being considered by the agency. 73 FR 61859. In response to comments on the DEIS, the FEIS, among other things, analyzed how the agency's alternatives were affected by variations in certain economic assumptions. The agency carefully considered and analyzed each of the individual economic assumptions to determine which assumptions most accurately represent future economic conditions. For a discussion of the economic assumptions relied on by the agency in this final rule, see Section V.

The economic assumptions used by the agency in this final rule correspond to the ''Mid-2'' Scenario set of assumption analyzed in the FEIS. See FEIS § 2.2. The Optimized Alternative utilizing the Mid-2 Scenario economic assumptions, which were prompted in part by public comments, falls within the spectrum of alternatives set forth in the DEIS and the FEIS, and all relevant environmental impacts associated with the Optimized Alternative have been considered by NHTSA. The environmental impacts calculated to result under the Optimized Alternative utilizing the Mid-2 Scenario economic assumptions were presented in Appendix B of the FEIS, and discussed in Chapters 3 and 4 of the FEIS. The tables that follow in this section were developed from the tables provided in Appendix B of the FEIS.

As discussed in Section XVI of this Final Rule, the FEIS evaluates the aggregate environmental impacts associated with each alternative for a five-year period (i.e., the environmental impacts that would result if MY 2011–2015 passenger cars and light trucks met the higher, proposed CAFE standards for those years). However, the impacts resulting from this Final Rule, covering MY 2011 alone, fall within the spectrum of environmental impacts analyzed in the FEIS under the Optimized Alternative, Mid-2 Scenario.

This section presents selected consequences that would be associated with the final CAFE standards for MY 2011 passenger cars and light trucks (i.e., the Optimized Alternative, Mid-2 Scenario CAFE standards for MY 2011). These consequences include the effects of the MY 2011 standards on fuel consumption and associated emissions of greenhouse gases, as well as on emissions of criteria and hazardous air pollutants. Environmental impacts associated with the final CAFE standards for MY 2011 passenger cars and light trucks remain aggregated for MYs 2011–2015, and are reported in the FEIS. See Chapter 3, Chapter 4 and Appendix B of the FEIS. The aggregate impacts analyzed in the FEIS remain relevant, since the MY 2011 impacts associated with the CAFE standards fall within the spectrum of those aggregated impacts.

Table IX.F–1 shows the estimated impact of the final CAFE standards for MY 2011 on fuel consumption by passenger cars and light trucks during selected years from 2020 to 2060. Because the estimates of fuel consumption shown in the table assume that the CAFE standards established for MY 2011 would apply to all subsequent model years produced over this period, the proportion of the U.S. fleet consisting of cars and light trucks that met the MY 2011 CAFE standards would increase over the time period it spans. The table reports total fuel consumption for passenger cars and light trucks, including both gasoline and diesel, under the No Action Alternative (Baseline) and under the final standards chosen by the agency (the Optimized Alternative). The impact of the chosen standards on future fuel consumption by cars and light trucks is measured by the reduction from its level under the No Action or Baseline alternative that is projected to occur with the final standard in effect.

Table IX.F-1

Final Standards Annual Fuel Consumption and Fuel Savings (billion gallons)

	Passenger Cars		Light Trucks	
Calendar Year	No Action/Baseline	Final Standard	No Action/Baseline	Final Standard
Fuel Consumption				
2020	64.4	64.0	81.1	80.8
2030	75.1	74.5	92.0	91.5
2040	86.2	85.5	105.5	104.8
2050	98.7	97.9	120.7	119.9
2060	112.3	111.5	137.5	136.6
Fuel Savings Compared to No Action				
2020	--	0.4	--	0.3
2030	--	0.6	--	0.5
2040	--	0.7	--	0.7
2050	--	0.8	--	0.8
2060	--	0.9	--	0.9

A more informative measure of the impact of the final MY 2011 CAFE standards than the reductions in fuel use during any specific future year is their effect on cumulative fuel consumption by the U.S. car and light truck fleet over an extended future period. This is because the reduction in cumulative fuel consumption over the future that results from higher CAFE standards determines their impact on total GHG emissions, the accumulation of these gases in the earth's atmosphere, and any resulting impact on the global climate. Table IX.F–2 projects future fuel use by U.S. passenger cars and light trucks under the Baseline or No Action alternative and the final CAFE standards for MY 2011, and shows the reductions in fuel use that will result from adopting the MY 2011 standards. As with the estimates of fuel consumption reported in the previous table, those shown in Table IX.F–2 assume that the MY 2011 CAFE standards would also apply to subsequent model years. The fuel savings shown in the table grow not only as they are estimated for progressively longer time spans, but also because an increasing fraction of cars and light trucks in service during future years consists of models that meet the higher CAFE standards adopted beginning with MY 2011.

Table IX.F-2

Final Standards Cumulative Annual Fuel Consumption and Cumulative Fuel Savings (billion gallons)

Calendar Year	Passenger Car; No Action/ Baseline	Passenger Car; Final Standard	Light Truck; No Action/Baseline	Light Truck; Final Standard
Cumulative Fuel Consumption				
2010-2020	663.0	660.9	865.1	863.2
2010-2030	1,365.8	1,358.7	1,731.9	1,725.4
2010-2040	2,176.5	2,163.0	2,724.6	2,711.9
2010-2050	3,105.8	3,085.0	3,861.4	3,841.5
2010-2060	4,167.6	4,138.5	5,160.1	5,131.8
Cumulative Fuel Savings Compared to No Action Alternative				
2010-2020	--	2.1	--	1.9
2010-2030	--	7.2	--	6.5
2010-2040	--	13.5	--	12.7
2010-2050	--	20.8	--	19.9
2010-2060	--	29.1	--	28.2

NHTSA analyzed the air quality consequences of alternative CAFE standards by estimating total emissions of each criteria air pollutant and mobile source air toxic (MSAT) attributable to passenger cars and light trucks under each alternative, and assessing the changes in emissions of each pollutant from their Baseline levels that would occur under alternative standards. Emissions of these pollutants include those that occur while vehicles are being operated (''tailpipe'' emissions), as well as emissions that occur throughout the processes of producing and distributing fuel (''upstream'' emissions).[477] Because improving fuel economy results in an increase in the number of miles passenger cars and light trucks are driven (the ''rebound'' effect), tailpipe emissions of each pollutant are projected to increase by progressively larger amounts under alternatives that require higher fuel economy levels. In contrast, each action alternative reduces the volume of fuel that must be supplied, thus reducing emissions throughout the fuel production and distribution process.

The net effect of each alternative is equal to the increase in tailpipe emissions resulting from added rebound-effect driving, minus the reduction in upstream emissions resulting from the lower volume of fuel that must be supplied. Although the relative magnitude of these two effects differs among individual pollutants, the reduction in upstream emissions of most (but not all) pollutants outweighs the increase in tailpipe emissions, leading to a net reduction in their total emissions. Similarly, the net reduction in total emissions of each pollutant is usually—although not always—larger for alternatives that require higher fuel economy levels. For further explanation of the air quality methodology, see FEIS § 3.3.2.

Table IX.F–3 reports nationwide emissions of criteria air pollutants from passenger cars and light trucks (including both tailpipe and upstream emissions) under the Baseline alternative for selected years, and compares these to emissions levels expected to result from the final CAFE standards for MY 2011.[478] As the table shows, total emissions of each criteria pollutant are projected to decline as a consequence of the final MY 2011 CAFE standards, as reductions in upstream emissions due to the lower volume of fuel production and distribution more than offset any increases in tailpipe emissions resulting from additional driving.

Table IX.F-3

Nationwide Emissions of Criteria Air Pollutants from Passenger Cars and Light Trucks (thousand tons/year)

Pollutant and Year	No Action/Baseline	Final CAFE Standards	Changes from Baseline
Carbon Monoxide (CO)			
2015	18,863	18,862	-1
2020	16,628	16,623	-4
2015	2,154	2,153	-1
2020	1,546	1,544	-2
2025	1,315	1,313	-2
2035	1,260	1,257	-3
Particulate Matter (PM2.5)			
2015	75.5	75.5	-0.1
2020	77.2	77.0	-0.1
2025	81.7	81.5	-0.2
2035	92.8	92.5	-0.2
Sulfur Oxides (SO_x)			
2015	198	197	0
2020	207	206	-1
2025	222	221	-1
2035	255	253	-2
Volatile Organic Compounds (VOC)			
2015	2,115	2,113	-1
2020	1,758	1,755	-3
2025	1,676	1,672	-4
2035	1,750	1,746	-5

[477] In the case of volatile organic compounds (VOC), emissions from vehicle operation also include evaporative emissions that occur when vehicles are parked or stored, and while they are being refueled at retail stations. Emissions from vehicle operation are estimated by multiplying the total number of miles that cars and light trucks are driven annually by emissions factors for each pollutant, measured in grams of pollutant emitted per mile traveled. Emissions from fuel production and distribution are estimated by multiplying the total volume of fuel consumed by cars and light trucks by emissions per gallon during each phase of fuel supply, including petroleum extraction and transportation, fuel refining, storage, and distribution to retail outlets.

[478] Unlike GHGs, criteria and hazardous air pollutants are relatively short-lived; thus their concentrations in the atmosphere and the resulting impacts on human health depend primarily on emissions during the immediate period being analyzed, rather than on their cumulative emissions over an extended period.

In addition to their effects on emissions of criteria air pollutants, the final CAFE standards for MY 2011 are expected to affect emissions of some hazardous air pollutants (also known as mobile source air toxics, or MSATs) from fuel production and use. The MSATs included in this analysis are acetaldehyde, acrolein, benzene, 1,3-butadiene, diesel particulate matter (DPM), and formaldehyde, which EPA and the Federal Highway Administration have identified as the MSATs of primary concern for assessing the environmental impacts of motor vehicle use.

Table IX.F–4 reports total nationwide emissions of these air toxics by passenger cars and light trucks during selected future years under the Baseline or No Action alternative, as well as with the final MY 2011 CAFE standards in effect. As in the previous analyses of GHG and criteria air pollutant emissions, these estimates assume that the MY 2011 CAFE standards for cars and light trucks would also apply to subsequent model years. The table shows that emissions of acetaldehyde, benzene, 1,3-butadiene, DPM, and formaldehyde during future years would decline from their Baseline levels with the final CAFE standards for MY 2011 in effect. In contrast, emissions of acrolein are projected to increase slightly during some future years from their levels under the Baseline alternative with the final MY 2011 CAFE standards in effect.[479] For additional detail on this analysis see FEIS § 3.3.3; Chapter 5.

Table IX.F-4

Final CAFE Standards Nationwide Toxic Air Pollutant Emissions from Passenger Cars and Light Trucks (tons/year)

Pollutant and Year	No Action/Baseline	Emissions Levels	Changes from Baseline
Acetaldehyde			
2015	11,180	11,179	-1
2020	8,672	8,669	-2
2025	7,670	7,667	-3
2035	7,444	7,440	-4
Acrolein			
2015	530	531	0
2020	393	394	1
2025	336	337	1
2035	315	316	2
Benzene			
2015	60,222	60,204	-18
2020	47,721	47,685	-37
2025	43,332	43,280	-53
2035	43,189	43,121	-68
1,3-Butadiene			
2015	6,139	6,139	0
2020	4,711	4,711	0
2025	4,112	4,112	-1
2035	3,914	3,913	-1
Diesel Particulate Matter (DPM)			
2015	89,964	89,735	-230
2020	94,198	93,761	-436
2025	100,975	100,379	-595
2035	115,724	114,961	-762
Formaldehyde			
2015	16,258	16,253	-5
2020	13,087	13,077	-9
2025	11,955	11,943	-12
2035	12,022	12,008	-14

[479] The projected increases in future emissions of acrolein may result from the agency's inability to obtain ''upstream'' emission factors for this pollutant, which prevented it from estimating the reduction in acrolein emissions resulting from lower fuel production and distribution. It is possible that if the agency had been able to do so, lower acrolein emissions during fuel production and distribution would have more than offset the increase in emissions from fuel use by cars and light trucks, causing total acrolein emissions to decline.

The declines in future emissions of criteria air pollutants and MSATs resulting from the final MY 2011 CAFE standards would be expected to reduce the adverse health effects stemming from population exposure to harmful accumulations of these pollutants. In the Final EIS, the agency presented a detailed analysis of the air quality and health effects of reductions in population exposure to criteria air pollutants and MSATs projected to result from alternative CAFE standards for MY 2011–2015. That analysis suggested that significant reductions in adverse health effects and economic damages caused by exposure to these pollutants (primarily $PM_{2.5}$, the largest known contributor to adverse health effects) could result if higher CAFE standards were adopted for model years 2011 through 2020. See § 3.3.2.4.2 of the FEIS for a description of NHTSA's approach to providing these quantitative estimates of adverse health effects of conventional health pollutants associated with the final CAFE standards.

NHTSA's Final EIS also presented a detailed analysis of the potential effects of alternative car and light truck CAFE standards for MY 2011–2015 on the global climate. This analysis first estimated the effects of alternative increases in CAFE standards on fuel consumption and resulting emissions of greenhouse gases (GHG) over an extended future period beginning when those standards would take effect. Next, the agency projected the extent to which these projected reductions in GHG emissions might lower future atmospheric concentrations of GHGs. Finally, the agency utilized a widely-recognized global climate modeling system, known as MAGICC (Model for the Assessment of Greenhouse-gas Induced Climate Change), to simulate the consequences of reduced GHG concentrations for future increases in global mean surface temperatures and the projected future rise in sea levels, and approximated the likely consequences of these developments for regional precipitation patterns. For additional discussion of the FEIS climate analysis, see FEIS § 3.4 and 4.4.

The agency's analysis demonstrated that small but potentially important beneficial effects on the pace and extent of future climate change were likely to result from the long-term reductions in GHG emissions that would result from adopting higher CAFE standards for model years 2011 through 2015, particularly if increases in CAFE standards continued through model year 2020.

X. Other Fuel Economy Standards Required by EISA

In the NPRM, NHTSA explained that it is not promulgating standards for commercial medium- and heavy-duty on-highway vehicles or work trucks as part of this rule, because Congress was clear in EISA that several steps were necessary before such a rulemaking could begin. Section 103 of EISA added the following definitions to 49 U.S.C. 32901(a) for these vehicles:

- ''Commercial medium- and heavy-duty on-highway vehicle'' means an on-highway vehicle with a gross vehicle weight rating of 10,000 pounds or more; and
- ''Work truck'' means a vehicle that—
  (A) is rated at between 8,500 and 10,000 pounds gross vehicle weight; and
  (B) is not a medium-duty passenger vehicle (as defined in 40 CFR 86.1803–01, as in effect on the date of EISA's enactment).

EISA added a new provision to 49 U.S.C. 32902 requiring DOT, in consultation with DOE and EPA, to examine the fuel efficiency of these vehicles and determine the appropriate test procedures and methodologies for measuring the fuel efficiency of these vehicles, as well as the appropriate metric for measuring and expressing their fuel efficiency performance and the range of factors that affect their fuel efficiency. This study would need to be performed within 1 year of the publication of the NAS study required by section 108 of EISA.[480]

Then, within two years of the completion of the study, DOT, in consultation with DOE and EPA, would need to undertake rulemaking to

> determine * * * how to implement a commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency improvement program designed to achieve the maximum feasible improvement, and shall adopt and implement appropriate test methods, measurement metrics, fuel economy standards, and compliance and enforcement protocols that are appropriate, cost-effective, and technologically feasible for commercial medium- and heavy-duty on-highway vehicles and work trucks.[481]

EISA also requires a four-year lead time for fuel economy standards promulgated under this section, and would allow separate standards to be prescribed for different classes of vehicles.[482]

NHTSA received relatively few comments on this issue, perhaps not surprising since it is essentially concerned with a future rulemaking. Two commenters disagreed with NHTSA's characterization of Section 102 of EISA ''mandating'' or ''requiring'' that NHTSA develop CAFE standards for commercial medium- and heavy-duty on-highway vehicles and work trucks. Both Cummins, Inc. and EMA commented that NHTSA should change terminology used in footnotes 38 and 41 of the NPRM suggesting that CAFE standards were ''mandated'' for these vehicles. Both commenters argued that Congress did not necessarily have CAFE-type standards in mind for these vehicles in Section 102, as evidenced by the fact that Congress required a NAS study to be followed by another study by DOT in consultation with EPA and DOE. The commenters stated that Section 102 simply requires that NHTSA eventually implement a ''fuel efficiency improvement program'' with ''fuel economy standards,'' but not necessarily CAFE standards. As Cummins argued, because the ''truck sector has no broadly accepted metric for measuring fuel efficiency,'' ''there could be major unintended consequences'' if NHTSA implemented ''a CAFE-like system that regulates by a miles per gallon metric,'' because such a system ''could improve fuel economy but cause overall worse fuel efficiency by promoting multiple smaller trucks to do the same work that one does today.'' Cummins and EMA stated that NHTSA should therefore remove all terminology in the final rule suggesting that NHTSA would apply the ''CAFE system'' to commercial medium- and heavy-duty on-highway vehicles and work trucks.

Agency response: NHTSA disagrees with Cummins and EMA that CAFE standards for commercial medium- and heavy-duty on-highway vehicles and work trucks were not mandated by Section 102 of EISA. Congress was clear in Section 102 that, following completion of the required NAS and agency studies, NHTSA must engage in rulemaking to subject these vehicles to average fuel economy standards under EPCA and EISA, as the commenters recognized. Whether or not the precise contours of those standards are the same as the attribute-based average fuel economy standards established for passenger cars and light trucks, they will still be average fuel economy standards for fleets of particular vehicles. NHTSA sees no reason not to call these ''corporate average fuel economy'' or ''CAFE'' standards, and does not believe that such term connotes any pre-judgment on the part of the agency with respect to the outcomes of the required studies or eventual regulations.

NHTSA also received comments from NACAA and the Wisconsin DNR stating that CAFE standards should be applied

[480] 49 U.S.C. 32902(k)(1). The NAS study is currently underway as of the publication of this final rule.

[481] 49 U.S.C. 32902(k)(2).

[482] 49 U.S.C. 32902(k)(2) and (3).

to all passenger cars and light trucks up to 10,000 pounds GVWR. Wisconsin DNR argued that extending the standards to these vehicles would ''capture the full range of non-commercial passenger vehicles.''

Agency response: NHTSA explained in the NPRM that all four-wheeled motor vehicles with a gross vehicle weight rating of 10,000 pounds or less will be subject to the CAFE standards beginning in MY 2011, with the exception of commercial medium- and heavy-duty on-highway vehicles and work trucks, as discussed above. This follows up on NHTSA's statements in the 2006 final rule setting CAFE standards for MY 2008–2011 light trucks, where the agency said that it would begin regulating medium-duty passenger vehicles (MDPVs) under the light truck CAFE standards in MY 2011. MDPVs have been included in the final rule standards, although they make up a very small percentage (less than 1 percent) of light trucks in that model year.

XI. Vehicle Classification

Vehicle classification, for purposes of the CAFE program, refers to whether NHTSA considers a vehicle to be a passenger automobile or light truck, and thus subject to either the passenger automobile or the light truck standards. NHTSA created regulatory definitions for passenger automobiles and light trucks, found at 49 CFR part 523, to guide the agency and manufacturers in determining which vehicles are which.

As NHTSA explained in the NPRM, the statutory language is clear that some vehicles must be passenger automobiles (cars) and some must be non-passenger automobiles (light trucks). Passenger automobiles were defined in EPCA as ''any automobile (other than an automobile capable of off-highway operation) which the Secretary [i.e., NHTSA] decides by rule is manufactured primarily for use in the transportation of not more than 10 individuals.'' EPCA § 501(2), 89 Stat. 901.

Thus, under EPCA, there are two general groups of automobiles that qualify as non-passenger automobiles or light trucks: (1) those defined by NHTSA in its regulations as other than passenger automobiles due to their having not been manufactured ''primarily'' for transporting up to ten individuals; and (2) those expressly excluded from the passenger category by statute due to their capability for off-highway operation, regardless of whether they were manufactured primarily for passenger transportation. NHTSA's classification rule directly tracks those two broad groups of non-passenger automobiles in subsections (a) and (b), respectively, of 49 CFR 523.5.

In the NPRM, NHTSA took a fresh look at the regulatory definitions in light of its desire to ensure clarity in how vehicles are classified, the passage of EISA, and the Ninth Circuit's decision in CBD. NHTSA explained the origin of the current definitions of passenger automobiles and light trucks by tracing them back through the history of the CAFE program, and did not propose to change the definitions themselves at that time, because the agency tentatively concluded that doing so would not lead to increased fuel savings. The NPRM did, however, propose to tighten the coverage of its regulatory definition of ''light truck'' to ensure that, starting in MY 2011, 2WD versions of SUVs are no longer classified as off-highway capable light trucks under 49 CFR 523.5(b), simply because the SUV also comes in a 4WD version. This tightening of NHTSA's definitions will, as explained below, have significant impacts on fuel savings and preventing increased emission of carbon dioxide.

A. Summary of Comments

NHTSA received a number of comments on the vehicle classification issue from a range of organizations. Many commenters (including the Alliance, GM, Ford, and Toyota) supported the clarification in the NPRM concerning how 2WD vehicles should be classified. These commenters sought clarification that the change in how these 2WD vehicles are classified would become effective in MY 2011 and not earlier. Others (Nissan, NADA, and AIAM) questioned NHTSA's position on that issue, arguing that 2WD vehicles should be classified in the same way as 4WD versions of the same model. Some (Alliance, Ford, Toyota, and the Sierra Club) noted that moving large numbers of 2WD vehicles from the light truck category to the passenger category may have a significant impact on the stringency of the curves, and that the NPRM curves did not reflect this impact.

Several commenters (Public Citizen, Honda, UCS, CBD, and Sierra Club) argued that the rule's classification definitions needed to be revised. The commenters relied on several arguments: first, that the current definitions did not comport with the Ninth Circuit's opinion in CBD (which directed NHTSA either to ''revise its regulatory definitions of passenger automobile and light trucks or provide a valid reason for not doing so'') and do not reflect the fact that many light trucks are used as passenger vehicles; second, that they were not ratified by Congress in EISA; third, they do not ensure that some vehicles that these commenters believe should be classified as passenger cars are in fact classified as such; and fourth, that they allow manufacturers to ''game'' the definitions by making minor changes to vehicles to obtain a light truck classification and thus, a lower fuel economy target. One commenter (GM) urged NHTSA to define ''base form'' (a term used in a 1981 interpretation concerning the classification of 2WD vehicles) and ''model type,'' contending that these new definitions would help clarify how certain vehicles should be classified. NHTSA responds to these comments below.

B. Response to Comments

1. This Rule Substantially Tightens NHTSA's Vehicle Classification Definitions

(a) Under § 523.5(b), Only Vehicles That Actually Have 4WD Will Be Classified as 4WD Vehicles

As proposed in the NPRM, NHTSA has tightened the coverage of its regulatory definition of ''light truck'' to ensure that 2 wheel drive (2WD) versions of an SUV are not classified as light trucks under 49 CFR § 523.5(b) simply because the SUV also comes in a 4WD version. In order to be properly classifiable as a light truck under Part 523, a 2WD SUV must either be over 6,000 lbs GVWR and meet 4 out of 5 ground clearance characteristics to make it off-highway capable under § 523.5(b), or meet one of the functional characteristics under § 523.5(a) (e.g., greater cargo carrying capacity than passenger carrying capacity). In other words, a 2WD vehicle of 6,000 lbs GVWR or less, even if it has a sufficient number of clearance characteristics, cannot be considered off-highway capable. This is based on the plain meaning of § 523.5(b) (which refers to a vehicle that ''has'' 4WD) and the statute (49 U.S.C. 32901(a)(18)(b) speaks of a vehicle that ''is a 4-wheel drive automobile''). No change in the regulatory definition is needed. The clarification accomplishes NHTSA's purpose. This clarification, which the vehicle manufacturers largely supported, resulted in the re-classification of approximately 1.5 million 2WD SUVs from light trucks to passenger cars in MY 2011. The result of this re-classification is an increase of 0.3 mpg in the combined passenger car and light truck standards for MY 2011.

As noted above, several commenters agreed with NHTSA's clarification on the 2WD vehicles but asked for

assurance that it would be applied only to MY 2011 and later production. The Alliance commented that it agreed that NHTSA's vehicle classification ''regulations are consistent with congressional intent as expressed by EPCA and EISA,'' and that it did ''not object to NHTSA's interpretations and its proposed regulatory revisions to 49 CFR Part 523, provided that these are effective with the 2011 model year.'' The Alliance argued that this would help avoid ''the need to reexamine and re-issue standards for 2009 and 2010 model years,'' which the Alliance stated had been ''developed based on a data set with 4x2 utilities included in the truck fleet.'' Ford agreed, arguing that reclassifying 2WD SUVs for MYs 2008–2010 would ''make it more difficult for many manufacturers to meet the light truck standards (as well as the car standards) and would amount to an improper increase in the stringency of the MY 2008–2010 standards.'' NHTSA hereby clarifies that its intention is that its clarification on the treatment of 2WD vehicles under § 523.5(b) become effective with regard to MY 2011 vehicles. Applying that treatment earlier would require the agency to change the standards for those model years, which the agency is statutorily prevented from doing later than 18 months before the start of the model year to which the amended standard applies, if the standards would be more stringent.[483]

Some commenters noted that this clarification, although thoroughly discussed in the NPRM, was not reflected in the stringency curves of the proposed standard. NHTSA believes that its announced intention to apply this clarification in the final rule was adequate notice to all concerned that the stringency levels of the final rule would reflect the concomitant movement of many 2WD vehicles from the light truck to the passenger car fleet. Commenters who are manufacturers had every opportunity to analyze how the change might affect their fleets and comment accordingly. In the period since issuance of the NPRM, NHTSA has had the opportunity to evaluate new manufacturer product plans in order to analyze the full impact of the clarification on the standard. As noted above, this change has resulted in an increase in the standards and fuel savings for MY 2011. The final curves for passenger cars and light trucks reflect this change.

Nissan disagreed with NHTSA's proposal to classify certain 2WD SUVs as passenger cars, offering the following basic arguments: (1) That NHTSA has always interpreted and set standards with 2WD SUVs as light trucks, even in the MY 2008–2011 CAFE rule (as evidenced, for example, by the CAFE reporting requirements that specify that a manufacturer must indicate whether a light truck has 4WD—Nissan argued that that presumed that some light trucks did not); (2) that NHTSA's 1981 interpretation states that vehicle classification is determined by the base vehicle; (3) that classifying 2WD SUVs as light trucks because they also come in 4WD is consistent with EPA emissions test procedures which describe equipment as ''optional'' if a manufacturer expects less than one-third of the models sold to be equipped with it;[484] and (4) that NHTSA must provide notice and comment before changing the standards.

With regard to Nissan's comment that NHTSA has always interpreted and set standards with 2WD SUVs as light trucks, even in the MY 2008–2011 CAFE rule, NHTSA has never stated that 2WD SUVs are necessarily light trucks simply because they also come in 4WD, and in fact has stated to the contrary. As early as 1980, in the final rule promulgating light truck CAFE standards for MYs 1983–1985, NHTSA responded to a comment from GM requesting a change to the regulatory definitions to ensure that 2WD SUVs may be classified as light trucks even if their GVWR fell below 6,000 pounds. NHTSA stated that, ''Under the agency's current regulations in 49 CFR Part 523, such a change in the vehicle's GVWR would result in their being classified as passenger automobiles.'' Although NHTSA's technical analysis for the 1980 final rule ''treat[ed] 4x2 utility vehicles * * * as light trucks, consistent with the classification of current vehicles,'' NHTSA expressly cautioned that ''this treatment should not be interpreted as a statement by the agency that all future designs of 4x2 utility vehicles * * * will continue to be classified as light trucks.''[485] NHTSA also stated as much in a 1981 letter of interpretation, discussed in greater detail below. Thus, in response to Nissan's comment, while NHTSA has previously set standards with 2WD SUVs as light trucks, the agency has long held that 2WD SUVs are not inherently light trucks, and that the definitions could be tightened in the future. The fact that the reporting requirements include ''4WD (yes/no)'' does not, as Nissan suggests, indicate that 2WD SUVs may be light trucks under § 523.5(b) if their GVWR is less than 6,000 pounds.

Nissan's comments focus on how it believes NHTSA has construed and applied its definitions in the past. But Nissan does not make an argument that NHTSA's reading of its own rules, as proposed in the NPRM, is not a reasonable reading of those rules. In fact, NHTSA believes that it is reasonable to read a rule (§ 523.5(b)(1)(i)) that refers to a vehicle that ''has 4-wheel drive'' as encompassing only vehicles that have 4WD. The same is true with regard to the statute (49 U.S.C. 32901(a)(18)(B)), which speaks of a vehicle that ''is a 4-wheel drive automobile.'' NHTSA merely intends to read the rule and statute according to their plain meaning.

NHTSA also disagrees that the November 1981 letter of interpretation indicates that vehicle classification is always determined by the base vehicle. In that letter, NHTSA used the term ''base vehicle'' for classifying vehicles under § 523.5(a), not § 523.5(b). NHTSA has never used the term ''base vehicle'' to describe a vehicle as off-highway capable and thus properly classifiable under § 523.5(b). A vehicle either is or is not off-highway capable—the fact that the vehicle may also come in 4WD does not make the 2WD version off-highway capable.

With regard to Nissan's comment about EPA emissions test procedures describing equipment as ''optional'' if a manufacturer expects less than one-third of the models sold to be equipped with it, NHTSA has examined EPA's regulations and remains unconvinced that 2WD would be the kind of ''optional'' equipment covered. EPA regulations describe ''optional'' equipment as an ''item'' that could add weight or influence emissions in the test. If anything was ''optional'' equipment, then, it would appear to be the presence of 4WD, which both adds weight to a vehicle and causes it to emit more pollution, compared to 2WD.[486] NHTSA would of course defer to EPA's interpretation of its own regulations, but does not find Nissan's argument convincing for purposes of this rulemaking.

And finally, with regard to Nissan's comment that the agency was reclassifying 2WD SUVs without providing notice and comment, NHTSA disagrees—these changes have been made with full notice, as provided in the NPRM, and an opportunity for comment, and are appropriate and timely revisions to NHTSA's application

[483] 49 U.S.C. 32902 (g)(2).

[484] Thus, according to Nissan, if less than one-third of the ''variants'' of an SUV sold are 2WD, those 2WD variants are properly classified along with the 4WD ''base'' vehicle.

[485] 45 FR 81593, 81599–60 (Dec. 11, 1980).

[486] See, e.g., 40 CFR 86.1832–01.

of Part 523. In the NPRM, NHTSA specifically sought comment on the proposed changes to the vehicle classification system and whether further changes were appropriate.

AIAM also disagreed with NHTSA's proposal to classify certain 2WD SUVs as passenger cars. AIAM stated that larger 2WD SUVs had originally been classifiable as light trucks per the statutory off-highway definition, but that over time ''smaller, more fuel efficient versions of SUVs were offered in the U.S. market.'' AIAM thus suggested that NHTSA should classify ''all SUVs in the same category and provide lead-time for manufacturers before the new criteria take effect,'' as NHTSA had done for minivans and the ''three row'' requirement in its 2006 rule on light truck standards. In response, the agency notes that a vehicle's fuel economy capability has no bearing on its proper classification as a passenger car or as a light truck. NHTSA believes that the lead time between when the final rule standards are promulgated and when the revised definitions take effect (MY 2011) should be sufficient for manufacturers, particularly given the increasing consumer preference for higher fuel economy vehicles and NHTSA's announced intention to move in this direction in the NPRM.

In summary, NHTSA believes its clarification of how, starting with MY 2011, it will apply § 523.5(b) to 2WD vehicles of 6,000 lbs or less GVWR constitutes a reasonable and significant tightening of its definitions related to vehicle classification. As a result, in MY 2011, approximately 1.5 million vehicles formerly classified as light trucks will be classified as passenger automobiles, which will produce an average increase of 0.3 mpg in the combined passenger car and light truck standards in those years.

(b) The Final Rule Amends § 523.5(a)(4) To Prevent Gaming That Might Jeopardize Fuel Savings Created by NHTSA's Clarified Position on 2WD Vehicles

In explaining in the NPRM (73 FR 24459) that 2WD SUVs would no longer be classifiable as light trucks simply because a version is also available in 4WD, NHTSA noted that, alternatively, a 2WD automobile may properly be classified as a light truck under § 523.5(a)(4) if it provides ''greater cargo-carrying than passenger-carrying volume.'' In that context, NHTSA mentioned a 1981 letter of interpretation to GM.[487] The 1981 letter stated that ''two-wheel drive utility vehicles which are truck derivatives and which, in base form, have greater cargo-carrying volume than passenger-carrying volume should be classified as light trucks for fuel economy purposes.'' NHTSA stated in the NPRM that ''base form'' means ''the version of the vehicle sold as 'standard,' without optional equipment installed, and does not include a version that would meet the cargo volume criterion only if 'delete options' were exercised to remove standard equipment.'' NHTSA gave the example of a base vehicle that comes equipped with a standard second-row seat, which the agency stated could not be classified as a light truck simply on the basis that the purchaser has an option to delete that second-row seat.[488]

In its comments, GM urged NHTSA to incorporate the definition of ''base form'' into Part 523. However, it is possible that a literal application of the 1981 letter's definition of ''base form'' could result in gaming of the classification system. For example, with regard to a particular vehicle, a manufacturer could describe as optional a second-row seat that is in fact an item that the manufacturer expects to install in nearly every vehicle of that model. In fact, even with regard to a vehicle that has long come equipped with a second-row seat as standard equipment, the manufacturer could suddenly describe that seat as optional. Even if most, or even all, vehicles of that model continued to be sold with second-row seats, the manufacturer's mere description of the seat as optional could, if the manufacturer's description of the vehicle's ''base form'' were the only consideration, allow the manufacturer to argue that the vehicle is a light truck because its base form has greater cargo-carrying than passenger-carrying volume.

The vehicles described by GM in the 1981 correspondence have little relation to the 2WD SUVs of today. To the best of the agency's knowledge, most 2WD SUVs are routinely offered with a standard full bench or pair of captain's chairs in the second row. Additionally, far fewer 2WD SUVs manufactured today are based on a truck chassis. To permit a manufacturer to continue to sell 2WD SUVs with second-row seats and consider them light trucks merely because the manufacturer has decided to list those seats as an option rather than as a standard feature of the base vehicle would be to stand the November 1981 interpretation on its head. That interpretation was intended to prevent gaming of the ''greater cargo-carrying volume'' category of light trucks by limiting it to vehicles where carrying cargo was clearly the primary function for which the vehicle was designed. We cannot permit that interpretation to be used to produce the precisely opposite result, i.e., to categorize 2WD vehicles that are primarily designed to be sold with a second-row seat for passengers as light trucks merely because the manufacturer suddenly labels the second-row seat as an option.

Therefore, in response to comments and consistent with Congress' intent in EISA, starting with MY 2011, 2WD SUVs (including crossovers that are 2WD) may only be properly classified as light trucks under § 523.5(a)(4) if they are, like cargo vans, designed and sold primarily to serve a cargo-carrying function. The final rule amends that section to say: ''Provide, as sold to the first retail purchaser, greater cargo-carrying than passenger-carrying volume, such as in a cargo van; if a vehicle is sold with a second-row seat, its cargo-carrying volume is determined with that seat installed, regardless of whether the manufacturer has described that seat as optional.'' In light of this clarifying rule text, there is no need at this time to provide a definition for ''base form.'' The manufacturer must categorize its vehicles based upon the vehicle attributes when it is sold. If a cargo van is manufactured as such with no rear seating and is sold in that configuration then it can be considered a light truck under § 523.5(a)(4). If the same vehicle is sold with rear seating, it cannot be a truck under § 523.5(a)(4). GM's HHR provides an example of this concept. The HHR is available and sold in a ''panel'' version with no rear seating and a passenger version with rear seating. The panel version if actually sold that way can be a light truck under § 523.5(a)(4); the passenger version, when sold with rear seating, cannot be a truck under § 523.5(a)(4) even if the manufacturer were to label that seating as optional.

Thus, through interpretation and changes to the rule text, NHTSA has significantly tightened the definitions governing which vehicles may be classified as light trucks. 2WD SUVs of 6,000 lbs or less GVWR may no longer be properly classified as light trucks under § 523.5(b) simply because they also come in 4WD. Additionally, 2WD SUVs may not be properly classified as light trucks simply because a manufacturer asserts that their base form has no back seat and thus would ''provide greater cargo-carrying than

[487] See *http://www.nhtsa.dot.gov/cars/rules/interps/gm/81/nht81–3.36.html* (last accessed September 23, 2008) for the full text of the letter of interpretation to GM.

[488] 73 FR 24459, fn. 207 (May 2, 2008).

passenger-carrying volume'' according to § 523.5(a)(4).

2. Especially as Tightened by This Rule, NHTSA's Classification Definitions Are More Difficult To Game Than Commenters Suggest

As described above, this final rule effectuates significant changes in NHTSA's definitions and their interpretation that will substantially reduce any opportunities to game those definitions. NHTSA disagrees with the commenters' argument that the standards allow manufacturers to ''game'' the definitions by making minor changes to vehicles to obtain a light truck classification and thus, a lower fuel economy target.

Several commenters, including Sierra Club et al., UCS, and Honda commented that manufacturers are ''gaming'' the existing definitions by making changes to passenger cars in order to classify them as light trucks and obtain the benefit of lower fuel economy targets. UCS suggested that the ''loophole'' is a function of both the statutory requirement to set separate standards for passenger cars and light trucks, which ''accommodat[es] an industry interest in having non-passenger vehicles held to less stringent fuel economy standards than passenger vehicles of the same attribute,'' and of NHTSA's ''equating SUVs, minivans, crossovers and even some station wagons with non-passenger vehicles.'' UCS argued that ''The association of these categories has allowed automakers to tweak passenger vehicle characteristics in order to have them classified as light trucks that are held to lower fuel economy standards.'' The Sierra Club stated that the current definitions are being abused, with manufacturers classifying as light trucks ''obvious examples [of] many sedans and station wagons, such as the Chrysler PT Cruiser, Dodge Magnum, and the Subaru Outback sedan,'' as well as ''SUVs and minivans [which] are advertised, sold, and used as passenger vehicles.'' Sierra Club argued that the attribute-based system, under which manufacturers are subject to standards based on their fleet mix, encourages further gaming, as evidenced by the ''surge in 'crossover' vehicles that are more car-like and intended as passenger vehicles but are still classified as non-passenger vehicles and can therefore meet a lower fuel economy than cars.'' Honda stated that NHTSA should change the light truck definitions because ''the current system is much too easy to game, which creates competitive impacts and diverts limited engineering resources to figuring out how to game the latest rules instead of improving fuel economy,'' and ''in the long run, * * * will also encourage shifting sales towards vehicles classified as light trucks and cause increases in real world fuel consumption.''

In response to the above comments, NHTSA notes that separate standards for passenger cars and light trucks are a statutory requirement under EISA. NHTSA believes, as explained elsewhere in this notice, that that requirement extends to setting the target curves for the passenger car fleet based only on the passenger cars, and the target curves for the light truck fleet based only on the light trucks. NHTSA does not believe that it has the authority to combine the fleets for the purposes of setting the standards.

Moreover, with regard to ''crossovers'' and commenters' examples of ''many sedans and station wagons'' being classified as light trucks, the agency notes that as a result of the tightened implementation of our vehicle definitions, many crossovers are in fact now properly classified as passenger cars. To the extent that crossovers are not classified as passenger cars, it is, we believe, only because they either (1) have 4WD and meet 4 out of 5 ground clearance characteristics; (2) are over 6,000 lbs GVWR and meet 4 out of 5 ground clearance characteristics; or (3) have three rows of seats and the capability to expand cargo-carrying volume through folding or removing seats.

Of the specific examples of the PT Cruiser, the Dodge Magnum, and the Subaru Outback sedan, NHTSA believes that manufacturers currently classify these vehicles as light trucks either because they come in four-wheel drive and have the required ground clearance, or because their rear seats may be easily removed to create a flat, floor level surface that increases cargo-carrying capacity. After MY 2011, vehicles may only be classified as light trucks on the basis of permitting expanded use of the vehicle for cargo-carrying purposes if they have three rows of standard designated seating positions that fold flat or are removable. As currently designed, the PT Cruiser and the Magnum do not meet this requirement, so NHTSA would likely classify these vehicles as passenger cars as well. If the Outback sedan does in fact have 4WD (or AWD) and meet the required ground clearance characteristics, NHTSA is required by EPCA and EISA to consider it a light truck, regardless of its body shape.

Finally, NHTSA believes that minor changes are not sufficient, and that fairly major changes would be necessary in order to reclassify a passenger car as a light truck. To make a 2WD SUV a light truck, for example, manufacturers would need either to add a third row of seats to it (and otherwise meet the requirements for expanded cargo space) convert it to 4WD, or raise its GVWR over 6,000 lbs and ensure that it met 4 out of the 5 ground clearance characteristics. These changes are not minor, and likely can be made only every few years at the time of one of the periodic vehicle redesigns. Additionally, the minor benefit to be gained in terms of a lower target must be balanced against consumer demand. In a time of high gas prices and increasing consumer interest in high fuel economy vehicles, it seems unlikely to NHTSA that manufacturers would take the risk of turning passenger cars into light trucks solely to obtain the slightly lower light truck target standard.

3. Additional Changes in NHTSA's Classification Definitions Would Not Result in Greater Fuel Savings and Lower CO_2 Emissions

We have explained above the recategorization of 2WD vehicles that will result from NHTSA's tightening of its classification definitions. NHTSA considered whether recategorization of additional vehicles through further changes to its classification definitions would result in additional fuel economy improvements and therefore lower emissions of carbon dioxide. One of the concerns underlying the Ninth Circuit's decision in CBD was the potential impact of vehicle categorization on the ultimate fuel economy for light trucks. The commenters, too, were concerned about this in general. NHTSA has considered this issue carefully. In 2006, when NHTSA issued its MY 2008–2011 light truck fuel economy rule, and in 2007, when the Ninth Circuit issued its initial opinion in CBD concerning that 2006 light truck rule, EISA had not been enacted. Under EPCA as it then existed, the passenger car standard was a flat 27.5 mpg average requirement. Re-classifying light trucks (which had a standard far below 27.5 mpg) as passenger cars, in the flat pre-EISA world, intuitively would have resulted in their having to meet a higher standard, or in the manufacturers' having to build more small, lightweight vehicles in order to balance out former light trucks newly subject to the higher passenger standard, and could have resulted in more fuel savings. This assumption may no longer be correct, because such a recategorization could now result in lower standards for passenger automobiles.

In EISA, Congress made both the passenger car and light truck standards attribute-based, which means that the fuel economy target curves for each standard are a function of the fleet subject to that standard. In developing the curves that determine fuel economy targets for each vehicle footprint, NHTSA fits the curve based in part on the sizes (footprint) and fuel economy levels (given the estimated effects of adding fuel-saving technologies) of the vehicles in each regulatory class. Consider, for example, a small SUV typically classified as a light truck, and assume that the small SUV gets relatively good fuel economy for a truck. Moving the small SUV out of the truck fleet may reduce the overall average fuel economy level required of light trucks, because the vehicles remaining in that regulatory class will be the larger ones that have relatively lower fuel economy. Averaging their capabilities will result in a lower target than if the small SUV in question remained in the light truck fleet. Moving the SUV into the passenger car fleet may either boost or lower the average fuel economy level required of passenger cars, depending on how the size and potential fuel economy of the given SUV compares to those of the vehicles that were already classified as passenger cars.

NHTSA's analysis indicates that the direction and magnitude of the net effects of vehicle re-classification depend on the composition of the fleet and the specific nature of the change in classification. As shown in Figure XI–1, assigning 2WD SUVs and those vehicles that do not meet the third row requirement to the passenger car fleet would add to the passenger car fleet a set of vehicles (labeled ''PC Formerly Classified as LT'') with fuel economy levels that are generally (though not universally) in the same range as those of passenger cars of similar footprint. However, further reassigning to the passenger car fleet minivans and vehicles that do meet the third row requirement, as commenters appear to suggest, would add to the passenger car fleet a set of vehicles (labeled ''LT Reassigned to PC under Alternative Definition'') with fuel economy levels that are generally (though not universally) lower than those of passenger cars of similar footprint. Figure XI–2 shows how the composition of the light truck fleet is affected by such shifts. Reassigning either the smaller or larger group of vehicles to the passenger car fleet removes from the light truck fleet vehicles that are generally (though not universally) smaller and more efficient than the vehicles that remain in the light truck fleet.

In contrast, a number of commenters, including CBD, Sierra Club et al., and UCS, did not address NHTSA's discussion and commented that NHTSA should revise the definitions of passenger car and light truck in accordance with the Ninth Circuit's opinion, generally for the purpose of increasing fuel savings. Honda also commented that NHTSA should revise its definitions to be consistent with that opinion. None of those commenters specified precisely which vehicles should be reclassified as passenger cars instead of light trucks.

Figure XI-1. Effect on the MY 2011 Passenger Car Fleet

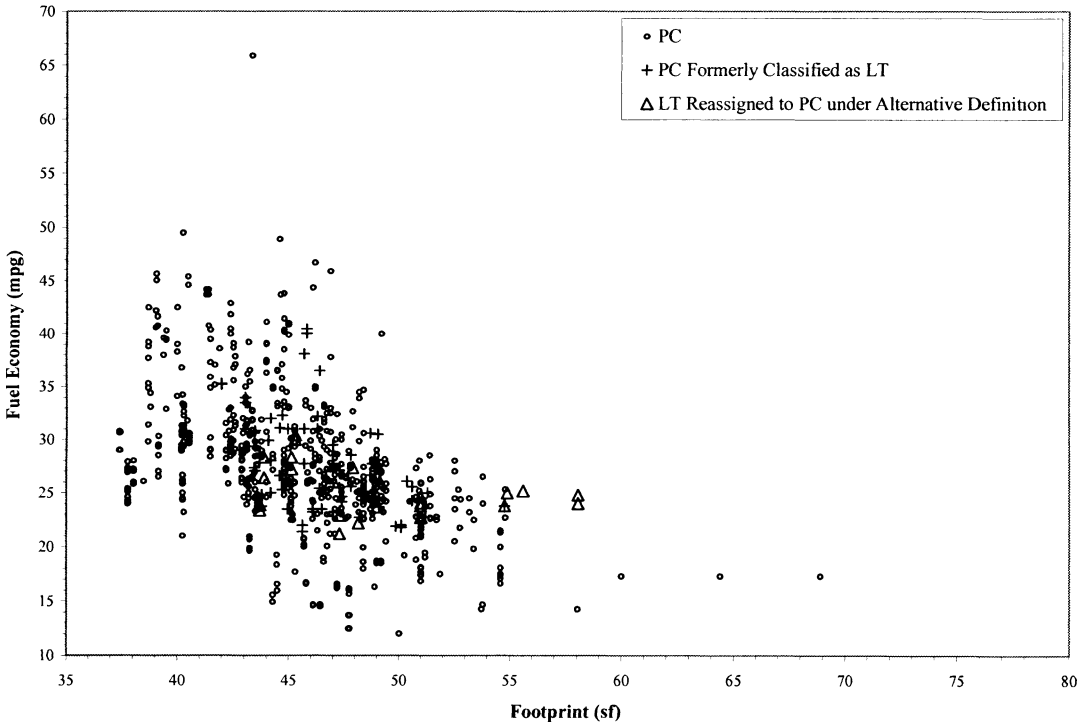
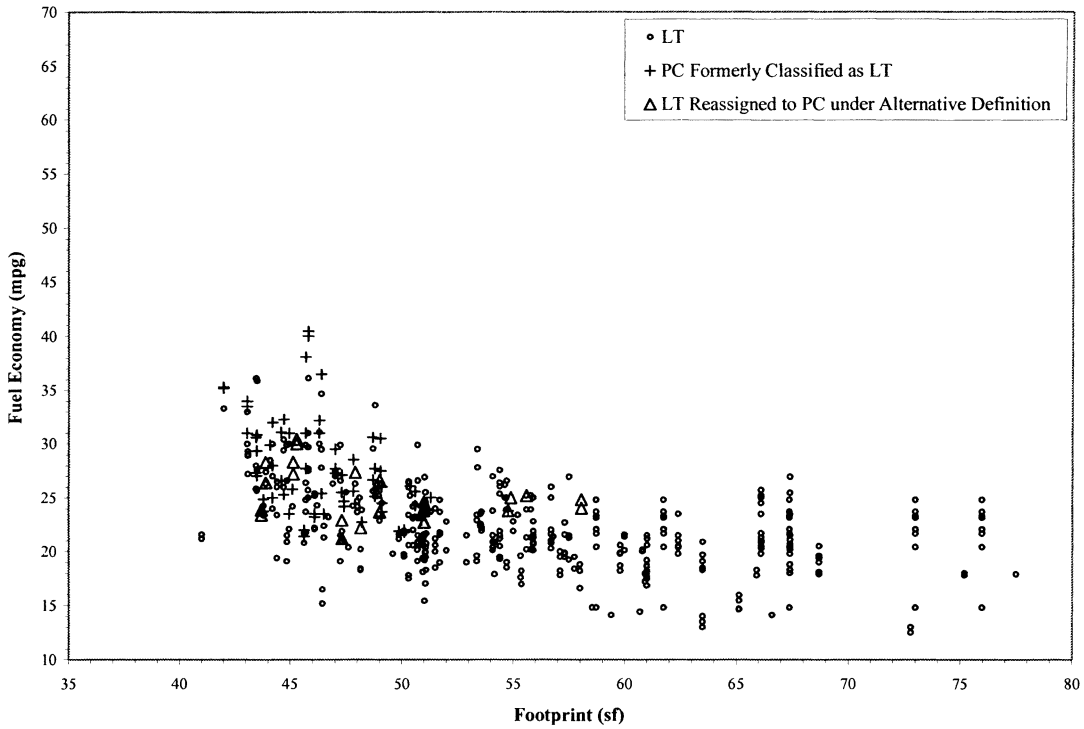


Figure XI-2. Effect on the MY 2011 Light Truck Fleet



The following table shows how, for MY 2011, reclassifying 2WD SUVs by virtue of NHTSA's tightened classification decisions changed average required CAFE levels, and how additionally reclassifying minivans and vehicles that do not meet the third row requirement would have changed average required CAFE levels. The overall averages reflect changes in the size of each fleet under each approach to vehicle classification, again bearing in mind that ''Alternative Definition'' in the tables refers to moving all light trucks that meet the 3-rows criterion of § 523.5(a)(5)(ii) into the passenger car fleet.

Table XI-1. Average CAFE (mpg) Required in MY 2011 under Alternative Light Truck Definitions

Fleet	Former Definition	Final Definition	Alternative Definition
Passenger Car	30.3	30.2	29.7
Light Truck	24.5	24.1	24.0
Average	27.0	27.3	27.2

Similarly, the next table shows how these changes in vehicle classification affected the amount of fuel consumed over the useful lives of vehicles in the MY 2011 fleet.

Table XI-2. Lifetime Fuel Consumption (billion gallons) of the MY 2011 Fleet under Alternative Light Truck Definitions

Fleet	Former Definition	Final Definition	Alternative Definition
Passenger Car	45.92	57.26	62.15
Light Truck	75.33	64.03	59.25
Total	121.25	121.28	121.41

As discussed above, in the context of the MY 2011 passenger car and light truck standards, moving about 1.5 million 2WD SUVs from the light truck to the passenger car fleet results in an average increase of 0.3 mpg in the combined passenger car and light truck standards for MY 2011. However, specific fleet differences are such that this change leads to increases in lifetime fuel consumption and carbon dioxide emissions of about 0.03 billion gallons and 0.06 million metric tons, respectively, than under standards that would apply under the former definitions.[489] This is due to the fact that the reassignment of vehicles changed the shapes of the passenger car and light truck target curves, which caused different results for different manufacturers depending on their fleet mixes. Although the overall combined average required fuel economy increases by 0.3 mpg, the overall average achieved fuel economy decreases very slightly (by about 0.009 mpg), such that total fuel consumption and emissions are very slightly higher, as noted. This occurs because for both Ford and General Motors, the reassignment of vehicles causes the planned CAFE levels of these manufacturers' light truck fleets to fall by 0.7 mpg (Ford) and 0.8 mpg (General Motors), but causes the corresponding required CAFE to fall by only 0.3 mpg, and causes the corresponding achieved CAFE levels to fall by 1.2 mpg (Ford) and 0.8 mpg (General Motors).[490]

It is possible, as some industry commenters suggested, that manufacturers will respond to the tightening of the definition by ceasing to build 2WD versions of SUVs, which could reduce fuel savings. However, NHTSA expects that manufacturer decisions will be driven in much greater measure by consumer demand than by NHTSA's regulatory definitions. In this era of high gasoline prices and increasing consumer interest in high fuel economy vehicles, NHTSA believes that there will still be demand for 2WD SUVs, whether they are classified for CAFE purposes as passenger cars or as light trucks.[491]

Nevertheless, going further and reclassifying other light trucks as passenger cars, as some commenters would have NHTSA do, would change the form and stringency of the curves for the maximum feasible standards. It would reduce the overall average required CAFE level by an average of 0.1 mpg MY 2011 and reduce lifetime fuel and carbon dioxide savings by about 0.13 billion gallons and 0.64 million metric tons, respectively.[492] Accordingly, EPCA and EISA's overarching purpose of energy conservation would not be better fulfilled by further changing the vehicle classifications.

4. The Vehicle Classification Definitions Embodied in This Final Rule Are Consistent With NHTSA's Statutory Authority and Respond to the Ninth Circuit's Opinion

Some commenters (Public Citizen, Sierra Club, CBD) argued broadly that the standards do not reflect the fact that many light trucks are used as passenger vehicles, and that, therefore, more of them should be classified as passenger cars. NHTSA discussed at length in the NPRM that the fact that vehicles are used for personal transportation does not make them passenger cars for purposes of CAFE. The commenters' argument overlooks the statutory definition of passenger automobile. Passenger automobiles were defined in EPCA as ''any automobile (other than an automobile capable of off-highway operation) which the Secretary [i.e., NHTSA] decides by rule is manufactured primarily for use in the transportation of not more than 10 individuals.'' EPCA § 501(2), 89 Stat. 901. The statute does not employ the word ''used.'' If Congress had wanted all vehicles used to transport passengers to be classified as passenger automobiles, it would have said ''used primarily'' in EPCA, instead of ''manufactured primarily.'' The definition of ''passenger automobile'' itself excludes two types of passenger-carrying vehicles: (1) Vehicles capable of off-highway operation regardless of whether they transport any number of passengers, and (2) vehicles manufactured primarily to transport more than 10 passengers. This indicates that Congress envisioned from the start of the program that some vehicles would be used for passenger transportation but, for fuel economy purposes, not be classified as passenger automobiles. Congress also authorized NHTSA to define, by rule, those vehicles ''manufactured primarily'' for carrying 10 or fewer passengers, indicating that Congress also envisioned that other passenger-carrying vehicles would be excluded from the definition if manufactured primarily for another purpose.

NHTSA refers readers to the discussion in the NPRM at 73 FR 24458–24461 (May 2, 2008) for additional information on this issue. See further the discussion of EPCA's legislative history in the proposal and final rule establishing NHTSA's vehicle definition regulation. 41 FR 55368, 55369–55371, December 20, 1976, and 42 FR 38362, 38365–38367, July 28, 1977. That discussion, and not the incorrect and anomalous description of it in a preliminary notice published by the agency in late 2003 (68 FR 74908, 74926, December 29, 2003), represents the agency's historical position.

NHTSA also explained in the NPRM that in EISA Congress specifically addressed the vehicle classification issue. It redefined ''automobile,'' added a definition of ''commercial medium- and heavy-duty on-highway vehicle,'' defined ''non-passenger automobile'' and defined ''work truck.'' Significantly, it did not change other definitions and its new definition of ''non-passenger automobile,'' which is most relevant in this context, in no way contradicted how NHTSA has long construed that term. In enacting EISA, Congress demonstrated its full awareness of how NHTSA classifies vehicles for fuel economy purposes and chose not to alter those classifications. That strongly suggests Congressional approval of the agency's 30-year approach to vehicle classification.

Moreover, Congress has given clear direction that overall objectives must be obtained regardless of vehicle classification. EISA adds a significant requirement to EPCA—the combined car and light truck fleet must achieve at least 35 mpg in the 2020 model year. Thus, regardless of whether the entire fleet is classified as cars or light trucks, or any proportion of each, the result must still be a fleet performance of at least 35 mpg in 2020. This suggests that Congress did not want to spend additional time on the subject of whether vehicles are cars or light trucks. Instead, Congress focused on mandating fuel economy performance, regardless of classifications.

A number of commenters, including Sierra Club, UCS, and Honda, disagreed

[489] NHTSA's analysis of the effects of then-pending MY 2011–2015 standards, documented in the October 2008 EIS, indicated that the reclassification reflected in today's final rule would reduce the total lifetime fuel consumption and carbon dioxide emissions (p. 10–229) of vehicles sold during this period.

[490] We note that in both cases, NHTSA's analysis did not identify a set of technologies that enabled these manufacturers to attain the required light truck CAFE levels.

[491] Of course, the agency recognizes that if manufacturers do cease to build and sell 2WD SUVs in response to this tightening of the definition, fuel savings would likely decrease relative to NHTSA's estimates in this final rule.

[492] The October 2008 EIS also indicates that for the analysis of the effects of then-pending MY 2011–2015 standards, the reclassification of minivans and 2WD SUVs with 3 rows would reduce overall average required CAFE levels by an average of 0.4 mpg during MYs 2011–2015, raising total lifetime fuel consumption and carbon dioxide emissions (p. 10–231) of vehicles sold during this period.

with the idea that Congress had expressed approval of NHTSA's classification system through its changes in EISA. The commenters argued instead that Congress's failure to address NHTSA's definitions for passenger car and light truck could just as well represent Congress's agreement with the Ninth Circuit's opinion in CBD, which found NHTSA's failure to revise its definitions or adequately explain its decision not to revise them to be arbitrary and capricious. UCS referred to Representative Edward Markey's (D–MA) extended comments on the Senate amendments to H.R. 6, which he submitted to the Congressional Record upon EISA's passage, and in which he stated that

> Section 106 is intended to clarify that Title I does not impact fuel economy standards or the standard-setting process for vehicles manufactured before model year 2011. This section is not intended to codify, or otherwise support or reject, any standards applying before model year 2011, and is not intended to reverse, supersede, overrule, or in any way limit the November 15, 2007 decision of the U.S. Court of Appeals for the Ninth Circuit in Center for Biological Diversity v. National Highway Traffic Safety Administration (No. 06–71891).[493]

Sierra Club and UCS argued that Rep. Markey's extended remarks indicate that Congress did not intend to nullify the decision of the Ninth Circuit. Honda also argued that ''If [Congress] did not agree with the court order, they would have addressed it in EISA.''

NHTSA has carefully considered the discussion of this issue in the extension of remarks by Rep. Markey. No Senate, House, or conference reports were created during the legislative process that culminated in EISA. The floor statements during Congressional consideration of EISA are also sparse. In any event, however, floor statements, regardless of who made them, are entitled to less weight than conference reports (even if they existed here) because they may not represent statements on the final terms of a bill agreed to by both houses.[494] Various members, including Representative Markey, also inserted material into the *Congressional Record* after floor debate. Materials inserted by members after congressional action are not indicative of congressional intent.[495]

Regardless of the weight that might be accorded to Rep. Markey's remarks, Congress did not amend the definition of ''passenger automobile'' or direct the agency to amend the definition of that term in the agency's classification regulation, and Rep. Markey's remarks do not contradict, much less address, these points.

Moreover, even if Congress' intent was not to disturb the Ninth Circuit's decision with regard to vehicle classification, NHTSA's action is responsive to the Court's concerns and consistent with the Court's decision. The court said, ''Thus, we remand to NHTSA to revise its regulatory definitions of passenger automobile and light truck or provide a valid reason for not doing so.'' 538 F.3d at 1209. In reaching its conclusion, the court stated that NHTSA had failed to follow a NAS recommendation that NHTSA ''tighten'' its definition of light truck, ''a step EPA has already taken for emissions standards purposes.'' Id. The court did not indicate specifically how it thought NHTSA should change its definitions or what would constitute a valid reason for not doing so.

As explained at length above, NHTSA has, since the court's decision, made significant changes in how it applies its light truck definition and, in this final rule, in one aspect of the definition itself. In order to be classified as off-highway capable, a vehicle weighing 6,000 lbs GVWR or less must actually have 4WD. And, only vehicles actually manufactured and sold without second-row seats will be considered as having greater cargo-carrying volume than passenger-carrying volume. The first change has resulted in moving approximately 1.5 million vehicles from the light truck category to the passenger category in the years covered by this rule, which raises the MY 2011 combined standards by 0.3 mpg. The second change will help prevent any gaming of the tightened definition based on a manufacturer's arbitrary declaration of what constitutes a vehicle's ''base form.'' These changes constitute a very significant tightening of NHTSA's vehicle classification standards, which is what the court indicated was necessary. Moreover, the agency has also explained above in great detail why further changes to its definitions would not improve, and would in fact weaken, the fuel economy standards and accompanying fuel savings.

With regard to the argument that EPA's definitions are ''tighter'' than NHTSA's, NHTSA notes that this is not an apt comparison for several reasons. First, the NAS Report and the Ninth Circuit are referring to EPA's Tier 2 criteria pollutant emissions requirements for mobile sources.[496] These requirements are different from the CAFE requirements. The effect of having more light trucks on the roads (and thus wanting to limit their classification as light trucks) is greater for criteria pollutant emissions purposes than for CAFE purposes.

Second, EPA continues to use the same definitions as NHTSA does for CAFE purposes.[497] Even though EPA has changed its definitions for Tier 2 purposes, the effect of those changes was to move only four vehicle models—the Chrysler PT Cruiser, the Chevrolet HHR, the Honda Element, and the Dodge Magnum—whose combined production is currently less than 250,000 per year (less than 20 percent of the number of vehicles reclassified as a result of our tightening the implementation of our vehicle definitions). As discussed above, none of these vehicles currently come in 4WD or meet the 3-row fold-flat requirement, so as currently designed, starting in MY 2012, NHTSA would likely classify these vehicles as passenger cars as well.

And third, after MY 2009, EPA will have no distinction between passenger cars and light trucks for Tier 2 purposes—all vehicles will be subject to the same standard. In summary, EPA's action has little relevance to vehicle classification for CAFE purposes. This is proved by the fact that EPA ultimately intends to do away with the distinction between passenger car requirements and light truck requirements in Tier 2, an option that EPCA would not permit NHTSA to implement for CAFE.

Accordingly, NHTSA believes that the vehicle classification standards and clarification of those standards embodied in this final rule are consistent with Congress's directives in EPCA and EISA, and respond to the Ninth Circuit's decision with regard to vehicle classification.

XII. Flexibility Mechanisms and Enforcement

This section addresses comments received on the enforcement aspects of the flexibility mechanisms provided by EPCA and EISA for manufacturers in

[493] See, e.g., Representative Markey's insertions at 153 CONG. REC. H14253 (editor's note) and H14444 (daily ed. Dec. 6, 2007) (statement of Cong. Markey).

[494] See, e.g., In re Burns, 887 F.2d 1541 (11th Cir. 1989). See also In re Kelly, 841 F.2d 908, 913 n. 3 (9th Cir. 1988) (''Stray comments by individual legislators, not otherwise supported by statutory language or committee reports, cannot be attributed to the fully body that voted on the bill. The opposite inference is far more likely.'')

[495] *See, e.g., Sigmon Coal Co., Inc.* v. *Apfel*, 226 F.3d 291, 304–05 (4th Cir 2000) (quoting INS v. Cardoza-Fonseca, 480 U.S. 421, 432 n. 12 (1987)), aff'd sub. nom., Barnhart v. Sigmon Coal Co., Inc., 534 U.S. 438 (2002), and *Shannon* v. *United States,* 512 U.S. 573, 583 (1994).

[496] NAS Report at 88; CBD, 538 F.3d at 1209.

[497] See 40 CFR Part 600.002–93.

complying with the CAFE standards. These mechanisms include payment of civil penalties or fines; trade, transfer, and application of credits earned for over-compliance; and the manufacturing incentive for dual-fueled automobiles. Section VII.C.5 above addresses comments received with respect to how these flexibility mechanisms interact with the standard-setting process. Additionally, although this section does not repeat NHTSA's overview in the NPRM of the CAFE enforcement program, because no comments were received on it, NHTSA refers interested readers to the discussion in that document at 73 FR 24461 (May 2, 2008).

A. NHTSA's Request for Comment Regarding Whether the Agency Should Consider Raising the Civil Penalty for CAFE Non-Compliance

In the NPRM, NHTSA explained that the civil penalty for failing to comply with a CAFE standard, as adjusted for inflation by law,[498] is $5.50 for each tenth of a mpg that a manufacturer's average fuel economy falls short of the standard for a given model year multiplied by the total volume of those vehicles in the affected fleet (i.e., import or domestic passenger car, or light truck), manufactured for that model year. NHTSA has collected $772.9 million in total penalties as of January 16, 2009.

NHTSA also explained that EPCA authorizes increasing the civil penalty up to $10, exclusive of inflationary adjustments, if NHTSA decides that the increase in the penalty—

(i) Will result in, or substantially further, substantial energy conservation for automobiles in model years in which the increased penalty may be imposed; and

(ii) Will not have a substantial deleterious impact on the economy of the United States, a State, or a region of a State.[499]

NHTSA explained that it did not intend to change the penalty in this rulemaking, but sought comment on whether it should initiate a proceeding to consider raising the civil penalty, since it recognized that paying penalties could be a less expensive way for manufacturers to comply with CAFE standards than by applying technology or by buying credits from other manufacturers.

GM, Ferrari, Porsche, Volkswagen, Mercedes, and NADA commented that NHTSA should not raise fines and should not initiate rulemaking to consider doing so, because doing so would not substantially improve energy conservation. All manufacturers who commented on this issue took exception with what they considered to be NHTSA's characterization in the NPRM that manufacturers were choosing to pay penalties as a strategic decision instead of adding fuel saving technology to their vehicles. Ferrari, Porsche, Volkswagen, and Mercedes generally argued that because of the nature of their products, increasing fines would not improve their vehicles' fuel economy performance, due to the demands of the market for luxury performance vehicles. Volkswagen and Mercedes both stated that they had already employed many if not all of the technologies considered by NHTSA in the NPRM, and that higher penalties thus would be no incentive for them to apply more technology. Porsche and Mercedes argued that raising penalties would only serve to punish ''niche manufacturers'' offering a limited line of vehicles.

Mercedes also argued that NHTSA had suggested in the NPRM that an increase in civil penalties would be ameliorated by the new regulation permitting credit trading, because Mercedes anticipated that the credit trading market would not likely be very robust.

NADA commented that it is ''premature'' to initiate proceedings to raise the civil penalties, because ''While historically a few manufacturers have found paying civil penalties to be substantially less expensive than installing fuel saving technologies, no evidence exists to suggest that vehicle manufacturers that have never paid a fine will choose to do so rather than attempt to comply with the 2011–2015 standards.'' NADA argued that NHTSA should only initiate rulemaking to increase penalties when it ''can show that vehicle manufacturers are electing to pay fines as an alternative to investing in fuel saving technologies.''

In contrast, UCS and ACEEE commented that NHTSA should raise fines in order to compel manufacturers to add more fuel economy-improving technologies to their vehicles. UCS commented that because the NPRM indicated that ''a significant number of manufacturers will opt for civil penalties over compliance with fuel economy requirements,'' thus, ''Increasing the civil penalty would ensure the benefits are actually realized.'' UCS stated that the penalty has been $5 since EPCA was enacted in 1975, and argued that ''inflation has devalued that penalty'' over time, such that ''A fine of equivalent value today would need to be more than $20 per 0.1 mpg.''[500] UCS argued that NHTSA should ''use existing authority to increase the CAFE noncompliance civil penalty from $5 to $10 per 0.1 mpg,'' in order to increase its effectiveness in light of the ''escalating economic and environmental importance of energy conservation.''

ACEEE also commented that NHTSA should consider raising the penalty. Although ACEEE recognized that historically ''the incentive to meet CAFE has been for some manufacturers far greater than the avoided cost of CAFE fines, because those companies, or their shareholders, attach great importance to complying with all applicable laws,'' it argued that ''DaimlerChrysler's payment of substantial fines for MY 2006 may signal increased willingness on the part of manufacturers to fall short of CAFE standards, even if this means incurring fines.'' Thus, since even NHTSA recognized that paying penalties may be less expensive than applying technologies to meet CAFE standards, ACEEE concluded that NHTSA should consider raising the penalty.

Agency response: NHTSA will take these comments into consideration in deciding whether to initiate rulemaking to raise the civil penalty for CAFE non-compliance. However, NHTSA wishes to respond to three points raised by commenters at this time. First, as discussed in the NPRM, the CAFE penalty was raised to $5.50 by application of an act of Congress, effective in model year 1998, to account for inflation, and prior to that was $5 since 1975 as stated by UCS. Second, in contrast to Mercedes' comments, NHTSA never suggested in the NPRM that it would consider raising penalties because of the additional compliance flexibility allowed by the credit transfer and trading programs. NHTSA may only raise penalties if doing so would ''result in, or substantially further, substantial energy conservation,'' as established by statute. With regard to the manufacturers who argued that their fleet mix forces them to pay penalties, NHTSA would like to clarify that under the attribute-based Reformed CAFE system, each manufacturer has its own required fuel economy level based on its particular mix of vehicles. NHTSA will continue to review the statutory criteria (i.e., whether increased penalties would substantially further energy conservation and the likely economic effects of higher penalties) in deciding whether to initiate rulemaking to raise

[498] Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104–134, 110 Stat. 1320, § 31001(s).

[499] 49 U.S.C. 32912(c).

[500] UCS cited *http://data.bls.gov/cgi-bin/cpicalc.pl*, stating ''Comparison between 1975 and 2008.''

the civil penalty for CAFE non-compliance.

B. CAFE Credits

As discussed in the NPRM, the ability to earn and apply credits has existed since EPCA's original enactment,[501] but the potential for trading credits, i.e., selling credits to other manufacturers or buying credits from them, was first raised in the 2002 NAS Report. NAS found that

> Changing the current CAFE system to one featuring tradable fuel economy credits and a ''cap'' on the price of these credits appears to be particularly attractive. It would provide incentives for all manufacturers, including those that exceed the fuel economy targets, to continually increase fuel economy, while allowing manufacturers flexibility to meet consumer preferences.[502]

However, as also discussed in the NPRM, Congress did not grant NHTSA authority to implement credit trading and transfer programs [503] until the passage of EISA in December 2007. Section 104 of EISA not only gave NHTSA authority to implement credit trading and transfer programs, but also extended the carry-forward period for credits from 3 to 5 years.

In the NPRM, NHTSA proposed a new Part 536 setting up these two credit programs, and sought comment generally on (1) whether the agency had correctly interpreted Congress' intent; (2) whether there were any ways to improve the proposed credit trading and transferring systems consistent with EISA and Congress' intent that the agency might have overlooked; and (3) whether any of the aspects of the programs proposed by the agency were either inconsistent with EISA and Congress' intent or the rest of the CAFE regulations, or were otherwise unworkable.

NHTSA received a number of comments on the proposed Part 536, which the agency has divided by issue below.

Comments Regarding Credits Generally

Who may be credit holders?

NHTSA stated in the NPRM that although only manufacturers may earn credits and apply them toward compliance, NHTSA would allow credits to be purchased or traded by both manufacturers and non-manufacturers in order to facilitate greater flexibility in the credit market.

NHTSA received comments regarding this proposed decision from AIAM, NADA, and the Wisconsin DNR, all of which were in favor of the decision, and generally stated that the additional flexibility in the credit market would facilitate and improve the market for credits. NADA cautioned that it did not believe the market would be particularly robust due to competitive concerns, but did suggest that the market would be enhanced by allowing non-manufacturers to purchase and sell credits.

Agency response: Comments favored the decision to allow non-manufacturers to be credit holders, and because NHTSA continues to believe that this broad definition of ''credit holders'' best serves the purposes of the credit trading program, this definition will be maintained in the final rule.

When a manufacturer has a shortfall, should NHTSA automatically apply oldest credits first or transfer credits to make up that shortfall?

In the proposed § 536.5, NHTSA proposed to manage some aspects of credit use by manufacturers automatically. For example, NHTSA would debit credits automatically from a manufacturer if the manufacturer fell below the standard in a compliance category, beginning with the oldest credits held by the manufacturer in that compliance category, transferring the oldest available credits in other categories if necessary, and notifying the manufacturer of its need to purchase additional credits, develop a carry-back plan, or pay fines if there were still insufficient credits to achieve compliance.[504] NHTSA was silent in the preamble with respect to its rationale for this proposal.

The Alliance, AIAM, Toyota, and Ford commented on NHTSA's proposal to use a manufacturer's oldest credits first and to transfer credits automatically if the manufacturer did not have sufficient credits in the original compliance category to make up the shortfall. The commenters generally argued that NHTSA was unduly restricting manufacturers' flexibility to manage credits at their own discretion, and that such a proposal was inconsistent with EISA.

The Alliance argued that the ''automatic transfer is inconsistent with the history of NHTSA's administration of the CAFE program and EISA,'' stating that ''Congress intended for the manufacturer to manage its own credits'' as ''acknowledged in the NPRM.'' The Alliance suggested that NHTSA's explanation in the NPRM that manufacturers should instruct NHTSA which credits to transfer when it wanted to transfer credits indicated that the agency recognized manufacturers' right to control credit transfers. The Alliance argued that ''A manufacturer facing a shortfall in a given fleet should retain the flexibility to manage that shortfall as it sees fit, including filing a carryback plan, acquiring traded credits or by a combination of various actions.''

AIAM agreed that NHTSA's approach of debiting oldest credits first ''should be followed in most cases,'' but commented that in cases where ''a manufacturer prefers to use available credits from some other compliance category or time period first, NHTSA should, upon request by the manufacturer, provide the manufacturer that flexibility.'' AIAM suggested that manufacturers might ''wish to preserve credits in a particular category and year to enhance trading opportunities or to comply with inter-category credit transfer limitations.'' AIAM also stated that ''nothing in [EISA] * * * mandates that manufacturers must use available credits in any particular order.''

Toyota also commented that EISA did not specify a particular order in which credits should be applied, and argued that NHTSA should maximize flexibility in manufacturers' use of credits and allow manufacturers to make their own decisions unless they made decisions inconsistent with the law or unless there was ''some clear reason'' to restrict flexibility.

Ford argued that NHTSA's proposal to transfer credits automatically to make up manufacturer shortfalls was ''inconsistent with EISA,'' because the statutory language with regard to the credit transfer program was permissive, stating that the Secretary of Transportation shall establish a regulation to ''allow'' manufacturers to transfer credits and apply them to different compliance categories in order to achieve compliance. Ford suggested that the automatic transfer of credits by NHTSA would interfere with manufacturers' flexibility to decide how to manage a shortfall. For example, Ford argued, a manufacturer may prefer to submit a carry-back plan rather than to transfer surplus credit to another category, and EISA did not give NHTSA the discretion to interfere in the manufacturer's decision in that regard.

Agency response: NHTSA did not intend to allocate credits without allowing the manufacturer an opportunity to comment. NHTSA agrees

[501] The credit provision (currently codified at 49 U.S.C. 32903) was originally section 508 of EPCA's Public Law version.

[502] NAS Report, Finding 11, at 113.

[503] ''Trading'' refers to movement of credits between the earning manufacturer and another entity. ''Transfer'' refers to application of a manufacturer's credits to one of its fleets other than the fleet in which the credits were earned.

[504] Proposed § 536.5(d), at 73 FR 24485 (May 2, 2008).

with the commenters that manufacturers must ultimately be responsible for how their shortfalls are addressed, and has revised the regulatory text accordingly.

EPCA originally stated, with regard to conventional carry-forward/carry-back credits, that application of credits was to occur automatically (''shall apply'') if a manufacturer was short of the average fuel economy required and had credits available. The application of those credits offset any penalty to be paid by the manufacturer. 49 U.S.C. 32903(d). EISA did not change that provision. However, EISA did introduce the two new credit programs for transfers and trades.

In the past, NHTSA developed carry-forward plans for manufacturers automatically if carry-forward credits existed, and submitted the plan to the manufacturer so that it could comment on the proposed allocation plan. Only if no carry-forward credits were available would NHTSA ask the manufacturer to submit a carry-back plan or to pay a fine.

Upon further review the agency has decided that Congress clearly intended to give the manufacturer an opportunity to comment before any application of credits occurs. See 49 U.S.C. 32903(d). Accordingly, we have revised the text so that instead of NHTSA allocating credits automatically, a manufacturer with credits available will be required to submit a credit allocation plan to offset its confirmed shortfall. NHTSA will require manufacturers to submit a plan whenever NHTSA is informed by EPA that a manufacturer has not met the CAFE standards in a particular compliance category. An enforcement action will be initiated each time the agency receives notification from EPA that a standard has not been met. An enforcement letter will be sent to the responsible manufacturer identifying available credits and requesting that a credit allocation plan be submitted or penalty be paid. NHTSA will review and accept plans as received and allocate credits accordingly.

Should credits be denominated in mpg or in gallons for purposes of transfers and trades?

49 U.S.C. 32903(c) indicates that Congress intended credits to be denominated in tenths of a mpg, but 49 U.S.C. 32903(f) states that total oil savings must be preserved when trading credits. Because there is no similar caution that total oil savings must be preserved when transferring credits, NHTSA proposed in the NPRM to denominate credits in mpg rather than in gallons, but the agency also sought comment on whether transferred credits should be denominated in gallons to ensure that no transfers resulted in any loss of fuel savings. When using the terms ''denominating credits in gallons,'' the agency meant that credits be adjusted to preserve total oil savings as specified for credit trades in § 32903(f). Section § 32903(c) defines credits as the number of tenths of a mile per gallon the average fuel economy of a fleet exceeds the standard times the number of vehicles in that manufacturer's fleet. Therefore, credits should always be denominated in miles per gallon. In the comments below, those who argue that credits should be denominated in mpg are opposing any adjustment to credit transfers to prevent losses in fuel savings.

The Alliance, AIAM, NADA, and Toyota commented that NHTSA should denominate credits in mpg. The commenters generally argued that because § 32903(c) indicates that credits are to be denominated in tenths of mpg, and because Congress did not specify in EISA that oil savings must be preserved in credit transfers, the agency should not attempt to read anything into the statute that is not plainly there. AIAM also stated that, ''Using different units for transferred credits and other credits, as mentioned by the agency, would create unnecessary confusion and could create accounting problems.'' Toyota argued that ''Since Congress specified the application of an adjustment factor for traded credits but did not specify such a requirement for transferred credits, the clear intent of Congress is that it intended transferred credits to be calculated in the same manner as carryforward/carryback credits.''

Honda and EDF commented that NHTSA should denominate credits in gallons rather than in mpg. Honda stated that ''trading MPG will erode the total fuel/GHG reductions, which is not appropriate,'' and argued that EISA did not prohibit trading credits in gallons instead of mpg, because it simply addresses the maximum increase that manufacturers may obtain from transferred credits, not the maximum decrease.

EDF commented that denominating credits in gallons instead of mpg ''would be a more straightforward and simple way for the Agency to ensure that total oil savings are preserved in trading, banking and borrowing of CAFE credits,'' and would also ''maximize the environmental integrity of the program.'' EDF stated that NHTSA had correctly identified the risk that ''increasing fuel economy by one mpg at a higher fuel economy level results in less oil savings (and therefore less reductions in GHGs) than increasing fuel economy by one mpg at a lower fuel economy level.'' EDF argued that in order to promote the need of the nation to conserve energy, ''Expressing CAFE credits in gallons of fuel saved, rather than in mpg, would be a natural, and less confusing, way to present the oil saving benefits from exceeding the standard (or the 'oil-saving-deficit' as a result of non-compliance).''

Agency response: From the discussion above, it is clear that credits must be denominated in mpg per § 32903(c)(1). The question is whether all credits, traded and transferred, should be adjusted to preserve fuel oil savings. As discussed, § 32903(c) states that credits are earned in tenths of a mile per gallon; § 32903(d) and (e) refer to applying credits on a mile per gallon basis, § 32903(f) states that total oil savings must be preserved only when credits are traded. There is no other clear expression of congressional intent in the text of the statute suggesting that NHTSA would have authority to adjust transferred credits, even in the interest of preserving oil savings. However, the goal of the CAFE program is energy conservation; ultimately the U.S. would reap a greater benefit from ensuring that fuel oil savings are preserved for both trades and transfers. Furthermore, accounting for traded credits differently than for transferred credits does add unnecessary burden on program enforcement. Thus, NHTSA will adjust credits both when they are traded and when they are transferred so that no loss in fuel savings occurs.

Comments Regarding Carry-Forward/Carry-Back Credits

When should EISA's extension of the carry-forward period from 3 to 5 years take effect?

When Congress changed the carry-forward period from 3 to 5 years in EISA, it did not clearly specify to which credits that change was to apply. EISA's effective date was December 20, 2007, and NHTSA has historically defined the model year as beginning on October 1 of the previous calendar year (thus, the agency would define MY 2008 as beginning on October 1, 2007).[505] In the NPRM, NHTSA concluded that because EISA was enacted in the middle of MY 2008, the best interpretation of when the extension of the carry-forward period should take effect was to apply it only

[505] See Letter of Interpretation to William Shapiro of Volvo Cars, Jan. 13, 2000, available at *http://isearch.nhtsa.gov/files/18644KWII.ogms.html* (last accessed Sept. 18, 2008), and Letter of Interpretation to William F. Canever of Ford Motor Company, Oct. 22, 1990, available at *http://isearch.nhtsa.gov/files/2741y.html* (last accessed Sept. 18, 2008).

to vehicles manufactured in or after MY 2009. Interpreting the change as applying to all subsequent MY 2008 vehicles would have required the agency to find some way to prorate the change in credit lifespan, which the agency concluded would present considerable administrative difficulty, especially given that credits are denominated by year of origin and not month and year of origin. Thus, the agency added regulatory text stating that credits earned in MY 2008 or before had a 3-year carry-forward lifespan, and credits earned in MY 2009 or later had a 5-year carry-forward lifespan.

AIAM, Toyota, Chrysler, and NADA commented on this issue, and all argued that Congress intended the 5-year carry-forward provision to be effective concurrent with EISA's effective date. AIAM stated that it believed that any credits earned and not expired as of the effective date of EISA, including MY 2005–2007 credits, must be available for use in any of the five following model years. AIAM argued that if Congress had intended the 5-year carry-forward period to begin in MY 2009, it would have included such a limitation, as it included the provision disallowing transfers of credits earned before MY 2011. AIAM thus concluded that to maximize flexibility in use of credits, ''enhancements to the credit system mandated by Congress must be made effective immediately, except where Congress has specified otherwise.''

Toyota also commented that because Congress included an express start date for credit transfers, it must have intended that the 5-year carry-forward provision be effective on EISA's effective date. Toyota argued that Congress did address which credits could be used for 5-year carry-forward plans by stating in 49 U.S.C. § 32903(a) that when a manufacturer earns credits under this section, those ''credits may be applied to—

(1) Any of the 3 consecutive model years immediately before the model year for which the credits are earned; and

(2) *to the extent not used by paragraph (1) of this subsection*, any of the 5 consecutive model years immediately after the model year for which the credits are earned. (Toyota's emphasis)

Toyota argued that Congress thus ''clearly identifies the credits that are available for the 5-year carry-forward provision as being those that are not applied to the 3-year carry-back provision,'' and that Congress put no other limitation on when the 5-year carry-forward credits may be used. Toyota concluded that because the intent of Congress is clear in the statutory language, the agency has no room for interpretation under Chevron.

NADA also commented that ''Credit system changes set out in EISA should take effect immediately, except as otherwise specified.'' NADA argued that even though the transfer provisions ''may not take effect until MY 2011, any existing and future earned credits should immediately be available for the new five year carry-forward period and for trading.''

Chrysler also commented that because Congress had chosen to put specific effective dates in some credit provisions but not in the carry-forward provision, the 5-year carry-forward provision must be applicable to MY 2008 credits. Chrysler argued that NHTSA's arguments regarding the difficulty of prorating MY 2008 credits were unavailing, because NHTSA could simply apply the 5-year carry-forward provision to all credits earned in MY 2008 and after. Chrysler further argued that NHTSA has ''not felt it necessary to pro-rate credits (or penalties) when transfers of ownership take place, instead assigning the full year's credits (or penalties) to a single manufacturer, as agreed to among the parties involved.'' Chrysler also stated that ''when carry-forward/carry-back credits were extended from 1 to 3 years as a result of the Automobile Fuel Efficiency Act of 1980 * * * NHTSA did not see any need to pro-rate credits. Instead, the agency's final rule [ ] had an immediate effective date.'' Chrysler suggested that if the agency is determined to prorate the MY 2008 credits, ''it can simply divide the number of days after enactment but before October 1, 2009 (which is 285 days) by 365 and then multiply the credits earned in MY 2008 by the resultant (0.781).''

Agency response: NHTSA has decided to revise the implementation of the 5 year carry-forward allowance by changing the effective date from MY 2009 to MY 2008. As discussed, because EISA was enacted in the middle of MY 2008, NHTSA concluded in the NPRM that the best interpretation of this change in lifespan was to apply it only to vehicles manufactured in or after MY 2009, because the alternative of finding some way to prorate the change in lifespan presented considerable administrative difficulties.

However, 49 U.S.C. 32903(b)(2) specifies that credits are available to a manufacturer at the end of the model year in which earned. Due to the fact that the MY 2008 credits were not finalized when EISA became effective, the agency agrees that it is reasonable to begin the 5-year carry-forward provision in MY 2008. The agency does not believe that this provision should be applied to all unexpired credits (MYs 2005–2007) as suggested by AIAM, but only to those credits that are actually earned in MY 2008 or after.

Can carry-forward/carry-back credits not acquired by trade or transfer be used to meet the minimum domestic passenger car standard?

Through EISA, Congress clearly intended to limit the use of traded or transferred credits by manufacturers in order to achieve compliance with the minimum domestic passenger car standards specified in Section 102(b)(4). See Section 104(a)(4), codified (in relevant part) at 49 U.S.C. § 32903(f)(2) and (g)(4), respectively. In NHTSA's proposed regulatory text, the agency included these prohibitions, and also stated as follows:

> If a manufacturer's average fuel economy level for domestically manufactured passenger cars is lower than both the attribute-based standard and the minimum standard, then the difference between the attribute-based standard and the minimum standard may be relieved by the use of credits, but the difference between the minimum standard and the manufacturer's actual fuel economy level may not be relieved by credits and will be subject to penalties.[506]

NHTSA did not explain its reasoning in the NPRM for this provision, which prompted comments from a number of companies, including the Alliance, Chrysler, Ford, GM, and Toyota.

The commenters stated that the proposed § 536.9(d) improperly prevents manufacturers from employing carry-back and carry-forward credits to meet the minimum domestic passenger car standard. The commenters argued that Congress only explicitly prohibited the use of traded and transferred credits to meet the minimum domestic passenger car standard, but did not explicitly prohibit the use of originating manufacturer carry-forward/-back credits, and that therefore NHTSA should not assume that Congress intended more than it expressly stated. The commenters further stated that NHTSA was unduly and unnecessarily restricting manufacturers' flexibility in using credits to meet the standards, when the purpose of the carry-forward/carry-back allowances was to maximize flexibility.

Chrysler further argued that although ''NHTSA may have assumed that the use of the word minimum [in EISA § 102(b)(4)] might imply that the actual

[506] 73 FR 24487 (May 2, 2008); proposed section 49 CFR 536.9(d).

level of the standard each year may be attained to ensure compliance,'' this would be inconsistent with NHTSA's own regulations that allow the use of credits to meet average fuel economy standards for cars and light trucks that NHTSA refers to as ''minimum'' levels.[507] Chrysler suggested that the minimum domestic passenger car standard was simply a ''new category'' of standards, and that ''allowing the use of carry-forward/carry-back credits does not spoil the statutory scheme nor does it result in reduced fleet fuel economy, since credits for exceeding the minimum standard must ultimately be earned.''

Ford also further argued that because the compliance provision of EPCA, 49 U.S.C. 32911(b), includes all fuel economy standards under § 32902, and states that ''Compliance is determined after considering credits available to the manufacturer under section 32903 of this title,'' that credits may be used to meet the minimum domestic passenger car standard just as they may be used to meet the passenger car and light truck standards.

Agency response: NHTSA agrees with the commenters that Congress did not clearly establish in EISA that carry-forward and carry-back credits may not be used to comply with the minimum domestic passenger car standard, unlike traded and transferred credits which clearly may *not* be used, per § 32903(f)(2) and (g)(4). As Ford argued in its comments, 49 U.S.C. 32903(a), which provides for the carry-forward and carry-back periods, expressly states that credits may be earned for exceeding ''an applicable average fuel economy standard under subsections (a) through (d) of section 32902.'' Congress included the minimum domestic passenger car standard requirement in § 32902(b)(4), which may suggest that Congress both intended for manufacturers to be able to earn credits for exceeding it, and to be able to use carry-forward and carry-back credits to achieve compliance with it. NHTSA has some concern that if the purpose of the minimum domestic passenger car standard required by Congress is to ensure a certain minimum level of fuel savings, that Congress may not have intended that credits be used to meet it, but NHTSA accepts that the language of the statute does not clearly indicate such a lack of intent.

A manufacturer's actual CAFE value may be above or below both or only one of its corresponding attribute-based or minimum standards. Also, a manufacturer's attribute-based standard may be above or below its corresponding minimum standard. For each situation it must be clear how credits can be earned and allocated. 49 U.S.C. § 32903(a) states that credits are earned when a manufacturer ''exceeds an applicable average fuel economy standard under subsections (a) through (d) of section 32902,'' which appears to include the minimum domestic passenger car standard under 32902(b)(4). To determine a credit excess or shortfall, a manufacturer's actual CAFE value is compared against either the attribute-based standard value or the minimum standard value, whichever is larger. Also, if a manufacturer's actual CAFE value is less than the minimum standard, only conventional carry-forward and carry-back credits earned by the originating manufacturer can be used to offset the shortfall between the actual CAFE value and the minimum standard.

Whether Pre-MY 2011 Passenger Car Credits May Be Carried Forward for 5 Years

AIAM requested that ''NHTSA confirm that pre-2011 passenger auto credits, which are compiled separately for domestic and import fleets of a manufacturer, may be carried forward into 2011 and later years (subject to the 5 year limitation).''

Agency response: As NHTSA explained above, the agency has decided to apply the 5-year carry-forward provision to all credits earned in MY 2008 and after. Thus, credits earned in MYs 2008, 2009, and 2010 would be available to manufacturers through MY 2013, 2014, and 2015, respectively. However, credits earned before MY 2008 remain subject to the 3-year carry-forward lifespan, which means that a credit earned in MY 2007 would expire at the end of the MY 2010 model year, and not be available for MY 2011 or later.

Whether There is a Cut-Off Date for Consideration and use of Carry-Back Credits

AIAM also requested that NHTSA confirm that the proposed § 536.7(e) ''is not intended to establish an arbitrary cut-off date for consideration of carry-back credits.'' The proposed § 536.7(e) states that carry-back credits ''from any source'' may not be used for compliance more than three years after the non-compliance. AIAM argued that because ''Precise final CAFE values are not established by the end of a model year,'' and because ''Final determination of CAFE may be delayed for a significant period of time, due to the need for EPA to verify the data and to report to NHTSA,'' that therefore ''Manufacturers should be permitted to develop a compliance approach based on credits, even if the final accounting takes place more than 3 years after the noncompliance.'' AIAM concluded that ''A manufacturer should not be prohibited from carrying back credits for the three model year period based on administrative delays in establishing final CAFE calculations.''

Agency response: NHTSA did not intend for the proposed § 536.7(e) to suggest that the agency meant to change the 3-year carry-back provision. As specified in § 536.7(a), credits earned in any model year may be used in carry-back plans approved by NHTSA, pursuant to 49 U.S.C. § 32903(b), for up to three model years prior to the years in which the credits were earned. As further specified in § 536.7(c), NHTSA will determine ultimate compliance with the approved carry-back plan upon receipt of the final verified CAFE model year figures received from EPA. NHTSA recognizes that because manufacturers have 90 days after the end of the model year to submit final CAFE fleet numbers to EPA, and because it may take up to several months after that before EPA can validate the final data and report back to the manufacturer and NHTSA, it is possible that the literal 3-year period may be exceeded. NHTSA will revise the regulatory text to clarify that there is no expiration or cut-off date associated with this process or with available carry-back credits.

Comments Regarding Credit Trading Issues

When should the credit trading program begin?

In the NPRM, NHTSA proposed to begin the credit trading program with credits earned in MY 2011 or later. AIAM commented that because EISA established a 2011 effective date for credit *transfers*, but added no specific effective date for credit trades, Congress must have intended ''to not limit the trading system.'' Thus, AIAM supported an immediate effective date for trading of all credits in existence as of December 20, 2007.

Agency response: NHTSA disagrees with AIAM that it must allow all credits in existence as of December 20, 2007 to be immediately tradable. Although Congress mandated in EISA that NHTSA establish a credit transfer program, it gave the agency discretion to establish a credit trading program. Part of the agency's discretion in establishing a credit trading program lies in deciding when it should begin. While NHTSA supports flexibility in manufacturer use

[507] Chrysler cited 49 CFR 531.2 and 533.2.

of credits, NHTSA believes that it is logical for credit trading to begin in MY 2011, at the same time as the new standards take effect, and be limited to credits earned in or after MY 2011. Allowing credit trading to include credits earned prior to MY 2011 could provide a windfall of credits for manufacturers currently exceeding, for example, the 27.5 mpg passenger car standard, which NHTSA believes would be inconsistent with Congress' intent in allowing the agency to develop a credit trading program. Additionally, for ease of implementation and management of the credit trading and transferring programs, the agency continues to believe that both programs should commence for credits earned after 2010, as Congress has stipulated for transferred credits.

How should NHTSA calculate the adjustment factor to preserve total oil savings?

Congress stated in EISA that any credit trading program established must be set up ''such that the total oil savings associated with manufacturers that exceed the prescribed standards are preserved when trading credits to manufacturers that fail to achieve the prescribed standards.'' EISA Sec. 104, to be codified at 49 U.S.C. § 32903(f)(1). NHTSA explained in the NPRM that EISA requires total oil savings to be preserved because one credit is not necessarily equal to another, as Congress realized. For example, the fuel savings lost if the average fuel economy of a manufacturer falls one-tenth of a mpg below the level of a relatively low standard are greater than the average fuel savings gained by raising the average fuel economy of a manufacturer one-tenth of a mpg above the level of a relatively high CAFE standard.

In order to ensure that total oil savings are preserved in credit trades, NHTSA proposed to subject traded credits to an adjustment factor. NHTSA explained that the effect of applying the adjustment factor would be to increase the value of credits that were earned for exceeding a relatively low CAFE standard and are intended to be applied to a compliance category with a relatively high CAFE standard, and to decrease the value of credits that were earned for exceeding a relatively high CAFE standard and are intended to be applied to a compliance category with a relatively low CAFE standard. NHTSA proposed to multiply the value of each credit (with a nominal value of 0.1 mpg per vehicle) by an adjustment factor calculated by the following formula:

$$/A = \left(\frac{VMTe * \left(\left(\frac{1}{MPGe} \right) - \left(\frac{1}{MPGe - 0.1} \right) \right)}{VMTu * \left(\left(\frac{1}{MPGu} \right) - \left(\frac{1}{MPGu - 0.1} \right) \right)} \right)$$

Where A = adjustment factor applied to traded credits by multiplying mpg for a particular credit;

VMT_e = lifetime vehicle miles traveled for the compliance category in which the credit was earned (152,000 miles for domestic and imported passenger cars; 179,000 miles for light trucks);

VMT_u = lifetime vehicle miles traveled for the compliance category in which the credit is used for compliance (152,000 miles for domestic and imported passenger cars; 179,000 miles for light trucks);

MPG_e = fuel economy standard for the originating manufacturer, compliance category, and model year in which the credit was earned;

MPG_u = fuel economy standard for the manufacturer, compliance category, and model year in which the credit will be used.

NHTSA further explained it was proposing to use the fuel economy standard in the formula rather than the actual fuel economy or some average of the two, primarily because we believe it will be more predictable for credit holders and traders. However, we sought comment on those two alternatives, since they may be more precise in their ability to account for fuel savings.

Several commenters addressed NHTSA's proposal to use the fuel economy standard rather than the actual fuel economy in the adjustment factor formula. AIAM ''agree[d] that [NHTSA's] approach is sensible and facilitates record keeping,'' and argued that ''The proposed approach would encourage credit trading by valuing credits at a higher level, thereby providing an additional incentive for manufacturers to exceed the standards by substantial margins.''

Cummins, Inc., commented instead that the adjustment factor formula should include ''actual fuel economy'' achieved by the manufacturer instead of ''target fuel economy,'' because doing so ''would ensure that total fuel savings are preserved.'' Cummins further commented that NHTSA should apply the adjustment factor to both trades and transfers, which would ''ensure that we are meeting the EISA's objective of reducing the United States' dependence on oil.

Wisconsin DNR commented that using either actual fuel economy or an average of actual and formula-based fuel economy in calculating the adjustment factor would be preferable to NHTSA's proposed approach of using the fuel economy standard. Wisconsin DNR argued that ''The proposed approach inflates the actual fuel economy achieved and reduces the net benefit in terms of fuel savings and pollution reductions.''

ACEEE, in contrast, commented that the adjustment factor formula ''does not ensure oil savings,'' and that the use of any formula is inappropriate, because ''The increase in fuel economy in one compliance category needed to offset the additional fuel consumption associated with a shortfall in fuel economy in another compliance category can be expressed precisely, in closed form, and this should be required by the rule.'' ACEEE argued that the formula's use of a ''linear approximation to a non-linear function'' makes it inherently imprecise, and that that imprecision may result in errors that are ''far from negligible.'' ACEEE presented the following example:

> If * * * one manufacturer exceeds a 22 mpg standard by 2 mpg and wishes to trade credits to a manufacturer falling short of a 34 mpg target (in a compliance category with the same lifetime vehicle miles traveled), the proposed adjustment factor would allow the second manufacturer to use those credits to comply at 29.2 mpg. The result would be that the extra fuel consumed by the second manufacturer's vehicles exceeds the fuel saved by the first manufacturer's vehicles by 21 percent.

ACEEE argued that this result was unacceptable and ''inconsistent with the requirements of EISA.''

Honda and Toyota both commented on the ''lifetime vehicle miles traveled'' estimates used as constants in the adjustment factor formula. Honda expressed concern ''about the use of different lifetime mileage for cars versus

light trucks,'' due to the rise in fuel prices changing driving behavior, and stated that ''the separate lifetime mileage for cars and light trucks based upon historical data may be inappropriate when applied to current and future markets.''

Toyota commented that ''NHTSA may need to adjust those mileage accumulation rates to reflect alignment with the types of vehicles that NHTSA expects to be classified as cars and trucks in the future,'' suggesting that, as an example, ''moving some portion of 2WD SUVs to the car compliance category would tend to raise the average car lifetime mileage accumulation and lower the average truck lifetime mileage accumulation.'' Toyota argued that ''To the extent possible, NHTSA should ensure that the VMT rates in the adjustment equation reflect the vehicles in each category.''

Agency response: The agency has re-evaluated the adjustment factor proposed in the NPRM based upon the comments received. Various formulas for the adjustment factor could be derived in an attempt to ensure total fuel oil savings are preserved, which are dependent on assumptions made relating to fuel prices, rebound affects and vehicle miles traveled (VMT). The relationship between fuel (gallons) saved or lost as fuel economy (mpg) increases or decreases is non-linear. The effect of applying an adjustment factor would be to increase the value of credits that were earned for exceeding a relatively low CAFE standard and to decrease the value of credits that were earned for exceeding a relatively high CAFE standard. Furthermore, the fuel savings lost if the average fuel economy of a manufacturer falls one-tenth of a mpg below the level of a given standard are greater than the fuel savings gained by raising the average fuel economy of a manufacturer one-tenth of a mpg above the level of the same or higher CAFE standard.

The NPRM formula set the adjustment factor at the ratio of the inverse of the earner's (seller) and the user's (buyer) CAFE target standard values, modified for the total vehicle miles traveled (VMT) by compliance category. For example, if one manufacturer had an attribute-weighted target standard of 21 mpg, and another manufacturer had an attribute-weighted target standard of 25 mpg, and the VMT was constant, then the adjustment factor was approximately 1.19 (the ratio of the inverse of the two target standard values, 25/21 = 1.19). This adjustment factor is accurate as long as the actual fuel economy values of the earner and user are close to their respective CAFE target standard values. However, ACEEE commented correctly that if the actual fuel economy values for the seller and/or buyer are several mpg different from their respective target standard values, using only the CAFE standard in the adjustment factor formula could produce an adjustment factor that provides the buyer with more fuel savings than the seller actually saved.

NHTSA believes that this issue can be resolved with a revised adjustment factor formula that sets the adjustment factor at the ratio of the average fuel savings per mpg achieved by the originating manufacturer and average fuel savings needed per mpg required by the user (which, in the case of credit transfers, would be the same manufacturer). This approach ensures that fuel oil savings are preserved by applying an adjustment to each credit based upon each credit's ''fuel oil value.'' As an example, in a trade situation there is a seller (earner) who has excess credits to sell and a buyer (user) who has a credit deficit. Consider a seller and a buyer with the following situations, as described in the table below:

	Seller (earner)	Buyer (user)
Actual fuel economy.....	31.0 mpg	16.0 mpg
Target fuel economy.....	30.0 mpg	20.0 mpg
Fleet production volume.....	700,000 vehicles	10,000 vehicles
Car fleet total lifetime miles traveled.....	150,992 miles	150,992 miles
Amt fuel used at target FE over life of all vehicles in fleet.....	(150,992 miles) x (700,000 vehicles) x (1/30 mpg) = 3,523,146,667 gallons	(150,992 miles) x (10,000 vehicles) x (1/20mpg) = 75,496,000 gallons
Amt fuel used at actual FE over life of all vehicles in fleet.....	(150,992 miles) x (700,000 vehicles) x (1/31mpg) = 3,409,496,774 gallons	(150,992 miles) x (10,000 vehicles) x (1/16.0mpg) = 94,370,000 gallons
Total fuel saved for seller; total excess fuel used for buyer.....	3,523,146,667 – 3,409,496,774 = 113,649,893 gallons	94,370,000 – 75,496,000 = 18,874,000 gallons
Credits earned (for seller)/needed (for buyer)....	(31.0 – 30.0) x 10 x 700,000 = 7,000,000 credits	(20.0 - 16.0) x 10 x 10,000 = 400,000 credits
Rate (gallons/credit).....	113,649,893 / 7,000,000 = 16.2357 gal/credit	18,874,000 / 400,000 = 47.1850 gal/credit

Assume that the buyer wants to purchase only enough seller credits to offset half of its 400,000 credit shortfall. The buyer needs to purchase 9,437,000 (18,874,000/2) gallons worth of credits from the seller. If each seller credit is worth 16.2357 gallons as calculated above then the number of seller credits that must be purchased by the buyer is

(9,437,000 gal)/(16.2357 gal/credit) = 581,250 credits

Thus, the buyer must purchase 581,250 credits of the seller's 7,000,000 available credits.

To depict this relationship as an adjustment factor A = (buyer gal/credit)/(seller gal/credit)

A = 47.1850/16.2357 = 2.9062 (rounded to four decimal places)

The buyer has to multiply the credit shortfall it wants to offset by the adjustment factor to determine the number of seller credits that must be obtained from the seller as follows:

(200,000 credit shortfall) x (A) = 581,240 seller credits required (rounded to the nearest integer)

The following adjustment factor equation is derived from the above example:

$$A = \left(\frac{\text{VMTu} * \text{MPGae} * \text{MPGse}}{\text{VMTe} * \text{MPGau} * \text{MPGsu}} \right)$$

Where:

A = Adjustment Factor applied to traded or transferred credits to ensure fuel oil savings is preserved (rounded to four decimal places);

VMTe = Lifetime vehicle miles traveled for the compliance category in which the credit was earned: 150,992 miles for domestically manufactured and imported passenger cars, 172,552 miles for light trucks;

VMTu = Lifetime vehicle miles traveled for the compliance category in which the credit is used for compliance: 150,992 miles for domestically manufactured and imported passenger cars, 175,552 miles for light trucks;

MPGse = Fuel economy target standard for the originating manufacturer, compliance category, and model year in which the credit was earned;

MPGae = Actual fuel economy value for the originating manufacturer, compliance category, and model year in which the credit was earned.

MPGsu = Fuel economy target standard for the user, compliance category, and model year in which the credit is used for compliance;

MPGau = Actual fuel economy value for the user manufacturer, compliance category, and model year in which the credit is used for compliance.

The revised adjustment factor thus includes both actual fuel economy value and the fuel economy targets to which the buyer and seller are subject, and helps to ensure that total fuel savings are preserved in trades. Additionally, as discussed above, given that the overarching purpose of the CAFE program is energy conservation, the nation would ultimately gain greater energy benefits by ensuring that total fuel savings are preserved in both credit trades and credit transfers. Thus, NHTSA has decided to adjust credits both when they are traded and when they are transferred so that no loss of fuel savings occurs. The same adjustment factor will be calculated and applied to transferred credits as was explained above for traded credits.

Additionally, as noted above, Honda and Toyota commented that the agency should evaluate and possibly revise the values of the passenger car and light truck total vehicle miles traveled (VMT) values used in the adjustment factor equation.

Agency response: The agency agrees with the commenters that the VMT values should be revised. VMT is an important value used in the adjustment equation because it defines a vehicle's total lifetime miles traveled. The agency has moved approximately 1.5 million MY 2011 2WD sport utility vehicles from the light truck fleet into the passenger car fleet. Also, the agency has moved to a higher fuel price forecast, which by way of the rebound effect lowers the VMT each year in every vehicle compliance category. For modeling purposes, four classes of VMT are used: passenger car, pickup, van and SUV. Table X–1 below shows the survival rates for passenger cars and light trucks (one survival rate applies to all three truck classes) and the average annual miles driven for each vehicle class.

In general, light trucks are driven more miles per year and survive more years than passenger cars. Among the light truck vehicle classes, SUVs are driven the most miles, while vans are driven the least. Changes in the analysis from the NPRM to the final rule include moving over 1.5 million SUVs from MY 2011 that were classified as light trucks in the NPRM to the passenger car classification in the final rule. This means that the car VMT described in the NPRM must be adjusted to include these reclassified vehicles. The light truck fleet VMT must also be adjusted because the light truck fleet now has less SUVs. Considering EISA's revisions to EPCA's credit carry-forward and carry-back provisions which allow credits to be used over a longer time frame, with greater potential variation in VMT factors for a given credit, NHTSA has concluded that VMT factors for use in credit calculations should reflect model years beyond MY 2011. Compared to developing VMT factors specific to MY 2011, NHTSA believes this approach will better ensure preservation of fuel savings over time.

Over the five model years addressed by the NPRM, the passenger car fleet now contains 47.04 million vehicles. There are 39.86 million vehicles that were classified as passenger cars in the NPRM (84.7 percent), plus 7.18 million SUVs (15.3 percent) that are reclassified as passenger cars in the final rule. The truck fleet over the five model years contains 35.77 million vehicles—41.4 percent are pickups, 43.9 percent are SUVs, and 14.7 percent are vans. This reflects a reduction in SUVs in the truck fleet from the NPRM to the final rule.

In each fleet, the adjusted VMT in each year is the sum of the vehicle classes weighted by survival rate and market share. Adjusted car VMT equals the car VMT times the car survival rate times the car market share (84.7 percent), plus the SUV VMT times the SUV survival rate times the proportion of SUVs in the car fleet (15.3 percent).

Adjusted Car VMT_t = Car VMT_t * Car $Survival_t$ * 0.847 + SUV VMT_t * SUV $Survival_t$ * 0.153, where t denotes model year

Adjusted truck VMT equals the pickup truck VMT times the pickup truck survival rate times the pickup truck market share (41.4 percent), plus the SUV VMT times the SUV survival rate times the proportion of SUVs in the truck fleet (43.9 percent), plus the van VMT times the van survival rate times the proportion of vans in the truck fleet (14.7 percent).

Adjusted Truck VMT_t = Pickup VMT_t * Pickup $Survival_t$ * 0.414 + SUV VMT_t * SUV $Survival_t$ * 0.439 + Van VMT_t * Van $Survival_t$ * 0.147, where t denotes model year

Total VMT is the sum over 36 years for the adjusted car and truck VMT. For passenger cars, the adjusted VMT is 150,922 miles. For light trucks, the adjusted VMT is 172,552 miles. NHTSA expects to reevaluate trends in vehicle survival and mileage accumulation in the future, and to adjust these VMT factors accordingly in future CAFE rulemakings.

Table XII-1. Adjusted VMT for cars and trucks by vehicle age

Vehicle	% Surviving to Age:		Average Annual Miles Driven at Each Age				Adjusted VMT by Age	
Age	Cars	Light Trucks	Car	SUV	Pickup	Van	Car	Light Truck
1	99.5%	99.5%	12,885	14,689	15,229	14,734	13,095	14,845
2	99.0%	97.4%	12,641	14,251	14,688	14,401	12,724	14,080
3	98.3%	96.0%	12,377	13,827	14,157	14,043	12,337	13,440
4	97.3%	94.2%	12,094	13,415	13,637	13,664	11,902	12,758
5	95.9%	91.9%	11,796	13,016	13,128	13,265	11,415	12,038
6	94.1%	89.1%	11,484	12,628	12,630	12,850	10,878	11,285
7	91.9%	85.9%	11,160	12,252	12,146	12,421	10,295	10,508
8	89.2%	82.3%	10,825	11,887	11,674	11,981	9,673	9,717
9	86.0%	78.3%	10,483	11,533	11,216	11,532	9,021	8,924
10	82.5%	74.0%	10,135	11,190	10,772	11,078	8,351	8,141
11	78.7%	69.6%	9,783	10,857	10,344	10,620	7,673	7,380
12	71.7%	65.0%	9,429	10,533	9,930	10,161	6,774	6,650
13	61.3%	60.4%	9,075	10,220	9,533	9,705	5,653	5,957
14	50.9%	55.2%	8,722	9,915	9,153	9,253	4,600	5,242
15	41.4%	50.1%	8,374	9,620	8,789	8,808	3,675	4,587
16	33.1%	45.2%	8,032	9,334	8,444	8,374	2,896	3,990
17	26.0%	40.6%	7,698	9,056	8,117	7,952	2,261	3,455
18	20.3%	36.3%	7,374	8,786	7,809	7,545	1,755	2,979
19	15.7%	32.4%	7,061	8,524	7,521	7,156	1,358	2,559
20	12.0%	28.7%	6,763	8,271	7,253	6,788	1,051	2,193
21	9.2%	25.4%	6,481	8,024	7,006	6,443	815	1,874
22	7.0%	22.4%	6,217	7,785	6,781	6,124	634	1,599
23	5.3%	19.8%	5,972	7,553	6,577	5,833	495	1,362
24	4.0%	17.4%	5,750	7,329	6,396	5,573	389	1,160
25	3.0%	15.2%	5,551	7,110	6,239	5,348	307	988
26	2.3%	13.3%	5,379	6,899	6,105	5,158	244	841
27	0.0%	11.7%	0	6,693	5,996	5,008	119	717
28	0.0%	10.2%	0	6,494	5,912	4,899	101	612
29	0.0%	8.9%	0	6,300	5,853	4,835	86	523
30	0.0%	7.7%	0	6,113	5,821	4,818	72	448
31	0.0%	6.7%	0	6,113	5,821	4,818	63	390
32	0.0%	5.9%	0	6,113	5,821	4,818	55	340
33	0.0%	5.1%	0	6,113	5,821	4,818	48	295
34	0.0%	4.4%	0	6,113	5,821	4,818	41	257
35	0.0%	3.9%	0	6,113	5,821	4,818	36	223
36	0.0%	3.3%	0	6,113	5,821	4,818	31	194
Lifetime	--	--	233,540	330,781	313,784	299,278	150,922	172,552

Comments Regarding Credit Transfer Issues

Whether NHTSA Should Prevent Credits Received by Trade From Being Transferred in Quantities Beyond the Transfer Cap

In the NPRM, NHTSA proposed to allow manufacturers to transfer credits that they had obtained by trade from one compliance category to another, but not to allow credits obtained by trade and subsequently transferred to be used to exceed the statutory cap on increases in a manufacturer's fuel economy attributable to transferred credits under 49 U.S.C. 32903(g)(3).

AIAM and Volkswagen commented that NHTSA should not limit the benefit of cross-compliance category trades via the cap on transfers. AIAM argued that a trade from, for example, Manufacturer A's passenger car fleet to Manufacturer B's light truck fleet should be considered a direct trade, rather than a trade followed by a transfer as NHTSA indicated in the NPRM. AIAM stated that ''The agency's limitation is inconsistent with the express language of Congress in applying the maximum credit limit only to credit transfers.'' VW argued that unlimited trading should be allowed because the adjustment factor is in place to preserve total oil savings.

Agency response: NHTSA disagrees with the commenters that the example given by AIAM would be a direct trade rather than a trade followed by a transfer. Allowing traded credits to be used in the manner suggested by AIAM would circumvent the limit requirements set up by Congress for credit transfers. EISA provided NHTSA with the authority to develop a credit trading program along with the mandated credit transferring program. As part of the trading program, the agency decided not to specify limits on trades within the same compliance category. Further, the agency is clarifying the definition of ''trade'' in the regulatory text to make plain its intent that trades occur between manufacturers within the same compliance category only. Still, the agency believes that the limits that apply to transfers should apply to all transfers, including the transfer of credits earned by an originating manufacturer between its compliance categories and transfers of credits acquired by trade.

Further, NHTSA believes that VW is mistaken that the adjustment factor means that trading may be unlimited. The traded credit adjustment factor and the limits applied to transferred credits are two separate requirements. The adjustment factor is applied to ensure

that credit values are standardized across different manufacturers, which ultimately preserves total oil savings. The credit transfer limits, in contrast, ensure that only a specified amount of a manufacturer's noncompliant fuel economy value can be offset by transferred credits. A traded credit that is subsequently transferred for compliance is adjusted to ensure total oil saving is preserved and is subject to the transfer limitations of Section 536.5(d)(3).

C. Extension and Phasing out of Flexible-Fuel Incentive Program

NHTSA explained in the NPRM that EPCA encourages manufacturers to build alternative-fueled and dual-fueled vehicles by using a special, statutorily-specified calculation procedure for determining the fuel economy of these vehicles. The fuel economy calculation is based on the assumption that the vehicle operates on the alternative fuel a significant portion of the time. This approach gives such vehicles a much-higher fuel economy level compared to similar gasoline-fueled vehicles, and lets those vehicles be factored into a manufacturer's general fleet fuel economy calculation, but only to the extent that the overall fleet fuel economy rises 1.2 mpg per compliance category in a model year.

Congress extended the incentive in EISA for dual-fueled automobiles through MY 2019, but provided for its phase out between MYs 2015 and 2019.[508] The maximum fuel economy increase which may be attributed to the incentive is thus as follows:

Model Year	mpg increase
MYs 1993-2014.....	1.2
MY 2015.....	1.0
MY 2016.....	0.8
MY 2017.....	0.6
MY 2018.....	0.4
MY 2019.....	0.2
After MY 2019.....	0

NHTSA further explained in the NPRM that 49 CFR Part 538 implements the statutory alternative-fueled and dual-fueled automobile manufacturing incentive, and that NHTSA was not proposing to amend Part 538 in this rulemaking to reflect the changes in EISA, but that the agency would undertake this task in a future rulemaking.

NHTSA received two comments on this issue. Cummins, Inc. stated that it ''supports the continuation of the flex-fuel credit,'' because ''The use of alternative fuels such as biodiesel can reduce the dependence on foreign oil and produce domestic economic benefits for local producers of these fuels.''

The Alliance commented that despite NHTSA's statement in the NPRM that it would not be including changes to Part 538 in this rulemaking, it would ''not be difficult to implement'' changes in this rulemaking, and would not require supplemental notice and comment. The Alliance offered proposed text amending 49 CFR § 538.9, and argued that the proposal was simply a ''ministerial implementation of 49 U.S.C. § 32906(a),'' as ''Existing Section 538.9 of the Title 49 Code of Federal Regulations is clearly a ministerial application of EPCA.''

Agency response: NHTSA agrees with the Alliance that amending 49 CFR § 538.9 would be simply a ministerial implementation of 49 U.S.C. § 32906(a), but reiterates that it will undertake this task in a near-future rulemaking. Meanwhile, to the extent that 49 U.S.C. 32906(a) differs from 49 CFR 538.9, the statute supersedes the regulation, and regulated parties may rely on the text of the statute. NHTSA appreciates the comment from Cummins, but notes that the decision to extend the manufacturing incentive was that of Congress and not of the agency.

XIII. Test Procedure for Measuring Wheelbase and Track Width and Calculating Footprint

The reformed CAFE program requires manufacturers to use vehicle wheelbase and track width data to establish target standards for each of its compliance categories. Manufacturers are required to provide these data to the agency in the pre-model year reports as specified in 49 CFR part 537, ''Automotive Fuel Economy Reports.'' As part of its assigned CAFE responsibilities, NHTSA's Office of Vehicle Safety Compliance (OVSC) is establishing a program to validate the wheelbase and track width data for selected vehicle configurations (models). As mentioned in the NPRM, the OVSC has developed a draft test procedure for measuring production vehicle wheelbase and track width dimensions. This test procedure was made available on NHTSA's website.[509] It will be used by NHTSA and will not be a requirement that manufacturers must follow. Accordingly, NHTSA is not required to provide notice and an opportunity to comment on its procedure. Nevertheless, the agency sought comments in the NPRM on the draft test procedure. In response, the Alliance and SEA, Ltd., submitted comments that are categorized into three subject areas, including test procedure execution, measured value tolerances, and administrative or editorial issues. All of the comments were considered. An updated revision to the procedure will be posted on the NHTSA web site concurrent with the final rule. Following is a brief discussion of the key issues in each of these three areas.

A. Test Procedure Execution

The Alliance commented that the base tires and test weight should be confirmed prior to executing the test. Vehicle track width is determined with a vehicle equipped with the base tire. The test procedure already included identification of the base tire

[508] 49 U.S.C. 32906(a). NHTSA notes that the incentive for dedicated alternative-fuel automobiles, automobiles that run exclusively on an alternative fuel, at 49 U.S.C. § 32905(a), was not phased-out by EISA.

[509] Available at *http://www.nhtsa.gov/staticfiles/DOT/NHTSA/Vehicle%20Safety/Test%20Procedures/Associated%20Files/TP%20537–00%20Draft.pdf* (last accessed Oct. 1, 2008).

information. However, in response to the Alliance's comment, we are modifying 49 CFR Part 537 to include a requirement for manufacturers to provide base tire information in their pre-model year CAFE reports. As for confirming the vehicle weight, it is NHTSA's intent to conduct testing at the vehicle's unloaded vehicle weight. The test procedure has been revised to specify this loading condition. Additionally, NHTSA does not currently have a definition for ''base tire.'' Recent discussions with manufacturers have indicated to the agency that there is some confusion with regard to what the term means. Since different tire sizes may affect vehicle track width, and thus affect footprint, a precise definition for ''base tire'' is necessary to prevent gaming. A definition has been added to 49 CFR 523.2.

The Alliance further stated that the actual measurement point for the track width is under the tire at the geometric center of the tire tread patch when in contact with the ground (tire to ground interface). NHTSA's draft procedure, which called for measuring the track width at the front center of the front tires and at the rear center of the rear tires at ground level, provided a means for measuring the approximate front and rear track widths. The differences between the two measurement techniques are unknown but would be impacted by camber and toe angles. NHTSA has evaluated other approaches that may be more accurate for measuring the vehicle track width. The Alliance suggested a possible technique of rolling the vehicle over an impressionable material and measuring the perpendicular distance between the corresponding axle tire patch tread centers. A second technique for determining the track width from the geometric center of the tire tread patch was provided in the comments from SEA, Ltd. SEA, Ltd. has been conducting track width and wheelbase measurements for NHTSA's NCAP rollover static stability factor (SSF) program for the past seven years. The NCAP procedure involves measuring the inside and outside, front and rear width dimensions between the tires on each axle and then averaging those measured dimensions to calculate an accurate front and rear axle track width. Averaging the measurements mitigate the potential for measurement errors caused by a vehicle's toe and camber angles. NHTSA has decided to follow the approach used by the NCAP and has revised the test procedure accordingly.

The Alliance also commented on the procedure used to verify that the front tires are pointed in the forward direction during testing. NHTSA agrees that placement of tires, including steering angle and suspension adjustments can have an impact on measured results. During testing the front tires will be placed in a ''straight ahead position'' parallel to the longitudinal axis of the vehicle, although the agency does not believe that it is necessary to specify particular tolerances. The test procedure has been modified to include an additional step of rolling the vehicle in a straight line forward and backwards once positioned on the test surface to ensure any steering and suspension loading and imbalances caused from steering the vehicle onto the test surface are removed. Furthermore, NHTSA is confident that by adopting the NCAP test technique the placement of the front tires is no longer a critical issue affecting the track width measurements.

B. Measured Value Tolerances

The Alliance questioned what tolerances the agency will allow between manufacturer-provided wheelbase, track width and footprint data, and the corresponding agency-measured and -calculated wheelbase, track width and footprint data. The Alliance argued that just being off by ⅛-inch for the wheelbase and ⅛-inch for the track width can result in a 0.2 square foot difference in footprint.

NHTSA understands that both test instrumentation accuracy and the inherent measurement variations between design dimensions and physical measurements must be considered when determining an acceptable tolerance between manufacturer-reported data and NHTSA-measured data. In the short term, the agency plans to collect physical data by measuring wheelbase and track width dimensions of production vehicles in the field. Also, the agency is in the process of asking each manufacturer for data relating to known tolerances between design and production measurements and analyzing the tolerances from the vehicles measured by the NCAP program. The agency plans to collect and analyze these data along with the field data to understand better the tolerances that can be expected. NHTSA plans to revise its test procedure accordingly to address the issue raised.

The Alliance also expressed concern with the accuracy of the hand level and tape measure proposed to be used in the draft test procedure, and argued that more accurate means exist and should be employed in order to eliminate any sources that would cause discrepancies between design data and field measurements. The agency agrees with the Alliance and has identified more accurate instrumentation that is now referenced in the test procedure and will be used for measuring wheelbase and track width dimensions. Further research is ongoing to identify instrumentation that can be easily adapted to this kind of application. The agency is open to any further suggestions that the Alliance or anyone else has for identifying other inexpensive and portable tools and instrumentation that can be used with a high level of accuracy and repeatability for making field measurements. When instrumentation changes are made the NHTSA test procedure will reflect them accordingly.

The Alliance also commented that wheelbase and track width measurement procedures round the measurements to a finer level than is repeatable. The Alliance appeared to be referencing the statements in the test procedure which allow for recording the track width and wheelbase measurements to the nearest ⅛-inch and then rounding to the nearest 1/10-inch. Measuring the wheelbase and track width in inches and rounding to the nearest 1/10-inch is required by the definition of footprint as specified in 49 CFR Part 523. The test procedure has been revised to remove references to recording the measurements to the nearest ⅛″ and now incorporates making the measurement to a more precise value of millimeters that correlates to the measuring instruments the agency has decided to use. However, the test procedure will retain requirements for rounding wheelbase and track width measurements to the nearest 1/10-inch after converting from metric units to English units.

C. Administrative and Editorial Issues

The Alliance suggested that the test procedure reference SAE J1100 (W101). ''L101 Wheelbase'' and ''W101–1, 2 Tread Width Front & Rear Tires'' are the applicable SAE items equivalent to the agency's definitions of wheelbase and track width in Part 523. The Alliance argued that the use of these dimensions is a standard practice for the industry and should be incorporated in NHTSA's test procedure.

In response to the Alliance's comment, the agency notes that the definitions for wheelbase in SAE J1100 and 49 CFR part 523 are the same. Both SAE J1100 and 49 CFR 523.2 define ''wheelbase'' as the longitudinal distance between front and rear wheel centerlines. However, differences exist in SAE J1100 and the Part 523

definitions for track width. SAE J1100 defines ''track width'' as the lateral distance between the centerlines of the tires at ground, whereas Part 523 specifies the lateral distance between the centerlines of the *base tires* at ground, *including the camber angle*. Base tire size and camber angle impact the track width dimension. Vehicle manufacturers must report wheelbase and track width dimensions per the part 523 definitions in MY 2008 and later pre-model year CAFE reports required by 49 CFR part 537. However, plan view and profile view figures depicting the vehicle wheelbase and track width measurements, similar to what is provided in SAE J1100, will be added to the NHTSA test procedure for clarification.

The Alliance also commented that manufacturers already attest in the pre-MY report that they follow 49 CFR part 537 for things like analytically-derived fuel economy, and argued that this official certification should extend to the wheelbase, track width and footprint data provided. The Alliance appears to suggest that the agency should accept the data submitted by the vehicle manufacturers without implementing any type of validation enforcement program. The primary mission of NHTSA's enforcement is to ensure and verify that manufacturers conform to appropriate Federal regulations and comply with required Federal motor vehicle safety standards. Verification of the key data used to calculate the manufacturer's fuel economy standards required by 49 CFR parts 531 and 533 is essential to meeting this mission.

The Alliance also questioned the use of the term ''Apparent Noncompliance'' in the test procedure and requested clarification regarding what would constitute a failure. In response, the OVSC test data collected will be used to validate wheelbase and track width data submitted by each manufacturer required by 49 CFR Part 537. Collected data may identify possible discrepancies between manufacturer-submitted data and production vehicle measurements. Footprint calculations derived from the wheelbase and track width measurements are critical for determining compliance with CAFE standards. Any noted discrepancies will have to be discussed with the respective vehicle manufacturer and resolved prior to the manufacturer submittal of final data to the Environmental Protection Agency. If the vehicle manufacturer's data are found to be in error, it could be classified as a non-conformance to the CAFE pre-model year reporting requirements of 49 CFR part 537. This would not qualify as a non-compliance to a safety standard. The test procedure text will be updated to reflect this distinction. However, a non-conformance to the CAFE footprint requirements could result in a re-determination of applicable fuel economy target standards for each respective vehicle model and compliance category.

Finally, the Alliance argued that the procedure should measure dimensions using metric units of measure and a conversion to English should follow at the end only to generate English equivalents for secondary reporting. The Alliance stated that ''The manufacturers that comprise the Alliance of Automobile Manufacturers, are citizens of the world and it makes our great country look arrogant when we continue to author Technical Procedures based on English units.'' It is the agency's common practice in development of test procedures to follow the unit of measure format used in the corresponding regulation or standard. The agency has worked for several years to issue revised and new regulations and standards employing the metric system of measures. However, to date, not all of the agency regulations and standards have been converted. 49 CFR Part 523 specifies wheelbase and track width dimensions to be measured in inches and rounded to the nearest tenth of an inch. In this case, we have decided to accept the Alliance's recommendation and have revised the test procedure to measure dimensions in metric units and then convert to English-equivalent units.

XIV. Sensitivity and Monte Carlo Analysis

NHTSA is establishing fuel economy standards, based on the Volpe model analysis, that maximize net societal benefits—that is, where the estimated benefits to society exceed the estimated cost of the rule by the highest amount. This analysis is based, among other things, on many underlying estimates, all of which entail uncertainty. Future fuel prices, the cost and effectiveness of available technologies, the damage cost of carbon dioxide emissions, the economic externalities of petroleum consumption, and other factors cannot be predicted with certainty.

Recognizing these uncertainties, NHTSA has used the Volpe model to conduct both sensitivity analyses, by changing one factor at a time, and a probabilistic uncertainty analysis (a Monte Carlo analysis that allows simultaneous variation in these factors) to examine how key measures (e.g., mpg levels of the standard, total costs and total benefits) vary in response to changes in these factors.

However, NHTSA has not conducted a probabilistic uncertainty analysis to evaluate how optimized stringency levels respond to such changes in these factors. The Volpe model currently does not have the capability to integrate Monte Carlo simulation with stringency optimization.

The agency has performed several sensitivity analyses to examine important assumptions. The analyses include:

(1) The value of reducing CO_2 emissions. We examined $2 per metric ton as a domestic value, $33 per metric ton as a global value and $80 per metric ton as a global value, with the main analysis using a value of $2 per metric ton as a domestic value. These values can be translated into dollars per gallon by multiplying by 0.0089 metric tons per gallon [510], as shown below:

$2 per ton CO_2 = $2*0.0089 = $0.0178 per gallon

$33.00 per ton CO_2 = $33*0.0089 = $0.2937 per gallon

$80.00 per ton CO_2 = $80*0.0089 = $0.712 per gallon

(2) The value of monopsony costs. For domestic values of CO_2, the main analysis uses $0.266 per gallon for monopsony costs. At the low end of the range for domestic values, the sensitivity analysis uses a value of $0.210. For global values of CO_2, a $0 value of monopsony cost is appropriate. As discussed previously in Section V, this is consistent with the fact that monopsony payments are a transfer rather than a real economic benefit when viewed from the same global perspective, and thus have a net value of zero.

(3) The price of gasoline. The main analysis uses the AEO 2008 High Price case forecast for the price of gasoline (see Table VIII–3). In this sensitivity analysis we also examine the AEO 2008 Reference Case forecast of the price of gasoline.

(4) Military security. For one of the scenarios, we assumed a $0.05 reduction in military security costs for each gallon of fuel saved. The derivation of this estimate is discussed in detail in Section V.

Sensitivity analyses were performed on only the optimized (7%) alternative. In the PRIA, we examined the sensitivity

[510] The molecular weight of Carbon (C) is 12, and the molecular weight of Oxygen (O) is 16, thus the molecular weight of CO_2 is 44. One ton of C = 44/12 tons CO_2 = 3.67 tons CO_2. 1 gallon of gas weighs 2,819 grams, of that 2,433 grams are carbon. $1.00 CO_2 = $3.67 C and $3.67/ton * ton/1000kg * kg/1000g * 2433g/gallon = (3.67 * 2433)/1000 * 1000 = $0.0089/gallon

of the price of gasoline (low, reference, and high case), values of reducing CO_2 emissions ($0 to $14 per ton), combined externalities ($0.120 and $0.504 per gallon), and the rebound effect (10 to 20 percent). Only the price of gasoline had a significant impact on the results.

The results of the sensitivity analyses indicate that the much wider values of CO_2 examined have almost no impact on the achieved mpg levels for passenger cars and a small impact on the levels for light trucks. This occurs because the effect of the higher global values for reducing CO_2 emissions is partly offset by the accompanying reduction of the benefit from savings in monopsony costs from its domestic value of $0.266 per gallon to its global value of $0.000. However, the extent to which eliminating the monopsony benefit offsets the higher values of reducing CO_2 emissions is limited by the fact that these values continue to grow at the assumed 2.4 percent rate over the period spanned by the analysis, while the monopsony benefit remains fixed.

The lower fuel prices forecast in the AEO 2008 Reference Case have no discernible difference in the projected achievable levels for passenger cars but result in a lower projected achievable level (by 0.3 mpg) for light trucks in MY 2011. Assuming a savings in military security costs of $0.05 per gallon has no significant impact on the level of the standards.

OMB Circular A–4 requires formal probabilistic uncertainty analysis of complex rules where there are large, multiple uncertainties whose analysis raises technical challenges or where effects cascade and where the impacts of the rule exceed $1 billion. The agency identified and quantified the major uncertainties in the preliminary regulatory impact analysis and estimated the probability distribution of how those uncertainties affect the benefits, costs, and net benefits of the alternatives considered in a Monte Carlo analysis. The results of that analysis, summarized for the combined passenger car and light truck fleet across both the 7 percent (typically the lower range) and 3 percent (typically upper range) discount rates[511] are as follows:

Fuel Savings: The analysis indicates that MY 2011 vehicles (both passenger cars and light trucks) will experience between 732 million and 1,114 million gallons of fuel savings over their useful lifespan.

Total Costs: The analysis indicates that vehicle manufacturers will invest between $760 million and $2,235 million to improve the fuel economy of MY 2011 passenger cars and light trucks.

Societal Benefits: The analysis indicates that changes to MY 2011 passenger cars and light trucks to meet the proposed CAFE standards will produce overall societal benefits valued between $1,003 million and $2,229 million.

Net Benefits: The uncertainty analysis indicates that the net impact of the higher CAFE requirements for MY 2011 passenger cars and light trucks will range from a net loss of $913 million to a net benefit of $1,224 million. There is at least an 80 percent certainty (the lower of the passenger car and light truck certainty levels) that changes made to MY 2011 vehicles to achieve the higher CAFE standards will produce a net benefit.

XV. NHTSA's Record of Decision

On January 7, 2009, the Department of Transportation announced that the Bush Administration decided not to finalize its rulemaking on CAFE, stating that ''recent financial difficulties of the automobile industry will require the next administration to conduct a thorough review of matters affecting the industry, including how to effectively implement the Energy Independence and Security Act of 2007 (EISA).'' *Statement from the U.S. Department of Transportation*, available at *http://www.dot.gov/affairs/dot0109.htm* (last accessed Feb. 9, 2009).

On January 26, 2009, President Obama issued a memorandum to the Secretary of Transportation and the Administrator of NHTSA, directing NHTSA ''to publish in the **Federal Register** by March 30, 2009, a final rule prescribing increased fuel economy for model year 2011.'' See 74 FR 4907. President Obama also requested that ''before promulgating a final rule concerning model years after model year 2011, [the agency] consider the appropriate legal factors under EISA, the comments filed in response to the [NPRM], the relevant technological and scientific considerations, and to the extent feasible, the forthcoming report by the National Academy of Sciences mandated under section 107 of EISA. * * *'' Id. President Obama also requested that NHTSA ''consider whether any provisions regarding preemption are consistent with the EISA, the Supreme Court's decision in *Massachusetts* v. *EPA* and other relevant provisions of law and the policies underlying them.'' See id.

In accordance with President Obama's directive, this Final Rule promulgates the fuel economy standards for MY 2011 only. The agency is deferring further action at this time in order to evaluate the appropriate course of action concerning fuel economy standards for model years after MY 2011. This Final Rule constitutes the Record of Decision (ROD) for NHTSA's MY 2011 CAFE standards, pursuant to the National Environmental Policy Act (NEPA) and the Council on Environmental Quality's (CEQ) implementing regulations.[512] See 40 CFR § 1505.2.

As required by CEQ regulations, this Final Rule and ROD sets forth the following: (1) The agency's decision; (2) alternatives considered by NHTSA in reaching its decision, including the environmentally preferable alternative; (3) the factors balanced by NHTSA in making its decision, including considerations of national policy; (4) how these factors and considerations entered into its decision; and (5) the agency's preferences among alternatives based on relevant factors, including economic and technical considerations and agency statutory missions. This Final Rule also addresses mitigation as required by CEQ regulations and applicable laws.

The Agency's Decision

After carefully reviewing and analyzing all of the information in the public record including technical support documents, the FEIS, public and agency comments submitted on the Draft Environmental Impact Statement (DEIS), public and agency comments submitted on the FEIS, and public and agency comments submitted on the NPRM, NHTSA's decision is to proceed with the Optimized Alternative, Mid-2 Scenario for MY 2011 (NHTSA's Decision).[513] Specifically, the agency's decision is to implement the following CAFE standards for MY 2011: 30.2 mpg for passenger cars and 24.1 mpg for light trucks. In the DEIS and the FEIS, the agency identified the Optimized Alternative (maximizing societal net benefits) as NHTSA's Preferred Alternative. For a discussion of the agency's selection of the Optimized

[511] In a few cases the upper range results were obtained from the 7% rate and the lower range results were obtained from the 3% rate. While this may seem counterintuitive, it results from the random selection process that is inherent in the Monte Carlo technique.

[512] NEPA is codified at 42 U.S.C. 4321–47. CEQ NEPA implementing regulations are codified at 40 Code of Federal Regulations (CFR) Parts 1500–08.

[513] NHTSA's Decision to proceed with the Optimized Alternative using economic assumptions that are reflected in the Mid-2 Scenario, which were prompted in part by public comments, is within the spectrum of alternatives set forth in the DEIS and the FEIS, and the environmental impacts of this decision are within the spectrum of impacts analyzed in the DEIS and the FEIS.

Alternative, see Section VII(E)(2)(b) of this Final Rule.

Alternatives Considered by NHTSA in Reaching its Decision, Including the Environmentally Preferable Alternative

When preparing an EIS, NEPA requires an agency to compare the potential environmental impacts of its proposed action and a reasonable range of alternatives. NHTSA identified alternative stringencies that represent the full spectrum of potential environmental impacts and safety considerations. Specifically, the DEIS and FEIS analyzed the impacts of the following six ''action'' alternatives: 25 Percent Below Optimized, Optimized, 25 Percent Above Optimized, 50 Percent Above Optimized, Total Costs Equal Total Benefits, and Technology Exhaustion. The DEIS and FEIS also analyzed the impacts that would be expected if NHTSA imposed no new requirements (the No Action Alternative). In accordance with CEQ regulations, the agency selected a Preferred Alternative in the DEIS and FEIS (the Optimized Alternative).

In response to public comments, the FEIS expanded the analysis to determine how the proposed alternatives are affected by variations in the economic assumptions input into the computer model NHTSA uses to calculate the costs and benefits of various potential CAFE standards (the Volpe model). Specifically, the agency calculated and analyzed mpg standards and environmental impacts associated with each alternative under four model input scenarios: Reference Case, High Scenario, Mid-1 Scenario, and Mid-2 Scenario. See FEIS § 2.2.2. With this expanded analysis, the FEIS presented the agency with a broad, comprehensive spectrum of the alternatives, varied economic inputs, and potential environmental impacts.

The agency compared the potential environmental impacts of alternative mpg levels, analyzing direct, indirect, and cumulative impacts. For a discussion of the environmental impacts associated with each of the alternatives, including the Optimized Alternative using the Mid-2 Scenario, see Chapter 3, Chapter 4 and Appendix B to the FEIS.

The agency considered and analyzed each of the individual economic assumptions to determine which assumptions most accurately represent future economic conditions. For a discussion of the analysis supporting the selection of the economic assumptions relied on by the agency in this Final Rule, see Section V. The economic assumptions used by the agency in this Final Rule are reflected in the Mid-2 Scenario set of assumptions analyzed in the FEIS. See FEIS § 2.2.

The Technology Exhaustion Alternative is the overall Environmentally Preferable Alternative. Specifically, the Technology Exhaustion Alternative is the Environmentally Preferable Alternative in terms of the following reductions: Fuel use, CO_2 emissions, criteria air pollutant emissions, and their resulting health impacts, and emissions of almost all mobile source air toxics (MSATs).

Because it would impose the highest car and light truck CAFE standards for MY 2011 among the alternatives considered, the Technology Exhaustion Alternative would result in the largest reductions in fuel use and GHG emissions. As explained in Chapter 5 of the FEIS, the reductions in fuel consumption resulting from higher fuel economy cause emissions during fuel refining and distribution to decline. For most pollutants, this decline is more than sufficient to offset the increase in tailpipe emissions that results from increased driving due to the rebound effect of higher fuel economy, leading to a net reduction in total emissions from fuel production, distribution, and use. Because of this effect, the Technology Exhaustion Alternative would also lead to the largest reductions in emissions of criteria air pollutants and their resulting health impacts, as well as the largest reductions in emissions of almost all mobile source air toxics (MSATs).

NHTSA's environmental analysis indicates that emissions of the MSATs acrolein would increase under some alternatives, with the largest increases in emissions of these MSATs projected to occur under the Technology Exhaustion Alternative. The analysis of acrolein emissions presented in the FEIS, however, is incomplete, because emissions factors for acrolein during fuel production and distribution are unavailable, so that the agency is thus unable to estimate the net change in total acrolein emissions likely to result under each alternative. If the agency had been able to estimate reductions in ''upstream'' emissions of acrolein as part of its analysis, total acrolein emissions under each alternative would increase by smaller amounts than those amounts reported in the EIS, or even decline. However, given that the agency is unable to estimate the net change in total acrolein emissions, the agency is unable to conclude which alternative is environmentally preferable with respect to acrolein emissions.

Overall, however, the Technology Exhaustion alternative is the agency's Environmentally Preferable Alternative. For additional discussion regarding the alternatives considered by the agency in reaching its decision, including the Environmentally Preferable Alternative, see Section VII of this Final Rule. For a discussion of the environmental impacts associated with each alternative, see Chapter 3, Chapter 4 and Appendix B of the FEIS.

Factors Balanced By NHTSA In Making Its Decision, Including Considerations Of National Policy

Section VII of this Final Rule discusses the factors balanced by NHTSA in making its decision. Notably, 49 U.S.C. 32902(b)(2)(A) and (C) set forth the following three requirements specific to MYs 2011–2020: (1) The standards must be sufficiently high to result in a combined (passenger car and light truck) fleet fuel economy of at least 35 mpg by MY 2020; (2) the standards must increase annually; and (3) the standards must increase ratably.

EPCA also requires the agency to determine what level of CAFE stringency would be ''maximum feasible'' for each model year by considering the four competing factors of technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy, which includes environmental considerations, along with additional relevant factors such as safety.

''The need of the United States to conserve energy'' is a broad concept encompassing ''the consumer cost, national balance of payments, environmental, and foreign policy implications of our need for large quantities of petroleum, especially imported petroleum.''[514] NHTSA has historically considered safety in setting the CAFE standards. For an explanation of the agency's historical consideration of safety in setting the CAFE standards, see Section VIII.

Finally, NEPA directs that environmental considerations are a factor integrated into the agency's decisionmaking process. To accomplish that purpose, NEPA requires an agency to compare the potential environmental impacts of its proposed action to those of a reasonable range of alternatives.

For further discussion of the factors balanced by NHTSA in making its decision, including considerations of national policy, see Section VII of this Final Rule.

[514] 42 FR 63184, 63188 (Dec. 15, 1977).

How the Factors and Considerations Balanced by NHTSA Entered Into its Decision

The agency recognizes that the CAFE program is designed to raise fuel economy standards for both passenger cars and light trucks. The agency also recognizes that the enactment of EISA represents a major step forward in, among other things, reducing oil consumption and reducing CO_2 emissions in order to combat global climate change. While the agency's balancing of the need of the nation factor ensures consideration of climate change issues, the NEPA analysis also promotes consideration of the environmental factor by NHTSA when making its decision. The agency further recognizes that under EPCA, it is required to set fuel economy standards for each model year and for each fleet separately at the ''maximum feasible'' level for that model year and fleet by balancing the factors identified above. 49 U.S.C. 32902(a). In doing so, while considering the need of the nation to conserve energy alone might counsel for setting the standards at the levels suggested by proponents of higher standards, NHTSA does not believe that such an action would be consistent with, among other things, economic practicability, which it is required to consider under EPCA.

As has been widely reported in public throughout this rulemaking, and as shown in public comments, the national and global economies are in crisis. Even before the recent economic developments, the automobile manufacturers were already facing substantial difficulties. Further, at this time, NHTSA cannot know the full scope, depth or duration of the crisis unfolding in the national and world economies. These problems have made NHTSA's economic practicability analysis particularly important and challenging in this rulemaking.

NHTSA's Decision attempts to balance the factors by setting the CAFE standards so that they are both technologically and economically feasible, especially in light of the current economic climate, while providing the maximum national public social benefit.

For further discussion of how the factors and considerations balanced by the agency entered into NHTSA's Decision, see Sections VII and IX.F of this Final Rule.

The Agency's Preferences Among Alternatives Based on Relevant Factors, Including Economic and Technical Considerations and Agency Statutory Missions

With regard to MY 2011, the No Action Alternative and Technology Exhaustion Alternative, while useful for illustrative purposes, is facially inconsistent with the requirements of EPCA, and thus was not selected as the agency's decision. The No Action Alternative violates EPCA because it (1) does not fulfill the requirement that the Secretary establish CAFE standards for each model year separately; (2) does not fulfill the requirement that MY 2011–2020 standards are to be set high enough to ensure that the industry-wide fleet achieves a combined passenger car/light truck average fuel economy of at least 35 mpg; and (3) does not fulfill the requirement that the standards for MYs 2011–2020 increase annually and ratably. Although the Technology Exhaustion Alternative is the environmentally preferable alternative for NEPA purposes, it does not reflect any consideration of economic practicability, and thus is facially inconsistent with the requirements of EPCA.

Considering the remaining alternatives available for MY 2011, the agency chose the Optimized Alternative because maximizing benefits helps ensure that manufacturers are not forced to apply technologies that will not pay for themselves. NEPA's purpose is to integrate environmental considerations into the decision-making process. For MY 2011, setting standards at the point at which social net benefits are maximized in NHTSA's analysis results in standards that still increase higher and faster than any standards since the earliest years of the program, do not require the addition of technologies that the agency does not believe will pay for themselves, and result in measurable environmental benefits. The standards for MY 2011 thus fulfill EPCA's objectives regarding the need of the nation to conserve energy, while not imposing substantial economic hardship on the industry, while taking into account the feasibility of applying technologies appropriately and consistent with manufacturers' natural cycles, and the other motor vehicle standards of the government with which manufacturers have to comply.

In short, in balancing the EPCA factors against one another and carefully considering the environmental impacts associated with the various alternatives evaluated, NHTSA continues to believe that the proper overall balance of all relevant consideration is the point at which social net benefits are maximized, and results in CAFE standards that are the maximum feasible for MY 2011.

For further discussion of the agency's preferences among alternatives based on relevant factors, including economic and technical considerations, see Sections VII.E and IX.F of this Final Rule.

Mitigation

NHTSA's Decision results in a decrease in CO_2 emissions and associated climate change effects, a reduction in total criteria air pollutant emissions and toxic air pollutant emissions, and a decrease in energy consumption as compared to the No Action Alternative. In addition, the Optimized Alternative will reduce adverse health outcomes and health costs related to motor vehicle air pollution. The Optimized Alternative will generally have beneficial environmental impacts and health effects.

Under NEPA, an EIS is required to contain '' 'a reasonably complete discussion of possible mitigation measures.' '' *Northern Alaska Environmental Center* v. *Kempthorne*, 457 F.3d 969, 979 (9th Cir. 2006) (citing *Robertson* v. *Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989)). Essentially, ''[t]he mitigation must '' 'be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.' '' Id. (citing *City of Carmel-By-The-Sea* v. *U.S. Dept. of Transp.*, 123 F.3d 1142, 1154 (9th Cir. 1997)). NEPA, however, ''does not require an agency to formulate and adopt a complete mitigation plan.'' [515] An agency is not required to mitigate adverse consequences of an environmental action; it is only required to analyze them.[516] Indeed, '' 'it would be inconsistent with NEPA's reliance on procedural mechanisms—as opposed to substantive, result-based standards—to demand the presence of a fully developed plan that will mitigate environmental harm before an agency

[515] *Id.* (citing *Robertson,* 490 U.S. at 352 (noting that NEPA does not contain a substantive requirement that a complete mitigation plan be actually formulated and adopted)). *See also Valley Community Preservation Com'n* v. *Mineta*, 231 F. Supp. 2d 23, 41 (D.D.C. 2002) (noting that NEPA does not require that a complete mitigation plan be formulated and incorporated into an EIS).

[516] *See Robertson,* 490 U.S. at 333 (holding, inter alia, that ''NEPA does not impose a substantive duty on agencies to mitigate adverse environmental effects or to include in each EIS a fully developed mitigation plan''). *See also Valley Community Preservation Com'n,* 231 F. Supp. 2d 23.

can act.' '' *Id.* (citing *Robertson,* 490 U.S. at 333).

Chapter 5 of the FEIS explains that Federal transportation funds administered by the Federal Highway Administration (FHWA) might be available to assist in funding projects to reduce any increases in MSATs.

NHTSA acknowledges that the absolute level of GHG emissions will continue to rise over current levels. This was explained in the FEIS. See Figure 3.4–4 and Table 3.4–1 of the FEIS. The increase in emissions from factors such as an increase in vehicle miles traveled (VMT) is beyond NHTSA's jurisdiction to control under EPCA, as amended by EISA. Essentially, NHTSA does not have the statutory authority to reduce the total amount of GHGs emitted by all vehicles driven, because NHTSA, under its statutory authority conferred by EPCA, cannot control how many miles citizens elect to drive. See FEIS §§ 10.1–10.2. In view of this statutory directive, it is not reasonable for NHTSA to explore mitigation strategies related to the quantity of vehicle miles traveled by the public.

Based on the agency's current understanding of global climate change, certain effects are likely to occur due to the increasing global GHG emissions entering the atmosphere. The Optimized Alternative will not prevent these effects. Instead, the Optimized Alternative may diminish the effects of climate change by contributing to global GHG reductions from currently anticipated trends. As such, the Optimized Alternative will generally have beneficial environmental impacts and health effects.

XVI. Regulatory Notices and Analyses

The following discussion of relevant regulatory notices and analyses considers both the final rule and the FEIS together.

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, Oct. 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

This rulemaking is economically significant. Accordingly, OMB reviewed it under Executive Order 12866. The rule is significant within the meaning of the Department of Transportation's Regulatory Policies and Procedures.

The benefits and costs of this final rule are described above. Because the rule is economically significant under both the Department of Transportation's procedures and OMB guidelines, the agency has prepared a Final Regulatory Impact Analysis (FRIA) and placed it in the docket and on the agency's Web site. Further, pursuant to OMB Circular A–4, we have prepared a formal probabilistic uncertainty analysis for this proposal. The circular requires such an analysis for complex rules where there are large, multiple uncertainties whose analysis raises technical challenges or where effects cascade and where the impacts of the rule exceed $1 billion. This rule meets these criteria on all counts.

B. National Environmental Policy Act

Under NEPA, a Federal agency must prepare an Environmental Impact Statement (EIS) on proposed actions that could significantly impact the quality of the human environment. The requirement is designed to serve three major functions: (1) To provide the decisionmaker(s) with a detailed description of the potential environmental impacts of a proposed action prior to its adoption, (2) to rigorously explore and evaluate all reasonable alternatives, and (3) to inform the public of, and allow comment on, such efforts.

NHTSA prepared a draft EIS (DEIS), solicited and analyzed public comments thereon, including both a public hearing and written comments, and prepared a final EIS (FEIS), which responds to public comments and incorporates the information relevant to the effects of each of the alternatives considered in the EIS. Specifically, in March 2008, NHTSA issued a Notice of Intent (NOI) to prepare an EIS for the MY 2011–2015 CAFE standards. 73 FR 16615; see 40 CFR 1501.7. In April 2008, NHTSA issued a supplemental NOI. 73 FR 22913. On June 26, 2008, NHTSA submitted the DEIS to the Environmental Protection Agency (EPA). On July 2, 2008, NHTSA published a **Federal Register** Notice of Availability of its DEIS. See 73 FR 37922. NHTSA's Notice of Availability also made public the date and location of a public hearing, and invited the public to participate at the hearing on August 4, 2008, in Washington, DC. See id. On July 3, 2008, the EPA issued its Notice of Availability of the DEIS, triggering the 45-day public comment period. See 73 FR 38204. See also 40 CFR 1506.10. In accordance with CEQ regulations, the public was invited to submit written comments on the DEIS until August 18, 2008. See 40 CFR 1503, et seq.

NHTSA mailed approximately 200 copies of the DEIS to interested parties, including federal, state, and local officials and agencies; elected officials, environmental and public interest groups; Native American tribes; and other interested individuals, as listed in Chapter 9 of the DEIS. NHTSA held a public hearing on the DEIS at the National Transportation Safety Board Conference Center in Washington, DC, on August 4, 2008.

NHTSA received 66 written comments from interested stakeholders, including the EPA, the Centers for Disease Control (CDC), state and local agencies, elected officials, automobile trade associations, organizations, and individuals. In addition, NHTSA received one petition with 10,540 signatures. During the public comment hearing in Washington, DC, 44 individuals provided oral statements. The transcript from the public hearing and written comments submitted to NHTSA are part of the administrative record, and are available on the Federal Docket, which can be found on the Web at *http://www.regulations.gov*, Reference Docket No. NHTSA–2008–0060. Written comments and the public hearing transcript can also be viewed in their entirety in Appendix D of the FEIS.

NHTSA reviewed and analyzed all written and oral comments received during the public comment period in the preparation of the FEIS. NHTSA revised the FEIS in response to comments on the DEIS.[517] For a more detailed discussion of NHTSA's scoping and comment periods, please see Section 1.3 and Chapter 10 of the FEIS.

On October 10, 2008, NHTSA submitted the FEIS to the EPA. On October 17, 2008, the EPA published a

[517] The agency also changed the FEIS as a result of updated information that became available after issuance of the DEIS.

Notice of Availability of the FEIS in the **Federal Register**. See 73 FR 61859.

This Final Rule constitutes the Record of Decision (ROD) for NHTSA's MY 2011 CAFE standards, pursuant to the National Environmental Policy Act (NEPA) and Council on Environmental Quality's (CEQ) implementing regulations.[518] See 40 CFR § 1505.2. For additional information regarding NHTSA's compliance with 40 CFR § 1505.2, see Section XV of this Final Rule.

The MY 2011 CAFE standards adopted in this Final Rule have been informed by analyses contained in the *Final Environmental Impact Statement, Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011—2015*, Docket No. NHTSA–2008–0060–0605 (FEIS).[519] For purposes of this rulemaking, the agency referred to an extensive compilation of technical and policy documents available in the dockets for the NPRM and Final Rule and for the EIS. The EIS docket and the rulemaking docket are available on the Federal Docket, which can be found on the Web at *http://www.regulations.gov*, Reference Docket Nos.: NHTSA–2008–0060 (EIS) and NHTSA–2008–0089 (Rulemaking).

The NPRM proposed fuel economy standards for MYs 2011–2015. Consistent with that proposal, the agency designed the FEIS to evaluate the aggregate environmental impacts associated with each alternative for the entire five-year period (i.e., the environmental impacts that would likely result if MY 2011—2015 passenger cars and light trucks met the higher, proposed CAFE standards for those years). The aggregate environmental impacts provided in the FEIS remain relevant, since the MY 2011 impacts associated with the CAFE standards fall within the spectrum of those aggregated impacts. See Chapter 3, Chapter 4 and Appendix B of the FEIS. Sections VII.D and IX.F of this Final Rule present the following consequences associated with each alternative, including NHTSA's Decision, for MY 2011 passenger cars and light trucks: fuel consumption and associated emissions of greenhouse gases, as well as on emissions of criteria and hazardous air pollutants.

Given the unusual circumstances surrounding this rulemaking (i.e., the Bush Administration's decision to postpone issuing CAFE standards and the Obama Administration's decision to sever the rulemaking so that it addresses only MY 2011), which are a matter of public record, one issue presented is whether the existing EIS remained sufficient, without change, to adequately inform the agency. Under CEQ Regulations, an agency shall prepare a supplemental EIS if ''(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.'' 40 CFR § 1502.9(c).

Reviewing courts apply the ''arbitrary and capricious'' standard of the Administrative Procedure Act when evaluating whether an agency decision not to prepare a supplemental EIS was proper under NEPA. *See Marsh* v. *Oregon Natural Resources Council, et al.*, 490 U.S. 360, 375–76 (1989) (noting that an agency should apply a ''rule of reason'' when deciding whether to prepare a supplemental EIS). A supplemental EIS is required if ''there remains a major federal action to occur and if the new information is sufficient to show that the remaining action will affec[t] the quality of the human environment in a significant manner or to a significant extent not already considered * * *.'' Marsh, 490 U.S. at 374 (citations omitted) (quotations omitted). *See also Operation of the Missouri River System Litigation* v. *U.S. Army Corps of Engineers, et al.*, 516 F.3d 688 (8th Cir. 2008) (holding that a supplemental EIS is not required if the relevant environmental impacts were already considered by the agency).

Courts have upheld agencies' decisions not to supplement where the relevant environmental impacts of the proposed change have been fully considered. Thus, courts have interpreted the ''substantial change'' provision of the CEQ regulations to require agencies to issue a supplement if the changes will impact the environment ''in a significant manner * * * not already considered by the federal agency.'' *Ark. Wildlife Fed'n* v. *U.S. Army Corps of Engineers*, 431 F.3d 1096, 1102 (8th Cir. 2005) (quoting *Airport Impact Relief, Inc.* v. *Wykle*, 192 F.3d 197, 204 (1st Cir. 1999)). That is, a change is considered ''substantial'' under the regulations only where ''it presents a 'seriously different picture of the environmental impact' '' than that previously considered. Id. (*quoting South Trenton Residents Against 29* v. *Fed. Highway Admin.*, 176 F.3d 658, 663 (3d Cir. 1999)).

In addition to asking whether the agency has fully considered the environmental impact of the proposed change, courts have also asked whether the change is '' 'qualitatively within the spectrum of alternatives that were discussed' in a prior FEIS.'' *In re Operation of the Missouri River System Litigation*, 516 F.3d at 693 (quoting *Dubois* v. *U.S. Dep't of Agric.*, 102 F.3d 1273, 1292 (1st Cir. 1996)). This language first appeared in a 1981 CEQ guidance document, commonly referred to as the CEQ ''Forty Questions.'' See Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 FR 18026, 18035 (1981).

Under applicable law, NHTSA has decided that a supplemental NEPA analysis for MY 2011 fuel economy standards is not required. Here, NHTSA analyzed alternatives in the FEIS for five model years so that the agency could capture a full spectrum of potential environmental impacts, ranging from vehicles continuing to maintain their MY 2010 fuel economy to standards based on the maximum technology expected to be available over a five-year period. NHTSA's FEIS presented the agency and the public with a comprehensive analysis of this spectrum of environmental impacts. In regard to NHTSA's Decision, the environmental impacts fall within the spectrum of environmental impacts analyzed under the Optimized Mid-2 Scenario[520] in the FEIS, which the agency developed after consideration of public comments.

In light of the President's January 26, 2009 Memorandum directing NHTSA to issue a final rule for MY 2011 only, and consistent with NEPA's rule of reason and applicable case law, the relevant environmental impacts for MY 2011 have been fully considered within the broader FEIS prepared for MYs 2011–2015, and the President's directive to issue a final rule for a single model year does not present a seriously different picture of the environmental impacts that NHTSA analyzed, both incrementally and cumulatively, in its broader FEIS. In fact, the impacts analyzed in the FEIS are more comprehensive than any NEPA analysis that NHTSA could prepare in the short time between the President's January 26, 2009 Memorandum and today's final rule.[521] In short, the FEIS served to

[518] NEPA is codified at 42 U.S.C. 4321–47. CEQ NEPA implementing regulations are codified at 40 Code of Federal Regulations (CFR) Parts 1500–08.

[519] The Notice of Availability of the FEIS was published in the **Federal Register** by the EPA on October 17, 2008.

[520] The Mid-2 Scenario is summarized in Section V of this Final Rule. See also FEIS Chapter 3, Chapter 4 and Appendix B.

[521] If, on account of the unforeseen current events, NHTSA were to attempt to isolate the environmental impacts of its Decision on its own,

Continued

inform the agency and support today's decision, and no rule of reason could require the preparation of a supplemental environmental analysis for a single model year of fuel economy standards already contained within a comprehensive analysis for five model years. For a discussion of NHTSA's Decision, see Section VII of this Final Rule.

Based on the foregoing, the agency concludes that the environmental analysis and public involvement process complies with both the letter and spirit of NEPA implementing regulations issued by CEQ, DOT Order 5610.1C, and NHTSA regulations.[522]

1. Clean Air Act (CAA)

The CAA (42 U.S.C. 7401) is the primary Federal legislation that addresses air quality. Under the authority of the CAA and subsequent amendments, the EPA has established National Ambient Air Quality Standards (NAAQS) for six criteria pollutants, which are relatively commonplace pollutants that can accumulate in the atmosphere as a result of normal levels of human activity. The EPA is required to review the NAAQS every five years and to change the levels of the standards if warranted by new scientific information.

The air quality of a geographic region is usually assessed by comparing the levels of criteria air pollutants found in the atmosphere to the levels established by the NAAQS. Concentrations of criteria pollutants within the air mass of a region are measured in parts of a pollutant per million parts of air (ppm) or in micrograms of a pollutant per cubic meter (μg/m3) of air present in repeated air samples taken at designated monitoring locations. These ambient concentrations of each criteria pollutant are compared to the permissible levels specified by the NAAQS in order to assess whether the region's air quality is potentially unhealthful.

When the measured concentrations of a criteria pollutant within a geographic region are below those permitted by the NAAQS, the region is designated by the EPA as an attainment area for that pollutant, while regions where concentrations of criteria pollutants exceed Federal standards are called nonattainment areas (NAAs). Former NAAs that have attained the NAAQS are designated as maintenance areas. Each NAA is required to develop and implement a State Implementation Plan (SIP), which documents how the region will reach attainment levels within time periods specified in the CAA. In maintenance areas, the SIP documents how the State intends to maintain compliance with the NAAQS. When EPA changes a NAAQS, States must revise their SIPs to address how they will attain the new standard.

Section 176(c) of the CAA prohibits Federal agencies from taking actions in nonattainment or maintenance areas that do not ''conform'' to the State Implementation Plan (SIP). The purpose of this conformity requirement is to ensure that Federal activities do not interfere with meeting the emissions targets in the SIPs, do not cause or contribute to new violations of the NAAQS, and do not impede the ability to attain or maintain the NAAQS. The EPA has issued two sets of regulations to implement CAA Section 176(c):

- The Transportation Conformity Rules (40 CFR 51 Subpart T), which apply to transportation plans, programs, and projects funded under title 23 United States Code (U.S.C.) or the Federal Transit Act. Highway and transit infrastructure projects funded by FHWA or the Federal Transit Administration (FTA) usually are subject to transportation conformity.
- The General Conformity Rules (40 CFR part 51 Subpart W) apply to all other Federal actions not covered under transportation conformity. The General Conformity Rules established emissions thresholds, or de minimis levels, for use in evaluating the conformity of a project. If the net emission increases due to the project are less than these thresholds, then the project is presumed to conform and no further conformity evaluation is required. If the emission increases exceed any of these thresholds, then a conformity determination is required. The conformity determination may entail air quality modeling studies, consultation with EPA and State air quality agencies, and commitments to revise the SIP or to implement measures to mitigate air quality impacts.

The CAFE standards and associated program activities are not funded under title 23 U.S.C. or the Federal Transit Act. Further, CAFE standards are established by NHTSA and are not an action undertaken by FHWA or FTA. Accordingly, the CAFE standards are not subject to transportation conformity.

The General Conformity Rules contain several exemptions applicable to ''Federal actions,'' which the conformity regulations define as: ''any activity engaged in by a department, agency, or instrumentality of the Federal Government, or any activity that a department, agency or instrumentality of the Federal Government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities [subject to transportation conformity].'' 40 CFR 51.852. ''Rulemaking and policy development and issuance'' are exempted at 40 CFR 51.853(c)(2)(iii). Since NHTSA's CAFE standards involve a rulemaking process, its action is exempt from general conformity. Also, emissions for which a Federal agency does not have a ''continuing program responsibility'' are not considered ''indirect emissions'' subject to general conformity under 40 CFR 51.852. ''Emissions that a Federal agency has a continuing program responsibility for means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the Federal agency.'' 40 CFR 51.852. Emissions that occur as a result of the final CAFE standards are not caused by NHTSA carrying out its statutory authorities and clearly occur due to subsequent activities, including vehicle manufacturers' production of passenger car and light truck fleets and consumer purchases and driving behavior. Thus, changes in any emissions that result from NHTSA's final CAFE standards are not those for which the agency has a ''continuing program responsibility'' and NHTSA is confident that a general conformity determination is not required. NHTSA is evaluating the potential impacts of air emissions under NEPA.

2. National Historic Preservation Act (NHPA)

The NHPA (16 U.S.C. 470) sets forth government policy and procedures regarding ''historic properties''—that is, districts, sites, buildings, structures, and objects included in or eligible for the National Register of Historic Places (NRHP). See also 36 CFR part 800. Section 106 of the NHPA requires federal agencies to ''take into account'' the effects of their actions on historic properties. The agency concludes that the NHPA is not applicable to NHTSA's Decision, because it does not directly involve historic properties. The agency has, however, conducted a qualitative

the agency would fail to issue MY 2011 standards by March 30, 2009. As a result, the agency would fail to fulfill its EPCA statutory mandate of issuing fuel economy standards ratably beginning with MY 2011 and President Obama's directive of issuing MY 2011 standards by March 30, 2009. NHTSA's failure to issue standards would also enable automobile manufacturers to establish any standard they deemed appropriate, or no standard whatsoever.

[522] NEPA is codified at 42 U.S.C. 4321–4347. CEQ's NEPA implementing regulations are codified at 40 CFR Pts. 1500–1508, and NHTSA's NEPA implementing regulations are codified at 49 CFR part 520.

review of the related direct, indirect, and cumulative impacts, positive or negative, of the alternatives on potentially affected resources, including historic and cultural resources. See Section 3.5.7 of the FEIS.

3. Executive Order 12898 (Environmental Justice)

Under Executive Order 12898, Federal agencies are required to identify and address any disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. NHTSA complied with this order by identifying and addressing the potential effects of the alternatives on minority and low-income populations in Section 3.5.9. In Section 4.6 of the FEIS, the agency set forth a qualitative analysis of the cumulative effects of the alternatives on these populations. Given the foregoing, the agency concludes that it complied with Executive Order 12898.

4. Fish and Wildlife Conservation Act (FWCA)

The FWCA (16 U.S.C. 2900) provides financial and technical assistance to States for the development, revision, and implementation of conservation plans and programs for nongame fish and wildlife. In addition, the Act encourages all Federal agencies and departments to utilize their authority to conserve and to promote conservation of nongame fish and wildlife and their habitats. The agency concludes that the FWCA is not applicable to NHTSA's Decision, because it does not directly involve fish and wildlife.

5. Coastal Zone Management Act (CZMA)

The Coastal Zone Management Act (16 U.S.C. 1450) provides for the preservation, protection, development, and (where possible) restoration and enhancement of the nation's coastal zone resources. Under the statute, States are provided with funds and technical assistance in developing coastal zone management programs. Each participating State must submit its program to the Secretary of Commerce for approval. Once the program has been approved, any activity of a Federal agency, either within or outside of the coastal zone, that affects any land or water use or natural resource of the coastal zone must be carried out in a manner that is consistent, to the maximum extent practicable, with the enforceable policies of the State's program.

The agency concludes that the CZMA is not applicable to NHTSA's Decision, because it does not involve an activity within, or outside of, the nation's coastal zones. The agency has, however, conducted a qualitative review of the related direct, indirect, and cumulative impacts, positive or negative, of the alternatives on potentially affected resources, including coastal zones. See Section 4.5.5 of the FEIS.

6. Endangered Species Act (ESA)

The ESA (16 U.S.C. 1531) provides for the protection of species that are at risk of extinction throughout all or a significant portion of their range, and for the protection of ecosystems on which they depend. Under Section 7 of the ESA, all Federal agencies are required to undertake programs for the conservation of endangered and threatened species.

Federal agencies are responsible for determining whether their proposed action requires consultation with Fish and Wildlife Service or National Marine Fisheries Service under Section 7 of the ESA. To make this determination, an agency examines the direct and indirect effects of its proposed action to see if the action ''may affect'' a listed species. For indirect effects, the impact to the species must be later in time, must be caused by the proposed action, and must be reasonably certain to occur.

As stated in the FEIS, the action alternatives, including NHTSA's Decision, show a reduction in emissions of CO_2, NO_X, $PM_{2.5}$, SO_X, VOC, DPM, benzene, and 1,3-butadiene compared to the No Action Alternative. The FEIS also quantified the resulting decreases in sea-level rise, changes in precipitation, and temperature decreases for each of the alternatives from decreasing CO_2 emissions. NHTSA then qualitatively discussed the impacts to ecosystems, ocean acidification, natural resources, wildlife, and many other factors. Because it is beyond the ability of current modeling and the level of uncertainty is very high, it was not possible to quantitatively calculate the effects of the CO_2 reduction on specific localized ecosystems. See United States Department of Interior, Fish and Wildlife Service, Memorandum, ''Expectations for Consultations on Actions that would Emit Greenhouse Gases,'' dated May 14, 2008. NHTSA discussed the issue with the U.S. Fish and Wildlife Service to ensure proper compliance. Without sufficient data to establish the required causal connection (to the level of reasonable certainty) between the proposed rulemaking, GHG emissions, and the subsequent impacts to listed species or critical habitat, Section 7 consultation is not required.

For additional discussion regarding NHTSA's compliance with Section 7 of the ESA, please see Section 10.3.6.1, Section 3.5.2.2, and Section 4.7.2.1 of the FEIS.

7. Floodplain Management (Executive Order 11988 & DOT Order 5650.2)

These Orders require Federal agencies to avoid the long- and short-term adverse impacts associated with the occupancy and modification of floodplains, and to restore and preserve the natural and beneficial values served by floodplains. Executive Order 11988 also directs agencies to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains through evaluating the potential effects of any actions the agency may take in a floodplain and ensuring that its program planning and budget requests reflect consideration of flood hazards and floodplain management. DOT Order 5650.2 sets forth DOT policies and procedures for implementing Executive Order 11988. The DOT Order requires that the agency determine if a proposed action is within the limits of a base floodplain, meaning it is encroaching on the floodplain, and whether this encroachment is significant. If significant, the agency is required to conduct further analysis of the proposed action and any practicable alternatives. If a practicable alternative avoids floodplain encroachment, then the agency is required to implement it.

In this rulemaking, the agency is not occupying, modifying and/or encroaching on floodplains. The agency, therefore, concludes that the Orders are not applicable to NHTSA's Decision. The agency has, however, conducted a review of the alternatives on potentially affected resources, including floodplains. See Chapters 3 and 4 of the FEIS.

8. Preservation of the Nation's Wetlands (Executive Order 11990 & DOT Order 5660.1a)

These Orders require Federal agencies to avoid, to the extent possible, undertaking or providing assistance for new construction located in wetlands unless the agency head finds that there is no practicable alternative to such construction and that the proposed action includes all practicable measures to minimize harms to wetlands that may result from such use. Executive Order 11990 also directs agencies to take action to minimize the destruction, loss or degradation of wetlands in ''conducting Federal activities and programs affecting land use, including

but not limited to water and related land resources planning, regulating, and licensing activities.'' DOT Order 5660.1a sets forth DOT policy for interpreting Executive Order 11990 and requires that transportation projects ''located in or having an impact on wetlands'' should be conducted to assure protection of the Nation's wetlands. If a project does have a significant impact on wetlands, an EIS must be prepared.

The agency is not undertaking or providing assistance for new construction located in wetlands. The agency, therefore, concludes that these Orders do not apply to NHTSA's Decision. The agency has, however, conducted a review of the alternatives on potentially affected resources, including wetlands. See Chapters 3 and 4 of the FEIS.

9. Migratory Bird Treaty Act (MBTA), Bald and Golden Eagle Protection Act (BGEPA), Executive Order 13186.

The MBTA provides for the protection of migratory birds that are native to the United States by making it illegal for anyone to pursue, hunt, take, attempt to take, kill, capture, collect, possess, buy, sell, trade, ship, import, or export any migratory bird covered under the statute. The statute prohibits both intentional and unintentional acts. Therefore, the statute is violated if an agency acts in a manner that harms a migratory bird, whether it was intended or not. *See, e.g., United States* v. *FMC Corp.*, 572 F.2d 902 (2nd Cir. 1978).

The BGEPA (16 U.S.C. 668) prohibits any form of possession or taking of both bald and golden eagles. Under the BGEPA, violators are subject to criminal and civil sanctions as well as an enhanced penalty provision for subsequent offenses.

Executive Order 13186, ''Responsibilities of Federal Agencies to Protect Migratory Birds,'' helps to further the purposes of the MBTA by requiring a Federal agency to develop a Memorandum of Understanding (MOU) with the Fish and Wildlife Service when it is taking an action that has (or is likely to have) a measurable negative impact on migratory bird populations.

The agency concludes that the MBTA, BGEPA, and Executive Order 13186 do not apply to NHTSA's Decision, because there is no disturbance and/or take involved in NHTSA's Decision.

10. Department of Transportation Act (Section 4(f))

Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 303), as amended by Public Law § 109–59, is designed to preserve publicly owned parklands, waterfowl and wildlife refuges, and significant historic sites. Specifically, Section 4(f) of the Department of Transportation Act provides that DOT agencies cannot approve a transportation program or project that requires the use of any publicly owned land from a significant public park, recreation area, or wildlife and waterfowl refuge, or any land from a significant historic site, unless a determination is made that:

- There is no feasible and prudent alternative to the use of land, and
- The program or project includes all possible planning to minimize harm to the property resulting from use, or
- A transportation use of Section 4(f) property results in a de minimis impact.

The agency concludes that the Section 4(f) is not applicable to NHTSA's Decision because this rulemaking does not require the use of any publicly owned land. For a more detailed discussion, please see Section 3.5.6 of the FEIS.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' 13 CFR 121.105(a). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

I certify that the final rule will not have a significant economic impact on a substantial number of small entities. The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)).

The final rule directly affects seventeen large single stage motor vehicle manufacturers.[523] The final rule also affects four small domestic single stage motor vehicle manufacturers.[524] According to the Small Business Administration's small business size standards (see 13 CFR 121.201), a single stage automobile or light truck manufacturer (NAICS code 336111, Automobile Manufacturing; 336112, Light Truck and Utility Vehicle Manufacturing) must have 1,000 or fewer employees to qualify as a small business. All four of the vehicle manufacturers have less than 1,000 employees and make less than 1,000 vehicles per year. The rulemaking would not have a significant economic impact on the small vehicle manufacturers because under Part 525, passenger car manufacturer making less than 10,000 vehicles per year can petition NHTSA to have alternative standards set for those manufacturers. These manufacturers currently do not meet the 27.5 mpg standard and must already petition the agency for relief. If the standard is raised, it has no meaningful impact on these manufacturers, and they still must go through the same process and petition for relief. Given that there already is a mechanism for handling small businesses, which is the purpose of the Regulatory Flexibility Act, a regulatory flexibility analysis was not prepared.

NHTSA received comments on its discussion of the Regulatory Flexibility Act from Ferrari and NADA. Ferrari argued that the proposed standards did impact small manufacturers because they must pay fines in lieu of compliance and alternative standards are not available for manufacturers producing over 10,000 vehicles per year. Ferrari further argued that these fines would be particularly onerous if NHTSA raised the fine amount. In response, NHTSA notes that it has not yet initiated rulemaking to consider raising the penalties for CAFE non-compliance, and that the regulations are clear that manufacturers producing more than 10,000 vehicles per year are not small manufacturers, while manufacturers producing less may petition the agency. While the decision whether to grant the petition is within the agency's discretion, NHTSA has no interest in merely forcing manufacturers to pay fines. If an alternative standard is appropriate, NHTSA will set one.

NADA commented that NHTSA should have undertaken a full regulatory flexibility analysis in order to evaluate the impact of the standards on U.S. car and truck dealers, arguing that many of these are small businesses as defined by the Small Business Administration. NHTSA disagrees that these entities are directly impacted by the CAFE standards, as they are not a regulated entity under CAFE. As stated

[523] BMW, Mercedes, Chrysler, Ferrari, Ford, Subaru, General Motors, Honda, Hyundai, Lotus, Maserati, Mitsubishi, Nissan, Porsche, Suzuki, Toyota, and Volkswagen.

[524] The Regulatory Flexibility Act only requires analysis of small domestic manufacturers. There are four passenger car manufacturers we know of and no light truck manufacturers: Avanti, Panoz, Saleen, and Shelby.

above, a regulatory flexibility analysis is not necessary for this rulemaking.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The Order defines the term ''Policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under the Order, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

As noted above, the President has requested that NHTSA consider whether any provisions regarding preemption are consistent with EISA, the Supreme Court's decision in *Massachusetts* v. *EPA* and other relevant provisions of law and the policies underlying them. To provide time for further careful consideration of these issues, NHTSA has decided not to include any preemption provisions in the regulatory text at this time and will examine those issues in the context of the rulemaking for MY 2012 and later years.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform,'' [525] NHTSA has considered whether this rulemaking would have any retroactive effect. This final rule does not have any retroactive effect.

F. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of a proposed or final rule that includes a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for 2006 results in $126 million (116.043/92.106 = 1.26). Before promulgating a rule for which a written statement is needed, section 205 of UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, of more than $126 million annually, but it will result in the expenditure of that magnitude by vehicle manufacturers and/or their suppliers. In promulgating this final rule, NHTSA considered a variety of alternative average fuel economy standards lower and higher than those promulgated. NHTSA is statutorily required to set standards at the maximum feasible level achievable by manufacturers and has concluded that the final fuel economy standards are the maximum feasible standards for the MY 2011 passenger car and light truck fleets in light of the statutory considerations.

G. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The final rule amends the reporting requirements under 49 CFR part 537, Automotive Fuel Economy Reports. In addition to the vehicle model information collected under the approved data collection (OMB control number 2127–0019) in part 537, passenger car manufacturers will also be required to provide data on vehicle footprint. Manufacturers and other persons wishing to trade fuel economy credits would be required to provide an instruction to NHTSA on the credits to be traded. For these changes, NHTSA is submitting to OMB a request for approval of the following collection of information.

In compliance with the PRA, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to OMB for review and comment. The ICR describes the nature of the information collections and their expected burden. This is a request for an amendment of an existing collection.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: 49 CFR part 537, Automotive Fuel Economy (F.E.) Reports.

Type of Request: Amend existing collection.

OMB Clearance Number: 2127–0019.

Form Number: This collection of information will not use any standard forms.

Requested Expiration Date of Approval: Three years from the date of approval.

Summary of the Collection of Information

So that NHTSA can determine a manufacturer's required fuel economy level, NHTSA would require manufacturers to provide data on vehicle (including passenger car and light truck) footprint. This information collection would be included as part of the existing fuel economy reporting requirements. NHTSA would also require that manufacturers and other persons wishing to trade fuel economy credits provide an instruction to NHTSA on the credits to be traded.

Description of the Need for the Information and Use of the Information

NHTSA needs the footprint information to determine a manufacturer's required fuel economy level and its compliance with that level. NHTSA needs the credit trading instruction to ensure that its records of a manufacturer's available credits are accurate in order to determine whether a manufacturer has sufficient credits available to offset any non-compliance with the CAFE requirements in a given year.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

NHTSA estimates that 20 manufacturers would submit the required information. The frequency of reporting would not change from that currently authorized under collection number 2127–0019.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information

For footprint, NHTSA estimates that each passenger car manufacturer would incur an additional 10 burden hours per year. This estimate is based on the fact that data collection would involve only computer tabulation. Thus, each

[525] 61 FR 4729 (Feb. 7, 1996).

passenger car manufacturer would incur an additional burden of 10 hours or a total on industry of an additional 200 hours a year (assuming there are 20 manufacturers). At an assumed rate of $21.23 an hour, the annual, estimated cost of collecting and preparing the additional passenger car footprint information is $4,246.

For credit trading, NHTSA estimates that each instruction would incur an additional burden hour per year. This estimate is based on the fact that the data required is already available and thus the only burden is the actual preparation of the instruction. NHTSA estimates that the maximum instructions it would receive each year is 20. While non-manufacturers may also participate in credit trading, NHTSA does not believe that every manufacturer would need to, or be able to, participate in credit trading every year. NHTSA does not, at this time, have a way of estimating how many non-manufacturers may participate in credit trading. Therefore NHTSA believes that the total number of manufacturers is a reasonable estimate, for a total annual additional burden of 20 hours a year. At an assumed rate of $21.23 an hour, the annual estimated cost of collecting and preparing the credit trading instruction is $425.

NHTSA estimates that the recordkeeping burden resulting from the collection of information would be 0 hours because the information would be retained on each manufacturer's existing computer systems for each manufacturer's internal administrative purposes. There would be no capital or start-up costs as a result of this collection. Manufacturers can collect and tabulate the information by using existing equipment. Thus, there would be no additional costs to respondents or record keepers.

Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.
- Whether the Department's estimate for the burden of the information collection is accurate.
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attn: NHTSA Desk Officer. PRA comments are due within 30 days following publication of this document in the **Federal Register**.

The agency recognizes that the amendment to the existing collection of information contained in today's final rule may be subject to revision in response to public comments and the OMB review. For further information please contact Peter Feather, Division Chief, Fuel Economy Division, Office of International Policy, Fuel Economy, and Consumer Programs, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also contact him by phone at (202) 366–0846 or by fax at (202) 493–2290.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

J. Executive Order 13045

Executive Order 13045[526] applies to any rule that: (1) is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the final rule on children, and explain why the final regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This final rule does not pose such a risk for children. The primary effects of this final rule are to conserve energy and to reduce tailpipe emissions of CO_2, the primary greenhouse gas, by setting fuel economy standards for motor vehicles.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical.

Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specification and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

The final rule categorizes passenger cars according to vehicle footprint (average track width X wheelbase). For purposes of this calculation, NHTSA will base these measurements on those developed by the automotive industry. Determination of wheelbase would be consistent with L101-wheelbase, defined in SAE J1100 MAY95, Motor vehicle dimensions. NHTSA's final rule uses a modified version of the SAE definitions for track width (W101-tread-front and W102-tread-rear as defined in SAE J1100 MAY95). The definition of track width reduces a manufacturer's ability to adjust a vehicle's track width through minor alterations.

L. Executive Order 13211

Executive Order 13211[527] applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If the regulatory action meets either criterion, we must evaluate the adverse energy effects of the final rule and explain why the final regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

The final rule seeks to establish passenger car and light truck fuel economy standards that will reduce the consumption of petroleum and will not have any adverse energy effects. Accordingly, this final rulemaking

[526] 62 FR 19885 (Apr. 23, 1997).

[527] 66 FR 28355 (May 18, 2001).

action is not designated as a significant energy action.

M. Department of Energy Review

In accordance with 49 U.S.C. 32902(j)(2), NHTSA submitted this final rule to the Department of Energy for review.

N. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an organization, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov/privacy.html*.

XVII. Regulatory Text

List of Subjects in 49 CFR Parts 523, 531, 533, 534, 535, 536, and 537

Fuel economy, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, under the authority of 49 U.S.C. 32901, 32902, 32903, and 32907, and delegation of authority at 49 CFR 1.50, NHTSA amends 49 CFR Chapter V as follows:

PART 523—VEHICLE CLASSIFICATION

■ 1. Revise the authority citation for part 523 to read as follows:

Authority: 49 U.S.C. 32901, delegation of authority at 49 CFR 1.50.

■ 2. Amend § 523.2 by adding, in alphabetical order, definitions of ''Base tire,'' ''Light truck,'' and ''Work truck,'' and revising the definition of ''footprint'' to read as follows:

§ 523.2 Definitions.

* * * * *

Base tire means the tire specified as standard equipment by a manufacturer on each vehicle configuration of a model type.

* * * * *

Footprint is defined as the product of track width (measured in inches, calculated as the average of front and rear track widths, and rounded to the nearest tenth of an inch) times wheelbase (measured in inches and rounded to the nearest tenth of an inch), divided by 144 and then rounded to the nearest tenth of a square foot. For purposes of this definition, track width is the lateral distance between the centerlines of the base tires at ground, including the camber angle. For purposes of this definition, wheelbase is the longitudinal distance between front and rear wheel centerlines.

* * * * *

Light truck means a non-passenger automobile as defined in § 523.5.

* * * * *

Work truck means a vehicle that is rated at more than 8,500 and less than or equal to 10,000 pounds gross vehicle weight, and is not a medium-duty passenger vehicle as defined in 40 CFR 86.1803–01 effective as of December 20, 2007.

* * * * *

■ 3. Amend § 523.3 by revising paragraph (a) to read as follows:

§ 523.3 Automobile.

(a) An automobile is any 4-wheeled vehicle that is propelled by fuel, or by alternative fuel, manufactured primarily for use on public streets, roads, and highways and rated at less than 10,000 pounds gross vehicle weight, except:

(1) A vehicle operated only on a rail line;

(2) A vehicle manufactured in different stages by 2 or more manufacturers, if no intermediate or final-stage manufacturer of that vehicle manufactures more than 10,000 multi-stage vehicles per year; or

(3) A work truck.

* * * * *

■ 4. Revise § 523.5 to read as follows:

§ 523.5 Non-passenger automobile.

A non-passenger automobile means an automobile that is not a passenger automobile or a work truck and includes vehicles described in paragraphs (a) and (b) of this section:

(a) An automobile designed to perform at least one of the following functions:

(1) Transport more than 10 persons;

(2) Provide temporary living quarters;

(3) Transport property on an open bed;

(4) Provide, as sold to the first retail purchaser, greater cargo-carrying than passenger-carrying volume, such as in a cargo van; if a vehicle is sold with a second-row seat, its cargo-carrying volume is determined with that seat installed, regardless of whether the manufacturer has described that seat as optional; or

(5) Permit expanded use of the automobile for cargo-carrying purposes or other nonpassenger-carrying purposes through:

(i) For non-passenger automobiles manufactured prior to model year 2012, the removal of seats by means installed for that purpose by the automobile's manufacturer or with simple tools, such as screwdrivers and wrenches, so as to create a flat, floor level, surface extending from the forwardmost point of installation of those seats to the rear of the automobile's interior; or

(ii) For non-passenger automobiles manufactured in model year 2008 and beyond, for vehicles equipped with at least 3 rows of designated seating positions as standard equipment, permit expanded use of the automobile for cargo-carrying purposes or other nonpassenger-carrying purposes through the removal or stowing of foldable or pivoting seats so as to create a flat, leveled cargo surface extending from the forwardmost point of installation of those seats to the rear of the automobile's interior.

(b) An automobile capable of off-highway operation, as indicated by the fact that it:

(1)(i) Has 4-wheel drive; or

(ii) Is rated at more than 6,000 pounds gross vehicle weight; and

(2) Has at least four of the following characteristics calculated when the automobile is at curb weight, on a level surface, with the front wheels parallel to the automobile's longitudinal centerline, and the tires inflated to the manufacturer's recommended pressure—

(i) Approach angle of not less than 28 degrees.

(ii) Breakover angle of not less than 14 degrees.

(iii) Departure angle of not less than 20 degrees.

(iv) Running clearance of not less than 20 centimeters.

(v) Front and rear axle clearances of not less than 18 centimeters each.

(Sec. 9, Pub. L. 89–670, 80 Stat. 981 (49 U.S.C. 1657); sec. 301, Pub. L. 94–163, 89 Stat. 901 (15 U.S.C. 2002); delegation of authority at 41 FR 25015, June 22, 1976.)

PART 531—PASSENGER AUTOMOBILE AVERAGE FUEL ECONOMY STANDARDS

■ 5. The authority citation for part 531 continues to read as follows:

Authority: 49 U.S.C. 32902; delegation of authority at 49 CFR 1.50.

■ 6. Amend § 531.5 by revising paragraph (a), redesignating paragraph (b) as paragraph (d), and adding new paragraphs (b) and (c) to read as follows:

§ 531.5 Fuel economy standards.

(a) Except as provided in paragraph (d) of this section, each manufacturer of passenger automobiles shall comply with the average fuel economy standards in Table I, expressed in miles per gallon, in the model year specified as applicable:

TABLE I

Model year	Standard
1978	18.0
1979	19.0
1980	20.0
1981	22.0
1982	24.0
1983	26.0
1984	27.0
1985	27.5
1986	26.0
1987	26.0
1988	26.0
1989	26.5
1990-2010	27.5

(b) For model year 2011, a manufacturer's passenger automobile fleet shall comply with the fuel economy level calculated for that model year according to Figure 1 and the appropriate values in Table II.

FIGURE 1:

$$Required_Fuel_Economy_Level = \frac{N}{\sum_i \frac{N_i}{T_i}}$$

Where:

N is the total number (sum) of passenger automobiles produced by a manufacturer,

N_i is the number (sum) of the *ith* model passenger automobile produced by the manufacturer, and

T_i is fuel economy target of the *ith* model passenger automobile, which is determined according to the following formula, rounded to the nearest hundredth:

$$T = \frac{1}{\frac{1}{a} + \left(\frac{1}{b} - \frac{1}{a}\right)\frac{e^{(x-c)/d}}{1+e^{(x-c)/d}}}$$

Where:

Parameters a, b, c, and d are defined in Table II;

e = 2.718; and

x = footprint (in square feet, rounded to the nearest tenth) of the vehicle model

TABLE II—PARAMETERS FOR THE PASSENGER AUTOMOBILE FUEL ECONOMY TARGETS

Model year	Parameters			
	A	b	c	d
2011	31.20	24.00	51.41	1.91

(c) In addition to the requirement of paragraph (b) of this section, each manufacturer shall also meet the minimum standard for domestically manufactured passenger automobiles expressed in Table III:

TABLE III

Model year	Minimum Standard
2011	27.8

* * * * *

PART 533—LIGHT TRUCK FUEL ECONOMY STANDARDS

7. The authority citation for part 533 continues to read as follows:

Authority: 49 U.S.C. 32902; delegation of authority at 49 CFR 1.50.

8. Amend § 533.5 by revising Table V of paragraph (a) and paragraph (h) to read as follows:

§ 533.5 Requirements.

(a) * * *

TABLE V—PARAMETERS FOR THE LIGHT TRUCK FUEL ECONOMY TARGETS

Model year	Parameters			
	a	b	c	d
2008	28.56	19.99	49.30	5.58
2009	30.07	20.87	48.00	5.81
2010	29.96	21.20	48.49	5.50
2011	27.10	21.10	56.41	4.28

* * * * *

(h) For model year 2011, a manufacturer's light truck fleet shall comply with the fuel economy level calculated for that model year according to Figure 1 and the appropriate values in Table V.

PART 534—RIGHTS AND RESPONSIBILITIES OF MANUFACTURERS IN THE CONTEXT OF CHANGES IN CORPORATE RELATIONSHIPS

■ 9. The authority citation for part 534 continues to read as follows:

Authority: 49 U.S.C. 32901; delegation of authority at 49 CFR 1.50.

■ 10. Amend § 534.4 by revising paragraphs (c) and (d) to read as follows:

PART 534—RIGHTS AND RESPONSIBILITIES OF MANUFACTURERS IN THE CONTEXT OF CHANGES IN CORPORATE RELATIONSHIPS

9. The authority citation for part 534 continues to read as follows:

Authority: 49 U.S.C. 32901; delegation of authority at 49 CFR 1.50.

10. Amend § 534.4 by revising paragraphs (c) and (d) to read as follows:

§ 534.4 Successors and predecessors.

* * * * *

(c) Credits earned by a predecessor before or during model year 2007 may be used by a successor, subject to the availability of credits and the general three-year restriction on carrying credits forward and the general three-year restriction on carrying credits backward. Credits earned by a predecessor after model year 2007 may be used by a successor, subject to the availability of credits and the general five-year restriction on carrying credits forward and the general three-year restriction on carrying credits backward.

(d) Credits earned by a successor before or during model year 2007 may be used to offset a predecessor's shortfall, subject to the availability of credits and the general three-year restriction on carrying credits forward and the general three-year restriction on carrying credits backward. Credits earned by a successor after model year 2007 may be used to offset a predecessor's shortfall, subject to the availability of credits and the general five-year restriction on carrying credits forward and the general three-year restriction on carrying credits backward.

■ 11. Amend § 534.5 by revising paragraphs (c) and (d) to read as follows:

§ 534.5 Manufacturers within control relationships.

* * * * *

(c) Credits of a manufacturer within a control relationship may be used by the group of manufacturers within the control relationship to offset shortfalls, subject to the agreement of the other manufacturers, the availability of the credits, and the general three-year restriction on carrying credits forward or backward prior to or during model year 2007, or the general five-year restriction on carrying credits forward and the general three-year restriction on carrying credits backward after model year 2007.

(d) If a manufacturer within a group of manufacturers is sold or otherwise spun off so that it is no longer within that control relationship, the manufacturer may use credits that were earned by the group of manufacturers within the control relationship while the manufacturer was within that relationship, subject to the agreement of the other manufacturers, the availability of the credits, and the general three-year restriction on carrying credits forward or backward prior to or during model year 2007, or the general five-year restriction on carrying credits forward and the general three-year restriction on carrying credits backward after model year 2007.

PART 535—[REMOVED]

■ 12. Remove Part 535.

■ 13. Part 536 is added to read as follows:

PART 536—TRANSFER AND TRADING OF FUEL ECONOMY CREDITS

Sec.

536.1 Scope.
536.2 Application.
536.3 Definitions.
536.4 Credits.
536.5 Trading infrastructure.
536.6 Treatment of credits earned prior to model year 2011.
536.7 Treatment of carryback credits.
536.8 Conditions for trading of credits.
536.9 Use of credits with regard to the domestically manufactured passenger automobile minimum standard.
536.10 Treatment of dual-fuel and alternative fuel vehicles—consistency with 49 CFR Part 538.

Authority: Sec. 104, Pub. L. 110–140 (49 U.S.C. 32903); delegation of authority at 49 CFR 1.50.

§ 536.1 Scope.

This part establishes regulations governing the use and application of CAFE credits up to three model years before and five model years after the model year in which the credit was earned. It also specifies requirements for manufacturers wishing to transfer fuel economy credits between their fleets and for manufacturers and other persons wishing to trade fuel economy credits to achieve compliance with prescribed fuel economy standards.

§ 536.2 Application.

This part applies to all credits earned (and transferable and tradable) for exceeding applicable average fuel economy standards in a given model year for domestically manufactured passenger cars, imported passenger cars, and light trucks.

§ 536.3 Definitions.

(a) Statutory terms. All terms defined in 49 U.S.C. § 32901(a) are used pursuant to their statutory meaning.

(b) Other terms.

Above standard fuel economy means, with respect to a compliance category, that the automobiles manufactured by a manufacturer in that compliance category in a particular model year have greater average fuel economy (calculated in a manner that reflects the incentives for alternative fuel automobiles per 49 U.S.C. 32905) than that manufacturer's fuel economy standard for that compliance category and model year.

Adjustment factor means a factor used to adjust the value of a traded or transferred credit for compliance purposes to ensure that the compliance value of the credit when used reflects the total volume of oil saved when the credit was earned.

Below standard fuel economy means, with respect to a compliance category, that the automobiles manufactured by a manufacturer in that compliance category in a particular model year have lower average fuel economy (calculated in a manner that reflects the incentives for alternative fuel automobiles per 49 U.S.C. 32905) than that manufacturer's fuel economy standard for that compliance category and model year.

Compliance means a manufacturer achieves compliance in a particular compliance category when

(1) The average fuel economy of the vehicles in that category exceed or meet the fuel economy standard for that category, or

(2) The average fuel economy of the vehicles in that category do not meet the fuel economy standard for that category, but the manufacturer proffers a sufficient number of valid credits, adjusted for total oil savings, to cover the gap between the average fuel economy of the vehicles in that category and the required average fuel economy.

A manufacturer achieves compliance for its fleet if the above conditions (1)

or (2) are simultaneously met for all compliance categories.

Compliance category means any of three categories of automobiles subject to Federal fuel economy regulations. The three compliance categories recognized by 49 U.S.C. 32903(g)(6) are domestically manufactured passenger automobiles, imported passenger automobiles, and non-passenger automobiles (''light trucks'').

Credit holder (or holder) means a legal person that has valid possession of credits, either because they are a manufacturer who has earned credits by exceeding an applicable fuel economy standard, or because they are a designated recipient who has received credits from another holder. Credit holders need not be manufacturers, although all manufacturers may be credit holders.

Credits (or fuel economy credits) means an earned or purchased allowance recognizing that the average fuel economy of a particular manufacturer's vehicles within a particular compliance category and model year exceeds that manufacturer's fuel economy standard for that compliance category and model year. One credit is equal to 1/10 of a mile per gallon above the fuel economy standard per one vehicle within a compliance category. Credits are denominated according to model year in which they are earned (vintage), originating manufacturer, and compliance category.

Expiry date means the model year after which fuel economy credits may no longer be used to achieve compliance with fuel economy regulations. Expiry Dates are calculated in terms of model years: for example, if a manufacturer earns credits for model year 2011, these credits may be used for compliance in model years 2008–2016.

Fleet means all automobiles that are manufactured by a manufacturer in a particular model year and are subject to fuel economy standards under 49 CFR parts 531 and 533. For the purposes of this regulation, a manufacturer's fleet means all domestically manufactured and imported passenger automobiles and non-passenger automobiles (''light trucks''). ''Work trucks'' and medium and heavy trucks are not included in this definition for purposes of this regulation.

Light truck means the same as ''non-passenger automobile,'' as that term is defined in 49 U.S.C. 32901(a)(17), and as ''light truck,'' as that term is defined at 49 CFR 523.5.

Originating manufacturer means the manufacturer that originally earned a particular credit. Each credit earned will be identified with the name of the originating manufacturer.

Trade means the receipt by NHTSA of an instruction from a credit holder to place one of its credits in the account of another credit holder. A credit that has been traded can be identified because the originating manufacturer will be a different party than the current credit holder. Traded credits are moved from one credit holder to the recipient credit holder within the same compliance category for which the credits were originally earned. If a credit has been traded to another credit holder and is subsequently traded back to the originating manufacturer, it will be deemed not to have been traded for compliance purposes.

Transfer means the application by a manufacturer of credits earned by that manufacturer in one compliance category or credits acquired by trade (and originally earned by another manufacturer in that category) to achieve compliance with fuel economy standards with respect to a different compliance category. For example, a manufacturer may purchase light truck credits from another manufacturer, and transfer them to achieve compliance in the manufacturer's domestically manufactured passenger car fleet.

Vintage means, with respect to a credit, the model year in which the credit was earned.

§ 536.4 Credits.

(a) *Type and vintage.* All credits are identified and distinguished in the accounts by originating manufacturer, compliance category, and model year of origin (vintage).

(b) *Application of credits.* All credits earned and applied are calculated, per 49 U.S.C. 32903(c), in tenths of a mile per gallon by which the average fuel economy of vehicles in a particular compliance category manufactured by a manufacturer in the model year in which the credits are earned exceeds the applicable average fuel economy standard, multiplied by the number of vehicles sold in that compliance category. However, credits that have been traded between credit holders or transferred between compliance categories are valued for compliance purposes using the adjustment factor specified in paragraph (c) of this section, pursuant to the ''total oil savings'' requirement of 49 U.S.C. 32903(f)(1).

(c) *Adjustment factor.* When traded or transferred and used, fuel economy credits are adjusted to ensure fuel oil savings is preserved. For traded credits, the user (or buyer) of credits must multiply the calculated adjustment factor by the number of its shortfall credits it plans to offset in order to determine the number of equivalent credits to acquire from the earner (or seller). For transferred credits, the user of credits must multiply the calculated adjustment factor by the number of its shortfall credits it plans to offset in order to determine the number of equivalent credits to transfer from the compliance category holding the available credits. The adjustment factor is calculated by the following formula:

$$A = \left(\frac{\mathrm{VMTu} * \mathrm{MPGae} * \mathrm{MPGse}}{\mathrm{VMTe} * \mathrm{MPGau} * \mathrm{MPGsu}} \right)$$

Where A = Adjustment Factor applied to traded or transferred credits;

VMTe = Lifetime vehicle miles traveled for the compliance category in which the credit was earned: 150,922 miles for domestically manufactured and imported passenger cars, 172,552 miles for light trucks;

VMTu = Lifetime vehicle miles traveled for the compliance category in which the credit is used for compliance: 150,922 miles for domestically manufactured and imported passenger cars, 172,552 miles for light trucks;

MPGse = Required fuel economy standard for the originating (earning) manufacturer, compliance category, and model year in which the credit was earned;

MPGae = Actual fuel economy for the originating manufacturer, compliance category, and model year in which the credit was earned;

MPGsu = Required fuel economy standard for the user (buying) manufacturer, compliance category, and model year in which the credit is used for compliance;

MPGau = Actual fuel economy for the user manufacturer, compliance category, and model year in which the credit is used for compliance.

§ 536.5 Trading Infrastructure.

(a) *Accounts.* NHTSA maintains ''accounts'' for each credit holder. The account consists of a balance of credits

in each compliance category and vintage held by the holder.

(b) *Who may hold credits*. Every manufacturer subject to fuel economy standards under 49 CFR parts 531 or 533 is automatically an account holder. If the manufacturer earns credits pursuant to this regulation, or receives credits from another party, so that the manufacturer's account has a non-zero balance, then the manufacturer is also a credit holder. Any party designated as a recipient of credits by a current credit holder will receive an account from NHTSA and become a credit holder, subject to the following conditions:

(1) A designated recipient must provide name, address, contacting information, and a valid taxpayer identification number or social security number;

(2) NHTSA does not grant a request to open a new account by any party other than a party designated as a recipient of credits by a credit holder;

(3) NHTSA maintains accounts with zero balances for a period of time, but reserves the right to close accounts that have had zero balances for more than one year.

(c) *Automatic debits and credits of accounts*.

(1) Upon receipt of a verified instruction to trade credits from an existing credit holder, NHTSA verifies the presence of sufficient credits in the account of the trader, then debits the account of the trader and credits the account of the recipient with credits of the vintage, origin, and compliance category designated. Traded credits identified by a specific compliance category are deposited into the recipient's account in that same compliance category. If the recipient is not a current account holder, NHTSA establishes the account subject to the conditions described in § 536.5(b), and adds the credits to the newly-opened account.

(2) NHTSA automatically deletes unused credits from holders' accounts as they reach their expiry date.

(d) *Compliance*. (1) NHTSA assesses compliance with fuel economy standards each year, utilizing the certified and reported CAFE data provided by the Environmental Protection Agency for enforcement of the CAFE program pursuant to 49 U.S.C. 32904(e). Credit values are calculated based on the CAFE data from the EPA. If a particular compliance category within a manufacturer's fleet has above standard fuel economy, NHTSA adds credits to the manufacturer's account for that compliance category and vintage in the appropriate amount by which the manufacturer has exceeded the applicable standard.

(2) If a manufacturer's vehicles in a particular compliance category have below standard fuel economy, NHTSA will provide written notification to the manufacturer that it has failed to meet a particular fleet target standard. The manufacturer will be required to confirm the shortfall and must either: submit a plan indicating how it will allocate existing credits or earn, transfer and/or acquire credits; or pay the appropriate civil penalty. The manufacturer must submit a plan or payment within 60 days of receiving agency notification.

(3) Credits used to offset shortfalls are subject to the three and five year limitations as described in § 536.6.

(4) Transferred credits are subject to the limitations specified by 49 U.S.C. 32903(g)(3) and this regulation.

(5) The value, when used for compliance, of any credits received via trade or transfer is adjusted, using the adjustment factor described in § 536.4(c), pursuant to 49 U.S.C. 32903(f)(1).

(6) Credit allocation plans received from a manufacturer will be reviewed and approved by NHTSA. NHTSA will approve a credit allocation plan unless it finds that the proposed credits are unavailable or that it is unlikely that the plan will result in the manufacturer earning sufficient credits to offset the subject credit shortfall. If a plan is approved, NHTSA will revise the respective manufacturer's credit account accordingly. If a plan is rejected, NHTSA will notify the respective manufacturer and request a revised plan or payment of the appropriate fine.

(e) *Reporting*. (1) NHTSA periodically publishes the names and credit holdings of all credit holders. NHTSA does not publish individual transactions, nor respond to individual requests for updated balances from any party other than the account holder.

(2) NHTSA issues an annual credit status letter to each party that is a credit holder at that time. The letter to a credit holder includes a credit accounting record that identifies the credit status of the credit holder including any activity (earned, expired, transferred, traded, carry-forward and carry-back credit transactions/allocations) that took place during the identified activity period.

§ 536.6 Treatment of credits earned prior to model year 2011.

(a) Credits earned in a compliance category before model year 2008 may be applied by the manufacturer that earned them to carryback plans for that compliance category approved up to three model years prior to the year in which the credits were earned, or may be applied to compliance in that compliance category for up to three model years after the year in which the credits were earned.

(b) Credits earned in a compliance category during and after model year 2008 may be applied by the manufacturer that earned them to carryback plans for that compliance category approved up to three years prior to the year in which the credits were earned, or may be held or applied for up to five model years after the year in which the credits were earned.

(c) Credits earned in a compliance category prior to model year 2011 may not be transferred or traded.

§ 536.7 Treatment of carryback credits.

(a) Carryback credits earned in a compliance category in any model year may be used in carryback plans approved by NHTSA, pursuant to 49 U.S.C. 32903(b), for up to three model years prior to the year in which the credit was earned.

(b) For purposes of this regulation, NHTSA will treat the use of future credits for compliance, as through a carryback plan, as a deferral of penalties for non-compliance with an applicable fuel economy standard.

(c) If NHTSA receives and approves a manufacturer's carryback plan to earn future credits within the following three model years in order to comply with current regulatory obligations, NHTSA will defer levying fines for non-compliance until the date(s) when the manufacturer's approved plan indicates that credits will be earned or acquired to achieve compliance, and upon receiving confirmed CAFE data from EPA. If the manufacturer fails to acquire or earn sufficient credits by the plan dates, NHTSA will initiate compliance proceedings.

(d) In the event that NHTSA fails to receive or approve a plan for a non-compliant manufacturer, NHTSA will levy fines pursuant to statute. If within three years, the non-compliant manufacturer earns or acquires additional credits to reduce or eliminate the non-compliance, NHTSA will reduce any fines owed, or repay fines to the extent that credits received reduce the non-compliance.

(e) No credits from any source (earned, transferred and/or traded) will be accepted in lieu of compliance if those credits are not identified as originating within one of the three model years after the model year of the confirmed shortfall.

§ 536.8 Conditions for trading of credits.

(a) *Trading of credits.* If a credit holder wishes to trade credits to another party, the current credit holder and the receiving party must jointly issue an instruction to NHTSA, identifying the quantity, vintage, compliance category, and originator of the credits to be traded. If the recipient is not a current account holder, the recipient must provide sufficient information for NHTSA to establish an account for the recipient. Once an account has been established or identified for the recipient, NHTSA completes the trade by debiting the transferor's account and crediting the recipient's account. NHTSA will track the quantity, vintage, compliance category, and originator of all credits held or traded by all account-holders.

(b) *Trading between and within compliance categories.* For credits earned in model year 2011 or thereafter, and used to satisfy compliance obligations for model year 2011 or thereafter:

(1) Manufacturers may use credits originally earned by another manufacturer in a particular compliance category to satisfy compliance obligations within the same compliance category.

(2) Once a manufacturer acquires by trade credits originally earned by another manufacturer in a particular compliance category, the manufacturer may transfer the credits to satisfy its compliance obligations in a different compliance category, but only to the extent that the CAFE increase attributable to the transferred credits does not exceed the limits in 49 U.S.C. 32903(g)(3). For any compliance category, the sum of a manufacturer's transferred credits earned by that manufacturer and transferred credits obtained by that manufacturer through trade must not exceed that limit.

(c) *Changes in corporate ownership and control.* Manufacturers must inform NHTSA of corporate relationship changes to ensure that credit accounts are identified correctly and credits are assigned and allocated properly.

(1) In general, if two manufacturers merge in any way, they must inform NHTSA how they plan to merge their credit accounts. NHTSA will subsequently assess corporate fuel economy and compliance status of the merged fleet instead of the original separate fleets.

(2) If a manufacturer divides or divests itself of a portion of its automobile manufacturing business, it must inform NHTSA how it plans to divide the manufacturer's credit holdings into two or more accounts. NHTSA will subsequently distribute holdings as directed by the manufacturer, subject to provision for reasonably anticipated compliance obligations.

(3) If a manufacturer is a successor to another manufacturer's business, it must inform NHTSA how it plans to allocate credits and resolve liabilities per 49 CFR Part 534, Rights and Responsibilities of Manufacturers in the Context of Corporate Relationships.

(d) *No short or forward sales.* NHTSA will not honor any instructions to trade or transfer more credits than are currently held in any account. NHTSA will not honor instructions to trade or transfer credits from any future vintage (*i.e.*, credits not yet earned). NHTSA will not participate in or facilitate contingent trades.

(e) *Cancellation of credits.* A credit holder may instruct NHTSA to cancel its currently held credits, specifying the originating manufacturer, vintage, and compliance category of the credits to be cancelled. These credits will be permanently null and void; NHTSA will remove the specific credits from the credit holder's account, and will not reissue them to any other party.

(f) *Errors or fraud in earning credits.* If NHTSA determines that a manufacturer has been credited, through error or fraud, with earning credits, NHTSA will cancel those credits if possible. If the manufacturer credited with having earned those credits has already traded them when the error or fraud is discovered, NHTSA will hold the receiving manufacturer responsible for returning the same or equivalent credits to NHTSA for cancellation.

(g) *Error or fraud in trading.* In general, all trades are final and irrevocable once executed, and may only be reversed by a new, mutually-agreed transaction. If NHTSA executes an erroneous instruction to trade credits from one holder to another through error or fraud, NHTSA will reverse the transaction if possible. If those credits have been traded away, the recipient holder is responsible for obtaining the same or equivalent credits for return to the previous holder.

§ 536.9 Use of credits with regard to the domestically manufactured passenger automobile minimum standard.

(a) Each manufacturer is responsible for compliance with both the minimum standard and the attribute-based standard.

(b) In any particular model year, the domestically manufactured passenger automobile compliance category credit excess or shortfall is determined by comparing the actual CAFE value against either the required standard value or the minimum standard value, whichever is larger.

(c) Transferred or traded credits may not be used, pursuant to 49 U.S.C. 32903(g)(4) and (f)(2), to meet the domestically manufactured passenger automobile minimum standard specified in 49 U.S.C. 32902(b)(4).

(d) If a manufacturer's average fuel economy level for domestically manufactured passenger automobiles is lower than the attribute-based standard, but higher than the minimum standard, then the manufacturer may achieve compliance with the attribute-based standard by applying credits.

(e) If a manufacturer's average fuel economy level for domestically manufactured passenger automobiles is lower than the minimum standard, then the difference between the minimum standard and the manufacturer's actual fuel economy level may only be relieved by the use of credits earned by that manufacturer within the domestic passenger car compliance category which have not been transferred or traded. If the manufacturer does not have available earned credits to offset a credit shortage below the minimum standard then the manufacturer can submit a carry-back plan that indicates sufficient future credits will be earned in its domestic passenger car compliance category or will be subject to penalties.

§ 536.10 Treatment of dual-fuel and alternative fuel vehicles—consistency with 49 CFR Part 538.

(a) Statutory alternative fuel and dual-fuel vehicle fuel economy calculations are treated as a change in the underlying fuel economy of the vehicle for purposes of this regulation, not as a credit that may be transferred or traded. Improvements in alternative fuel or dual fuel vehicle fuel economy as calculated pursuant to 49 U.S.C. 32905 and limited by 49 U.S.C. 32906 are therefore attributable only to the particular compliance category and model year to which the alternative or dual-fuel vehicle belongs.

(b) If a manufacturer's calculated fuel economy for a particular compliance category, including any required calculations for alternative fuel and dual fuel vehicles, is higher or lower than the applicable fuel economy standard, manufacturers will earn credits or must apply credits or pay fines equal to the difference between the calculated fuel economy level in that compliance category and the applicable standard. Credits earned are the same as any other credits, and may be held, transferred, or traded by the manufacturer subject to

the limitations of the statute and this regulation.

(c) If a manufacturer builds enough alternative fuel or dual fuel vehicles to improve the calculated fuel economy in a particular compliance category by more than the limits set forth in 49 U.S.C. 32906(a), the improvement in fuel economy for compliance purposes is restricted to the statutory limit. Manufacturers may not earn credits nor reduce the application of credits or fines for calculated improvements in fuel economy based on alternative or dual fuel vehicles beyond the statutory limit.

PART 537—AUTOMOTIVE FUEL ECONOMY REPORTS

■ 14. Revise the authority citation for part 537 to read as follows:

Authority: 49 U.S.C. 32907, delegation of authority at 49 CFR 1.50.

■ 15. Amend § 537.7 by revising paragraphs (b), (c)(4)(xvi)(A), and (c)(4)(xvi)(B) to read as follows:

§ 537.7 Pre-model year and mid-model year reports.

* * * * *

(b) *Projected average and required fuel economy.* (1) State the projected average fuel economy for the manufacturer's automobiles determined in accordance with § 537.9 and based upon the fuel economy values and projected sales figures provided under paragraph (c)(2) of this section.

(2) State the projected final average fuel economy that the manufacturer anticipates having if changes implemented during the model year will cause that average to be different from the average fuel economy projected under paragraph (b)(1) of this section.

(3) State the projected required fuel economy for the manufacturer's passenger automobiles and light trucks determined in accordance with 49 CFR 531.5(c) and 49 CFR 533.5(h) and based upon the projected sales figures provided under paragraph (c)(2) of this section.

(4) State the projected final required fuel economy that the manufacturer anticipates having if changes implemented during the model year will cause the targets to be different from the target fuel economy projected under paragraph (b)(3) of this section.

(5) State whether the manufacturer believes that the projections it provides under paragraphs (b)(2) and (b)(4) of this section, or if it does not provide an average or target under those paragraphs, the projections it provides under paragraphs (b)(1) and (b)(3) of this section, sufficiently represent the manufacturer's average and target fuel economy for the current model year for purposes of the Act. In the case of a manufacturer that believes that the projections are not sufficiently representative for those purposes, state the specific nature of any reason for the insufficiency and the specific additional testing or derivation of fuel economy values by analytical methods believed by the manufacturer necessary to eliminate the insufficiency and any plans of the manufacturer to undertake that testing or derivation voluntarily and submit the resulting data to the Environmental Protection Agency under 40 CFR 600.509.

(c) * * *

(4) * * *

(xvi)(A) In the case of passenger automobiles:

(*1*) Interior volume index, determined in accordance with subpart D of 40 CFR part 600,

(*2*) Body style,

(*3*) Beginning model year 2010, base tire as defined in 49 CFR 523.2,

(*4*) Beginning model year 2010, track width as defined in 49 CFR 523.2,

(*5*) Beginning model year 2010, wheelbase as defined in 49 CFR 523.2, and

(*6*) Beginning model year 2010, footprint as defined in 49 CFR 523.2.

(B) In the case of light trucks:

(*1*) Passenger-carrying volume,

(*2*) Cargo-carrying volume,

(*3*) Beginning model year 2008, base tire as defined in 49 CFR 523.2,

(*4*) Beginning model year 2008, track width as defined in 49 CFR 523.2,

(*5*) Beginning model year 2008, wheelbase as defined in 49 CFR 523.2, and

(*6*) Beginning model year 2008, footprint as defined in 49 CFR 523.2.

Issued: March 23, 2009.

Ronald L. Medford,

Acting Deputy Administrator.

[FR Doc. E9–6839 Filed 3–27–09; 8:45 am]

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