

(2) The causes of major systemic errors may include, but are not limited to: Incorrect computer programming, ineffective worker training, problems in case conversion, insufficient server capacity, improper equipment, and ineffective States' business processes in the local offices related to the systems change.

(b) *State reporting.* (1) When the Food and Nutrition Service (FNS) determines that major systemic errors may have occurred in a State, the State shall provide the information that FNS identifies as necessary to make its determination that a systemic error has, or has not, occurred. Based on the data FNS gathers from the State, FNS will determine whether there has been a systemic error that affected a substantial number of households. FNS' data needs will be determined by the nature and timing of the systemic error, but will generally cover at least a 6 month time period. FNS will only request the information necessary to make its determination and calculate the proper amount of any potential claim against the State. FNS may require States to conduct additional reviews of cases randomly sampled from the State's caseload to determine the extent of a potential systemic error. When sample data is used, FNS will base its determination on the point estimate of the sample data and negotiate with the State on the size of the sample. FNS may also require a State to provide data from its automated eligibility (data processing) system.

(2) Unless otherwise specified by FNS, States shall report to FNS within 3 months of being notified of the data requirements.

(c) *FNS determination.* (1) FNS shall base its determination of whether a major systemic error exists on the data it requires to be provided by the State and any data from Federal review sources including the USDA Office of Inspector General, the General Accounting Office, and FNS reviews. FNS may also validate data provided by a State.

(2) FNS will notify a State of its determination and, when a major systemic error is determined to exist, inform the State of the specifics of the error(s) and prohibit claims collection from the affected cases. FNS will establish and inform the State on the time period for which overissuances to the subject cases are not subject to recipient claims collection.

(3) When FNS determines that a major systemic error exists, FNS shall determine the amount of the overissuance caused by the major systemic error. FNS will calculate the

claim amount based on the best information available and may require the State to provide information from its information management system or review a sample of cases.

(4) Error amounts below \$20 in a given month shall not be included in the determination of a systemic error.

(5) When a sample is used, the claim shall be based on the lower boundary of a 95 percent confidence interval. Example of calculation based on information from a sample: The sample estimate of the major systemic error is 8 percent over a 6 month period, but based on a 95 percent confidence interval of 2 percentage points, the rate used would be 6 percent. Therefore the claim would be 6 percent of value of the State's total issuance over the 6 months.

(6) If any funds resulting from the systemic error caused overissuances are collected based on the negligence or quality control provisions of 7 CFR parts 276 and 275, the claim calculated under paragraph (c)(3) of this section would be reduced by the amount collected.

(d) *Action on recipient claims collection.* (1) When FNS determines that a major systemic error has occurred, the State will be notified that claims resulting from the systemic error overissuances shall not be collected. FNS will specify the beginning date of the major systemic error the time period in which the errors occurred.

(2) States shall have 10 days from the date of notification by FNS to stop collection of the claims resulting from the systemic error.

(3) Once FNS determines that the systemic error has been corrected to the extent that it no longer affects a substantial number of households, the State will be notified of the ending date for prohibition on collection of claims for overissuances resulting from the major systemic error and that claims shall again be collected for all overissuances.

(4) If claims are collected from households based on overissuances caused the major systemic error, the State shall return the claim amount collected to these households by restoring benefits to households EBT account.

(e) *Collection of liabilities and appeals.* FNS shall initiate collection action unless an administrative appeal relating to the liability is pending. Appeals include administrative appeals in accordance with the procedures specified in § 276.7 and judicial appeals. While the amount of a State's liability may be recovered through offsets to their letter of credit as identified in § 277.16(c) of this chapter, FNS shall also have the option of billing

a State directly or using other claims collection mechanisms authorized under the Federal Claims Collection Act, depending upon the amount of the State's liability.

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

3. The authority citation for part 276 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

4. In § 276.7, paragraph (a)(1) is revised to read as follows:

§ 276.7 Administrative review process.

(a) * * *

(1) Whenever FNS asserts a claim against a State agency, the State agency may appeal the claim by requesting an administrative review. FNS claims that may be appealed are billings resulting from financial losses involved in the acceptance, storage, and issuance of coupons (§ 276.2), billings based on charges of negligence or fraud (§ 276.3), billings based on over-issuances for systemic errors (§ 276.3) and disallowances of Federal funds for State agency failures to comply with the Food and Nutrition Act, regulations, or the FNS-approved State Plan of Operations (§ 276.4).

* * * * *

Dated: August 8, 2011.

Audrey Rowe,
Administrator, Food, Nutrition, and Consumer Services.

[FR Doc. 2011–20786 Filed 8–17–11; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2010–BT–NOA–0028]

RIN 1904–AC24

Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Statement of Policy for Adopting Full-Fuel-Cycle Analyses Into Energy Conservation Standards Program

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

ACTION: Statement of Policy.

SUMMARY: In its effort to adopt several National Academy of Sciences (the Academy) recommendations, the U.S. Department of Energy (DOE) intends to modify the methods it uses to estimate the likely impacts of energy

conservation standards for covered products on energy use and emissions and will work to expand the energy use and emissions information made available to consumers. Specifically, DOE intends to use full-fuel-cycle (FFC) measures of energy use and emissions, rather than the primary (or site) energy measures it currently uses.

Additionally, DOE intends to work collaboratively with the Federal Trade Commission (FTC) to make readily available to consumers information on the FFC energy and greenhouse gas (GHG) emissions of specific products to enable consumers to make cross-class comparisons of product energy use and emissions.

ADDRESSES: The docket is available for review at <http://www.regulations.gov>, including the **Federal Register** notice of proposed policy, the public meeting attendee list and transcript, all comments received, and other supporting documents/materials. All documents in the docket are listed in the <http://www.regulations.gov> index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: http://www1.eere.energy.gov/buildings/appliance_standards/full_fuel_cycle_analyses.html. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

- I. Summary of the Policy
- II. Background
- III. General Discussion and Discussion of Comments
 - A. Considering FFC Energy and Emission Impacts of Prospective Efficiency Standards
 - B. Using FFC Energy Efficiency Metrics in DOE's Assessment of Energy Conservation Standards Impacts
 - C. Estimated Impacts From Expansion of Considered GHG Emissions
 - D. Methodology for Estimating FFC Energy and Emission Impacts

- E. Consumer Information on FFC Impacts of Specific Covered Products
- IV. Procedural Issues and Regulatory Review
 - A. Review Under the National Environmental Policy Act of 1969
 - B. Review Under the Information Quality Bulletin for Peer Review
- V. Approval of the Office of the Assistant Secretary

I. Summary of the Policy

In its August 2010 Notice of Proposed Policy (referred to herein as "Notice" or "NOPP") (75 FR 51423), the U.S. Department of Energy (DOE) proposed to use full-fuel-cycle (FFC) measures of energy use and greenhouse gas (GHG) and other emissions in the national impact analyses and environmental assessments included in rulemakings for future energy conservation standards (referred to herein as "energy conservation standards" or "energy efficiency levels"). DOE stated that using the FFC measure in these analyses will provide more complete information about the total energy use and GHG emissions associated with a specific energy efficiency level than the primary (or site) energy measures currently used by DOE. DOE also indicated that utilizing the FFC measure for environmental assessments and national impact analyses would not require alteration of the measures used to determine the energy efficiency of covered products (referred to herein as "appliances and equipment" or just "appliances") because the Energy Policy and Conservation Act (EPCA), as amended, requires that such measures be based solely on the energy consumed at the point of use. (42 U.S.C. 6291(4)-(6), 6311(3)-(4), (18)) However, the Notice stated that using the FFC measure in lieu of primary energy in environmental assessments and national impact analyses could affect the alternative standard levels that DOE considers before choosing an energy efficiency level in the future. A policy change to consider FFC impacts would increase the energy and emission reductions estimated to result from energy efficiency levels. This shift would, consequently, increase some of the estimated benefits of such standards.

The NOPP also proposed that DOE would significantly improve upon the Federal Trade Commission's (FTC) existing online databases of appliance site energy use and efficiency ratings by including FFC energy use and emissions data. DOE's Notice indicated that the improved databases could provide tools to enable users to easily compare a product's energy use, emissions, and costs to similar products, including products that are in different classes, have different features or use different

fuels. DOE solicited public comment on whether such an online service would likely benefit consumers and, if so, the most effective way to present this information. DOE also solicited comments on the merits of providing GHG emissions and other product-specific comparative data on Energy Guide labels.

After consideration of the comments received on its NOPP, DOE has decided to use FFC measures of energy use and GHG and other emissions in the national impact analyses and environmental assessments included in future energy conservation standards rulemakings. DOE currently uses primary (or site) energy consumption for national impact analyses and environmental assessments using the National Energy Modeling System (NEMS) developed by DOE's Energy Information Administration (EIA). DOE will continue to rely upon NEMS-based estimates of primary energy and emission impacts, but intends to use conversion factors generated by the DOE Argonne National Laboratory (ANL) Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation (GREET) model to convert these estimates into estimates of FFC energy and emission impacts. DOE also will, subject to the availability of funds, support efforts to make readily available to consumers and other users of regulated products information on the FFC energy use and emissions associated with specific products, and the means to compare this energy use and emissions to other comparable products, whether or not those other products use the same type of energy. The following sections more clearly state today's policy as it applies to the different issues raised in DOE's NOPP.

II. Background

Section 1802 of the Energy Policy Act of 2005 (EPACT 2005) directed DOE to commission a study with the National Academy of Sciences (the Academy) to examine whether the goals of energy conservation standards are best served by measurement of energy consumed, and efficiency improvements at, the actual point-of-use or through the use of the FFC, beginning at the source of energy production (Pub. L. 109-58). The FFC measure includes point-of-use energy, the energy losses associated with generation, transmission, and distribution of electricity, and the energy consumed in extracting, processing, and transporting or distributing primary fuels. The study, "Review of Site (Point-of-Use) and Full-Fuel-Cycle Measurement Approaches to DOE/EERE Building Appliance Energy-

Efficiency Standards,” (Academy report) was completed in May 2009 and included five recommendations. A copy of the study can be downloaded at: http://www.nap.edu/catalog.php?record_id=12670.

The Academy’s primary recommendation is that “DOE consider moving over time to use of a FFC measure of energy consumption for assessment of national and environmental impact, especially levels of GHG emissions, and to providing more comprehensive information to the public through labels and other means such as an enhanced Web site.”¹ The Academy further recommended that DOE work with the FTC to consider options for making product specific GHG emissions estimates available to consumers. More specifically, the Academy recommended that DOE use the FFC measure of energy consumption for the environmental assessment and national impact analyses used in energy conservation standards rulemakings.

DOE’s energy conservation program for consumer products and certain commercial and industrial equipment sets energy conservation standards to reduce U.S. energy consumption in residential and commercial buildings. DOE separates covered products into classes differentiated by energy source, technology, and capacity. EPCA, as amended, requires DOE to set energy conservation standards for covered products based on energy consumption at the point-of-use. (42 U.S.C. 6291(4)–(6), 6311(3)–(4), (18))

The point-of-use method for measuring energy consumption considers the use of electricity, natural gas, propane, and/or fuel oil by an appliance at the site where the appliance is operated. DOE uses point-of-use measures of energy consumption, usually presented in the physical units typically used for the relevant fuel (or electricity), for setting energy conservation standards. Before choosing an energy conservation standard, however, DOE performs several analyses to estimate the likely impacts of alternative standard levels. DOE impact analyses include a: life-cycle cost analysis, manufacturer impact analysis, national impact analysis, engineering analysis, screening analysis, environmental assessment, utility impact assessment, and employment impact assessment. For many years, DOE has used primary energy measures of energy consumption and related emissions in several of these analyses, including the national impact analysis and the environmental assessment, to

estimate the total projected energy savings and emission impacts likely to result from the imposition of alternative standard levels. Primary energy includes energy consumed on-site, plus energy losses that occur in the generation, transmission, and distribution of electricity.

Based on the results of these various analyses, DOE then proposes (and, ultimately, adopts) the energy conservation standard that it determines achieves the maximum energy efficiency improvement that is technologically feasible and economically justified as required by EPCA, as amended. (42 U.S.C. 6295(o)(2)(A) Additionally, DOE must determine that the establishment of a new or amended energy conservation standard will result in significant energy conservation. (42 U.S.C. 6295(o)(3)(B))

III. General Discussion and Discussion of Comments

In response to DOE’s Notice, DOE received comments from 41 entities. Comments were submitted by utilities, research facilities, consumer representatives, non-profit organizations, farmers and others. In the following sections, the comments received concerning this proposed change in policy are summarized and addressed, and DOE provides a statement of the resulting policy that it will apply in the development of future energy efficiency rules and related activities.

There were, however, a number of comments received in response to the Notice that are peripheral to the issues addressed in the Notice. For example, several comments indicated that the Department should not use estimates of the social cost of carbon in assessing the impacts of prospective energy conservation standards and others disagreed with the methods now used by DOE to estimate such cost. (See *e.g.*, NRECA, Public Comment, EERE–2010–BT–NOA–0028–0001, p. 3) These issues have been addressed in previous rulemakings, would not be affected by today’s policy change to use FFC analyses, and were not the subject of the Academy’s report.

American Public Power Association (APPA) commented that DOE should be noting the high degree of subjectivity involved in the monetary benefit of reduced carbon dioxide (CO₂) in the monetization of societal benefits. (APPA, Public Comment, EERE–2010–BT–NOA–0028–0033, p. 4) This comment on the treatment of the monetary benefits of reduced CO₂ emissions is outside the scope of the Notice and this final Policy Statement.

However, DOE notes that DOE’s analysis does identify such benefits separately in its life-cycle cost and net present value benefit calculations.

The Edison Electric Institute (EEI) indicated that the method used by DOE to derive estimates of primary energy inappropriately “assigns” a fossil fuel heat rate for electricity generated by renewable and nuclear resources. EEI indicated that this approach resulted in an inflated value for the national energy savings associated with the electricity demand reductions estimated by appliance efficiency standards analyses. (EEI, Public Comment, EERE–2010–BT–NOA–0028–0007, p. 3) Today’s policy would not modify the methods used by DOE to calculate primary energy.

Michigan dairy farmers provided a comment concerning the final water heater energy conservation standard. (Weiss, Public Comment, EERE–2010–BT–NOA–0028–0009, p. 1) Comments on DOE directives made under previous energy conservation standards rulemakings are outside the scope of the Notice and are not addressed in this Statement of Policy.

A. Considering FFC Energy and Emission Impacts of Prospective Efficiency Standards

In its August 2010 Notice, DOE proposed to modify the methods it uses to estimate the likely impacts of energy conservation standards for covered products in order to use FFC measures of energy and related emissions in national impact analyses and environmental assessments, rather than the primary energy measures that DOE currently uses in these analyses. The NOPP also provided various tables with examples of the preliminary estimates of the conversion factors that DOE would use to shift its estimates of the primary energy savings and emission reductions likely to result from various energy efficiency levels to their FFC equivalents.

A few of the comments noted that existing law requires the development of efficiency standards based on the energy consumed by an appliance at its point-of-use (or site energy). While some commenters questioned whether this legal constraint was appropriate, no comments argued that DOE was not obligated by existing law to set its energy conservation standards using metrics derived from point-of-use (or site) energy. In a related comment, the American Council for an Energy-Efficient Economy (ACEEE) recommended that DOE make a statement indicating DOE’s intention of keeping gas and electric appliances in separate product classes for energy

¹ Academy Report at p. 10.

conservation standards. (ACEEE, Public Comment, EERE-2010-BT-NOA-0028-0013, p. 1) The Consumer Energy Council of America (CECA) recommended that energy conservation standards continue to be fuel neutral, as they indicated was directed by EPCA, as amended, and that DOE should not identify or establish favored energy sources. (CECA, Public Comment, EERE-2010-BT-NOA-0028-0012, p. 2)

In response, DOE is confirming that it intends to continue to set energy conservation standards for covered products based on energy consumption at the point-of-use, as required by EPCA, as amended. (42 U.S.C. 6291(4)-(6), 6311(3)(4), (18)) DOE is also confirming that it will continue to consider comparable products that use different fuels in separate classes as required by 42 U.S.C. 6295(q)(1). However, DOE does not agree that EPCA, as amended, mandates fuel neutral energy conservation standards. In evaluating and establishing energy conservation standards, DOE divides covered products into classes based on the type of energy used, their size or capacity and other features that directly affect the product's energy use or efficiency. EPCA, as amended, specifically provides that energy conservation standards for different product classes can have higher or lower levels. (See 42 U.S.C. 6295(q)) DOE sets the energy conservation standard for each product class independently based upon the maximum energy efficiency improvement that is technologically feasible and economically justified, and that results in significant conservation of energy for each product class. (See 42 U.S.C. 6295(o)(2)(A)-(B) and (3)(B))

A number of comments focused on the primary issue raised by the Notice: Should DOE consider the FFC energy and emission impacts of prospective energy conservation standards in determining whether a particular standard should be selected? An appliance efficiency standard is chosen based on the results of various analyses—some of which EPCA, as amended, directs DOE to perform and some of which DOE performs under the discretionary provisions of EPCA. (42 U.S.C. 6295(o)(2)(B)) EPCA, as amended, does not mandate the use of point-of-use measures in these analyses, although the ultimate energy conservation standard chosen must be expressed as a point-of-use measure. (42 U.S.C. 6291(4)-(6), 6311(3)-(4), (18))

Several commenters supported DOE's proposal to begin considering the FFC energy and emission impacts of prospective energy conservation standards. The American Gas

Association (AGA) indicated their support by stating, "Current efficiency standards and appliance labels rely on incomplete energy consumption and emission measurements." (AGA, Public Comment, EERE-2010-BT-NOA-0028-0004, p. 1) Also in support, the National Propane Gas Association commented that the FFC approach will enable "a more comprehensive analysis of total energy and environmental impacts of energy efficiency standards." (NPGA, Public Comment, EERE-2010-BT-NOA-0028-0034, p. 2)

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) expressed their concern that the use of FFC factors would lengthen the rulemaking process by sidetracking discussions of important aspects of a rulemaking, such as benefits to the consumer. (AHRI, Public Comment, EERE-2010-BT-NOA-0028-0017, p. 3)

DOE does not believe that the incorporation of FFC energy and emission impact analyses will substantially alter the focus of public review and comment on DOE's energy conservation standards rulemakings. DOE already conducts and presents the results of analyses on a broad range of criteria other than the direct impacts of appliance efficiency standards on the users of the covered product, as required by statute. While new impact analyses or methods often receive considerable attention when they are introduced, over time, public comments tend to focus on those elements of DOE's analysis that have the greatest impact on the identification and selection of the minimum standard level that is ultimately adopted. DOE does not believe that the use of FFC factors in the national impacts analysis and environmental assessment will significantly impact the selection of the minimum standard level adopted.

Other commenters also opposed such a change to the use of FFC factors. CECA and EEI both stated that considering FFC impacts would push the analysis used to set energy conservation standards beyond what is economically feasible and technically justified. EEI also questioned whether DOE had a sufficiently reliable basis for estimating FFC energy and emission impacts. (CECA, Public Comment, EERE-2010-BT-NOA-0028-0042, p. 7; EEI, Public Comment, EERE-2010-BT-NOA-0028-0007, p. 2) Specifically, EEI commented that "there is significant disagreement" as to the appropriate FFC and primary energy factors for the same energy source among different entities. (EEI, Public Comment, EERE-2010-BT-NOA-0028-0037, pp. 5-6)

Under today's policy, DOE will continue to use EIA estimates of primary energy and emission impacts as the basis for its impact analyses and the GREET model will be used simply to convert these primary energy values to their FFC equivalents. This approach avoids making any changes to the methods long used by DOE's EIA (and by DOE's appliance efficiency standards program) to convert energy end-use values to primary energy values, which are the source of many of the disagreements referenced by EEI. DOE's ANL has, in the past, compared different life-cycle assessment methods and found that the results are consistent with those generated by GREET when the same critical input parameters are used. This analysis will be cited in future standards rulemakings, as appropriate.

The statute specifically directs DOE to set appliance efficiency standards at levels that achieve the maximum energy savings that is technologically feasible and economically justified; DOE must also determine that the establishment of the chosen standard will result in significant energy conservation. (42 U.S.C. 6295(o)(2)-(3)) DOE does not believe that the consideration of the FFC energy and emission impacts in the national impacts analysis and environmental assessment of a standard under consideration is in conflict with this statutory directive. In practice, the consideration of FFC energy and emission impacts is likely to have comparatively small effects on DOE's analysis of the economic justification of specific alternative appliance efficiency standards. As indicated by the illustrative tables included in the NOPP that provided preliminary estimates of FFC conversion factors, the estimated energy savings likely to result from efficiency levels under consideration using the FFC method could increase by approximately seven to fifteen percent for gas or oil-fired appliances and two to fifteen percent for electric appliances, relative to the estimates of primary energy savings used currently. These relative increases were based on the ratio of FFC energy use and primary energy use, which were estimated by the GREET model. This increase in energy savings would not affect the estimated value or cost of the resulting energy savings, nor the estimated net present value of consumer life-cycle costs savings, since all energy costs savings are based on DOE estimates of the energy costs (derived from retail energy prices) paid directly by energy users. As a result of a change to consider FFC impacts, there also would be a

comparable increase in the CO₂ emission reductions and in the estimated monetary value of such emission reductions. DOE believes that these adjustments in the estimated energy savings and in the value of the benefits associated with reduced CO₂ emissions would enhance, rather than distort, DOE's analyses by more fully representing the total energy and emissions associated with the delivery of energy to consumers.

While estimates of the additional energy use and emissions resulting from the FFC methodology will add some new uncertainties to DOE's impact analyses, these new uncertainties are small relative to the total additional energy and emission impacts being estimated and are comparable to the uncertainties associated with previous DOE analyses. Since FFC-based estimates will more fully reflect the total energy and emission reductions associated with the imposition of energy conservation standards and are not significantly less reliable than current methods, DOE has concluded that such estimates should be used in future impact analyses.

Policy Statement: In the national impacts analyses and environmental assessments of future energy conservation standards rulemakings, DOE intends to include impact estimates based on FFC energy and emissions, rather than the previous practice of estimating such impacts based on the likely effects on primary energy and emissions.

B. Using FFC Energy Efficiency Metrics in DOE's Assessment of Energy Conservation Standards Impacts

In the NOPP, DOE proposed to use FFC measures of energy use and related emissions in the national impact analyses and environmental assessments included in future energy conservation standards rulemakings, but did not propose to create or use extended site or FFC measures of energy efficiency in its rules or regulatory impact analyses.

For rulemakings for covered products for which there is a choice of fuel, AGA noted the Academy's third recommendation that "efficiency ratings should be calculated using the extended site (source) measure of energy consumption until the Department can consider and complete a transition to the use of a full fuel-cycle measure of consumption." AGA recommended that DOE make "side-by-side comparisons of the calculated energy savings from proposed efficiency standard for each appliance" as part of its analysis of the likely impacts of prospective standards.

While recognizing that DOE does not have the statutory authority to use FFC energy efficiency metrics as the basis for DOE conservation standards, AGA recommended that DOE create and use such metrics as part of its analysis of the likely impacts of prospective energy conservation standards. (AGA, Public Comment, EERE-2010-BT-NOA-0028-0035, pp. 4-5)

DOE has the statutory authority to create and consider extended site or FFC energy efficiency metrics as part of its analysis of the likely impacts of prospective energy conservation standards. (See 42 U.S.C. 6295(o)(2)(B)(i)(VII)) Extended site or FFC energy efficiency metrics would provide DOE with a rough indication of the likely energy impacts of a shift in the market of products using different fuels (*i.e.*, fuel switching) that might result from the imposition of alternative energy conservation standards under consideration. If DOE's analysis indicated that a particular standard level under consideration would likely lead to a shift in consumer purchases from products with higher FFC efficiency to products with lower FFC efficiency, then DOE decision-makers would be alerted that such a shift would likely undercut the energy savings (and emission reductions) resulting from that standard level.

For this reason, DOE carefully considered whether it should establish a policy to calculate and use in future rulemakings such extended-site or FFC efficiency metrics for appliances for which there is a fuel choice. DOE concluded, however, that the use of extended site or FFC energy efficiency metrics would only provide a rough indicator of the impacts of possible fuel switching on total energy savings and emissions and, therefore, would not enhance current DOE estimates of the direct impacts of alternative standard levels on fuel choice, energy savings, emissions and other factors. On the other hand, such FFC energy efficiency metrics may prove to be a useful mechanism for conveying complex information to consumers. The issue of consumer information is discussed further in Section E of this notice.

Policy Statement: After careful consideration, DOE has concluded that calculating and comparing efficiency ratings on an FFC basis is not likely to significantly enhance the considerable information already available on the likely impacts of prospective energy conservation standards on total energy use, emissions and other factors. Consequently, DOE does not intend to create or use such metrics in the development of future appliance

efficiency standards. While DOE already accounts for the potential impacts of fuel switching in its energy conservation standards analyses (where appropriate), it will make the methodologies and results of fuel switching more explicit in all rulemakings in which fuel switching might occur.

C. Estimated Impacts From Expansion of Considered GHG Emissions

As part of its rulemaking analyses, DOE currently estimates the impacts of alternative standard levels on emissions of Carbon Dioxide (CO₂), Sulfur Dioxide (SO₂), Nitrogen Oxide (NO_x) and Mercury. Of these, CO₂ is the only GHG addressed in DOE's rulemaking analyses. In the NOPP, DOE proposed to add estimates of the impact of alternative energy conservation standards on the emissions of two other types of GHGs, methane (CH₄) and nitrous oxide (N₂O), as part of the environmental assessments included in future rulemakings. These estimates would be provided both as physical units of the emissions of these gases and as CO₂ equivalents of these emissions based on their climate forcing effects (using generally accepted conversion factors). Although not directly addressed in the Academy's report, such emissions have a direct association with the production and use of energy and adding reduction estimates of these gases will allow DOE to provide a more comprehensive assessment of the impact of standards on GHG emissions. These two gases are included in national GHG emissions inventories worldwide and, according to the EPA, they are among the principle GHGs that enter the atmosphere due to energy production. Addition of reduction estimates of these gases to the environmental assessments of future energy efficiency rulemakings could increase the estimated impacts of alternative standard levels on CO₂-equivalent GHG emissions by approximately five to seventeen percent, as indicated by the preliminary estimates provided in the NOPP.

Southern Company agreed in their comments that it is reasonable to use estimates of the CO₂-equivalent emissions of these two gases in environmental assessments, stating that the addition would provide "useful, more complete information on the environmental impacts of appliance use." They also noted "that most leakage of methane from natural gas comes from distribution systems, and electric generation generally receives direct service from natural gas transmission systems without using gas distribution systems. Therefore the

methane-related global warming impact for electric generation should be much less than the adjustment for methane leakage for direct consumer use of natural gas, which does use natural gas distribution systems.” (Southern, Public Comment, EERE-2010-BT-NOA-0028-0027, p. 4)

DOE notes that, for electricity generation from natural gas, the GREET model includes methane leakage associated with gas transmission systems, but not leakage associated with gas distribution from city gate to households. Also, methane leakage in gas production is accounted for in the natural gas fuel cycle in GREET.

NEEA questioned whether the flaring of natural gas and other gases during oil production, and methane from coal mining, is included in the FFC emissions analysis. (NEEA, Public Comment, EERE-2010-BT-NOA-0028-0021, p. 3) The emissions from both flaring and venting of gas in oil production are accounted for in GREET simulations. Methane released into the atmosphere during the production of oil or gas, or during coal mining, is also considered as an emission.

DOE did not receive any comments opposing the addition of these gases.

Policy Statement: DOE intends to add estimates of the impacts of alternative energy conservation standards on emissions of CH₄ and N₂O, two significant GHGs, to future environmental assessments. These impact estimates will be provided in the physical units of these gases, as well as their CO₂-equivalent values. These values, however, will not be used to develop estimates of the monetary value of reductions in CO₂ emissions until such time as the methodology used to calculate the social cost of carbon is explicitly modified to cover such gases.

D. Methodology for Estimating FFC Energy and Emission Impacts

DOE proposed to use the GREET model in energy conservation standards rulemakings to convert primary energy and emission impacts, including CH₄ and N₂O, to FFC energy and emission impacts. The GREET model was originally developed in 1995 and is routinely updated with support from several DOE programs. It includes more than 100 fuel production pathways, including those addressed by the FFC methodology to be used for product standards rulemakings. The model and its technical documentation are available at the GREET Web site (<http://greet.es.anl.gov/>). At present, there are more than 15,000 registered GREET users worldwide.

In the NOPP, for each alternative energy conservation standard under consideration, DOE proposed to first estimate the primary energy and related emission impacts by using the same methodologies and NEMS projections that DOE’s conservation standards program has traditionally used. Second, for each alternative energy conservation standard under consideration, DOE proposed to use the energy conversion factors that are generated using the GREET model to convert primary energy use and emission impacts to FFC energy use and emission impacts.

EI asked which version of the GREET model was used to derive the preliminary conversion values shown in Tables 1 and 2 of the Notice. (EEL, Public Comment, EERE-2010-BT-NOA-0028-0037, p. 5) The most recent version of the GREET model available at the time, version 1.8d, was used to calculate the values in Tables 1 and 2. There will be a new version of GREET released in 2011. The latest version of GREET will be used when the FFC is calculated in future energy conservation standards rulemakings.

Southern Company commented that DOE’s proposal to use existing methodologies and NEMS, together with conversion factors generated by the GREET model, was a reasonable approach. (Southern, Public Comment, EERE-2010-BT-NOA-0028-0027, p. 3) Both AGA and the Natural Gas Supply Association (NGSA) commented in support of the GREET model, stating that GREET provides “an adequate modeling platform for the calculation of energy consumption and greenhouse gas emissions data as part of the Department’s energy conservation standards program.” (AGA, Public Comment, EERE-2010-BT-NOA-0028-0035, p. 3; NGSA, Public Comment, EERE-2010-BT-NOA-0028-0019, p. 2)

The American Public Gas Association (APGA) commented that it is important that DOE use a transparent process to ensure that stakeholders understand how the GREET model would be used to calculate FFC energy and GHG emissions impacts as part of energy conservation standards rulemakings. The National Association of Home Builders expressed concern about the level of technical documentation and verifiable data provided in the Notice. (APGA, Public Comment, EERE-2010-BT-NOA-0028-0024, p. 5)

The methods, data and assumptions used in the GREET model were subject to public review and comment under separate Federal and State rulemakings. When the current GREET model, or a new version of the model, is used in future DOE rulemakings, the methods,

data and assumptions will again be fully documented and subject to public review and comment.

The Northwest Energy Efficiency Alliance (NEEA) commented that the conversion factors and other GREET model estimates presented in the Notice appeared frozen in time, yielding minimal changes for most fuels analyzed from 2010 to 2030. (NEEA, Public Comment, EERE-2010-BT-NOA-0028-0021, p. 1) The NEMS and GREET models both forecast or simulate changes in energy use and emissions over time. The small changes in the conversion factors in Tables 1 and 2 of the Notice reflect the fact that large, long-lived capital stocks dominate the energy production and transport sector, and change slowly over time. New facilities or processes replace existing facilities and processes only gradually over many decades. Retrofitting of existing facilities to alter the fuels used or substantially reduce emissions can result in more rapid changes, and there are efforts to continually improve the ability of the GREET model to capture these types of changes.

Additionally, NEEA asked how to interpret the analyses as they apply to nuclear-fueled electricity, noting that the energy returned on energy invested (EROEI) for nuclear electricity is likely different than the two EROEI values reflected in the current DOE ANL estimates of the FFC factors for this source of energy. (NEEA, Public Comment, EERE-2010-BT-NOA-0028-0021, p. 2) GREET simulations for energy input versus output are based on fossil energy input only. This may be the reason why the imputed EROEI from the GREET model appears higher than some other estimates. The FFC factors are not the same as the EROEI values, since EROEI cannot separate use of different types of energy sources, which is necessary for FFC and GHG emission estimation. Details of the nuclear electricity pathway used in GREET are documented in a paper published in 2007 and posted at the GREET Web site.

EI commented that the values in Tables 1 and 2 of the Notice are stochastic and do not include all aspects of energy production (such as energy used for oil drilling or to produce chemicals used in the natural gas hydraulic fracturing process). In addition, the tables do not show the range of values in the GREET model for different energy production methods. (EEL, Public Comment, EERE-2010-BT-NOA-0028-0037, p. 5)

DOE agrees that the values generated by the GREET model reflect industry averages that are the product of widely variable processes and practices. DOE

also agrees that the values do not represent all emissions associated, either directly or indirectly, with the production and delivery of energy to end-users, although DOE believes that the values generated by the GREET model will enable DOE to use estimates of energy and emission impacts that are a close approximation of the definition of FFC analysis recommended by the Academy. More specifically, while the current GREET model does not include energy use and emissions of oil exploration, it does include the impacts of upstream oil operations (including recovery and drilling). In addition, the energy and emission impacts of shale gas production will be added to the 2011 update of the GREET model.

Details of the estimates used for specific technology pathways (such as residual oil production, natural gas production, electricity generation) are provided in the GREET model and the methods, data and assumptions underlying these estimates are provided in the GREET documentation, both of which are available at <http://greet.es.anl.gov/>.

APPA commented that the GREET model is susceptible to multiple forms of error because of its large set of base assumptions. APPA also stated that the model is subject to manipulation. (APPA, Public Comment, EERE-2010-BT-NOA-0028-0033, p. 3) APPA is correct that the GREET model, like any life-cycle assessment (LCA) model, is based on a multitude of assumptions. The data supporting these assumptions come from Federal and State databases, as well as data provided by industry. The public can view the model, its assumptions, and the data. This transparency helps produce reliable estimates of FFC impacts.

CECA commented that: "A simple conversion factor from site energy to full fuel cycle is not adequate. There are myriad criteria for determining full-fuel-cycle analysis and reaching agreement on a satisfactory procedure would likely be beyond DOE/EERE's time and resources." CECA also cited environmental externalities such as those in the European Commission's ExternE model. The ExternE model includes not just energy costs but societal concerns such as environmental impacts, global warming, accidents, energy security, employment impacts, and depletion of non-renewable resources. (CECA, Public Comment, EERE-2010-BT-NOA-0028-0012, p. 3) The State of California developed a model for transportation fuels which defines a "Full Fuel Cycle Assessment" as evaluating and comparing the full environmental and health impacts of

each step in the life-cycle of a fuel, which include, but are not limited to, feedstock extraction, transport, storage, fuel production, distribution, vehicle operation, refueling, combustion, or conversion and evaporation. (California Energy Commission, Development of the State Plan for Alternative Transportation Fuels, AB 1007, 3/2/2007) These and other models, in addition to GREET, are cited in the Academy's report. Other entities had similar concerns regarding other available models. (AHRI, Public Comment, EERE-2010-BT-NOA-0028-0017, p. 3) AHRI also noted that the GREET model was not "specifically designed for use in DOE efficiency standard rulemakings."

Today's Policy Statement addresses the energy use and associated emissions directly used in, or emitted from, the point of primary fuel production to the point of end-use, as specified in the recommendations of the Academy's report. Consequently, the scope of FFC, as this term is used in this Policy Statement, is limited. Other social and environmental impacts, such as the indirect energy and emission impacts associated with the manufacture of covered appliances and equipment, or the manufacture of the equipment used in fuel production and refining, as well as other impacts on health or the environment, are not within the scope of the FFC estimates referenced in this Policy Statement.

In its evaluation of alternative transportation fuels under AB 1007, the California Energy Commission uses GREET and a fuel-cycle definition that is very similar to the FFC approach proposed for use in the development of DOE energy conservation standards.

DOE acknowledges that the GREET model was not specifically designed to generate the factors necessary to convert the primary energy and emission values now used in DOE's energy conservation standards impact analyses into FFC values. DOE is not aware of any model that was specifically designed for this purpose. Nevertheless, DOE has concluded that the GREET model can be appropriately used for this purpose and that the resulting values will be sufficiently reliable to significantly improve the usefulness of the resulting energy and emission impact estimates. The GREET model has been previously used to support certain Federal and State regulatory actions on GHG emissions (such as the EPA's Renewable Fuel Standard development and California's low-carbon fuel standard development) and Federal vehicle fuel efficiency labeling by EPA and DOE. It has already been subject to considerable

public review and comment. For these reasons, DOE concludes that GREET is the best model to use for the purposes of today's Policy Statement.

Policy Statement: In future energy conservation standards rulemakings, DOE intends to calculate FFC energy and emission impacts by applying conversion factors generated by the GREET model to the NEMS projections currently used by DOE. When DOE uses the GREET factors in a rulemaking, the factors will be subject to public review and comment. These factors will be used to convert the primary energy and emission values generated by methodologies that have been traditionally used by DOE in its appliance efficiency standards rulemakings to their FFC equivalents. The GREET model will also be used to generate estimates of the FFC emissions of methane and nitrous oxides.

From time to time, DOE will review alternative approaches to estimating these factors and may decide to use a model other than GREET to estimate the FFC energy and emission impacts in any particular future appliance efficiency standards rulemaking. For example, DOE is aware that a future version of the NEMS model may provide the detail necessary to estimate FFC energy and emission impacts. Whether DOE uses the GREET model or another model identified in the future, the model and FFC energy and emission impacts will be subject to public review and comments within an energy conservation standards rulemaking.

E. Consumer Information on FFC Impacts of Specific Covered Products

The Academy recommended that DOE work with the FTC to initiate a project to consider the merits of providing consumers with information about FFC energy use and GHG emissions of individual appliances so that the public can make more informed purchasing decisions. In particular, the Academy recommended that DOE and FTC should initiate a project to consider the merits of adding to the Energy Guide label an indicator of how an appliance's total energy consumption might affect levels of GHG emissions.² The FTC has statutory authority over Energy Guide labels.

DOE indicated in its NOPP that the FTC maintains online databases of the site energy use and efficiency ratings of appliances currently on the market. These databases do not, however, include FFC energy use or any energy cost or emissions-related data. While it is possible to compare the site energy

² Academy report at p. 12.

use and efficiency ratings of different products using these databases, such comparisons are often difficult, especially if they involve products that have different features. Furthermore, comparing products that use different fuels is often not feasible because of differences in the measures of energy use or efficiency of products that use different fuels.

In response to the Academy's recommendations, DOE proposed to significantly improve upon the FTC's existing on-line databases by making FFC energy use and emissions data (and possibly annual energy cost data) available to the public. The improved databases could enable users to easily compare a product's energy use, associated emissions, and costs to similar products, including products that are in different classes because they have different features or use different fuels. Additional energy, emissions, and cost data could be included by updating FTC's online database with the emissions factors developed with the GREET model and estimated annual energy use and/or energy cost data reported by manufacturers on appliance Energy Guide labels. This proposed action was also supported by comments from the Natural Resources Defense Council. (NRDC, Public Comment, EERE-2010-BT-NOA-0028-0030, p. 2)

Regarding the Energy Guide label, DOE stated in the NOPP that it is not clear to DOE that including additional label disclosures, such as the GHG emissions indicator mentioned by the Academy, would be valuable to customers unless they could easily compare the GHG emissions associated with one product to other comparable products or other common energy uses. DOE indicated in its proposal that because the GHG emissions associated with a particular class of products using the same fuel would be directly proportional to that class of products' estimated annual energy costs, simply comparing an individual product to products of the same class using the same fuel would add little useful information to the label. DOE also stated that providing comparisons to the energy use, costs or emissions associated with other comparable products with different features or that use different fuels on the Energy Guide label may increase the complexity of the label, making the label more difficult to understand and decreasing the utility of the basic annual operating cost information already on the label.

AGA supported the inclusion of emissions information on Energy Guide labels to allow customers to better understand the emissions implications

of their appliance choices. AGA commented that "any concerns regarding the complexity and utility of any particular Energy Guide label can and should be addressed in a rulemaking proceeding by the FTC to revise the labels. The potential that some labels may be perceived by some users as less than clear should not be a basis for denying consumers the emissions information they need to make environmentally sound appliance choices." (AGA, Public Comment, EERE-2010-BT-NOA-0028-0004, pp. 3-4)

DOE will make available to the FTC the FFC energy and emission factors that it generates for use in rulemakings. DOE still has some concerns that using these factors to provide FFC information to consumers via the Energy Guide Label is likely to increase the complexity of the label and, therefore, may decrease its effectiveness. However, DOE believes that other means of providing this information to consumers could be as or more effective.

The Institute for Policy Integrity disagreed with DOE's concerns about adding GHG emissions to the Energy Guide labels. The Institute pointed out that other labels are far more complex, which indicates that consumers are accustomed to relatively complex labels, and encouraged DOE to work with the FTC on label modifications. (Institute, Public Comment, EERE-2010-BT-NOA-0028-0032, pp. 5-6)

In contrast, EEI commented that providing consumers with accurate product-specific GHG emissions data associated with electricity use would likely be extremely complex because each utility has its own distinct GHG emission mix. As a result, national or even regional average data can be very misleading. If product-specific GHG emissions data was made available, EEI, along with others, indicated that it supported the use of a website providing such information as opposed to including the information on Energy Guide labels. (EEI, Public Comment, EERE-2010-BT-NOA-0028-0007, p. 3)

EEI and CECA Solutions commented that DOE's proposal to provide customers with energy use and emissions data back to the point of extraction of fossil fuels would lead consumers to incorrectly believe that they will save more energy than is the case and could harm the ability of consumers to make smart purchasing decisions. (EEI, Public Comment, EERE-2010-BT-NOA-0028-0007, p. 2; CECA, Public Comment, EERE-2010-BT-NOA-0028-0012, p. 2)

Similarly, NRECA stated that consumers will not accurately

understand the amount of energy being utilized by their appliances and providing this information would burden manufacturers, possibly resulting in higher costs for the consumer. (NRECA, Public Comment, EERE-2010-BT-NOA-0028-0002, p. 3)

In response, DOE emphasizes that it is not proposing to provide consumers with information that might lead them to conclude that the benefits associated with the reduction of FFC energy or emissions would be reflected in additional consumer cost savings. DOE does not believe that providing consumers with information about the FFC impacts of appliances on GHG emissions would mislead consumers about the actual energy use of their appliances, nor that providing such information would place a significant new cost on manufacturers that would increase product costs. However, DOE agrees that providing this type of information in a meaningful way, given the large regional variations in the electric sector, may well be difficult.

NRECA went on to comment that "the analysis and cost effectiveness of the efficiency standard must be based upon costs and savings that the customers experience." They indicated that they believe that "placing source energy consumption on a label for the customer is misleading at best, and very confusing. Customers could choose the "highest" efficiency unit on the label but find their utility bills increasing because the appliance would not be operating on the most efficient energy source at the site." (NRECA, Public Comment, EERE-2010-BT-NOA-0028-0002, p. 3)

DOE agrees that energy conservation standards should continue to be based, in large part, on the costs and savings that user's experience. However, EPCA, as amended, and other laws direct DOE to consider a range of other factors as well, including the energy resource and environmental impacts of alternative standard levels. While ongoing changes in the electric sector sometimes may make this type of analysis complex and less certain, DOE believes that such analyses are nevertheless possible and, ultimately, useful to government decision-makers and many consumers. Regarding the information made available to consumers, DOE agrees that information on energy costs and life-cycle costs should continue to be emphasized. However, DOE also believes that consumers should be given ready access to better information on the energy resource and environmental impacts of their appliance choices. DOE believes that this objective can be achieved, at least in part, through web-

based information tools, although DOE will also work collaboratively with the FTC to determine if changes to Energy Guide labeling requirements would be beneficial to consumers.

DOE agrees with NEEA's comment that the difference between primary energy use estimates and FFC energy use estimates is relatively small. (NEEA, Public Comment, EERE-2010-BT-NOA-0028-0021, p. 2) However, to date, consumers have not had ready access to information on either the primary or FFC energy and emission impacts of products. Making such information available in a manner that would enable consumers to make cross-fuel and cross-class comparisons of comparable products could provide consumers with significant new information.

The Consumer's Union commented that the Energy Guide labels must increase consumer awareness of GHG emissions to effectively educate consumers and engage them in energy and climate change policy. Such labels should "address regional variation of electricity fuel mixes and provide consumers guidance on how to interpret the data given their region or particular utility." (Consumers, Public Comment, EERE-2010-BT-NOA-0028-0028, p. 5) DOE agrees that consumers should be given ready access to better information on the energy resource and environmental impacts of their appliance choices and how to provide this information in a meaningful way will be a significant issue for DOE and the FTC to consider.

Policy Statement: Subject to the availability of funds, DOE will work with other Federal agencies to make readily available to consumers improved information on the energy use, life-cycle cost and associated emissions of comparable products, even if those products use different forms of energy. Consumers should be able to easily identify the likely energy use, life-cycle costs and associated emissions of individual products (based on their local energy costs and utility system characteristics), but should also be able to compare those attributes to a range of other products providing similar utility. In developing better ways of conveying such information to consumers, DOE will explore the possible role of common efficiency metrics for products using different fuels or energy, and will, as appropriate, solicit further public review and comment on the mechanisms developed to make available this information to consumers.

Any updates to Energy Guide labels will be promulgated by the FTC, which

has statutory authority over Energy Guide labels.

IV. Procedural Issues and Regulatory Review

A. Review Under the National Environmental Policy Act of 1969

DOE has determined that this Policy Statement falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this Policy Statement describes methods for data analysis and how DOE plans to incorporate such data analysis into future energy conservation standards. For this reason, and because the Policy Statement does not establish an energy conservation standard or take any action that might have an impact on the environment, it is covered by the Categorical Exclusion A9 under 10 CFR part 1021, subpart D. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

B. Review Under the Information Quality Bulletin for Peer Review

In consultation with the Office of Science and Technology Policy (OSTP), OMB issued on December 16, 2004, its "Final Information Quality Bulletin for Peer Review" (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the government's scientific information. Under the Bulletin, the Academy recommendations and GREET model are "influential scientific information," which the Bulletin defines as "scientific information that the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions." 70 FR 2664, 2667 (Jan. 14, 2005). The Academy recommendations have been peer reviewed pursuant to section II.2 of the Bulletin. The GREET model, which is in the public domain, has been reviewed through its development and applications over the past 16 years.

V. Approval of the Office of the Assistant Secretary

The Assistant Secretary of DOE's Office of Energy Efficiency and Renewable Energy has approved publication of this final policy.

Issued in Washington, DC, on August 10, 2011.

Roland J. Risser,

Program Manager, Building Technologies Program, Energy Efficiency and Renewable Energy.

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FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052-AC50

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investment Management

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, Agency, us, our, or we) proposes to amend our regulations governing investments held by institutions of the Farm Credit System (FCS or System). We propose to strengthen our regulations governing investment management, interest rate risk management, and association investments; revise the list of eligible investments to ensure it is limited only to high-quality, liquid investments; reduce regulatory burden for investments that fail to meet eligibility criteria after purchase or are unsuitable; and make other changes that will enhance the safety and soundness of System institutions. In this proposal, we also seek comments on compliance with section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or DFA), which requires us to remove all references to and requirements relating to credit ratings and to substitute other appropriate standards of creditworthiness. We also seek comment on other issues.

DATES: You may send us comments by November 16, 2011.

ADDRESSES: We offer a variety of methods for you to submit comments on this proposed rule. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the Agency's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods: