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DEPARTMENT OF ENERGY

Adjusted Indemnification Amount

AGENCY: Department of Energy.

ACTION: Notice of adjusted indemnification amount.

SUMMARY: The Department of Energy (DOE) is announcing the adjusted amount of indemnification provided under subsection 170d. of the Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2210d., commonly known as the Price-Anderson Act, consistent with section 607 of the Energy Policy Act of 2005, Public Law 109-58 (EPA 2005). Section 607 ("Inflation Adjustment") of EPA 2005 amended subsection 170t. of the AEA by requiring the adjustment of the indemnification amount not less than once during each 5-year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index (CPI) since that date. This notice announces \$11.961 billion as the inflation-adjusted amount based on the aggregate percentage change in the CPI during the initial 5-year period.

DATES: This action is effective October 14, 2009.

FOR FURTHER INFORMATION CONTACT: John S. Boulden III, Acting Director (HS-40), Office of Enforcement, Office of Health, Safety and Security, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874, (301) 903-2178; or Sophia Angelini, Attorney Advisor (GC-52), Office of the General Counsel, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-6975.

SUPPLEMENTARY INFORMATION:

The Price-Anderson Act, section 170 of the AEA (42 U.S.C. 2210), establishes a system of financial protection for persons who may be liable for and persons who may be injured by a "nuclear incident," as defined at section 11q. of the AEA (42 U.S.C. 2014q.). The Price-Anderson Act is administered by DOE with respect to the nuclear activities of DOE contractors acting on its behalf. Subsection 170d. provides that the Secretary of Energy shall enter into agreements of indemnification with any person who may conduct activities under a contract with DOE that involve the risk of public liability and that are not subject to the financial protection requirements of the Nuclear Regulatory Commission. DOE's Price-Anderson Act indemnification contract provisions are

codified in the Department of Energy Acquisition Regulation (DEAR), which sets forth a standard nuclear indemnification clause, the Nuclear Hazard Indemnity Agreement at 48 CFR 952.250-70, that is incorporated into all DOE contracts and subcontracts involving source, special nuclear, or by-product material.

The Price-Anderson Amendments Act of 2005 (PAAA 2005), enacted as part of EPA 2005, sections 601 through 610, altered the indemnity provisions in several ways. Specifically, the PAAA 2005 altered the amount of the indemnification by: (1) Specifying \$10 billion as the amount of the indemnification for nuclear incidents within the United States resulting from contractual activities on behalf of DOE (section 604); (2) directing the adjustment of this indemnification amount not less than once during each five-year period in accordance with the aggregate percentage change in the CPI (section 607); and (3) increasing the indemnification amount for nuclear incidents outside the United States from \$100 million to \$500 million (section 605).

With regard to the inflation adjustment for indemnification, the AEA subsection 170t. was amended by adding a new provision requiring the adjustment of "the amount of indemnification provided under an agreement of indemnification under subsection d. not less than once during each 5-year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index since—(A) that date, in the case of the first adjustment under this paragraph; or (B) the previous adjustment under this paragraph." Under the AEA subsection 170t.(3), the term "Consumer Price Index" is defined to mean the CPI for all urban consumers published by the Secretary of Labor. The CPI in July 2003 was 183.9. In July 2008, the CPI was 219.964. This represents an increase of approximately 19.61%. Application of this increase to the initial \$10 billion DOE indemnification amount results in an inflation-adjusted indemnification amount of \$11.961 billion.

The inflation adjustment under AEA subsection 170t. applies only to a nuclear incident within the United States. Accordingly, the indemnification amount for a nuclear incident outside the United States continues to be \$500 million.

The next inflation adjustment will be based on the incremental change in the CPI between July 1, 2008 and the date of the adjustment, which will be no later than July 1, 2013.

This notice of indemnification inflation adjustment is a "rule" as defined in the Administrative Procedure Act (APA) (5 U.S.C. 551(4)). However, the APA (5 USC 553(b)(B)) does not require an agency to use the public notice and comment process "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." In this instance, DOE has concluded that solicitation of public comment is unnecessary. Congress has required DOE to adjust the amount of indemnification provided under an agreement of indemnification under section 170d. to reflect inflation in the initial and each subsequent 5-year period following July 1, 2003, and provided no discretion regarding the substance of the adjustment process. DOE is required only to perform a ministerial computation to determine the relevant inflation adjustment. On the same basis, DOE finds good cause, pursuant to 5 USC 553(d)(3) to waive the requirement for a 30-day delay in the effective date for this rule. As such, this rule is effective October 14, 2009.

DOE has determined that this notice of indemnification inflation adjustment is the type of action that does not individually or cumulatively have a significant impact on the human environment as set forth in DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the rule is covered under the categorical exclusion in paragraph A6 of Appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

Dated: Issued in Washington, DC, on September 22, 2009.

Steven Chu,

Secretary of Energy.

[FR Doc. E9-24718 Filed 10-13-09; 8:45 am]

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DEPARTMENT OF ENERGY

Guidance on Energy-Efficiency Enforcement Regulations

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice.

SUMMARY: This notice sets forth the Department of Energy's (DOE's) interpretation of its energy efficiency

enforcement regulations. These regulations provide for manufacturer submission of compliance statements and certification reports to DOE, maintenance of compliance records by manufacturers, and the availability of enforcement actions for improper certification or upon a determination of noncompliance. DOE also announces its intent to randomly select and review manufacturer compliance with these requirements and initiate enforcement actions as appropriate.

DATES: This guidance is effective October 14, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Weiner, Office of the General Counsel, U.S. Department of Energy, Forrestal Building, Room 6A-245, 1000 Independence Ave., SW., Washington, DC 20585; Telephone (202) 586-9648.

SUPPLEMENTARY INFORMATION: The Energy Policy and Conservation Act of 1975, as amended, (EPCA or the "Act") authorizes the Department of Energy (DOE or the "Department") to enforce compliance with the energy conservation standards established for certain consumer products and commercial equipment. 42 U.S.C. 6299-6305 (consumer products), 6316 (commercial and industrial equipment). To ensure that all covered products distributed in the United States comply with DOE's energy conservation standards, the Department has promulgated enforcement regulations, which include specific certification and compliance requirements. *See* 10 CFR part 430, subpart F; 10 CFR part 431, subparts B, K, U, and V.

The Department issues this guidance to make clear that under existing DOE regulations, a manufacturer's failure to properly certify a covered product and retain records in accordance with DOE regulations may be subject to enforcement action, including the assessment of civil penalties. In addition, DOE announces its intent to exercise this enforcement authority more rigorously, beginning this fall, with a program to randomly select and review manufacturers' compliance with these certification requirements.

The Department's rules require manufacturers of covered consumer products to "certify by means of a compliance statement and a certification report that each basic model(s) meets the applicable energy conservation standard," before distributing it in commerce within the United States. 10 CFR 430.62. Appendix A to Subpart F of Part 430 sets forth templates for these filings. For each basic model, the certification report must include certain identifying information, including the

product type, product class, manufacturer's name and model number, as well as a product-specific energy efficiency levels. *Id.* Section 430.62(a)(4). The accompanying compliance report must certify that "the basic model(s) complies with the applicable energy conservation standard" and that "[a]ll required testing has been conducted in conformance" with applicable DOE test procedures. *Id.* Section 430.62(a)(3)(i)-(ii). Importantly, the manufacturer must also certify that all reported certification information is "true, accurate, and complete," and that he or she is "aware of the penalties associated with violations of the Act, the regulations thereunder, and 18 U.S.C. 1001 which prohibits knowingly making false statements to the Federal Government." *Id.* Section 430.62(a)(3)(iii)-(iv).

In connection with these filings, the Department's rules also require manufacturers to "establish, maintain, and retain the records of the underlying test data for all certification testing." 10 CFR 430.62(d). Further, the records must be "organized and indexed in a fashion which makes them readily accessible for review by DOE" and "shall include the supporting test data associated with tests performed on any test units to satisfy" the certification and compliance requirements. *Id.*

Under EPCA, the Secretary may take enforcement action for violations of these certification requirements. As relevant here, EPCA makes it unlawful "for any manufacturer to fail to permit access to, or copying of, records required to be supplied under this part, or fail to make reports or provide other information required to be supplied under [the Act]." 42 U.S.C. 6302(a)(3). Implementing that provision, the Department's rules prohibit both the "[f]ailure to permit access to, or copying of records required to be supplied under the Act and this rule" and the "failure to make reports or provide information required to be supplied under this Act and this rule." 10 CFR 430.61(a)(1). The Secretary may bring an injunctive action for the failure to properly certify covered products, 42 U.S.C. 6304, or may assess penalties for knowing violations of the certification reporting requirements, *id.* Section 6303(a). DOE's rules establish that, for consumer products:

If a basic model is not properly certified in accordance with the requirements of this subpart, the Secretary may seek, among other remedies, injunctive action to prohibit distribution in commerce of such basic model.

10 CFR 430.71(b).

To eliminate uncertainty among manufacturers subject to these requirements, the Department hereby provides its interpretation of the scope of these rules. Specifically, the Department clarifies that a failure to certify covered products in accordance with the DOE's rules is an independent violation of EPCA and DOE's implementing regulations that may be subject to enforcement action. The Department reads 42 U.S.C. 6302(a)(3) and 10 CFR 430.61(a)(1) to require not only that manufacturers make reports and provide the information required by the certification regulations, but also that such submissions be both accurate and provided in accordance with those regulations. A failure to do so is a prohibited act under EPCA and DOE rules and subject to enforcement action. A contrary reading would substantially undermine the purpose of the certification and compliance requirements in the first place—to ensure that all covered products distributed in commerce comply with applicable energy-efficiency standards and have been tested as prescribed by the rules.

Under a plain reading of section 430.71(b), moreover, improperly certifying a covered product is itself a violation subject to enforcement action. The Department need not test an improperly certified product or otherwise determine its noncompliance with the applicable standard before seeking an injunction or assessing civil penalties. Separate from these certification requirements, the Department's rules also establish both the process for testing covered consumer products' compliance, 10 CFR 430.70, and the Department's authority to take enforcement actions in the event that DOE determines that a covered product does not comply with an applicable standard, *id.* Sections 430.71(a), 430.73. But those regulations do not restrict the Department from seeking injunctive relief or civil penalties for prohibited acts that are not dependent upon testing or a determination of noncompliance. *See, e.g., id.* Section 430.61(b) (allowing DOE to seek penalties for acts other than standards violations). Thus, the Department has the authority to initiate enforcement action for improper certification, separate from any determination of whether a covered product does or does not comply with the applicable energy-conservation standard.

EPCA's enforcement provisions likewise apply to covered commercial and industrial equipment. *See* 42 U.S.C. 6316 (providing that the enforcement

provisions for consumer products apply “to the same extent and in the same manner” for covered commercial and industrial equipment). As with consumer products, the Department has promulgated certification and compliance regulations for certain equipment, including motors and transformers. See 10 CFR part 431, subparts B, K, U, and V; See, e.g., 10 CFR 431.385(b) (“If a basic model [of electric motor] is not properly certified in accordance with the requirements of this subpart, the Secretary may seek, among other remedies, injunctive action to prohibit distribution in commerce of such basic model.”)¹ The Department interprets its certification regulations governing covered commercial and industrial equipment in the same way as its regulations governing consumer products. For the reasons set forth above, the failure to certify a covered piece of commercial or industrial equipment in accordance with DOE rules may be subject to enforcement action, including the imposition of civil penalties.

Today, the Department also announces its intent to exercise its enforcement authority more rigorously in the future. In order for DOE’s efficiency standards to effectively promote the development and distribution of energy efficient products that will save energy and reduce costs for millions of Americans, DOE must ensure that these standards are aggressively and consistently enforced. Proper certification is a necessary prerequisite to achieving these goals. This fall, therefore, DOE will begin this effort by initiating a compliance review of certification reports for consumer products and commercial equipment covered by DOE regulations. Pursuant to its existing enforcement authority, the Department intends to randomly select previously filed certification reports for review, to request certification records from manufacturers as needed, and to hold manufacturers accountable for any failure to certify covered products in accordance with DOE rules.

This guidance represents the Department’s interpretation of existing regulations and announcement of the agency’s general policy with respect to exercising its existing enforcement authority. It is not intended to create or remove any rights or duties, nor is it

intended to affect any other aspect of EPCA or DOE regulations.

Authority: 42 U.S.C. 6299–6305; 6316.

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice.

Issued in Washington, DC, on October 7, 2009.

Scott Harris,

General Counsel.

[FR Doc. E9–24666 Filed 10–13–09; 8:45 am]

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DEPARTMENT OF ENERGY

Guidance on Ex Parte Communications

AGENCY: Office of the General Counsel, Department of Energy (DOE).

ACTION: Notice of guidance on ex parte communications.

SUMMARY: The Department of Energy sets forth guidance on ex parte communications during informal rulemaking proceedings. The guidance is intended to encourage the public to provide DOE with all information necessary to develop rules that advance the public interest, while ensuring that rulemaking proceedings are not subject to improper influence from off-the-record communications. As President Obama stated in a January 21, 2009 memorandum, “Executive departments and agencies should offer Americans increased opportunities to participate in policymaking and to provide their Government with the benefits of their collective expertise and information.” (74 FR 4685) DOE intends this guidance to provide both increased public participation in the rulemaking process and additional transparency during that process.

DATES: This guidance on ex parte communications is effective on October 14, 2009.

FOR FURTHER INFORMATION CONTACT:

Daniel Cohen, Assistant General Counsel for Legislation and Regulatory Law, Office of the General Counsel, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121, e-mail: expartecommunications@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The following guidance, provided in the form of answers to “Frequently Asked Questions”, is intended to encourage stakeholders to meet with, and provide information and advice to, DOE officials during the rulemaking process by setting forth simple and clear procedures governing meetings, or

telephone or electronic contact, with DOE officials to discuss a pending rulemaking action. Informal stakeholder communications other than written comments on the proposed rule or presentations at a public hearing that occur during the public comment period are generally lawful under section 501 of the Department of Energy Organization Act and the Administrative Procedure Act (5 U.S.C. 553). Informal communications, however, must be disclosed properly to ensure fairness for all stakeholders, the integrity of the rulemaking process, and the adequacy of the record in support of the final rule.

Frequently Asked Questions on Ex Parte Communications With DOE Employees

(1) *What is the purpose of DOE’s Ex Parte Guidance?*

The ex parte guidance governs the manner in which interested parties may communicate with DOE during its informal rulemaking proceedings, termed “permit-but-disclose” proceedings for purposes of this guidance. It is designed to encourage additional public participation in the rulemaking process, while ensuring that all such participation is open and transparent.

(2) *What types of proceedings are considered “permit-but-disclose” proceedings?*

Permit-but-disclose proceedings are comprised of: (i) Proceedings in response to petitions for rulemaking; (ii) informal rulemaking proceedings upon release of an advanced notice of proposed rulemaking, a notice of public meeting or, if neither of those documents are utilized, the notice of proposed rulemaking; (iii) proceedings involving an interim final rule.

(3) *Does the ex parte guidance apply to me?*

The ex parte guidance applies to anyone who engages in the kind of communications covered by the guidance.

(4) *What types of communications are covered by the ex parte guidance?*

The guidance governs ex parte presentations to DOE decision makers during its “permit-but-disclose” proceedings.

(5) *What is an ex parte presentation?*

An ex parte presentation is a communication directed to the merits or outcome of a proceeding that, if written (including e-mail), is not provided to all interested parties or, if oral, is made without advance notice to all interested parties and without opportunity for such parties to be present.

¹ Additionally, the Department is developing a final rule to adopt similar certification and compliance regulations for the remaining types of covered commercial and industrial equipment covered by statute. See 64 FR 69598 (December 13, 1999); 71 FR 25104 (April 28, 2006); 71 FR 42193 (July 25, 2006); 71 FR 71341–42 (December 8, 2006).