4–7–08 Monday
Vol. 73 No. 67 Apr. 7, 2008

Pages 18701–18942

Federal Register

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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

7 CFR Part 301

[Docket No. APHIS–2007–0157]

Karnal Bunt; Removal of Regulated Areas in Texas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Karnal bunt regulations to remove certain areas or fields in Baylor, Knox, Throckmorton, and Young Counties, TX, from the list of regulated areas based on our determination that those fields or areas meet our criteria for release from regulation. This action is necessary to relieve restrictions that are no longer necessary.

DATES: This interim rule is effective April 7, 2008. We will consider all comments that we receive on or before June 6, 2008.

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-2007-0157* 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–2007–0157, 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–2007–0157.

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. Matthew H. Royer, Associate Director, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road, Unit 26, Riverdale, MD 20737–1236; (301) 734–7819.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the planting of infected seed followed by very specific environmental conditions matched during specific stage of wheat growth. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine; therefore, without measures taken by the Animal and Plant Health Inspection Service, United States Department of Agriculture, to prevent its spread, the presence of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

Upon detection of Karnal bunt in Arizona in March of 1996, Federal quarantine and emergency actions were imposed to prevent the interstate spread of the disease to other wheat-producing areas in the United States. The quarantine continues in effect, although it has since been modified, both in terms of its physical boundaries and in terms of its restrictions on the production and movement of regulated articles from regulated areas. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–16 (referred to below as the regulations).

Under the regulations in § 301.89–3(f), a field known to have been infected with Karnal bunt, as well as any noninfected acreage surrounding the field, will be released from regulation if:

- The field has been permanently removed from crop production; or
- The field is tilled at least once per year for a total of 5 years (the years need not be consecutive). After tilling, the field may be planted with a crop or left fallow. If the field is planted with a host crop, the harvested grain must test negative, through the absence of bunted kernels, for Karnal bunt.

The regulations in § 301.89–3(g) describe the boundaries of the regulated areas in Arizona, California, and Texas. In this interim rule, we are amending § 301.89–3(g) by removing certain areas or fields in Baylor, Knox, Throckmorton, and Young Counties, TX, from the list of regulated areas, based on our determination that these fields or areas are eligible for release from regulation under the criteria in § 301.89–3(f). This action relieves restrictions on fields within those areas that are no longer necessary. With this action, there are no longer any regulated areas in Baylor or Knox Counties, TX, and the size of the regulated areas in each of the two remaining regulated Texas counties is reduced.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This 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.

This rule modifies the Karnal bunt regulations by removing certain areas in

Texas from quarantine based on surveys that indicate the areas meet our criteria for release from regulation. In Texas, four counties will be affected by this change and a total of 37,012.25 acres will be removed from quarantine. The following table presents the acreage and number of fields removed from regulation by this rule:

TABLE 1.—LOCATION, ACREAGE, AND NUMBER OF FIELDS TO BE RELEASED FROM REGULATION, BY COUNTY

County	Number of acres released	Number of fields
Baylor	20,404.13	281
Knox	11,522.39	117
Throckmorton	4,040.25	43
Young	1,045.48	18

In both Throckmorton and Young counties there will still be portions that remain under quarantine for Karnal bunt. Additionally, the quarantine boundaries will remain the same in California and Arizona. In the areas released from regulation for Karnal bunt, producers and other entities will no longer have to meet the restrictions that apply to regulated articles moved from quarantined areas.

The affect of this rule will be to allow affected landowners and businesses in the previously quarantined areas to resume normal operations since the areas have met the criteria for removal from quarantine. The U.S. Small Business Administration's (SBA) size standard for wheat farming is $750,000 or less in annual receipts.[1] We believe the majority of affected entities will be small by SBA standards. There were a total of 230,000 farms, including wheat farms, in the State of Texas in 2006. Of the 230,000 farms, only 3,900 (1.7 percent) had sales of $500,000 or more.[2] Statewide, a total of 5.5 million all-purpose acres were planted with wheat in 2006, with most of it not harvested but used as forage.[3] Of the 1.4 million wheat acres that were harvested, there was an average yield of 24 bushels per acre, for a total production of 33.6 million bushels.[4] The average price for wheat in 2006 was $4.55/bushel, for a total value of production of over $152.8 million in Texas. In 2002, the most recent year of the Census of Agriculture, there were a total of 9,031 farms that harvested wheat for grain in Texas. Of those, the Census of Agriculture recorded that there were 342 wheat farms located in the four counties that will be affected by the interim rule.[5]

This interim rule will allow producers in the deregulated area to freely move harvested wheat. As a result, it is possible that these producers may have a broader sales base and increased marketing opportunities than prior to the implementation of the interim rule as they will be able to reacquire domestic and international markets that may have been closed to them because of the quarantine. In addition, the possibility of enhanced buyer perceptions that the wheat is of higher quality than when the area was under quarantine may translate into higher prices received. That said, the benefits of this rule are still expected to be small for each producer. The requirement to test grain for Karnal bunt, a prerequisite of movement from a regulated area, is already performed free of charge. Removal of these areas from quarantine represents more the eliminating of the inconvenience of testing rather than a large financial gain.

It is important to note that the effects of this rule, although beneficial, will not result in a significant impact on the domestic market for wheat. As stated earlier, Texas wheat production in 2006 totaled 33.6 million bushels, with the value of production totaling over $152.8 million. For that same year, U.S. wheat production totaled over 1.8 billion bushels, with the value of production over $7.7 billion dollars.[6] Therefore, Texas represented only 1.86 percent of total U.S. wheat production, and contributed 1.98 percent to the value of U.S. wheat production. Wheat production in the affected counties is a small fraction of the Texas total, and any benefits of the interim rule experienced by affected producers will not have an impact on the price for wheat.

To further illustrate the point, in 2002 Texas production of wheat for grain totaled over 75.1 million bushels. In the four counties that are affected by this rule, production of wheat for grain totaled about 3.8 million bushels, representing approximately a 5 percent share of the State total. The 2002 percentage share of total U.S. wheat production for the counties of Baylor, Knox, Throckmorton, and Young, combined, was limited to 0.24 percent.[7] The interim rule will not have an impact on the domestic market for wheat. Table 2 presents the wheat production data in 2002 for the four counties affected by the interim rule.

TABLE 2.—FARM PRODUCTION DATA OF HARVESTED WHEAT FOR GRAIN FOR THE FOUR AFFECTED COUNTIES, 2002

County	Number of farms	Bushels harvested
Baylor	68	636,391
Knox	150	2,195,982
Throckmorton	59	694,079
Young	65	309,121
Total	342	3,835,573

Source: USDA–NASS, *2002 Census of Agriculture—Texas County Data*, Table 24. Washington, DC: National Agricultural Statistics Service.

Wheat producers will not be the only entities to benefit from the quarantine removal. The quarantine regulations require that all conveyances, mechanized harvesting equipment, seed conditioning equipment, grain elevators, and structures used for storing and handling wheat, durum wheat, or triticale be cleaned by removing all soil and plant debris. If disinfection is required by an inspector in addition to cleaning, the articles must be disinfected by one of the methods specified in § 301.89–12 of the regulations. As with the affected wheat producers, we expect that most if not all of the independent operators of harvesting equipment and other service providers that operate in the areas removed from quarantine by this rule are small entities.[8] They will benefit, but the financial gains for them are not expected to be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

[1] Table of Size Standards based on NAICS 2002 [Wheat farming: NAICS code 111140]. Washington, DC: U.S. Small Business Administration, effective October 1, 2007.

[2] USDA–NASS, *Quick Stats: U.S. & All States Data-Farm Numbers, Texas Data: Farm Numbers by Economic Sales Classes*. Washington, DC: National Agricultural Statistics Service.

[3] Wheat is planted for forage, grain, or a combination of the two.

[4] USDA–NASS, *Texas State Agriculture Overview—2006*. Washington, DC: National Agricultural Statistics Service.

[5] USDA–NASS, *2002 Census of Agriculture—Texas County Data*, Table 24. Washington, DC: National Agricultural Statistics Service.

[6] USDA–NASS, *Quick Stats*. Washington, DC: National Agricultural Statistics Service.

[7] U.S. production of harvested wheat for grain in 2002 totaled over 1.5 billion bushels. USDA–NASS, *2002 Census of Agriculture—U.S. State Data*, Table 23. Washington, DC: National Agricultural Statistics Service.

[8] These entities are covered under NAICS subsector code 115—Support Activities for Agriculture and Forestry, where the SBA size standard is $6.5 million or less in annual receipts.

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 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 interim 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 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301–89.3, paragraph (g) is amended under the heading ''Texas'' by removing the entries for Baylor County and Knox County and by revising the entries for Throckmorton County and Young County to read as follows:

§ 301.89–3 Regulated areas.

* * * * *

(g) * * *

Texas

Throckmorton County. Beginning in the northeastern portion of the county at the line of longitude −98.9921° W and the line of latitude 33.2836° N; then south along the line of longitude −98.9921° W to the line of latitude 33.2055° N; then east along the line of latitude 33.2055° N to the line of longitude −98.9891° W; then south along the line of longitude −98.9891° W to the line of latitude 33.1809° N; then east along the line of latitude 33.1809° N to the Throckmorton/Young County line at the line of longitude −98.9527° W; then north along the line of longitude −98.9527° W to the line of latitude 33.2836° N; then west along the line of latitude 33.2836° N to the point of beginning.

Young County. Beginning in the northwestern portion of the county at the line of longitude −98.9527° W and the line of latitude 33.2836° N; then south along the line of longitude −98.9527° W to the line of latitude 33.1809° N; then east along the line of latitude 33.1809° N to the line of longitude −98.8762° W; then north along the line of longitude −98.8762° W to the line of latitude 33.1946° N; then east along the line of latitude 33.1946° N to the line of longitude −98.8356° W; then north along the line of longitude −98.8356° W to the line of latitude 33.2880° N; then west along the line of latitude 33.2880° N to the line of longitude −98.9430° W; then south along the line of longitude −98.9430° W to the line of latitude 33.2836° N; then west along the line of latitude 33.2836° N to the point of beginning.

Done in Washington, DC, this 1st day of April 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–7194 Filed 4–4–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket No. AMS–FV–07–0095; FV07–983–2 FR]

Pistachios Grown in California; Change in Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the current reporting requirements prescribed under the California pistachio marketing order (order). The order regulates the handling of pistachios grown in California and is administered locally by the Administrative Committee for Pistachios (committee). These changes will modify one existing committee form and add a new form to a currently-approved information collection. The information collected will require handlers to report production and producer data, enabling the committee to obtain better information for preparing its annual marketing policy statement and conducting committee nominations and periodic referenda under the order.

DATES: *Effective Date:* April 8, 2008.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Senior Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Terry.Vawter@usda.gov* or *Kurt.Kimmel@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 983 (7 CFR part 983), regulating the handling of pistachios grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed

not later than 20 days after the date of the entry of the ruling.

This final rule changes the reporting requirements prescribed under the order. These changes will modify one committee form and add a new form to the currently-approved information collection. The new form will require handlers to report production and producer data. This new data will enable the committee to obtain better information for preparing its annual marketing policy statement and for conducting committee nominations and periodic referenda for pistachio producers. These changes were unanimously recommended by the committee on April 2, 2007.

Under § 983.47 handlers are required to furnish such reports as the committee, with the approval of the Secretary, needs to enable the Secretary and the committee to perform their functions.

As a result of a producer referendum, the California Pistachio Commission (CPC), a California State marketing program, was terminated in the spring of 2007. Data historically collected by the CPC and shared with the committee is no longer available. Such data includes information on the total available supply of pistachios grown in California and on the producers who produced the pistachios.

Thus, the committee unanimously recommended changes to its reporting requirements to capture information necessary for the effective administration of the Federal order that is no longer available through the CPC. Specifically, the committee recommended revising its current ACP Form 7, ''Monthly Report of Inventory/Shipments,'' and creating a new form, ACP Form 8, ''Producer Delivery Report.'' These forms will allow the committee to collect production, producer, inventory, and shipment data from handlers.

Requiring handlers to report such data will enable the committee to obtain better information on the total available supply of pistachios grown in California and to contact pistachio producers. The order requires the committee to prepare an annual marketing policy statement, pursuant to § 983.37. Several elements are required for an acceptable marketing policy statement: production, harvesting, processing, and storage conditions data. The committee is also required to hold annual nominations for seats on the committee, and USDA is required to conduct periodic continuance referenda. The committee needs producer and production data to fulfill order requirements.

Currently on the ACP Form 7, all handlers must report their beginning inventory, grower deliveries, shipments of pistachios to the domestic market, interhandler transfers, non-handler purchases of California product, inventory adjustments on split and shelled pistachios, and ending inventory on a monthly basis. This final rule will remove the requirement to report inventory adjustments to split and shelled pistachios, as the committee believes that this information is no longer needed. This final rule will also require handlers to report their export shipments. Export data was previously collected by the CPC and provided by some handlers voluntarily to the committee.

On the new form, ACP Form 8, ''Producer Delivery Report,'' handlers will be required to annually provide the names of the producers who deliver pistachios to them, the producers' mailing addresses and other contact information (telephone and facsimile numbers and e-mail addresses), the producers' employer identification numbers, total receipts of pistachios from each producer, and the counties in which the pistachios were grown. These reports will allow the committee to identify all authorized voters for committee selections and referenda in which each business entity is entitled to cast one vote. Individual producers may produce and deliver pistachios under more than one business entity. The information collected on this report will also allow the committee to determine whether individual producers are eligible to represent more than one business entity, based upon Federal Tax Identification numbers.

The information on producer deliveries will also allow the committee to track deliveries to handlers and verify that handlers pay the appropriate assessments on pistachios they receive. This information will also streamline handler audits for committee staff.

Pursuant to § 983.147(c), handlers who handle less than 5,000 pounds annually will be exempt from filing ACP Form 8. These small handlers tend to be producers who handle their own production only and are known to the committee in their producer, as well as their handler, capacity. Therefore, the committee already has business entity, production, and contact information on the producers that are also exempt handlers.

Such information will provide the committee with production and producer data to enhance the administration of the order. An electronic version of the form will be available to those handlers who file electronically.

Since the addition of ACP Form 8 will require changes to the order's rules and regulations, § 983.147 will be modified to add a new paragraph (g), and to redesignate current paragraphs (g) and (h) as paragraphs (h) and (i).

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 740 producers in the production area and approximately 50 handlers of California pistachios subject to regulation under the order. The Small Business Administration (SBA) (13 CFR 121.201) defines small agricultural producers as those having annual receipts less than $750,000, and defines small agricultural service firms as those whose annual receipts are less than $6,500,000. Of the 740 producers, approximately 722 have annual receipts of less than $750,000. Forty-two of the 50 handlers subject to regulation have annual pistachio receipts of less than $6,500,000. Thus, the majority of producers and handlers of California pistachios may be classified as small entities.

This final rule will change § 983.147 of the order's regulations, and revise a currently-approved information collection. The committee determined that production data the CPC previously collected and made available to the committee was still necessary for the efficient operation of the program. Therefore, the committee agreed that it should require handlers to report production and shipment data directly to the committee. In order to receive this data, the committee unanimously recommended that current ACP Form 7, ''Monthly Report of Inventory/Shipments,'' be revised and that a new form, ACP Form 8, ''Producer Delivery Report,'' be developed. Authority for these changes is provided in § 983.47.

On April 2, 2007, the committee deliberated on the value of revising the current form and requiring the new form, and discussed alternatives. It

determined that the only alternative would be to not collect such industry data. However, the order requires the committee to prepare an annual marketing policy statement. Several elements are required for an acceptable marketing policy statement: Production, harvesting, processing, and storage conditions data. The committee is also required to hold annual nominations for seats on the committee, and USDA is required to conduct periodic continuance referenda. Thus, the committee needs this data to fulfill order requirements. The revised ACP Form 7 and the new ACP Form 8 have been approved by the Office of Management and Budget (OMB) under OMB No. 0581–0215, ''Pistachios Grown in California.''

As with other marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

This final rule will impose additional reporting and recordkeeping burdens on handlers. However, any additional burden is expected to be offset by the efficient operation of the order. Handlers will continue to file the ACP Form 7 monthly and will file the ACP Form 8 annually, but the data collected will serve multiple purposes and streamline committee operations. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

Further, the committee's meeting was widely publicized throughout the pistachio industry and all interested persons were encouraged to attend the meeting and participate in the committee's deliberations. Like all committee meetings, the April 2, 2007, meeting was a public meeting, and entities of all sizes were encouraged to express their views on these issues.

A proposed rule was published in the **Federal Register** on September 7, 2007 (72 FR 173). Copies of the proposed rule were mailed or sent via facsimile to all committee members and handlers. Finally, the proposed rule was made available through the Internet, USDA and the Office of the Federal Register. A 60-day comment period ending November 6, 2007, was provided to allow interested persons to respond to the proposal. One opposing comment was received.

The commenter was opposed to the committee collecting and disseminating monthly export shipment and inventory data from handlers. According to the commenter, this data, when collected by the CPC in the past, proved valuable in evaluating market conditions and measuring the effectiveness of marketing efforts by the industry. However, the commenter stated that the export data is no longer necessary because the Federal order only regulates domestically shipped product and not exports. The commenter also expressed concern with the accuracy of the inventory data, and contends that such discrepancies are deliberate or accidental errors in the reporting to the committee. The commenter stated a preference for standardized inventory reporting practices because there are no standards for determining inventory levels. The commenter argues that, without set procedures, handlers could easily manipulate their reported inventory to seek competitive advantage in the marketplace.

Regarding the concerns about export shipments, the order provides authority for the collection of information from handlers, which includes shipment data. The committee believes that this information is valuable to the industry, and unanimously voted to collect this information under the Federal order.

Regarding the concerns about the accuracy of the monthly inventory data, the ACP–7 requires handlers to report an ''inventory adjustment'' figure, which is an adjustment to inventory due to issues including splitting, shelling, shrink, and loss of product. According to committee staff, there is variability in the way handlers store and manage their pistachios, which creates differences in how handlers report inventory adjustments. The committee is exploring ways to improve the accuracy of this information.

Accordingly, no changes will be made to this rule based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab/html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the data required through this rule is no longer available from the CPC, and the committee needs this information to ensure proper administration of the Federal order. Further, handlers are aware of this rule, which was unanimously recommended by the committee at a public meeting. Also, a 60-day comment period was provided for the proposed rule.

List of Subjects in 7 CFR Part 983

Pistachios, Marketing agreements and orders, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 983 is amended as follows:

PART 983—PISTACHIOS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 983 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 983.147, current paragraphs (g) and (h) are redesignated as paragraphs (h) and (i), and a new paragraph (g) is added to read as follows:

§ 983.147 Reports.

* * * * *

(g) *ACP–8, Producer Delivery Report.* Each handler of pistachios shall file this report with the committee by the 15th day of December of each production year: *Provided,* That for the 2007–08 production year, handlers must file this report with the committee by April 17, 2008, to report his/her receipts of pistachios during the current production year, the names of the handlers' producing entities, business type, and the following information concerning each producing entity: Federal Tax Identification number; mailing and e-mail address; telephone and fax number; total bearing acres; county of production; and for the current production year, the total receipts of open inshell, closed shell, shelling stock of each producing entity; and total pounds of processed pistachios produced by each producing entity.

* * * * *

Dated: April 2, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 08–1109 Filed 4–3–08; 1:02 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0392; Directorate Identifier 2008–CE–022–AD; Amendment 39–15451; AD 2008–07–10]

2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation Models B200, B200GT, B300, and B300C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation (HBC) Models B200, B200GT, B300, and B300C airplanes. This AD requires you to fabricate and install a placard incorporating information that limits operation when there is known or forecast icing and requires you to replace a section of the pneumatic supply tube for the tail deice system with a new tube of a different material. This AD results from reports of collapsed tail deice boot pneumatic supply tubes. We are issuing this AD to prevent collapsed pneumatic supply tubes, which could result in failure of the tail deice boots to operate. This failure could lead to loss of control in icing conditions.

DATES: This AD becomes effective on April 10, 2008.

On April 10, 2008 the Director of the **Federal Register** approved the incorporation by reference of certain publications listed in this AD.

We must receive any comments on this AD by June 6, 2008.

ADDRESSES: Use one of the following addresses to comment on this AD.

- *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.

To get the service information identified in this AD, contact Hawker Beechcraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

To view the comments to this AD, go to *http://www.regulations.gov.* The docket number is FAA–2008–0392; Directorate Identifier 2008–CE–022–AD.

FOR FURTHER INFORMATION CONTACT: Don Ristow, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4120; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

We received information of reports of collapsed pneumatic tubes, which supply pressure and vacuum to the horizontal stabilizer deice boots. With the introduction of an improved environmental control system, a section of the pneumatic deice tube located in the aft evaporator bay is subject to higher than normal temperature. This high heat in the aft evaporator bay may cause the tubing to soften and collapse undetected and permanently block flow to and from the deice boots.

The pilot's operating handbook specifies to visually check deicing boots, where possible, for inflation and hold down function when ice protection equipment is required. However, the tail deice boots are not visible from the cockpit during the check.

Since the collapse of the pneumatic deice supply tube is caused by the use of cabin heat, there is the possibility that the condition could occur after pre-flight verification of operation. Icing conditions and the use of cabin heat would be a normal operational mode.

In February 2008, HBC issued a safety communique to inform flight crews of the potential for collapsed pneumatic supply tubes and recommended flight crews avoid flight into icing conditions.

This condition, if not corrected, could result in failure of the tail deice boots to operate. This failure could lead to loss of control in icing conditions.

Relevant Service Information

We reviewed Hawker Beechcraft Mandatory Service Bulletin SB 30–3889, Issued: March 2008. The service information describes procedures for replacement of tail deice boot pneumatic supply tubes.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This AD requires you to fabricate and install a placard incorporating information that limits operation when there is known or forecast icing and requires you to replace a section of the pneumatic supply tube for the tail deice system with a new tube of a different material. The replacement of the tail deice boot pneumatic supply tubes is terminating action for the operation limitations in known or forecast icing.

In preparing this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included a discussion of any information that may have influenced this action in the rulemaking docket.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because this condition could result in failure of the tail deice boots to operate. This failure could lead to loss of control in icing conditions. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and an opportunity for public comment. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number ''FAA–2008–0392; Directorate Identifier 2008–CE–022–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://*

www.regulations.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this 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 AD will not have federalism implications under Executive Order 13132. This AD will 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 that this AD:

(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) 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 AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the AD, the regulatory evaluation, any comments received, and other information 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 Docket Office (telephone (800) 647–5527) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2008–07–10 Hawker Beechcraft Corporation: Amendment 39–15451; Docket No. FAA–2008–0392; Directorate Identifier 2008–CE–022–AD.

Effective Date

(a) This AD becomes effective on April 10, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
B200	BB–1926, BB–1978, and BB–1988 through BB–2000.
B200GT ...	BY–1 through BY–26.
B300	FL–427, FL–493, and FL–500 through FL–573.
B300C	FM–14 through FM–18.

Unsafe Condition

(d) This AD is the result of reports of collapsed tail deice boot pneumatic supply tubes. We are issuing this AD to prevent collapsed pneumatic supply tubes, which could result in failure of the tail deice boots to operate. This failure could lead to loss of control in icing conditions.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Fabricate a placard (using at least 1/8-inch letters) with the following words and install the placard on the instrument panel within the pilot's clear view: ''THIS AIRPLANE IS PROHIBITED FROM FLIGHT IN KNOWN OR FORECAST ICING''.	Before further flight in known or forecast icing conditions or within the next 3 days after April 10, 2008 (the effective date of this AD), whichever occurs first.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may fabricate the placard required in paragraph (e)(1) of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(2) Replace the tail deice boot pneumatic supply tubes using Kit No. 130–9701–0003 for Models B200 and B200GT or Kit No. 130–9701–0001 for Models B300 and B300C. The replacement of tail deice boot pneumatic supply tubes required by paragraph (e)(2) of this AD is terminating action for the placard required by paragraph (e)(1) of this AD.	Within 25 hours time-in-service (TIS) after April 10, 2008 (the effective date of this AD) or within 3 months after April 10, 2008 (the effective date of this AD), whichever occurs first.	Follow Hawker Beechcraft Mandatory Service Bulletin SB 30–3889, Issued: March 2008.

Actions	Compliance	Procedures
(3) Remove the placard required by paragraph (e)(1) of this AD.	Before further flight after the replacement of tail deice boot pneumatic supply tubes required by paragraph (e)(2) of this AD.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may remove the placard required in paragraph (e)(1) of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office (ACO), 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: Don Ristow, Aerospace Engineer, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4120; fax: (316) 946–4107. 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.

Related Information

(g) Hawker Beechcraft Safety Communique No. 290, dated: February 2008, pertains to the subject of this AD.

Material Incorporated by Reference

(h) You must use Hawker Beechcraft Mandatory Service Bulletin SB 30–3889, Issued: March 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Hawker Beechcraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on March 27, 2008.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–6959 Filed 4–4–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9387]

RIN 1545—AY75

Application of Normalization Accounting Rules to Balances of Excess Deferred Income Taxes and Accumulated Deferred Investment Tax Credits of Public Utilities Whose Assets Cease To Be Public Utility Property; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 9387) that were published in the **Federal Register** on Thursday, March 20, 2008 (73 FR 14934), providing guidance on the normalization requirements applicable to public utilities that benefit (or have benefited) from accelerated depreciation methods or from the investment tax credit permitted under pre-1991 law. These regulations permit a utility whose assets cease, whether by disposition, deregulation, or otherwise, to be public utility property with respect to the utility (deregulated public utility property) to return to its ratepayers the normalization reserve for excess deferred income taxes (EDFIT) with respect to those assets and, in certain circumstances, also permit the return of part or all of the reserve for accumulated deferred investment tax credits (ADITC) with respect to those assets.

DATES: This correction is effective April 7, 2008.

FOR FURTHER INFORMATION CONTACT: Patrick Kirwan, (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under sections 46 and 168 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9387) contain an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.46–6 is amended by revising paragraph (k)(2)(i) to read as follows:

§ 1.46–6 Limitation in case of certain regulated companies.

* * * * *

(k) * * *

(2) * * *

(i) *Restoration of rate base reduction.* A reduction in the taxpayer's rate base on account of the credit with respect to public utility property that becomes deregulated public utility property is restored ratably during the period after the property becomes deregulated public utility property if the amount of the reduction remaining to be restored does not, at any time during the period, exceed the restoration percentage of the recoverable stranded cost of the property at such time.

For this purpose —

* * * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–7226 Filed 4–4–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9392]

RIN 1545–BE11

Information Returns by Donees Relating to Qualified Intellectual Property Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance for filing information returns by donees relating to qualified intellectual property contributions. These final regulations reflect changes to the law made in 2004. The regulations affect donees receiving net income from qualified intellectual property contributions made after June 3, 2004.

DATES: *Effective date:* These regulations are effective April 7, 2008.

Applicability date: For dates of applicability, see § 1.6050L–2(f).

FOR FURTHER INFORMATION CONTACT: Timothy S. Sheppard, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1932. The collection of information in these final regulations is in § 1.6050L–2(a) and (b). Responses to this collection of information are required to obtain a tax benefit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) relating to section 6050L of the Internal Revenue Code (Code). These regulations reflect changes to the law made by the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418). On May 23, 2005, temporary regulations (TD 9206) relating to information returns by donees with respect to qualified intellectual property contributions under section 6050L were published in the **Federal Register** (70 FR 29450). A notice of proposed rulemaking (REG–158138–04) cross-referencing the temporary regulations was published in the **Federal Register** (70 FR 29460) on the same date. No comments were received from the public in response to the notice of proposed rulemaking and no public hearing was requested or held. Accordingly, the proposed regulations are adopted as amended by this Treasury decision and the corresponding temporary regulations are removed. The final regulations generally retain the provisions of the proposed and temporary regulations but eliminate transition rules that are no longer needed and make other minor editorial changes.

Explanation of Changes

The final regulations do not include certain transition rules that were included in the temporary and proposed regulations. Specifically, the proposed and temporary regulations provide guidance for donees on making the required information return before a form is prescribed by the IRS. The IRS has since issued a new Form 8899 on which donees must report qualified donee income. Thus, these transition rules are no longer needed and are not included in the final regulations. The proposed and temporary regulations also include a transition rule that applies to donees with taxable years to which net income from the qualified intellectual property is properly allocable that end prior to or on May 23, 2005, the issuance date of the proposed and temporary regulations. Under this transition rule, the donee shall furnish the information required under section 6050L to the donor on or before August 22, 2005. This transition rule is no longer needed and is not included in the final regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that few, if any, small entities will be required to file under these regulations. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Timothy S. Sheppard, Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** § 1.6050L–2 is added to read as follows:

§ 1.6050L–2 Information returns by donees relating to qualified intellectual property contributions.

(a) *In general.* Each donee organization described in section 170(c), except a private foundation (as defined in section 509(a)), other than a private foundation described in section 170(b)(1)(F), that receives or accrues net income during a taxable year from any qualified intellectual property contribution (as defined in section 170(m)(8)) must make an annual information return on the form prescribed by the IRS. The information return is required for any taxable year of the donee that includes any portion of the 10-year period beginning on the date of the contribution, but not for taxable years beginning after the expiration of the legal life of the qualified intellectual property.

(b) *Information required to be provided on return.* The information

return required by section 6050L and paragraph (a) of this section shall include the following—

(1) The name, address, taxable year, and employer identification number of the donee making the information return;

(2) The name, address, and taxpayer identification number of the donor;

(3) A description of the qualified intellectual property in sufficient detail to identify the qualified intellectual property received by such donee;

(4) The date of the contribution to the donee;

(5) The amount of net income of the donee for the taxable year that is properly allocable to the qualified intellectual property (determined without regard to paragraph (10)(B) of section 170(m) and with the modifications described in paragraphs (5) and (6) of such section); and

(6) Such other information as may be specified by the form or its instructions.

(c) *Special rule—statement to be furnished to donors.* Every donee making an information return under section 6050L and this section with respect to a qualified intellectual property contribution shall furnish a copy of the information return to the donor of the property. The information return required by section 6050L and this section shall be furnished to the donor on or before the date the donee is required to file the return with the IRS.

(d) *Place and time for filing information return*—(1) *Place for filing.* The information return required by section 6050L and this section shall be filed with the IRS location listed on the prescribed form or in its instructions.

(2) *Time for filing.* A donee is required to file the return required by section 6050L and this section on or before the last day of the first full month following the close of the donee's taxable year to which net income from the qualified intellectual property is properly allocable.

(e) *Penalties.* For penalties for failure to comply with the requirements of this section, see sections 6721 through 6724.

(f) *Effective/applicability date.* The rules of this section apply to qualified intellectual property contributions made after June 3, 2004.

§ 1.6050L–2T [Removed]

■ **Par. 3.** Section 1.6050L–2T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 5.** In § 602.101, paragraph (b) is amended by removing the following entry from the table:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * *	*
1.6050L–2T	1545–1932
* * * *	*

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: March 31, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–7223 Filed 4–4–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[FWS–R7–SM–2008–0036; 70101–1261–0000L6]

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustments

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

ACTION: Seasonal adjustments; hunting seasons for caribou in Unit 9D and female deer in Chichagof Controlled Use Area and Unit 4.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management actions to protect caribou populations in Unit 9D and female deer populations in the Northeast Chichagof Controlled Use Area and Unit 4. These actions provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on December 27, 2007. Those regulations established seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2007–08 regulatory year.

DATES: The closure of the subsistence caribou hunting season in Unit 9D is effective November 15, 2007, through March 31, 2008. The closure of the subsistence female deer hunting season in the portion of Unit 4 known as the Northeast Chichagof Controlled Use Area (NECCUA) was effective November 27, 2007, through January 26, 2008, and in the entirety of Unit 4 was effective January 1 through January 31, 2008. The Unit 4 closure beginning January 1, 2008, supersedes the NECCUA-specific closure on January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Peter J. Probasco, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Manager, USDA, Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and therefore negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of title VIII of ANILCA on public lands. The Departments administer title VIII through regulations at title 50, part 100 and title 36, part 242 of the Code of Federal Regulations (CFR). Consistent with subparts A, B, and C of these regulations, as revised January 8, 1999 (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional

Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA, Forest Service.

Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2007–08 wildlife seasons, harvest limits, and methods and means were published on December 27, 2007 (72 FR 73426). Because this action relates to a joint program managed by an agency or agencies in both the Departments of Agriculture and the Interior, an identical adjustment would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G) manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

Current Management Action

These actions are authorized and in accordance with 50 CFR 100.19(d)–(e) and 36 CFR 242.19(d)–(e), which allow the Board to restrict subsistence uses of fish or wildlife on public lands if necessary to ensure the continued viability of a fish or wildlife population. According to these regulations, temporary changes directed by the Board are effective following notice in the affected areas. Such notice via newspapers or local radio stations is then followed by notice in the **Federal Register**.

Caribou—Unit 9D

The Federal Subsistence Board closed the winter (November 15, 2007, through March 31, 2008) subsistence caribou hunting season on Federal public lands in Unit 9D. Current surveys of the Southern Alaska Peninsula Caribou Herd (SAPCH) in Unit 9D have shown a marked decrease in both the size of the population and calf recruitment. The intent of this in-season adjustment is to prevent additional mortality of this caribou herd caused by human harvest. On July 17, 2007, the ADF&G issued Emergency Order No. 02–02–07 to announce the closure of the State's resident hunting seasons for caribou in Unit 9D. On July 30, 2007, the Office of Subsistence Management via delegated authority approved a previous special action request to close the fall season (August 1, 2007, through September 30, 2007) to the taking of caribou in Unit 9D. Both Federal and State regulatory managers concur that the SAPCH population decline poses a significant conservation concern that warrants these actions. Ultimately, the intent of the closure is to stop the population decline of the SAPCH and to provide for future long-term subsistence use of this resource.

Female Deer—Northeast Chichagof Controlled Use Area (NECCUA)

The Federal Subsistence Board closed the subsistence female deer hunting season on Federal public lands in the NECCUA portion of Chichagof Island in Unit 4 for the period November 27, 2007, through January 26, 2008. This in-season adjustment was based on conservation concerns due to heavy snowfall and high winter deer mortality during the 2006–2007 winter and indications of a decline in the population. ADF&G issued an Emergency Order Closure (No. 01–06–07) for the remainder of the State doe hunting season in the NECCUA. Because the NECCUA is a popular hunting area for both local and non-local hunters, in part because of the extensive road system that permits vehicle access into all major watersheds, ADF&G is concerned that additional doe harvest is likely to occur and will jeopardize the future productivity and recovery of this deer population. At a meeting in Hoonah on October 25, 2007, community residents overwhelmingly supported both State and Federal closures of doe hunting until the population has recovered. Because harvest in January is generally minimal and accounts for approximately 2 percent of the total harvest, ADF&G had less concern about the Federal season being reopened for part of January.

Female Deer—Unit 4

The Federal Subsistence Board closed the subsistence female deer hunting season on Federal public lands in Unit 4 in Southeast Alaska for the period January 1, 2008, through January 31, 2008. This action supersedes the previous action closing Federal public lands in the NECCUA portion of Chichagof Island in Unit 4. This in-season adjustment was based on conservation concerns due to heavy snowfall and presumed high winter deer mortality across broad areas of Unit 4 during the 2006–2007 winter and indications of a decline in the population. Restricting the harvest of does is necessary to diminish further decline in the population and to allow a faster rate of recovery of the deer populations.

Beginning on January 1 through January 31, 2008, hunters must possess a 2008 State of Alaska hunting license and valid State of Alaska 2007–2008 harvest ticket, reside within Unit 4 or in the communities of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, Wrangell or Yakutat; and harvest only male deer on Federal public lands.

Conformance with Statutory and Regulatory Authorities

Administrative Procedure Act

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these adjustments are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate action would generally fail to serve the overall public interest and conflict with Section 815(3) of ANILCA. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of this action and pursuant to 5 U.S.C. 553(d)(3) to make these adjustments effective as indicated in the **DATES** section.

National Environmental Policy Act

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940, published May 29, 1992), implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999 (64 FR 1276.)

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, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment does not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Federal Agencies 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.

Other Requirements

The adjustment has been exempted from OMB review under Executive Order 12866.

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. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as sporting goods dealers. The number of small entities affected is unknown; however, the effects will be seasonally and geographically limited in nature and will likely not be significant. The Departments certify that this adjustment will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this action 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.

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

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

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

In accordance with Executive Order 13132, the adjustment 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. Cooperative salmon run assessment efforts with ADF&G will continue.

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 action.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this action is not expected to significantly affect energy supply, distribution, or use, it is not a significant energy action and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted this document under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Charles Ardizzone, 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, USDA, Forest Service, provided additional assistance.

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

Dated: February 22, 2008.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

Dated: February 22, 2008.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. E8–7180 Filed 4–4–08; 8:45 am]

BILLING CODE 3410–11–P (50%); 4310–55–P (50%)

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–250

RIN 1215–AB65

Nondiscrimination and Affirmative Action Obligations of Contractors and Subcontractors Regarding Protected Veterans

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations in 41 CFR part 60–250 implementing the nondiscrimination and affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (''Section 4212'' or ''VEVRAA''). The regulations in part 60–250 implement the nondiscrimination and affirmative action provisions of VEVRAA prior to their amendment in 2002 by the Jobs for Veterans Act (''JVA''), and apply to contracts entered into before December 1, 2003. Today's final rule revises the mandatory job listing provision in the part 60–250 regulations to provide that listing employment openings with the state workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the mandatory job listing requirements under the part 60–250 regulations. The effect of this final rule is to conform the mandatory job listing provision in the part 60–250 regulations to the parallel provision in the

regulations of the Office of Federal Contract Compliance Programs (''OFCCP'') implementing the JVA amendments to VEVRAA in 41 CFR part 60–300. Today's final rule also clarifies that the regulations in part 60–250 apply to any contract or subcontract of at least $25,000 entered into before December 1, 2003, and that the regulations in part 60–300, not the part 60–250 regulations, apply to such a contract or subcontract if it is modified on or after December 1, 2003 and the contract or subcontract as modified is for $100,000 or more.

DATES: *Effective Date:* These regulations are effective April 7, 2008.

FOR FURTHER INFORMATION CONTACT: Sandra Dillon, Acting Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW, Room N3422, Washington, DC 20210. Telephone: (202) 693–0102 (voice) or (202) 693–1337 (TTY).

SUPPLEMENTARY INFORMATION: The nondiscrimination and affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act, 38 U.S.C. 4212, (''VEVRAA'' or ''Section 4212'') require Federal contractors and subcontractors to provide equal employment opportunity to and take affirmative action to employ and advance in employment the categories of veterans protected under the law. Prior to the amendments made in 2002 by the Jobs for Veterans Act (Pub. L. 107–288, 116 Stat. 2033)(''JVA''), VEVRAA required, in part, that the President implement the nondiscrimination and affirmative action provisions by promulgating regulations requiring contractors to list immediately with the appropriate local employment service office all of its employment openings, except that the contractor may exclude openings for executive and top management positions, positions which are to be filled from within the contractor's organization, and positions lasting three days or less.

OFCCP's regulations implementing the pre-JVA nondiscrimination and affirmative action provisions of VEVRAA are published in 41 CFR part 60–250. The pre-JVA nondiscrimination and affirmative provisions of VEVRAA and the regulations in part 60–250 continue to apply to contractors with contracts entered into before December 1, 2003. The mandatory job listing requirement is addressed in the regulation containing the equal opportunity clause at 41 CFR 60–250.5. OFCCP clarified in § 60–250.5(a)2 that ''the appropriate local employment service office'' is ''an appropriate local employment service office of the state employment security agency wherein the opening occurs.'' In addition, OFCCP interpreted the language in the pre-JVA affirmative action provisions of VEVRAA to authorize the use of alternative methods for complying with the mandatory job listing requirement. Thus, § 60–250.5(a)2 currently provides that ''[l]isting employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.''

Today's final rule revising the mandatory job listing provision in § 60–250.5(a)2 was made necessary by two events. First, the JVA amended the nondiscrimination and affirmative action provisions of VEVRAA and made those amendments applicable only to contracts entered into on or after December 1, 2003. Among the changes made by the JVA amendments was a change to the manner in which the mandatory job listing provision is to be implemented. Section 2(b)(1) of the JVA requires the Secretary to promulgate regulations that obligate each covered contractor to list all of its employment openings with ''the appropriate employment service delivery system.'' Section 5(c)(1) of the JVA defines the term ''employment service delivery system'' as ''a service delivery system at which or through which labor exchange services, including employment, training, and placement services, are offered in accordance with the Wagner-Peyser Act.'' *See* 38 U.S.C. 4101(7). In addition to listing with an appropriate employment service delivery system, the JVA permits contractors to list their employment openings with ''one-stop career centers under the Workforce Investment Act of 1998, other appropriate service delivery points, or America's Job Bank (or any additional or subsequent national electronic job bank established by the Department of Labor).'' Under the JVA amendments, listing jobs solely with America's Job Bank (''AJB'') no longer complies with the requirements of VEVRAA. In addition, AJB ceased operations on July 1, 2007.

OFCCP recently published final regulations to implement the JVA amendments to the nondiscrimination and affirmative action provisions of VEVRAA (72 FR 44393, August 8, 2007). The regulation at 41 CFR 60–300.5(a)2 implementing the mandatory job listing requirement provides that ''listing employment openings with the state workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service delivery system.'' Contractors that are covered by both the regulations in part 60–250 and part 60–300 have asked whether they may use the same methods to satisfy their mandatory job listing obligations under both sets of regulations. In addition, with the elimination of one of the permissible methods under § 60–250.5(a)2 for satisfying their job listing obligations, contractors have inquired about other methods that might be used to comply with the mandatory job listing requirements in the part 60–250 regulations.

OFCCP has interpreted the language of the pre-JVA nondiscrimination and affirmative action provisions of VEVRAA and the current § 60–250.5(a)2 to authorize alternative methods for listing job openings with the local employment service office. Thus, OFCCP has interpreted the current § 60–250.5(a)2 to permit contractors to list job openings in the same manner that is permitted under the regulation at 41 CFR 60–300.5(a)2. In a Frequently Asked Question (''FAQ'') published on the OFCCP Web site, OFCCP advised contractors that ''listing with the state workforce agency job bank in the state where the job opening occurs also will satisfy the listing requirement under the part 60–250 regulations.'' In another FAQ published on the Web site, OFCCP further explained that ''contractors subject to both sets of regulations also may satisfy the listing requirement by listing openings with an appropriate local employment service delivery system.'' *See http://www.dol.gov/esa/regs/compliance/ofccp/faqs/jvafaqs.htm.*

Today's final rule makes two changes to the mandatory job listing provision in § 60–250.5(a)2. First, the final rule removes the reference to AJB since it no longer exists. Second, today's final rule conforms the mandatory job listing provision in the part 60–250 regulations to the interpretation of current § 60–250.5(a)2 that is set forth in the FAQs. Thus, the final rule revises § 60–250.5(a)2 to state that ''listing employment openings with the state workforce agency job bank where the opening occurs or with the local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service office.'' As a result of the changes made by this final rule, the VEVRAA regulations at part 60–250 and part 60–300 will identify the same methods for satisfying the mandatory listing requirement.

In addition, this final rule revises § 60–250.1(b) to clarify that the regulations in part 60–250 apply to any contract or subcontract of at least $25,000 entered into before December 1, 2003, and that the regulations in part 60–300, not the part 60–250 regulations, apply to such a contract or subcontract if it is modified on or after December 1, 2003, and the contract or subcontract as modified is for $100,000 or more. This change will assist contractors in determining whether the regulations in part 60–250 and/or the regulations in part 60–300 apply to their contracts.

Regulatory Procedures

Publication in Final

OFCCP has determined that this rulemaking need not be published as a proposed rule, as generally required by the Administrative Procedure Act, 5 U.S.C. 553 (''APA''). Notice-and-comment requirements do not apply to ''interpretive rules.'' 5 U.S.C. 553(b)(A). The amendment to 41 CFR 60–250.5(a)2 is not being published as a proposed rule because it is an interpretive rule and therefore exempt from APA notice and comment procedures. Consistent with OFCCP's interpretation that under the pre-JVA affirmative action provisions of VEVRAA and existing 41 CFR 60–250.5(a)2 more than one method may be used to list openings with the appropriate local employment service office, the final rule amends 41 CFR 60–250.5(a)2 to include additional means of listing jobs. The current rule allowed contractors to post jobs on AJB, while this final rule permits contractors to satisfy the mandatory job listing requirement by posting employment openings with the state workforce agency job bank or with the local employment service delivery system where the employment opening occurs. For these reasons, the exemption for interpretive rules permits OFCCP to publish this final rule to codify OFCCP's interpretation that listing job openings with the state workforce agency job banks or with the local employment service delivery system where the job opening occurs are permissible methods for complying with the mandatory listing requirement at 41 CFR 60–250.5(a)2.

In addition, notice-and-comment rulemaking is not required for the amendment to 41 CFR 60–250.1(b), which clarifies the scope and applicability of the regulations in 41 CFR part 60–250 and the regulations in 41 CFR part 60–300. The JVA made the amendments to the nondiscrimination and affirmative action provisions of VEVRAA applicable only to Government contracts entered into on or after December 1, 2003. The term ''Government contract'' is defined in existing 41 CFR 60–250.2(i) and 41 CFR 60–300.2(i) as ''any agreement or modification thereof between any contracting agency and any person for the purchase, sale or use of personal property or nonpersonal services (including construction).'' Because a contract modification is a ''Government contract,'' the JVA amendments apply to modifications of otherwise covered contracts made on or after December 1, 2003. Consequently, the regulation at 41 CFR 60–300.1(b) provides that part 60–300 applies to any contract of $100,000 or more, entered into or modified on or after December 1, 2003. The amendment to 41 CFR 60–250.1(b) essentially incorporates the effective date of the JVA amendments, which was determined by statute, and tracks the regulation in 41 CFR 60–300.1(b). The Department of Labor may not, in response to public comment, change or decline to implement the effective dates of the JVA amendments. Consequently, there is good cause for finding that applying the notice-and-comment procedure to the amendment to 41 CFR 60–250.1 is unnecessary and contrary to the public interest, pursuant to Section 553(b)(B) of the APA.

Executive Order 12866

This final rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. OFCCP has determined that this rule is not ''a significant regulatory action'' under Executive Order 12866, section 3(f). Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

Executive Order 13132

OFCCP has reviewed the rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule will not ''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.''

Regulatory Flexibility Act

The rule clarifies existing requirements for Federal contractors. In view of this fact and because the rule does not substantively change existing obligations for Federal contractors, we certify that the rule will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Small Business Regulatory Enforcement Fairness Act

OFCCP has concluded that the rule is not a ''major'' rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). In reaching this conclusion, the OFCCP has determined that the rule will not likely result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform

Executive Order 12875—This rule does not create an unfunded Federal mandate upon any State, local, or tribal government.

Unfunded Mandates Reform Act of 1995—This rule does 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 increased expenditures by the private sector of $100 million or more.

Congressional Review Act

This regulation is not a major rule for purposes of the Congressional Review Act.

Paperwork Reduction Act

The information collection requirements contained in the existing VEVRAA regulations, with the exception of those related to complaint procedures, are currently approved under OMB Control No. 1215–0072 (Recordkeeping and Reporting Requirements—Supply and Service) and OMB Control No. 1215–0163 (Construction Recordkeeping and Reporting). The information collection requirements contained in the existing complaint procedures regulation are currently approved under OMB Control No. 1215–0131. This final rule amends the regulations implementing VEVRAA to allow contractors to list with the state workforce agency job bank where the opening occurs or the local employment service delivery system where the opening occurs to comply with the obligation to list jobs with an appropriate local employment service

office. However, this final rule does not make any changes to the currently approved information collections. Consequently, this final rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 41 CFR Part 60–250

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements, and Veterans.

Signed at Washington, DC, this 1st day of April, 2008.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Charles E. James, Sr.,

Deputy Assistant Secretary for Federal Contract Compliance.

■ Accordingly, under authority of 38 U.S.C. 4212, Title 41 of the Code of Federal Regulations, Chapter 60, Part 60–250, is amended as follows:

PART 60–250—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS REGARDING SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, RECENTLY SEPARATED VETERANS, AND OTHER PROTECTED VETERANS

■ 1. The authority citation for part 60–250 continues to read as follows:

Authority: 29 U.S.C. 793; 38 U.S.C. 4211 (2001) (amended 2002); 38 U.S.C. 4212 (2001) (amended 2002) and 4212; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

■ 2. Section 60–250.1 is amended by revising paragraph (b) to read as follows.

§ 60–250.1 Purpose, applicability and construction.

* * * * *

(b) *Applicability.* This part applies to any Government contract or subcontract of $25,000 or more entered into before December 1, 2003, for the purchase, sale or use of personal property or nonpersonal services (including construction), except that the regulations in 41 CFR part 60–300, and not this part, apply to such a contract or subcontract that is modified on or after December 1, 2003 and the contract or subcontract as modified is in the amount of $100,000 or more: *Provided,* That subpart C of this part applies only as described in § 60–250.40(a). Compliance by the contractor with the provisions of this part will not necessarily determine its compliance with other statutes, and compliance with other statutes will not necessarily determine its compliance with this part.

* * * * *

■ 3. Section 60–250.5 is amended by revising paragraph (a)2 to read as follows.

§ 60–250.5 Equal opportunity clause.

(a) * * *

2. The contractor agrees to immediately list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local employment service office of the state employment security agency wherein the opening occurs. Further, listing employment openings with the state workforce agency job bank where the opening occurs or with the local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service office.

* * * * *

[FR Doc. E8–7123 Filed 4–4–08; 8:45 am]

BILLING CODE 4510–CM–P

OFFICE OF PERSONNEL MANAGEMENT

45 CFR Part 801

RIN 3206–AL40

Voting Rights Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is removing part 801 of title 45, Code of Federal Regulations, Voting Rights Program, which prescribes the times, places, manner and procedures for the listing and removal of the names of persons on voter eligibility lists in accordance with sections 6, 7, and 9 of the Voting Rights Act of 1965. Enactment of Public Law 109–246, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Reauthorization and Amendments Act of 2006 repealed sections 6, 7, and 9 of the Voting Rights Act of 1965, which included the statutory authority for OPM's promulgation of these regulations (Pub. L. 109–246, Section 3. Changes relating to use of examiners and observers. ''(c) Repeal of Sections Relating to Examiners.—Sections 6, 7, and 9 of the Voting Rights Act of 1965 (42 U.S.C. 1973d, 1973e and 1973g) are repealed.''). Therefore, OPM is no longer authorized to maintain these regulations.

DATES: *Effective date:* April 7, 2008. *Comment date:* Submit comments on or before June 6, 2008.

ADDRESSES: Send or deliver written comments to Chris Hammond, Voting Rights Program Manager, Office of Personnel Management, 1900 E Street, NW., Room 2469R, Washington, DC 20415; by FAX to (202) 606–0398; or by e-mail to *Chris.Hammond@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Chris Hammond by telephone at (202) 606–5262; by FAX at (202) 606–0398; or by e-mail at *Chris.Hammond@opm.gov.*

SUPPLEMENTARY INFORMATION: On July 27, 2006, the President signed the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 (VRARA), Public Law 109–246, into law. The VRARA reauthorized many of the temporary provisions of the Voting Rights Act of 1965, Public Law 89–110, for an additional 25 years, but repealed sections 6, 7, and 9, which had authorized the Federal examiner program. Additionally, the VRARA amended other sections of the Voting Rights Act by removing all references to Federal examiners.

Purpose and Scope

The Voting Rights Act, as reauthorized and amended by the VRARA, continues in full force and effect to prohibit discrimination in voting on the basis of race or color and to provide protections for designated language minority groups. The Office of Personnel Management (OPM) will continue to assign, at the request of the Attorney General, Federal observers under the authority of the Voting Rights Act, to monitor and report on election procedures in certified political subdivisions (typically counties or parishes).

The sole purpose of OPM's removal of part 801 of title 45, Code of Federal Regulations, is to implement Congress' repeal of the Federal examiner program in the VRARA. This removal does not affect the Procedures for the Voting Rights Act promulgated by the Department of Justice (DOJ), parts 51

and 55 of title 28, Code of Federal Regulations.

The Voting Rights Act—Generally

The Voting Rights Act, signed by President Lyndon B. Johnson on August 6, 1965, and amended in 1970, 1975, 1982, 1992, and 2006, enforces the permanent guarantee of the Fifteenth Amendment to the Constitution that no person shall be denied the right to vote on account of race or color, among other protections. In addition, the Voting Rights Act contains several special temporary provisions that impose more stringent requirements on covered jurisdictions in certain areas of the country and provides protections for designated language minority groups. Under the Voting Rights Act, DOJ is responsible for enforcement and OPM is responsible for providing Federal observers to monitor and report on the election process in areas designated by the Attorney General or a Federal court. Prior to enactment of the VRARA, the Voting Rights Act authorized the Attorney General to request that OPM assign Federal examiners to certified jurisdictions to ensure that legally qualified persons were free to register for Federal, State, and local elections.

The Federal Examiner Program

Sections 6, 7, and 9 of the Voting Rights Act, previously codified at 42 U.S.C. 1973d, 1973e, and 1973g (2005), established the Federal examiner program. Under this program, persons in covered political subdivisions could attest to their eligibility to vote in Federal, State, and local elections by applying to a Federal examiner when such an examiner had been designated to serve in the jurisdiction. The examiner would, in turn, assess the applicant's voter qualifications as prescribed by State law and consistent with the Constitution and laws of the United States, and—if the person were eligible—instruct the voter's county/parish to include him/her on its voter rolls. Such voters could then not be removed from local voter rolls unless and until approval had been obtained from the Federal examiner. The OPM (formerly the Civil Service Commission) was responsible for administering the program and was authorized to promulgate regulations prescribing the times, places, manner and procedures for the listing and removal of the names of persons on voter eligibility lists. In accordance with this responsibility, OPM promulgated regulations for the Federal examiner program at part 801 of title 45, Code of Federal Regulations.

Congressional Hearings on Reauthorization and Amendment

With various provisions of the Voting Rights Act, including those establishing the Federal examiner program (sections 6, 7, and 9), scheduled to expire in 2007, Congress held hearings in 2005 and 2006 on reauthorization and amendment of the Voting Rights Act. During these hearings, Congress heard testimony from voting rights experts and representatives from OPM and DOJ who had worked with and supported the Federal examiner program. Congressional testimony revealed that Federal examiners had not been used to list eligible voters since 1983 and enactment of the National Voter Registration Act of 1993 (NVRA), Public Law 103–31, and the Help America Vote Act of 2002 (HAVA), Public Law 107–252, has significantly improved voter registration. Under the NVRA, States are required to make registration materials available at all driver's license offices, public benefits offices, and other social service agencies. States are also required to maintain voter registration lists for Federal elections in accordance with standards set out by the NVRA. Under HAVA, States are required to meet minimum standards with regard to updating voting equipment, administering provisional balloting, and maintaining one centrally located Statewide voter registration list. Therefore, in the final version of the bill to reauthorize and amend the Voting Rights Act (H.R. 9), Congress chose to include provisions to repeal sections 6, 7, and 9 and remove all references to Federal examiners. See H. Rept. 109–478, 2d Sess., at 61–62 (2006).

Repeal of Authority for the Federal Examiner Program and Attendant Regulations

On July 27, 2006, the President signed the VRARA into law, thereby repealing sections 6, 7 and 9 of the Voting Rights Act and eliminating the Federal examiner program. Section 9 had previously provided the statutory authority for OPM to promulgate regulations prescribing the times, places, manner and procedures for the listing and removal of the names of persons on voter eligibility lists. Therefore, OPM is no longer authorized to maintain part 801 of title 45, Code of Federal Regulations.

Conclusion of the Federal Examiner Program

Removal of part 801 of title 45, Code of Federal Regulations, is consistent with repeal of authority for the Federal examiner program. The DOJ and OPM have taken additional steps to effectuate the conclusion of the Federal examiner program. By letter dated May 1, 2007, the Chief of the Voting Section, DOJ, notified the five States affected by the end of the Federal examiner program (Alabama, Georgia, Mississippi, Louisiana, and South Carolina) that enactment of the VRARA had ended the program and enclosed, for each State, a final listing of remaining eligible voters listed by Federal examiners. The DOJ letter informed these States that final responsibility for making determinations on whether these Federally listed voters remain eligible in accordance with voter qualifications prescribed by State law and consistent with the Constitution and laws of the United States now rests with these States and their counties or parishes. Similarly, by letters dated May 17 or 18, 2007, OPM notified affected counties and parishes in those States that the Federal examiner program had ended and enclosed a copy of the DOJ letter to the respective State. OPM has also returned all unprocessed requests from counties and parishes to remove names from Federal examiner lists.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to the removal of regulatory language made obsolete in 2006 by the enactment of Public Law 109–246.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 45 CFR Part 801

Public welfare, Voting Rights Program.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Therefore, under the authority of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, OPM removes part 801.

PART 801—[REMOVED]

[FR Doc. E8–7142 Filed 4–4–08; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 060525140–6221–02]

RIN 0648–XG34

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper/Grouper Resources of the South Atlantic; Withdrawal of Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; withdrawal of trip limit reduction.

SUMMARY: NMFS withdraws the reduction of the commercial trip limit for golden tilefish in the South Atlantic to 300 lb (136 kg) per trip in or from the exclusive economic zone (EEZ) that was published in the **Federal Register** on March 28, 2008. Based on updated information, NMFS has determined that the threshold level for implementation of the trip limit will not have been reached by April 6 as originally projected.

DATES: The rule published on March 28, 2008 (73 FR 16571) is withdrawn as of April 2, 2008.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone 727–824–5305, fax 727–824–5308, e-mail *susan.gerhart@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Resources of the South Atlantic (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Under 50 CFR 622.44(c)(2), NMFS is required to reduce the trip limit in the commercial fishery for golden tilefish from 4,000 lb (1,814 kg) to 300 lb (136 kg) per trip when 75 percent of the fishing year quota is met, by filing a notification to that effect in the **Federal Register**. Based on reports through February, NMFS determined that 75 percent of the available commercial quota of 295,000 lb (133,810 kg), gutted weight, for golden tilefish would be reached on or before April 6, 2008. Accordingly, NMFS published a trip limit reduction (73 FR 16571, March 28, 2008) reducing the commercial golden tilefish trip limit to 300 lb (136 kg) in the South Atlantic EEZ from 12:01 a.m., local time, on April 6, 2008 through December 31, 2008, unless changed by further notification in the **Federal Register**. However, a new report including March landings indicated that 75 percent of the quota would not be reached by that date due to unexpected decreases in fishing effort and reporting errors. Therefore, NMFS is withdrawing the trip limit reduction, will continuing monitoring the fishery, and will publish a new trip limit reduction in the **Federal Register** when 75 percent of the applicable quota is projected to be reached.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is contrary to the public interest. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to avoid an unnecessary regulatory restriction and the associated adverse social and economic impacts. Prior notice and opportunity for public comment would require time and would potentially result in economic loss to participants in the fishery. For these same reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 2, 2008.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 08–1106 Filed 4–2–08; 2:03 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 071211828–8448–02]

RIN 0648–XG90

Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Fishery Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing the commercial and non-commercial fisheries in the Main Hawaiian Islands fishery for seven deepwater bottomfish species (''Deep 7'' bottomfish) as a result of reaching the total allowable catch (TAC) for the 2007–08 fishing year.

DATES: Effective April 16, 2008 through August 31, 2008.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS Pacific Islands Region, 808–944–2273.

SUPPLEMENTARY INFORMATION: Bottomfish fishing in Hawaii is managed under the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish FMP), developed by the Western Pacific Fishery Management Council (Council) and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the Bottomfish FMP appear at 50 CFR part 665 and at subpart H of 50 CFR part 600.

The regulations at § 665.72 authorize NMFS and the Council to set a TAC limit for Deep 7 bottomfish for the fishing year, based on the best available scientific, commercial, and other information, and taking into account the associated risk of overfishing. The Deep 7 bottomfish are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapu'upu'u (*Epinephelus quernus*).

When the TAC limit for the year is projected to be reached, the Regional Administrator is required to publish notification that the fishery will be closed beginning on a specified date (not earlier than 14 days after the date of filing the closure notice for public inspection at the Office of the **Federal Register**) until the end of the fishing

year in which the TAC is reached. During the closure, no person may fish for, possess, or sell any Deep 7 bottomfish in the Main Hawaiian Islands, except as otherwise authorized by law. Specifically, fishing for, and the resultant possession or sale of, Deep 7 bottomfish by vessels legally registered to Mau Zone, Ho omalu Zone, or Pacific Remote Island Areas bottomfish fishing permits, and conducted in compliance with all other laws and regulations, are not affected by this closure. There is no prohibition on fishing for or selling other non-Deep 7 bottomfish species throughout the year.

The TAC for the 2007–08 fishing year was established by the Council at 178,000 lb (80,740 kg) of Deep 7 bottomfish. Progress toward the 2007–08 TAC is monitored using information reported by holders of State of Hawaii commercial marine licenses (State CML) through monthly catch reports submitted to the State. Based on this information, the NMFS Pacific Islands Fisheries Science Center projected that the TAC for the 2007–08 fishing year will be reached on April 17, 2008. In accordance with § 665.72(c), this document serves as a 14 day advance notification to fishermen, the fishing industry, and the general public that the Main Hawaiian Islands Deep 7 bottomfish fishery will be closed from April 17, 2008, through the remainder of the fishing year. The 2008–09 fishing year will begin on September 1, 2008, and the TAC for the 2008–09 fishing year will be published in the **Federal Register** by August 31, 2008.

This action is required by § 665.72(c) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 2, 2008.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 08–1104 Filed 4–2–08; 1:54 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 67
Monday, April 7, 2008

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0403; Directorate Identifier 2007–NM–166–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Airplanes Equipped With General Electric CF6–80C2 Series Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas Model MD–11 and MD–11F airplanes. This proposed AD would require revising the airplane flight manual to advise the flightcrew to use certain procedures during descent in certain icing conditions. This proposed AD results from reports of several in-flight engine flameouts, including multiple dual engine flameout events, in ice-crystal icing conditions. We are proposing this AD to ensure that the flightcrew has the proper procedures to follow in certain icing conditions. These certain icing conditions could cause a multiple engine flameout during flight without the ability of the engines to be relit, and consequent forced landing of the airplane.

DATES: We must receive comments on this proposed AD by May 22, 2008.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

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: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

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–2008–0403; Directorate Identifier 2007–NM–166–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports indicating that there have been six (two dual) engine flameout events on McDonnell Douglas Model MD–11 airplanes, in ice-crystal icing conditions during descent. These airplanes were equipped with General Electric (GE) CF6–80C2 series engines. Each flameout was in or near convective weather with ice-crystal icing; this type of icing does not appear on radar due to its low reflectivity, and neither the airplane ice detectors nor visual indications indicate the presence of this type of icing conditions. Therefore, it is usually undetected by the flightcrew. These conditions can cause ice crystals to accumulate in the core flow path of the engine during low-power conditions, such as idle or idle descent. The accumulated ice sheds during throttle increase and is ingested into the engine, causing the combustor to flameout resulting in an in-flight flameout and potential damage to the high pressure compressor due to ice impact.

Activating the anti-ice system increases the flameout margin and reduces the potential for multiple engine flameouts by increasing bleed flow and engine idle speed. However, in some of the subject engine flameouts, the anti-ice was already on when the engines flamed out. In each event, the engines relit and continued to operate normally for the remainder of the flight. Having the igniters on is necessary to ensure that the engine will relight quickly.

This condition, if not corrected, could result in a multiple engine flameout during flight without the ability of the engines to be relit, and consequent forced landing of the airplane.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require revising the airplane flight manual (AFM) to advise the flightcrew to use certain procedures during descent in certain icing conditions.

Interim Action

We consider this proposed AD interim action. If final action is later identified, we might consider further rulemaking then.

Costs of Compliance

There are about 118 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM revision	1	$80	$0	$80	70	$5,600

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 have 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 that the 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. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2008–0403; Directorate Identifier 2007–NM–166–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 22, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model MD–11 and MD–11F airplanes, certified in any category, equipped with General Electric CF6–80C2 series engines.

Unsafe Condition

(d) This AD results from reports of several in-flight engine flameouts, including multiple dual engine flameout events, in ice-crystal icing conditions. We are issuing this AD to ensure that the flightcrew has the proper procedures to follow in certain icing conditions. These certain icing conditions could cause a multiple engine flameout during flight without the ability of the engines to be relit, and consequent forced landing of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Airplane Flight Manual (AFM) Revision

(f) Within 14 days after the effective date of this AD, revise the Limitations Section of the McDonnell Douglas MD–11/MD–11F AFM to include the following statement. This may be done by inserting a copy of this AD into the AFM.

''Prior to reducing thrust for descent in visible moisture when TAT is 6 °C and below, the ENG IGN OVRD switch and the ENG, WING, and TAIL ANTI–ICE switches must be placed in the ON position.''

Note 1: When a statement identical to that in paragraph (f) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. 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.

Issued in Renton, Washington, on March 27, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–7151 Filed 4–4–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0402; Directorate Identifier 2007–NM–165–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes and Model 767 Airplanes Equipped With General Electric CF6–80C2 and CF6–80A Series Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747 airplanes and Model 767 airplanes. This proposed AD would require revising the airplane flight manual to advise the flightcrew to use certain procedures during descent in certain icing conditions. This proposed AD results from reports of several in-flight engine flameouts, including multiple dual engine flameout events and one total power loss event, in ice-crystal icing conditions. We are proposing this AD to ensure that the flightcrew has the proper procedures to follow in certain icing conditions. These certain icing conditions could cause a multiple engine flameout during flight without the ability of the engines to be relit, and consequent forced landing of the airplane.

DATES: We must receive comments on this proposed AD by May 22, 2008.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

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: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6500; fax (425) 917–6590.

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–2008–0402; Directorate Identifier 2007–NM–165–AD,'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports indicating that there have been several in-flight engine flameout events, including one dual event, on Model 767 airplanes and four dual events on Model 747 airplanes, in ice-crystal icing conditions at altitudes between 13,000 and 36,000 feet during descent. These airplanes were equipped with General Electric (GE) CF6–80C2 series engines. Each flameout event was in or near convective weather with ice-crystal icing; this type of icing does not appear on radar due to its low reflectivity, and neither the airplane ice detector nor visual indications indicate the presence of icing conditions. Therefore, it is often undetected by the flightcrew. These conditions can cause ice crystals to accumulate in the core flow path of the engine during low-power conditions, such as idle or idle descent. The accumulated ice sheds during throttle increase and is ingested into the engine, causing the combustor to flameout resulting in an in-flight flameout and potential damage to the high pressure compressor due to ice impact. The GE CF6–80C2 and CF6–80A series engines models have similar compressor designs.

Activating the engine anti-ice increases the flameout margin and reduces the potential for multiple engine flameouts by increasing bleed flow and idle speed. Engine anti-ice also assists with relighting the engines by turning on the igniters on airplanes that are not equipped with autorelight. However, in several of the subject engine flameout events, the engine anti-ice was already on when the engines flamed out. In each flameout event, the engines relit and continued to operate normally for the remainder of the flight.

The requirement to activate the engine anti-ice prior to descent in visible moisture with total air temperature less than 10 °Celsius (C) and greater than −40 °C already exists for airplanes that are not equipped with a primary in-flight ice detection system, which is designed to automatically activate wing anti-ice and engine anti-ice when the airplane is in icing conditions. However, the primary in-flight ice detection system does not detect ice-crystal icing; therefore, the engine anti-ice would not be activated during these icing encounters. There is no requirement to activate engine anti-ice at temperatures below −40 °C, and this proposed AD would require activation of engine anti-ice at temperatures below −40 °C.

This condition, if not corrected, could result in a multiple engine flameout during flight without the ability of the engines to be relit, and consequent forced landing of the airplane.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This proposed AD would require revising the airplane flight manual (AFM) to advise the flightcrew to use certain procedures during descent in certain icing conditions.

Interim Action

We consider this proposed AD interim action. If final action is later

identified, we might consider further rulemaking then.

Costs of Compliance

There are about 1,064 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM revision	1	$80	$0	$80	340	$27,200

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 have 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 that the 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. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2008–0402; Directorate Identifier 2007–NM–165–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 22, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747 airplanes and Model 767 airplanes, certified in any category, equipped with General Electric CF6–80C2 or CF6–80A series engines.

Unsafe Condition

(d) This AD results from reports of several in-flight engine flameouts, including multiple dual engine flameout events and one total power loss event, in ice-crystal icing conditions. We are issuing this AD to ensure that the flightcrew has the proper procedures to follow in certain icing conditions. These certain icing conditions could cause a multiple engine flameout during flight without the ability of the engines to be relit, and consequent forced landing of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Airplane Flight Manual (AFM) Revision

(f) Within 14 days after the effective date of this AD, revise the Limitations Section of the Boeing 747 or 767 AFM, as applicable, to include the following statement. This may be done by inserting a copy of this AD into the AFM.

''Prior to descent in visible moisture and TAT less than 10 °C, including SAT less than −40 °C, nacelle anti-ice switch must be in the ON position.''

Note 1: When a statement identical to that in paragraph (f) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. 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.

Issued in Renton, Washington, on March 27, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–7153 Filed 4–4–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0406; Directorate Identifier 2007–NM–196–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Airplanes

AGENCY: Federal Aviation Administration (FAA), 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:

During routine visual inspection, a crack has been found in the wing MLG (main landing gear) rib 5 forward attachment lug on two A310 in-service aircraft. Laboratory examination of one of the cracked ribs confirmed that the crack is due to the presence of pitting corrosion in the forward lug holes. Also on both aircraft medium to heavy corrosion was found in the forward lugs on the opposite wing after removal of the bushes. This situation if not detected, could affect the structural integrity of the MLG attachment.

* * * * *

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 May 7, 2008.

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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, 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 Operations office 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 Operations 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: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

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–2008–0406; Directorate Identifier 2007–NM–196–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 based on those comments.

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

Discussion

On December 7, 2006, we issued AD 2007–02–09, Amendment 39–14896 (72 FR 2612, January 22, 2007). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2007–02–09, the type certificate holder has developed a new inspection using ultrasonic techniques. We have determined that the existing AD must be superseded to add repair or replacement of cracked main landing gear (MLG) Rib 5, provide the new inspection as an option, and reduce the applicability of the AD to exclude airplanes on which Airbus Service Bulletin A310–57–2090 has been done.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0195, dated July 19, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During routine visual inspection, a crack has been found in the wing MLG (main landing gear) rib 5 forward attachment lug on two A310 in-service aircraft. Laboratory examination of one of the cracked ribs confirmed that the crack is due to the presence of pitting corrosion in the forward lug holes. Also on both aircraft medium to heavy corrosion was found in the forward lugs on the opposite wing after removal of the bushes. This situation if not detected, could affect the structural integrity of the MLG attachment. As an interim measure, Airbus published Alert Service Bulletin (ASB) A310–57A2088 to introduce a repetitive detailed visual inspection (DVI) of the forward attachment lug of MLG Rib 5. EASA issued Emergency Airworthiness Directive (EAD) 2006–0335–E [which corresponds to FAA AD 2007–02–09] to require the accomplishment of this repetitive DVI.

In order to ensure the detection of any crack at an early stage in the forward lug of the RH (right-hand) and LH (left-hand) MLG Rib 5 aft bearing attachment, the Type Certificate holder has developed a new inspection by means of ultrasonic method. For the reasons described above, this new inspection program is rendered mandatory by this AD, which cancels and replaces the requirement of EAD 2006–0335–E.

The corrective action includes repairing or replacing MLG Rib 5, as applicable. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletins A310–57–2090, Revision 01, dated December 19, 2007, and A310–57–2091, including Appendix 01, dated May 22, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This 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 the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This 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 would affect about 68 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $27,200, or $400 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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, 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 39–14896 (72 FR 2612, January 22, 2007) and adding the following new AD:

Airbus: Docket No. FAA–2008–0406; Directorate Identifier 2007–NM–196–AD.

Comments Due Date

(a) We must receive comments by May 7, 2008.

Affected ADs

(b) The proposed AD supersedes AD 2007–02–09, Amendment 39–14896.

Applicability

(c) This AD applies to Airbus Model A310 airplanes, certificated in any category, all certified models, all serial numbers; except for those where LH (left-hand) and RH (right-hand) wing MLG (main landing gear) rib 5 forward lugs have been repaired by installation of oversized interference fit bushings as per Airbus Repair Instruction R57249121, or which have had Airbus Service Bulletin A310–57–2090 (AIRBUS modification 13329) embodied in service.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During routine visual inspection, a crack has been found in the wing MLG (main landing gear) rib 5 forward attachment lug on two A310 in-service aircraft. Laboratory examination of one of the cracked ribs confirmed that the crack is due to the presence of pitting corrosion in the forward lug holes. Also on both aircraft medium to heavy corrosion was found in the forward lugs on the opposite wing after removal of the bushes. This situation if not detected, could affect the structural integrity of the MLG attachment. As an interim measure, Airbus published Alert Service Bulletin (ASB) A310–57A2088 to introduce a repetitive detailed visual inspection (DVI) of the forward attachment lug of MLG Rib 5. EASA issued Emergency Airworthiness Directive (EAD) 2006–0335–E [which corresponds to FAA AD 2007–02–09] to require the accomplishment of this repetitive DVI.

In order to ensure the detection of any crack at an early stage in the forward lug of the RH (right-hand) and LH (left-hand) MLG Rib 5 aft bearing attachment, the Type Certificate holder has developed a new inspection by means of ultrasonic method. For the reasons described above, this new inspection program is rendered mandatory by this AD, which cancels and replaces the requirement of EAD 2006–0335–E.

The corrective action includes repairing or replacing MLG Rib 5, as applicable.

Restatement of Requirements of AD 2007–02–09

(f) Unless already done, do the following actions specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD in accordance with the instructions defined in Airbus Service Bulletin A310–57A2088, dated November 6, 2006.

(1) Before the accumulation of 12,000 total flight cycles, or within 14 days after February 6, 2007 (the effective date of AD 2007–02–09), whichever occurs later: Perform a detailed visual inspection of the LH and RH wing MLG rib 5 aft bearing forward lugs.

(2) If any crack is detected at LH and/or RH aft bearing forward lug, contact Airbus and proceed with the replacement before next flight.

(3) Repeat the inspection at intervals not exceeding 100 flight cycles.

New Requirements of this AD: Actions and Compliance

(g) Unless already done, before the accumulation of 12,000 total flight cycles or before the accumulation of 12,000 flight cycles on MLG Rib 5, or within 14 days after the effective date of this AD, whichever occurs latest: Perform either a detailed visual inspection (DVI) or an ultrasonic inspection of the LH and RH MLG Rib 5 aft bearing forward lug for cracks, in accordance with the instructions defined in Airbus Service Bulletin A310–57–2091, including Appendix 01, dated May 22, 2007. If a MLG Rib 5 has been replaced on one side only, then the RH and LH must be considered separately. Doing this inspection ends the requirements of paragraph (f) for that MLG Rib 5 only.

Note 1: The ultrasonic inspection will detect any crack at an early stage and will limit the risk of extensive repairs. This earlier crack detection is not possible with the DVI.

(1) If no crack is detected during any inspection required by paragraph (g) of this AD: Repeat the applicable inspection at the time specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(i) Repeat the DVI thereafter at intervals not to exceed 100 flight cycles.

(ii) Repeat the ultrasonic inspection thereafter at intervals not to exceed 825 flight cycles.

(2) Replacement of the MLG Rib 5 in accordance with the instructions defined in Airbus Service Bulletin A310–57–2090, Revision 01, dated December 19, 2007, ends the repetitive inspections required by paragraph (g)(1) of this AD for that MLG Rib 5 only.

(3) If any crack is detected during the DVI required by paragraph (g) of this AD: Before further flight, contact Airbus for replacement

instructions and replace before further flight. If MLG Rib 5 is not replaced in accordance with the instructions defined in Airbus Service Bulletin A310–57–2090, Revision 01, dated December 19, 2007; repeat the applicable inspection in paragraph (g) of this AD at the time specified in the applicable paragraph.

(4) If any crack is detected during the ultrasonic inspection required by paragraph (g) of this AD, before further flight, accomplish the actions specified in paragraphs (g)(4)(i) or (g)(4)(ii) of this AD, as applicable.

(i) If any crack is not visible on MLG Rib 5: Before further flight, repair MLG Rib 5 using Repair Instruction R572–49121, Issue C, dated May 2007. After embodiment of Repair Instruction R572–49121, no further actions are required by this AD and Airbus Service Bulletin A310–57–2091, including Appendix 01, dated May 22, 2007, for that MLG Rib 5 only.

(ii) If any crack is visible on MLG Rib 5: Before further flight, contact Airbus for rib replacement instructions, and replace before further flight. If MLG Rib 5 is not replaced in accordance with the instructions defined in Airbus Service Bulletin A310–57–2090, Revision 01, dated December 19, 2007, repeat the applicable inspection in paragraph (g) of this AD at the time specified. Accomplishing the replacement defined in Airbus Service Bulletin A310–57–2090 ends the repetitive inspections required by paragraph (g)(1) of this AD for that MLG Rib 5 only.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

Although the MCAI or service information allows flight with cracks on aft bearing forward lugs for a certain period of time, this AD requires replacing MLG Rib 5 before further flight if any crack is found.

Although the MCAI or service information specifies submitting an inspection report sheet to Airbus, this AD would not require that action.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149. 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, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI EASA Airworthiness Directive 2007–0195, dated July 19, 2007, and Airbus Service Bulletins A310–57–2090, Revision 01, dated December 19, 2007, and A310–57–2091, including Appendix 01, dated May 22, 2007, for related information.

Issued in Renton, Washington, on March 27, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–7163 Filed 4–4–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0407; Directorate Identifier 2008–NM–002–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain McDonnell Douglas Model 717–200 airplanes. This proposed AD would require inspecting the drive assembly of the aft elevator standby loop for interference between the clevis and bolt of the bellcrank assembly, correct orientation of the pull-pull cable clevis bolt, and excessive freeplay of the bellcrank assembly bearing, and corrective actions if necessary. This proposed AD would also require modifying the pull-pull cable clevis in the drive assembly of the aft elevator standby loop for certain airplanes. This proposed AD results from a report of an aborted takeoff due to a control column disconnect. We are proposing this AD to prevent binding of the bolt that connects the cable 264A clevis to the bellcrank assembly against the adjacent (upper) clevis of the pull-pull cable assembly. This binding condition could result in slow airplane rotation or a control column disconnect during takeoff and a runway excursion if takeoff must be aborted.

DATES: We must receive comments on this proposed AD by May 22, 2008.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

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: David Rathfelder, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5229; fax (562) 627–5210.

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–2008–0407; Directorate Identifier 2008–NM–002–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this

proposed AD because of those comments.

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

Discussion

We received a report of an aborted takeoff due to a control column disconnect. A cable in the fuselage drive assembly of the aft elevator standby loop was in intermittent contact with the adjacent clevis. Investigation revealed that the bolt connecting the cable 264A clevis to the bellcrank assembly within the drive assembly of the aft elevator standby loop may bind against the adjacent upper clevis of the pull-pull cable assembly. Further investigation revealed that one of the bolts of the drive assembly of the aft elevator standby loop and pull-pull cable clevis might be installed ''head up'' adding to the potential binding condition. The ''head up'' installation is not in accordance with design requirements. In addition, the bellcrank bearing had excessive freeplay due to corrosion that contributed to the binding condition. This binding condition, if not corrected, could result in slow airplane rotation or a control column disconnect during takeoff and a runway excursion if takeoff must be aborted.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 717–27A0039, dated December 6, 2007. The service bulletin describes procedures for a general visual inspection of the drive assembly of the aft elevator standby loop for interference between the clevis and bolt of the bellcrank assembly, correct orientation of the pull-pull cable clevis bolt, and excessive freeplay of the bellcrank assembly bearing, and corrective actions if necessary. The service bulletin also describes procedures for modifying the pull-pull cable clevis in the drive assembly of the aft elevator standby loop on certain airplanes. If any interference, incorrect orientation, or excessive freeplay is found, the corrective actions include rotating cable segment 264A, changing the bellcrank assembly bearing, and rotating the pull-pull cable clevis.

For Group 1, Configuration 1 and 2: The compliance time for performing the inspection is within 3,000 flight hours or 27 months after the service bulletin date, whichever occurs first. For Group 1, Configuration 1: The compliance time for accomplishing the modification is within 27 months after the service bulletin date.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 123 airplanes of U.S. registry.

It would take about 1 work-hour per product to do the proposed inspection. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $9,840, or $80 per product.

It would take about 4 work-hours per product to do the proposed modification. Required parts would cost about $163 per product. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $59,409, or $483 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2008–0407; Directorate Identifier 2008–NM–002–AD.

Comments Due Date

(a) We must receive comments by May 22, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model 717–200 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 717–27A0039, dated December 6, 2007.

Unsafe Condition

(d) This AD results from a report of an aborted takeoff due to a control column disconnect. We are issuing this AD to prevent binding of the bolt that connects the cable 264A clevis to the bellcrank assembly against the adjacent (upper) clevis of the pull-pull cable assembly. This binding condition could result in slow airplane rotation or a control column disconnect during takeoff and a runway excursion if takeoff must be aborted.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Inspection/Corrective Actions

(f) At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 717–27A0039, dated December 6, 2007; except, where the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD: Do the applicable actions specified in paragraphs (f)(1) and (f)(2) of this AD in accordance with the Accomplishment Instructions of the service bulletin.

(1) For all airplanes: Do a general visual inspection of the drive assembly of the aft elevator standby loop for interference between the clevis and bolt of the bellcrank assembly, correct orientation of the pull-pull cable clevis bolt, and excessive freeplay of the bellcrank assembly bearing. Do all applicable corrective actions before further flight.

(2) For airplanes identified in the service bulletin as Group 1, Configuration 1: Modify the pull-pull cable clevis in the drive assembly of the aft elevator standby loop.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, ATTN: David Rathfelder, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5229; fax (562) 627–5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. 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.

Issued in Renton, Washington, on March 28, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–7183 Filed 4–4–08; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 303

Rules and Regulations Under the Textile Fiber Products Identification Act

AGENCY: Federal Trade Commission.

ACTION: Reopening of comment period.

SUMMARY: The Federal Trade Commission (''Commission'' or ''FTC''), pursuant to a Petition filed by Mohawk Industries, Inc. (''Mohawk''), E. I. du Pont de Nemours and Company (''DuPont''), and PTT Poly Canada (''PTT Canada'') (hereinafter ''Petitioners''), solicited comments on whether the Commission should: amend Rule 7(c) of the Rules and Regulations Under the Textile Fiber Products Identification Act (''Textile Rules'') to establish a new generic fiber subclass name and definition within the existing definition of ''polyester'' for a specifically proposed subclass of polyester fibers made from poly(trimethylene terephthalate) (''PTT''); amend Rule 7(c) to broaden or clarify its definition of ''polyester'' to describe more accurately the PTT fiber; or retain Rule 7(c)'s definition of ''polyester.'' The Commission received comments through November 12, 2007. Based on those comments, the Commission is reopening the comment period for an additional 30 days.

DATES: Comments will be accepted until May 5, 2008.

ADDRESSES: Comments should refer to ''16 CFR Part 303—Textile Rule 8, Mohawk, DuPont, and PTT Canada Comment, Matter No. P074201'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room H-135 (Annex K), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

Because paper mail in the Washington area and at the FTC is subject to delay, please consider submitting your comment in electronic form, as prescribed below. Comments containing any material for which confidential treatment is requested, however, must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments filed in electronic form (except comments containing any confidential material) should be submitted to the FTC by clicking on the following Web link: *https://secure.commentworks.com/ftc-Mohawk, DuPontandPTTCanadaComment* and following the instructions on the Web-based form. You may also visit *http://www.regulations.gov* to read this request for public comment, and may file an electronic comment through that Web site. The FTC will consider all comments that *www.regulations.gov* forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Janice Podoll Frankle, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580; (202) 326-3022.

SUPPLEMENTARY INFORMATION: In a **Federal Register** Notice,[2] the Commission solicited comments on whether to amend Rule 7(c) of the Rules and Regulations Under the Textile Fiber Products Identification Act (''Textile Rules'') to establish a new generic fiber subclass name and definition within the existing definition of ''polyester.'' Specifically, the Commission asked whether it should establish a new subclass of polyester fibers made from PTT. At the close of the comment period on November 12, 2007, the Commission had received 49 comments.[3] With the exception of one comment, from INVISTA S. r.l. (''INVISTA''),[4] all of the commenters stated that they favored amending the Textile Rules to add a generic fiber subclass designation for PTT.

The Commission received INVISTA's comment opposing the Petition three days prior to the close of the 75 day comment period. Thus, the public had

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] 72 Fed. Reg. 48,600 (Aug. 24, 2007).

[3] The 49 comments can be found at: *http://www.ftc.gov/os/comments/textile-mohawk/index.shtm*

[4] INVISTA's comment can be found at: *http://www.ftc.gov/os/comments/textile-mohawk/532047-00053.pdf*

only limited opportunity to review and respond to it.[5] INVISTA's comment, which includes additional testing comparing PTT with conventional polyester (''PET''), calls into question the merits of the Petition, and raises issues worthy of additional time for public review and comment.

INVISTA's comment states that Petitioners failed to meet the Commission's standard for establishing a new generic fiber subclass for PTT. Under the Commission's standard, a new generic fiber subclass is appropriate if it: (1) has the same general chemical composition as an established generic fiber category, and (2) has distinctive properties of importance to the general public as a result of a new method of manufacture or substantially differentiated physical characteristics, such as fiber structure.[6] INVISTA argues that Petitioners failed to satisfy the second prong of this standard for two reasons.

First, INVISTA asserts that because PTT performed differently than PET on such a small percentage of performance characteristics important to consumers (two out of 10),[7] PTT is not sufficiently distinctive. Thus, INVISTA argues, the Petition is ''fatally flawed'' and the Commission cannot conclude that PTT fibers are ''significantly better suited'' than PET fibers in carpet applications.

Second, even if superiority as to only two of the top 10 carpet applications could satisfy the standard, INVISTA argues that the Petition does not substantiate the assertion that PTT is superior to PET. With regard to carpet durability, INVISTA states that Petitioner's test was inadequate because: (1) Petitioners used the Hexapod Wear Test, a relatively light-duty test of the performance of PET and PTT, and did not use the Vettermann Drum test, which INVISTA alleges better simulates how carpet holds up under actual use; (2) INVISTA's own testing using the Vettermann Drum test showed no meaningful difference between PET and PTT;[8] and (3) Petitioners compared finer, lighter weight PET fibers with thicker, heavier weight PTT fibers, thus making a meaningful comparison impossible.

INVISTA also argues that the Petition does not substantiate the assertion that PTT is superior with respect to softness. INVISTA states that rather than submitting any test results or survey data indicating how soft PTT fibers feel to consumers in actual carpet application, Petitioners presented ''irrelevant'' laboratory testing regarding deflection properties.[9] INVISTA argues that Petitioners failed to show that such testing reveals differences meaningful to consumers evaluating the softness of carpets. INVISTA relies on a similar analysis to argue that the Petitioners failed to demonstrate that PTT fabrics are softer than PET fabrics.[10]

Furthermore, INVISTA contends that the Petition does not substantiate the assertion that PTT is superior with respect to stretch with recovery of apparel products. INVISTA argues that Petitioners failed to present the results of any reliable testing methodology showing that PTT fibers ''recover'' from stretching better than PET fibers. INVISTA states that Petitioners' testing for stretch and recovery was flawed, in part, because Petitioners failed to demonstrate that the amount of tension used in the test simulates the tension applied in actual consumer use of garments.

INVISTA's comment discusses another reason why it believes the Commission should deny the Petition. Specifically, INVISTA states that two of Petitioners' three suggested new generic subclass names for PTT ''appear to be intentionally designed to create confusion with existing INVISTA trademarks.''[11]

INVISTA raises arguments that merit further discussion.[12] Because Petitioners and other interested parties had limited opportunity to review and comment on INVISTA's comment prior to the close of the public comment period, a full discussion of the issues has been impossible. Therefore, the Commission has decided to reopen the comment period for 30 days. The Commission believes that the benefit of enhancing the record by reopening the comment period outweighs any delay stemming from reopening the comment period.

List of Subjects in 16 CFR Part 303

Labeling, Textile, Trade Practices.

Authority: Sec. 7(c) of the Textile Fiber Products Identification Act (15 U.S.C. 70e(c)).

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E8–7179 Filed 4–4–07: 8:45 am]

BILLING CODE 6750–01–S

[5] Prior to the comment period closing, the Commission did not receive any comments responding to INVISTA's comment.

[6] The Commission articulated a standard for establishing a new generic fiber subclass in the ''lyocell'' proceeding (16 CFR 303.7(d)). There, the Commission noted that:

Where appropriate, in considering applications for new generic names for fibers that are of the same general chemical composition as those for which a generic name already has been established, rather than of a chemical composition that is radically different, but that have distinctive properties of importance to the general public as a result of a new method of manufacture or their substantially differentiated physical characteristics, such as their fiber structure, the Commission may allow such fiber to be designated in required information disclosures by either its generic name or, alternatively, by its ''subclass'' name. The Commission will consider this disposition when the distinctive feature or features of the subclass fiber make it suitable for uses for which other fibers under the established generic name would not be suited, or would be significantly less well suited.

60 FR 62352, 62353 (Dec. 6, 1995).

[7] As set forth in Table 1 of the Petition, consumer survey evidence indicates these carpet performance characteristics are: common spills and pet accidents can be easily removed; carpet is durable; dirt and soil can be easily removed; areas where spills have been cleaned will not be visible; stain resistant properties will not diminish over time; soil resistant properties will not diminish over time; carpet color will stay the same and will not fade; heavy soil and most stains can be removed from the carpet with water; carpet pile will not shed or fuzz; and carpet is soft.

[8] INVISTA submitted additional durability and appearance testing comparing PTT and PET carpets which it argued showed that ''PTT performed very much like PET.'' Only one other commenter, Independent Textile Testing Service, Inc. (''Independent''), stated that it had tested PTT. Independent stated that over the past 10 years it had been involved in extensive testing of the PTT fiber pertaining to carpet usage and that its testing included pedestrian traffic, soiling, staining, static, and colorfastness. Independent said that PTT performed much better than PET in foot traffic ratings and concluded that it would benefit the consumer to know that there were distinct differences between PET and PTT. Independent's comment can be found at: *http://www.ftc.gov/os/comments/textile-mohawk/532047-00047.htm.*

[9] The Petition states that a very useful measure of the difference in yarn softness is the force or stress required to deflect or strain a fiber a given distance.

[10] Concerning both carpet and apparel applications, INVISTA also argues that the Petition failed to address how different manufacturing techniques affect softness. INVISTA states that the Petition failed to address the possibility that the same level of softness provided by PTT could be achieved using PET fibers and different manufacturing techniques.

[11] INVISTA argues that Petitioners' proposed names ''resisoft'' and ''durares'' are ''alarmingly similar'' to INVISTA's ResisTech® and DuraTech® brand names, respectively.

[12] In addition to these arguments, INVISTA dismisses as irrelevant Petitioners' argument that it might be difficult to recycle PTT and PET together due to their different properties and that the subclass designation would help recyclers separate PTT from PET fibers to avoid any such difficulty.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–127391–07]

RIN 1545–BH02

Guidance Under Section 664 Regarding the Effect of Unrelated Business Taxable Income on Charitable Remainder Trusts; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed rulemaking providing guidance under Internal Revenue Code section 664 on the tax effect of unrelated business taxable income (UBTI) on charitable remainder trusts.

DATES: The public hearing, originally scheduled for April 11, 2008, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irscounsel.treas.gov*.

SUPPLEMENTARY INFORMATION: A notice of public hearing that appeared in the **Federal Register** on Friday, March 7, 2008 (73 FR 12313), announced that a public hearing was scheduled for April 11, 2008, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The subject of the public hearing is under section 664 of the Internal Revenue Code.

The public comment period for these regulations will be expired on May 6, 2008. Outlines of topics to be discussed at the hearing were due on March 28, 2008. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Monday, March 31, 2008, no one has requested to speak. Therefore, the public hearing scheduled for April 11, 2008, is cancelled.

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–7225 Filed 4–4–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–111583–07]

RIN 1545–BG50

Employment Tax Adjustments; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed rulemaking relating to employment tax adjustments and employment tax refund claims.

DATES: The public hearing, originally scheduled for April 17, 2008, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irscounsel.treas.gov*.

SUPPLEMENTARY INFORMATION: A notice of public hearing that appeared in the **Federal Register** on Monday, December 31, 2007 (72 FR 74233), announced that a public hearing was scheduled for April 17, 2008, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under sections 6011, 6205, 6302, 6402, 6413, and 6414 of the Internal Revenue Code.

The public comment period for these regulations expired on March 27, 2008. Outlines of topics to be discussed at the hearing were due on March 27, 2008. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Friday, March 28, 2008, no one has requested to speak. Therefore, the public hearing scheduled for April 17, 2008, is cancelled.

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–7224 Filed 4–4–08; 8:45 am]

BILLING CODE 4830–01–P

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Part 1633

RIN 3206–AL35

Federal Employees Health Benefits Acquisition Regulation: Board of Contract Appeals

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to remove the designation of the Armed Services Board of Contract Appeals (ASBCA) from the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). The ASBCA designation is no longer appropriate since the creation of the Civilian Board of Contract Appeals by the National Defense Authorization Act of 2006.

DATES: *Effective Date:* Effective May 7, 2008.

ADDRESSES: You may submit written comments, identified by RIN 3206–AL35, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: marguerite.martel@opm.gov.* Include RIN 3206–AL35 in the subject line of the message.
- *Fax:* 202–606–0633.
- *Mail:* Marguerite Martel, 1900 E Street, NW., Room 3415, Washington, DC 20415. 202–606–0004.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking.

SUPPLEMENTARY INFORMATION: The Contract Disputes Act (41 U.S.C. 601–613) (CDA) allows Federal Government contractors, including carriers participating in the Federal Employees Health Benefits (FEHB) Program, to appeal official decisions made by a contracting officer to an agency board of contract appeals. Prior to the enactment of the National Defense Authorization Act of 2006 (NDAA), the CDA authorized each agency to create their own board or, in the alternative, to designate another agency's board for this purpose. Previously, the Armed Services Board of Contract Appeals (ASBCA) served as the agency board of contract appeals for appeals between FEHB carriers and the Office of Personnel Management (OPM).

The NDAA of 2006, in addition to eliminating agency board designation

authority, dismantled most existing agency boards, creating as a replacement the Civilian Board of Contract Appeals (CBCA) with authority extending to most civilian agencies, including OPM. Accordingly, the CBCA has now replaced the ASBCA as the venue for claims brought under the Act for the FEHB Program. OPM is updating the FEHBAR to reflect this change in the law.

Collection of Information Requirement

This rulemaking makes a minor clarifying amendment to the Federal Employees Health Benefits Acquisition Regulations. The rule does not impose information collection and recordkeeping requirements that meet the definition of the Paperwork Reduction Act of 1995's term ''collection of information,'' which means obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States; or answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies with revenues of $11.5 million or less in any one year. This rulemaking affects FEHB Program carriers and their contractual arrangements that exceed the dollar threshold. Therefore, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Regulatory Impact Analysis

We have examined the impact of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the RFA (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This rule is not considered a major rule, as defined in title 5, United States Code, section 804(2), because we estimate it will affect only FEHB carriers. Any resulting economic impact would not be expected to exceed the dollar threshold.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 48 CFR Part 1633

Government employees, Government procurement, Health insurance.

Office of Personnel Management.

Linda M. Springer,

Director.

Accordingly, by the authority of 5 U.S.C. 8913; 41 U.S.C. 401 *et seq.*; 48 CFR 1.301, OPM is amending chapter 16 of title 48 of the Code of Federal Regulations by removing part 1633:

PART 1633—[REMOVED AND RESERVED]

[FR Doc. E8–7152 Filed 4–4–08; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Part 2133

RIN 3206–AL46

Federal Employees Group Life Insurance Federal Acquisition Regulation: Board of Contract Appeals

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to remove the designation of the Armed Services Board of Contract Appeals (ASBCA) from the Federal Employees Group Life Insurance Federal Acquisition Regulation (LIFAR). The ASBCA designation is no longer appropriate since the creation of the Civilian Board of Contract Appeals by the National Defense Authorization Act of 2006.

DATES: *Effective Date:* Effective May 7, 2008.

ADDRESSES: You may submit written comments, identified by RIN 3206–AL46, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: marguerite.martel@opm.gov.* Include RIN 3206–AL46 in the subject line of the message.
- *Fax:* 202–606–0633.
- *Mail:* Marguerite Martel, 1900 E Street, NW., Room 3415, Washington, DC 20415. 202–606–0004.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking.

SUPPLEMENTARY INFORMATION: The Contract Disputes Act (41 U.S.C. 601–613) (CDA) allows Federal Government contractors, including carriers participating in the Federal Employees Group Life Insurance (FEGLI) Program, to appeal official decisions made by a contracting officer to an agency board of contract appeals. Prior to the enactment of the National Defense Authorization Act of 2006 (NDAA), the CDA authorized each agency to create their own board or, in the alternative, to designate another agency's board for this purpose. Previously, the Armed Services Board of Contract Appeals (ASBCA) served as the agency board of contract appeals for appeals between the FEGLI carrier and the Office of Personnel Management (OPM).

The NDAA of 2006, in addition to eliminating agency board designation authority, dismantled most existing agency boards, creating as a replacement the Civilian Board of Contract Appeals (CBCA) with authority extending to most civilian agencies, including OPM. Accordingly, the CBCA has now replaced the ASBCA as the venue for claims brought under the Act for the FEGLI Program. OPM is updating the LIFAR to reflect this change in the law.

Collection of Information Requirement

This rulemaking makes a minor clarifying amendment to the Federal Employees Group Life Insurance Federal Acquisition Regulations. The rule does not impose information collection and recordkeeping requirements that meet the definition of the Paperwork Reduction Act of 1995's term ''collection of information,'' which means obtaining, causing to be obtained,

soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States; or answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies with revenues of $11.5 million or less in any one year. This rulemaking affects FEGLI life insurance carriers and their contractual arrangements that exceed the dollar threshold. Therefore, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Regulatory Impact Analysis

We have examined the impact of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the RFA (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995, (Pub. L. 104–4), and Executive Order 13132. Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This rule is not considered a major rule, as defined in title 5, United States Code, section 804(2), because we estimate it will affect only FEGLI life insurance carriers. Any resulting economic impact would not be expected to exceed the dollar threshold.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 48 CFR Part 2133

Government employees, Government procurement, Health insurance.

Office of Personnel Management.

Linda M. Springer,

Director.

Accordingly, by the authority of 5 U.S.C. 8716; 41 U.S.C. 401 *et seq.*; 48 CFR 1.301, OPM is amending chapter 16 of title 48 of the Code of Federal Regulations by removing part 2133:

PART 2133—[REMOVED AND RESERVED]

[FR Doc. E8–7155 Filed 4–4–08; 8:45 am]

BILLING CODE 6325–39–P

Notices

Federal Register
Vol. 73, No. 67
Monday, April 7, 2008

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 10413. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to *David_Rostker@omb.eop.gov* or fax to 202–395–7285. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0035.

Form Number: AID 1550–2.

Title: PVO Initial and Annual Registration Form.

Type of Submission: Renewal of Information Collection.

Purpose: USAID is required to collect information regarding the financial support of private and voluntary organizations registered with the Agency. The information is used to determine the eligibility of PVOs to receive USAID funding.

Annual Reporting Burden:

Respondents: 533.

Total annual responses: 533.

Total annual hours requested: 1,599 hours.

Dated: March 28, 2008.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. E8–7015 Filed 4–4–08; 8:45 am]

BILLING CODE 6116–02–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0038]

Notice of Request for Extension of Approval of an Information Collection; Phytosanitary Export Certification

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the issuance of phytosanitary certificates for plants or plant products being exported to foreign countries.

DATES: We will consider all comments that we receive on or before June 6, 2008.

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–2008–0038* 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–2008–0038, 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–2008–0038.

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: For information on regulations for phytosanitary export certification for plants or plant products being exported to foreign countries, contact Mr. Marcus McElvaine, Senior Export Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737; (301) 734–8414. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Phytosanitary Export Certification.

OMB Number: 0579–0052.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS), among other things, provides export certification services to assure other countries that the plants and plant products they are receiving from the United States are free of plant pests specified by the receiving country.

It should be noted that our regulations do not require that we engage in export certification activities. We perform this work as a service to exporters who are shipping plants or plant products to countries that require phytosanitary certification as a condition of entry.

To request that we perform a phytosanitary inspection, an exporter must complete and submit an Application for Inspection and Certification of Plants and Plant Products for Export (PPQ Form 572).

After assessing the condition of the plants or plant products intended for export (i.e., after conducting a phytosanitary inspection), an inspector (who may be an APHIS employee or a State or county plant regulatory official) will issue an internationally recognized phytosanitary certificate (PPQ Form 577), a phytosanitary certificate for reexport (PPQ Form 579), or an export certificate for processed plant products (PPQ Form 578).

These forms are critical to our ability to certify plants and plant products for export. Without them, we would be unable to conduct an export certification program.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(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 our 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.241330049 hours per response.

Respondents: U.S. growers, shippers, and exporters; State and county plant regulatory officials.

Estimated annual number of respondents: 13,000.

Estimated annual number of responses per respondent: 187.38461538.

Estimated annual number of responses: 2,436,000.

Estimated total annual burden on respondents: 587,880 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 1st day of April 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–7191 Filed 4–4–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0028]

Notice of Request for Extension of Approval of an Information Collection; Endangered Species Regulations and Forfeiture Procedures

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations to protect endangered species of terrestrial plants and with regulations concerning procedures related to the forfeiture of plants or other property.

DATES: We will consider all comments that we receive on or before June 6, 2008.

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–2008–0028* 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–2008–0028, Regulatory Analysis and Development, PPD, APHIS, Station3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0028.

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: For information on regulations to protect endangered species of terrestrial plants and concerning forfeiture procedures, contact Dr. John Veremis, National CITES Coordinator, Plant Safeguarding and Pest Identification, PPQ, APHIS, 4700 River Road Unit 52, Riverdale, MD 20737; (301) 734–8891. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS* Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Endangered Species Regulations and Forfeiture Procedures.

OMB Number: 0579–0076.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the United States Department of Agriculture (USDA) is responsible for enforcing provisions of the Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) that pertain to the importation, exportation, or reexportation of plants.

As part of this mission, the Animal and Plant Health Inspection Service (APHIS), USDA, administers regulations at 7 CFR part 355, ''Endangered Species Regulations Concerning Terrestrial Plants.'' In accordance with these regulations, any individual, nursery, or other entity wishing to engage in the business of importing, exporting, or reexporting terrestrial plants listed in the CITES regulations at 50 CFR 17.12 or 23.23 must obtain a protected plant permit from APHIS. Such entities include importers, exporters, or reexporters who sell, barter, collect, or otherwise exchange or acquire terrestrial plants as a livelihood or enterprise engaged in for gain or profit. The requirement does not apply to persons engaged in business merely as carriers or customhouse brokers.

To obtain a protected plant permit, entities must complete an application (PPQ Form 621) and submit it to APHIS for approval. When a permit has been issued, the plants covered by the permit may be imported into the United States, exported, or reexported, provided they are accompanied by documentation required by the regulations and provided all other conditions of the regulations are met.

Effectively regulating entities who are engaged in the business of importing, exporting, or reexporting endangered species of terrestrial plants requires the use of this application process, as well as the use of other information collection activities, such as notifying APHIS of the impending importation, exportation, or reexportation of the

plants, marking containers used for the importation, exportation, and reexportation of the plants, and creating and maintaining records of importation, exportation, and reexportation.

APHIS also administers regulations at 7 CFR part 356, ''Forfeiture Procedures,'' which sets out procedures for the forfeiture of plants or other property by entities in violation of the Endangered Species Act or the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*). Entities whose property is subject to forfeiture may file with APHIS a waiver of forfeiture procedures, a claim of ownership or interest in the seized property and a bond, a request for bonded release of property, a petition for remission or mitigation of forfeiture, or a request for release of property.

The information provided by these information collection activities is critical to APHIS' ability to carry out its responsibilities under the Endangered Species Act and the Lacey Act. These responsibilities include monitoring importation, exportation, and reexportation activities involving endangered species of plants, as well as the investigation of possible violations and the forfeiture of plants or other property.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(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 our 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.1039962 hours per response.

Respondents: U.S. importers, exporters, and reexporters of endangered species of terrestrial plants.

Estimated annual number of respondents: 16,584.

Estimated annual number of responses per respondent: 4.9476.

Estimated annual number of responses: 82,051.

Estimated total annual burden on respondents: 8,533 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 1st day of April 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–7193 Filed 4–4–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA650–08–5101–ER–B294–P]

Angeles National Forest, CA; Ridgecrest Field Office, CA; Barren Ridge Renewable Transmission Project

AGENCY: U.S. Department of Agriculture, Forest Service and U.S. Department of the Interior, Bureau of Land Management.

ACTION: Notice of Intent to prepare a joint Environmental Impact Statement/Report for the Barren Ridge Renewable Transmission Project.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the U.S. Department of Agriculture (USDA), Forest Service (Forest Service), the U.S. Department of the Interior (DOI), Bureau of Land Management (BLM) and the City of Los Angeles Department of Water and Power (LADWP) will prepare a joint Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) for the proposed Barren Ridge Renewable Transmission Project. This action is in response to LADWP's application to the Forest Service for a special use authorization and amendments to existing special use authorizations, and application to BLM for a right-of-way grant and amendments to existing right-of-way grants. It has been determined that this project is a major federal action which may have a significant impact upon the environment. Therefore, the appropriate environmental analysis document is an EIS/EIR. The EIS/EIR would describe and analyze potential environmental impacts from the proposed project/action and the range of reasonable alternatives. LADWP proposes the following: (1) Construction of a 230 kilovolt (kV) transmission line from the existing Barren Ridge Switching Station to Haskell Canyon on double circuit structures; (2) addition of a 230 kV circuit on existing double circuit structures from Haskell Canyon to the Castaic Power Plant; (3) upgrading of the existing Owens Gorge-Rinaldi (OG–RIN) 230 kV Transmission Line with larger capacity conductors between the Barren Ridge Switching Station and Rinaldi Substation; (4) construction of a new electrical switching station within Haskell Canyon near the southern boundary of the Angeles National Forest.

This notice initiates the public participation and scoping process for the EIS/EIR and also serves as an invitation for other interested agencies, individuals, organizations and Native American Tribes to provide comments on the scope and content of the EIS/EIR.

DATES: Comments concerning the scope of the analysis are requested by May 7, 2008. Seven public scoping meetings are planned to provide information about the proposed project/action and to allow people to comment on the proposed project/action. The draft EIS/EIR is expected to be published in July 2009 and the final EIS/EIR is expected in January 2010.

ADDRESSES: To request a copy of the draft or final EIS/EIR, and/or to send written comments, and/or to be added to the project mailing list, please write to the Forest Service/BLM/LADWP c/o POWER Engineers, Inc., 731 E. Ball Rd., Suite 100, Anaheim, CA 92805.

E-mail communications are also welcome; however, please remember to include your name and a return address in the email message. E-mail messages should be sent to *BRRTP@powereng.com*. Information about the applications and the environmental review process will be posted on the Internet at: *http://ladwp.com/barrenridge*. This site will be used to post all public documents during the environmental review process and to announce upcoming public meetings. See **SUPPLEMENTARY INFORMATION** for dates and addresses of future public meetings.

FOR FURTHER INFORMATION CONTACT: For additional information related to the project please contact the lead agency project managers. For National Forest System lands, contact Marian Kadota, Planning Forester, Adaptive Management Services Enterprise Team Forest Service, 1072 Casitas Pass Road #288, Carpinteria, CA 93013; phone and fax: (805) 220–6388 or e-mail to *mkadota@fs.fed.us*. For public lands managed by the BLM, contact Linn Gum, Chief, Lands & Minerals, Ridgecrest Field Office, Bureau of Land Management, 300 S. Richmond Road, Ridgecrest, CA 93555; fax: (760) 384–5499 or e-mail to *Linn_Gum@ca.blm.gov*. For non-federal lands, contact Chuck Holloway, LADWP, 111 North Hope Street, Room 1044, Los Angeles, CA 90012; fax: (213) 367–3582 or e-mail to *charles.holloway@ladwp.com*. Project information can also be requested by leaving a voice message to the Project Information Hotline at (877) 440–3592.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The primary purpose and need for the proposed project is to meet the State of California's Renewable Portfolio Standard (RPS) goals and reduce the environmental impacts associated with greenhouse gases (GHG) and emissions of other air pollutants. Current LADWP RPS goals call for 20% renewable energy by 2010 and 35% by 2020. GHG goals are set for CO_2 emission reductions of 35% below 1990 levels by 2030.

In order to reach these goals, additional transmission capacity is necessary for the City of Los Angeles to reach and integrate the many proposed renewable energy projects located in the Mojave Desert and Owens Valley areas of Southern California. LADWP is developing two wind projects that would total 270 MW combined in the mountains northeast of Tehachapi. Furthermore, LADWP currently has several interconnection requests for approximately 1200 megawatts (MW) of renewable energy within the same geographical area. These renewable projects are proposed to interconnect to, or deliver power through, the Barren Ridge Switching Station which is being constructed approximately 12 miles north of Mojave on the Owens Gorge-Rinaldi line (OG–RIN) to interconnect LADWP's Pine Tree Wind Development Project.

The existing OG–RIN 230 kV transmission line, which has a 400 MW transfer capacity, currently is loaded with 160 MW of electrical load leaving only 240 MW of excess capacity. Maximizing the capacity of the existing OG–RIN corridor is the second need for the project to not only meet the current interconnection requests, but to utilize future renewable energy sources in this area which are projected by the California Energy Commission at over 4000 MW of wind and over 2000 MW of solar.

The third purpose of the project is to increase system reliability and flexibility. A new switching station would help LADWP meet NERC and WECC reliability requirements while providing greater flexibility in the utilization of both the proposed wind and solar energy within their electrical system.

Last, there is a need for LADWP to increase the efficient utilization of the Castaic Power Plant. The power plant is a pump-storage generation facility that would be used to integrate the intermittent renewable energy (wind, solar). This will allow LADWP to utilize its power plants transmission network in a more efficient manner as well as reduce its power system losses.

The Forest Service and BLM need is to respond to the applications from LADWP for a Special Use Authorization (50-year term), Right of Way Grant, and amendments to existing authorizations/grants.

Proposed Action

LADWP is proposing the following components to meet the purpose and need of the project:

- Construct approximately 60 miles of a new 230 kV double circuit structure system from the Barren Ridge Switching Station to Haskell Canyon. This proposed line would cross approximately 13 miles of National Forest System lands and four miles of public lands managed by the BLM;
- Install approximately 12 miles of a 230 kV circuit onto existing double circuit transmission line structures from Haskell Canyon to the Castaic Power Plant. This proposed line would cross approximately four miles of National Forest System lands and less than one mile of public lands managed by the BLM;
- Reconductor the existing OG–RIN Transmission Line with larger capacity conductors from the Barren Ridge Switching Station to the Rinaldi Substation located in the San Fernando Valley. Approximately 13 miles of National Forest System lands and four miles of BLM lands would be affected by the reconductoring.
- Construct the new Haskell Switching Station on LADWP-owned property north of Santa Clarita and just south of the Angeles National Forest managed lands.

Possible Alternatives

The Forest Service, BLM, and LADWP have identified preliminary alternatives to the proposed project/action:

- No-Action Alternative—the proposed project would not be constructed and no expansion or upgrade activities would occur.
- The following routing alternatives for construction of the proposed double circuit 230 kV transmission towers from Barren Ridge Switching Station to Haskell Canyon are being considered:
  - From the Barren Ridge Substation through the Antelope Valley, one alternative route was identified along the LADWP aqueduct.
  - From the Antelope Valley to the proposed Haskell Switching Station, three alternative routes were identified: (1) Corridor along LADWP aqueduct and generally following the Interstate 5 corridor parallel to several existing transmission lines south to the Castaic Power Plant, (2) corridor along SCE's Antelope-Pardee 500 kV Transmission Line through Bouquet Canyon, or (3) Minimal-National Forest System lands route through Mint Canyon parallel to several existing transmission lines.
- An alternative that would consider the authorized width on National Forest System lands less than the 200-foot corridor proposed.

Lead and Cooperating Agencies

The Forest Service, BLM, and LADWP are joint lead agencies in accordance with 40 CFR 1501.5(b), and are responsible for the preparation of the EIS/EIR. The Forest Service and BLM will serve as co-lead agencies under NEPA for preparation of the EIS. The LADWP will serve as the lead agency under CEQA for preparation of the EIR. Scoping will determine if additional cooperating agencies are needed.

Responsible Official

The Forest Service responsible official for the preparation of the EIS/EIR is Jody Noiron, Forest Supervisor, Angeles National Forest, 701 N. Santa Anita Avenue, Arcadia, CA 91006. The BLM responsible official for the preparation of the EIS/EIR is Hector Villalobos, Field Office Manager, Ridgecrest Field Office, Bureau of Land Management, 300 S. Richmond Road, Ridgecrest, CA 93555.

Nature of Decision To Be Made

The Forest Supervisor will decide whether or not to authorize a 50-year term Special Use Authorization for an approximate 13-mile, 200-foot-wide

right-of-way for construction, operation and maintenance of a 230 kV transmission line parallel to the existing OG–RIN transmission line route (or alternative route) constructed on new double circuit structures and amend two existing Special Use Authorizations for: (1) The conductoring of the empty position of one of the existing Castaic Power Plant 230 kV double-circuit transmission line towers from the Castaic Power Plant to Haskell Canyon (approximately 4 miles across National Forest System lands), and (2) the replacement of conductors on the OG–RIN 230 kV transmission line (approximately 13 miles across National Forest System lands). The authorizations could include ancillary improvements on National Forest System lands needed to maintain the transmission system (i.e. double circuit towers, roads, communication equipment). The Forest Supervisor will only make a decision regarding the proposed project on National Forest System lands.

The BLM Ridgecrest Field Office Manager would have several authorizations to be made as part of the project. The BLM Field Office Manager would decide whether to authorize a Right-Of-Way Grant for an approximate 4-mile, 200-foot-wide right-of-way for construction, operation and maintenance of a 230 kV transmission line parallel to the existing OG–RIN transmission line route (or alternative route) constructed on new double circuit structures. Additional authorizations to be made by the Field Office Manager include revising existing Right-Of-Way Grants for: (1) The conductoring of the empty position of one of the existing Castaic Power Plant 230 kV double-circuit transmission line towers from the Castaic Power Plant to Haskell Canyon (less than 1 mile across public lands managed by BLM), and (2) the replacement of conductors on the OG–RIN 230 kV transmission line (approximately 4 miles across public lands managed by BLM). The authorizations would include ancillary improvements on public lands needed to maintain the transmission system (i.e. double circuit towers, roads, communication equipment).

Scoping Process

The lead agencies will be seeking information, issues, comments and assistance from Federal, State and local agencies, Native American tribes, and other individuals and organizations that may be interested in or affected by the proposed project. This input will be used in preparation of the Draft EIS/EIR.

Seven scoping meetings are proposed to provide information about the proposed project to the public and to allow people to comment on the proposed project. The scoping meetings will be held on the following dates, times, and locations:

1. April 22, 2008, Open House 5:30–8:30 p.m., Presentation at 7 p.m., Santa Clarita Activity Center, 20880 Centre Point Parkway, Santa Clarita, CA.
2. April 23, 2008, Open House 5:30–8:30 p.m., Presentation at 7 p.m., Agua Dulce Women's Club, 33201 Agua Dulce Canyon, Agua Dulce, CA.
3. April 24, 2008, Open House 5:30–8:30 p.m., Presentation at 7 p.m., Castaic Middle School, 28900 Hillcrest Parkway, Castaic, CA.
4. April 28, 2008, Open House 5:30–8:30 p.m., Presentation at 7 p.m., Hughes-Elizabeth Lakes Union School, 16633 Elizabeth Lake Road, Lake Hughes, CA.
5. April 29, 2008, Open House 5:30–8:30 p.m., Presentation at 7 p.m., Frazier Mountain High School, 700 Falcon Way, Lebec, CA.
6. April 30, 2008, Open House 5:30–8:30 p.m., Presentation at 7 p.m., Hillview School, 40525 Peonza Lane, Palmdale, CA.
7. May 1, 2008, Open House 5:30–8:30 p.m., Presentation at 7 p.m., California City Middle School, 9736 Redwood Blvd., California City, CA 93505.

All public meetings will be announced at least 15 days prior to the event through the local newspapers, the FS Web site *http://www.fs.fed.us/r5/angeles/projects/* and the BLM Web site *http://www.ca.blm.gov/ridgecrest*. In addition to the ongoing public participation process, formal opportunities for public participation would be provided upon publication of the Draft EIS/EIR.

Preliminary Issues

The environmental studies to be conducted as part of the EIS/EIR review process will identify potential impacts associated with the proposed project. However, based on previous projects of similar type, size, and scope, the following are preliminary issues that would likely be evaluated in the draft EIS/EIR: Visual resources; air quality; agriculture; biological resources; cultural and paleontological resources; hazards and hazardous materials; hydrology and water quality; land use, recreation, and planning; noise; and transportation. Other potential impacts to be evaluated include forest management related impacts and impacts to the management and use of public lands; and electric and magnetic fields and health effects.

Permits or Licenses Required

A 50-year term Special Use Authorization by the Forest Supervisor of the Angeles National Forest and Right-Of-Way Grant from the BLM Ridgecrest Field Office Manager will authorize LADWP for the construction, maintenance, and use of the new 230 kV transmission line on double circuit towers. Existing Special Use Permits and Right-Of-Way Grants would be amended for authorization of the replacement, maintenance, and use of electrical conductors associated with the OG–RIN 230 kV transmission line, and for the construction, maintenance and use of a second electrical circuit on existing double circuit structures from the Castaic Power Plant.

Additional permits may be required by LADWP to construct the project. These could include: Section 404 Permit by the U.S. Army Corps of Engineers, Federal Aviation Administration Permit for Construction or Alteration, National Pollutant Discharge Elimination System General Construction Permit issued by California's Regional Water Quality Control Board, Streambed Alteration Agreement issued by the California Department of Fish and Game, Permit to Construct issued by the South Coast Air Quality Management District, Encroachment Permit issued by California Department of Transportation, and Encroachment Permits issued by Kern and Los Angeles Counties.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the EIS/EIR. The Lead Agencies are seeking public and agency comment on the proposed project/action to identify major issues to be analyzed in depth and assistance in identifying potential alternatives to be evaluated. Comments received on this notice, including the names and addresses of those who comment, will be considered as part of the public record on this proposed project/action, and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be

granted in only very limited circumstances, such as to protect trade secrets. The Lead Agencies will inform the requester of the decision regarding the request for confidentiality. Where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted, without names and addresses, within a specified number of days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft EIS/EIR will be prepared for comment. The comment period on the Draft EIS/EIR will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Lead Agencies believe, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS/EIR must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS/EIR stage but that are not raised until after completion of the final EIS/EIR may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F2.d 1016, 1022 (9th Circ. 1986) and *Wisconsin Heritages, Inc* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Lead Agencies at a time when they can meaningfully consider them and respond to them in the final EIS/EIR.

To assist the Lead Agencies in identifying and considering issues and concerns on the proposed action, comments on the draft EIS/EIR should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS/EIR. Comments may also address the adequacy of the draft EIS/EIR or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21; BLM Handbook H–1790–1, Section V.

Dated: March 27, 2008.

Jody Noiron,

Angeles Forest Supervisor, U.S. Department of Agriculture, Forest Service.

Dated: March 28, 2008.

Hector Villalobos,

Field Office Manager, U.S. Department of the Interior, Bureau of Land Management.

[FR Doc. E8–6897 Filed 4–2–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed CERCLA Settlement Agreement; Silver Bow County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of an administrative settlement with the owners of an 18-acre parcel (the Settling Parties) within the Beal Mine site in Silver Bow County, Montana. The settlement requires the Settling Parties to convey the parcel to the United States. The settlement includes a covenant not to sue the Settling Parties pursuant Section 107(a) of CERCLA, 42 U.S.C. 9607(a), with regard to the Beal Mine Site. For thirty (30) days following the date of publication of this notice, the United States will receive written comments relating to the settlement. The United States will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before May 7, 2008.

ADDRESSES: The proposed settlement is available for public inspection at the Butte Ranger District/Supervisor's Office Annex of the Beaverhead-Deerlodge National Forest, 1820 Meadowlark Lane, Butte, MT 59701. A copy of the proposed settlement may be obtained from Gary E. Howard at the Butte Ranger District/Supervisor's Office Annex at (406) 494–0228 or from Kirk Minckler with USDA's Office of the General Counsel, (303) 275–5549. Comments should reference the Revelation Lode Parcel, Silver Bow County, Montana, and should be addressed to Mr. Howard at the Butte Ranger District/Supervisor's Office Annex. The United States' response to any comments received will be available for public inspection at the Butte Ranger District/Supervisor's Office Annex.

FOR FURTHER INFORMATION CONTACT: For additional information contact Gary E. Howard, Butte Ranger District/Supervisor's Office Annex, Beaverhead Deerlodge National Forest, 1820 Meadowlark Lane, Butte, MT 59701, phone (406) 494–0228 or Kirk Minckler, USDA Office of the General Counsel, 740 Simms Street, Room 309, Golden, CO 80401, phone (303) 275–5549.

Dated: March 21, 2008.

Thomas L. Tidwell,

Regional Forester, USDA Forest Service, Northern Region.

[FR Doc. E8–6853 Filed 4–4–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Special Census Program.

Form Number(s): SC–1, SC–1 SUPP, SC–1 (Phone/WYC), SC–2, SC–116, SC–351, SC–920, SC–921(HU), SC–921(SP).

OMB Control Number: 0607–0368.

Type of Request: Extension of a currently approved collection.

Burden Hours: 19,143.

Number of Respondents: 293,687.

Average Hours per Response: 4 minutes.

Needs and Uses: Governmental units requiring current population statistics between decennial censuses request that the Census Bureau conduct special censuses. Many states distribute funds based on current population statistics. In addition, special census data are used by the local jurisdictions to plan new schools, transportation systems, housing programs, and water treatment facilities.

The Special Census Program operates as a generic OMB clearance, including a library of forms and the operational

procedures that will be used for the many special censuses we anticipate conducting through June 2009. The Census Bureau will establish a reimbursable agreement with a variety of potential special census customers. Census will submit for OMB's review and approval, under cover of a change worksheet, any special-purpose questions requested by customers to be added to special census questionnaires.

Local jurisdictions use special census data to apply for available funds from both the state and Federal government. Many states distribute these funds based on current population statistics. This fact, along with local population shifts or annexations of territory, prompts local officials to request special censuses. In addition, special census data are used by the local jurisdictions to plan new schools, transportation systems, housing programs, water treatment facilities, etc. Some jurisdictions believe that additional data are required for proper planning and others must have the additional data to qualify for some sources of funding. For these reasons, local officials request special purpose questions. The Census Bureau also uses special census data as part of its local population estimates calculation and to update the Census Bureau's Master Address File (MAF) and Topographically Integrated Geographic Encoding and Referencing (TIGER) System.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, section 196.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: April 1, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–7097 Filed 4–4–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Current Population Survey (CPS) Voting and Civic Engagement Supplements

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before June 6, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Tim Marshall, U.S. Census Bureau, 7H106C, Washington, DC 20233–8400 at (301) 763–3806 (or via the Internet at *Tim.J.Marshall@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request clearance for the collection of data concerning the Voting and Civic Engagement Supplements to be conducted in conjunction with the November 2008 Current Population Survey (CPS). The Census Bureau sponsors the Voting Supplement questions, which have been requested biennially since 1964. The Civic Engagement Supplement will be conducted at the request of the Corporation for National and Community Service (CNCS).

The voting supplement has provided statistical information for tracking historical trends of voter and nonvoter characteristics in each Presidential or Congressional election since 1964. The data collected from this supplement relates demographic characteristics (age, sex, race, education, occupation, and income) to voting and nonvoting behavior. The November CPS supplement is the only source of data that provides a comprehensive set of voter and nonvoter characteristics distinct from independent surveys, media polls, or other outside agencies. Federal, state, and local election officials use these data to formulate policies relating to the voting and registration process. College institutions, political party committees, research groups, and other private organizations also use the voting and registration data.

The civic engagement supplement will provide information on the extent to which American communities are places where individuals are civically active. It will also provide information on the number of Americans who are active in their communities, communicating with one another on issues of public concern, and interacting with public institutions and private enterprises. The information will also provide the number of Americans who engage in activities that promote positive relationships with those of equal and differing socio-economic or professional levels. This survey will be the only source of nationally-representative data on such information as: level of participation in organized groups, extent of political action and knowledge, extent of connections with other community members, and how often individuals get news and information from various media sources.

When combined with demographic characteristics (age, sex, race, education, occupation, income), the data can provide information on the relationship between these characteristics and the level of civic engagement in the United States. Government agency analysts and private, state and local leaders will use this data to compare levels specific to their geographic area to the national level of civic engagement, and to formulate policies that foster healthy communities.

II. Method of Collection

The voting and civic engagement supplements will be collected by both personal visit and telephone interviews in conjunction with the regular November 2008 CPS interview process. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Control Number: 0607–0466.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 48,000.

Estimated Time per Response: 9 minutes.

Estimated Total Annual Burden Hours: 7,200.

Estimated Total Annual Cost: $0.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, U.S.C., Section 182, and Title 29, U.S.C., Sections 1–9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 1, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–7108 Filed 4–4–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–552–802, A–570–893

Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') received timely requests to conduct administrative reviews of the antidumping duty orders on frozen warmwater shrimp from the Socialist Republic of Vietnam and the People's Republic of China (''PRC''). The anniversary month of these orders is February. In accordance with the Department's regulations, we are initiating these administrative reviews.

EFFECTIVE DATE: April 7, 2008

FOR FURTHER INFORMATION CONTACT: Mark Manning or Howard Smith, Office 4, telephone: (202) 482–5253 or (202) 482–5193 (Vietnam); or Scot Fullerton, Office 9, telephone: (202) 482–1386 (PRC), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests, in accordance with 19 CFR 351.213(b), during the anniversary month of February, for administrative reviews of the antidumping duty orders on frozen warmwater shrimp from the Socialist Republic of Vietnam and the PRC covering multiple entities. The Department is now initiating these administrative reviews of the orders covering those entities.

INITIATION OF REVIEW

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the antidumping duty orders on frozen warmwater shrimp from the Socialist Republic of Vietnam and the PRC. We intend to issue the final results of these reviews on the companies listed below not later than March 9, 2009.

Antidumping Duty Proceeding	Period to be Reviewed
SOCIALIST REPUBLIC OF VIETNAM:[1],[2] Frozen Warmwater Shrimp A–552–802.	02/01/2007 - 01/31/2008
• AAAS Logistics.	
• Agrimex.	
• Amanda Foods (Vietnam) Ltd..	
• Amerasian Shipping Logistics Corp..	
• American Container Line.	
• An Giang Fisheries Import and Export Joint Stock Company (Agifish).	
• An Xuyen.	
• Angiang Agricultural Technology Service Company.	
• Aquatic Products Trading Company.	
• Bac Lieu Fisheries Company Limited.	
• Bac Lieu Fisheries Company Limited (''Bac Lieu'').	
• Bentre Aquaproduct Imports & Exports.	
• Bentre Forestry and Aquaproduct Import–Export Company (''FAQUIMEX'').	
• Bentre Frozen Aquaproduct Exports.	
•Bentre Seafood Joint Stock.	
• Beseaco.	
• Binh Dinh Fishery Joint Stock.	
• C P Livestock.	
• C.P. Vietnam Livestock Co. Ltd..	
• C.P. Vietnam Livestock Co., Ltd..	
• Ca Mau Seafood Joint Stock Company (''SEAPRIMEXCO'').	
• Ca Mau Seafood Joint Stock Company (''SEAPRIMEXCO'').	
• Ca Mau Seaproducts Exploitation and Service Corporation (''SES'').	
• Cadovimex Seafood Import–Export and Processing Joint Stock Company (''CADOVIMEX'').	
• Cadovimex Seafood Import–Export and Processing Joint–Stock Company (''Cadovimex–Vietnam'').	
• Cafatex Fishery Joint Stock Corporation (''Cafatex Corp.'').	
• Cafatex Fishery Joint Stock Corporation (''CAFATEX CORP.'').	
• Cai Doi Vam Seafood Import–Export Company (Cadovimex).	
• Cam Ranh Seafoods Processing Enterprise Company (''Camranh Seafoods'').	
• Camau Frozen Seafood Processing Import Export Corporation (''CAMIMEX'').	

Antidumping Duty Proceeding	Period to be Reviewed
• Camau Frozen Seafood Processing Import Export Corporation, or Camau Seafood Factory No. 4 (''CAMIMEX''). • Camau Seafood Fty. • Camranh Seafoods. • Can Tho Agricultural and Animal Product Import Export Company (''CATACO''). • Can Tho Agricultural and Animal Products Import Export Company (''CATACO''). • Can Tho Agricultural Products. • Can Tho Seafood Exports. • Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex). • Cantho Imp & Exp Seafood Join, a.k.a. Caseamex. • Cautre Enterprises. • Chun Cheng Da Nang Co., Ltd.. • Co Hieu. • Coastal Fisheries Development Corporation (''COFIDEC''). • Coastal Fisheries Development Corporation (Cofidec). • Coastal Fisheries Development Corporation (Cofidec). • Coastal Fishery Development. • Cong Ty Do Hop Viet Cuong. • Cuu Long Seaprodcuts Limited (Cuu Long Seapro). • Cuulong Seaproducts Company (''Cuu Long Seapro''). • Cuulong Seaproducts Company (''Cuulong Seapro''). • Danang Seaproducts Import Export Corporation (''Seaprodex Danang''). • Danang Seaproducts Import Export Corporation (and its affiliates) (''Seaprodex Danang''). • Dao Van Manh. • Dong Phuc Huynh. • Dragon Waves Frozen Food Fty.. • Duyen Hai Bac Lieu Company (''T.K. Co.''). • Duyen Hai Foodstuffs Processing Factory (''COSEAFEX''). • Frozen Fty. • Frozen Seafoods Factory No. 32. • Frozen Seafoods Fty. • General Imports & Exports. • Grobest & I–Mei Industrial (Vietnam) Co., Ltd.. • Grobest & I–Mei Industry Vietnam. •Hacota. • Hai Ha Private Enterprise. • Hai Thuan Export Seaproduct Processing Co., Ltd.. • Hai Viet. • Hai Viet Corporation (''HAVICO''). • Hanoi Seaproducts Import Export Corporation (''Seaprodex Hanoi''). • Hatrang Frozen Seaproduct Fty. • Hoa Nam Marine Agricultural. • Hoan An Fishery. • Hoan Vu Marine Product Co., Ltd.. • Hua Heong Food Ind Vietnam. • Investment Commerce Fisheries Corporation (''Incomfish''). • Investment Commerce Fisheries Corporation (''INCOMFISH''). • Khanh Loi Trading. • Kien Gang Sea Prodcuts Import - Export Company (Kisimex). • Kien Gang Seaproduct Import and Export Company (''KISIMEX''). • Kim Anh Co., Ltd.. • Konoike Vinatrans Logistics. • Lamson Import–Export Foodstuffs Corporation. • Long An Food Processing Export Joint Stock Company (''LAFOOCO''). • Lucky Shing. • Minh Hai Export Frozen Seafood Processing Joint Stock Company. • Minh Hai Export Frozen Seafood Processing Joint Stock Company (''Minh Hai Jostoco''). • Minh Hai Export Frozen Seafood Processing Joint–Stock Company (''Minh Hai Jostoco''). • Minh Hai Joint–Stock Seafoods Processing Company (''Sea Minh Hai''). • Minh Hai Joint–Stock Seafoods Processing Company (''Seaprodex Minh Hai''). • Minh Hai Sea Products Import Export Company (Seaprimex Co). • Minh Phat Seafood. • Minh Phat Seafood Co., Ltd.. • Minh Phu Seafood Corp.. • Minh Phu Seafood Corporation. • Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.). • Minh Phu Seafood Export Import Corporation (and its affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) (collectively ''Minh Phu Group''). • Minh Qui Seafood. • Minh Qui Seafood Co., Ltd.. • Nam Hai. • Ngoc Sinh Private Enterprise. • Ngoc Sinh Private Enterprise.	

Antidumping Duty Proceeding	Period to be Reviewed
• Ngoc Sinh Seafoods. • Nha Trang Company Limited. • Nha Trang Fisheries Co. Ltd.. • Nha Trang Fisheries Joint Stock Company (“Nha Trang Fisco”). • Nha Trang Fisheries Joint Stock Company (“Nha Trang FISCO”). • Nha Trang Seaproduct Company (“Nha Trang Seafoods”). • Nha Trang Seaproduct Company (“NHA TRANG SEAFOODS”). • Pataya Food Industry (Vietnam) Ltd.. • Phat Loc Seafood. • Phu Cuong Seafood Processing & Import–Export Co., Ltd.. • Phu Cuong Seafood Processing and Import–Export Co., Ltd.. • Phung Hung Private Business. • Phuong Nam Co. Ltd.. • Phuong Nam Seafood Co. Ltd.. • Quoc Viet Seaproducts Processing Trading Import and Export Co., Ltd.. • Saigon Orchide. • Sao Ta Foods Joint Stock Company (“Fimex VN”). • Sao Ta Foods Joint Stock Company (“FIMEX”). • Sea Product. • Sea Products Imports & Exports. • Seafood Company Zone II (“Thusaco2”). • Seafood Processing Joint Stock Company No.9 (previously Seafood Processing Imports Exports). • Seafoods and Foodstuff Factory. • Seaprodex. • Seaprodex Hanoi. • Seaprodex Min Hai. • Seaprodex Quang Tri. • Soc Trang Aquatic Products and General Import Export Company (“Stapimex”). • Soc Trang Aquatic Products and General Import–Export Company (“STAPIMEX”). • Sonacos. • Song Huong ASC Import–Export Company Ltd.. • Song Huong ASC Joint Stock Company. • Special Aquatic Products Joint Stock Company (“Seaspimex”). • SSC. • T & T Co., Ltd.. • Tacvan Frozen Seafoods Processing Export Company. • Taydo Seafood Enterprises. • Thami Shipping & Airfreight. • Thang Long. • Thanh Doan Seaproducts Import. • Thanh Long. • Thien Ma Seafood. • Tho Quang Seafood Processing & Export Company. • Thuan Phuoc Seafoods and Trading Corporation. • Thuan Phuoc Seafoods and Trading Corporation (and its affiliates). • Tourism Material and Equipment Company (Matourimex Hochiminh City Branch). • Truc An Company. • Trung Duc Fisheries Private Enterprise. • UTXI Aquatic Products Processing Company. • UTXI Aquatic Products Processing Company. • V N Seafoods. • Vien Thang Private Enterprise. • Viet Foods Co., Ltd.. • Viet Foods Co., Ltd. (“Viet Foods”). • Viet Hai Seafood Co., Ltd. a/k/a Vietnam Fish One Co., Ltd. (Fish One). • Viet Hai Seafoods Company Ltd. (“Vietnam Fish One Co. Ltd.”). • Viet Hai Seafoods Company Ltd. (Vietnam Fish One). • Viet Nhan Company. • Vietfracht Can Tho. • Vietnam Fish–One Co., Ltd.. • Vietnam Northern Viking Technologie Co.. • Vietnam Northern Viking Technology Co. Ltd.. • Vietnam Tomec Co., Ltd.. • Vilfood Co. • Vinh Hoan Co., Ltd. • Vinh Loi Import Export Company (“VIMEX”). • Vinh Loi Import Export Company (“Vimexco”). • Vita. • Western Seafood Processing and Exporting Factory.	

[1] If one of the listed companies does not qualify for a separate rate, all other exporters of frozen warmwater shrimp from the Socialist Republic of Vietnam that have not qualified for a separate rate are deemed to be covered by this review as part of the single Vietnam–wide entity of which the named exporter is a part.

[2] Some companies appear to be listed twice, but there are two addresses provided in the administrative review requests for similar named companies and therefore, we are listing them separately.

PEOPLE'S REPUBLIC OF CHINA[3,4,5,6]	02/01/2007 - 01/31/2008
Frozen Warmwater Shrimp A–570–893. • Allied Pacific (H.K.) Co. Ltd.. • Allied Pacific Aquatic Products (Zhangjiang) Co., Ltd.. • Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd.. • Allied Pacific Food (Dalian) Co., Ltd. • Ammon International. • Anhui Fuhuang Chaohu Sanzhen C. • Anhui Huaxiang Foodstuffs Co., Ltd.. • Anqiu Jiayuan Foodstuffs Co., Ltd.. • Aquafreezer Company. • Aquatic Foodstuffs FTY. • Aquatic Products Processing Factory of China National Zhoushan Marine Fisheries Company. • Asian Seafood (Zhanjiang) Co., Ltd.. • Babcock & Wilcox. • Bao Xian Company Ltd.. • Baofa Aquatic Products Co., Ltd.. • Beihai Hongen Aquatic Products Co., Ltd.. • Beihai Qinguo Frozen Foods Co., Ltd.. • Beihai Tashare Seafood Co., Ltd.. • Beihai Wanjing Marin Products Co., Ltd.. • Beihai Zhengwu Aquatic Products Co., Ltd.. • Beihai Zhengwu Industry Co., Ltd.. • Beilian Foods Industrial Co., Ltd.. • Cangnan Fengrun Freezing Plant. • Changle Jiacheng Food Co., Ltd.. • Chaoyang Qiaofeng Group Co., Ltd. (Shantou Qiaofeng (Group) Co., Ltd.) (Shantou/Chaoyang Qiaofeng). • Chaozhou Huahai Aquatic Products Co., Ltd.. • Chaozhou Huahai Aquatic Products Co., Ltd. Fengxi Plant. • China National Fisheries Yantai Marine Fisheries Corp. Fishery Products Processing Factory. • Chung Wan Enterprises. • Chungshan Shinyo Marine Products Co., Ltd.. • Citic Heavy Machinery. • CNF Zhanjiang (Tonglian) Fisheries Co., Ltd.. • Dafu Foods Industry. • Dalian Evergreen. • Dalian Ftz Sea–Rich International Trading Co., Ltd.. • Dalian Juxin Aquatic Food Company, Ltd.. • Dalian Ohbun Food Co., Ltd.. • Dalian Shan Li Food. • Dalian Shanhai Seafood. • Dalian Tongyuan Foodstuffs Co., Ltd. • Dandong Taihua Foodstuffs Co., Ltd. • Danzhou Zhulian Freezing Co., Ltd.. • Dhin Foong Trdg. • Dong Guan Hai Huang Food Co., Ltd.. • Donggang Hongfeng Foods Freeze. • Donggang Sanlong Sea Produces Co., Ltd.. • Dongri Aquatic Products Freezing Plants. • Dongshan Dongsheng Food Co., Ltd.. • Dongshan Dongwang Aquatic Products Freezing Co., Ltd.. • Dongshan Dongxiecheng Seafoods Co., Ltd.. • Dongshan Dongxing Aquatic Processing Co., Ltd.. • Dongshan Huachang Foodstuff Co., Ltd.. • Dongshan Xinfu Aquatic Processing Co., Ltd.. • Dongshan Xinhefa Co., Ltd.. • Dongshan Xinhefa Food. • E.S. Foods. •East Spark Logistics. • Fangchenggang City Fangcheng District Forestry Development Co., Ltd.. • Fenghua Hailiqu Frozen Corporation. • Foshan City Shunde District Yang Sei Seafoods Co., Ltd. (Seafood Workshop). • Foshan Seafood Imp and Exp Co., Ltd., Seariver Seafood Foodstuff Factory. • Fuchang Aquatic Products. • Fujian Chaohui Intl. • Fujian Meihua Aquatic Processing Factory. • Fujian Mingwei. • Fujian Provincial Meihua Aquat. • Fujian Western Gulf Seafood Co., Ltd.. • Fuqing Chaohui Aquatic Food Trdg. • Fuqing City Huasheng Aquatic Food Co., Ltd.. • Fuqing Dongwei Aquatic Products Industry Co., Ltd.. • Fuqing Longwei Aquatic Foodstuff Co., Ltd.. • Fuqing Maowang Seafood Developing Co., Ltd..	

PEOPLE'S REPUBLIC OF CHINA[3,4,5,6]	02/01/2007 - 01/31/2008
• Fuqing Minhua Trade Co., Ltd.. • Fuqing Xuhu Aquatic Food Trdg. • Fuqing Yihua Aquatic Food Co., Ltd. • Fuqing Yihua Aquatic Products Co., Ltd.. • Fuzhou Hongli Food Co., Ltd.. • Fuzhou Mandy Foods Industries Co., Ltd.. • Fuzhou Rixing Aquatic Food Co., Ltd.. • Gallant Ocean (Nanhai), Ltd.. • Gallant Ocean International. • Gallant Seafoods. • General (Xiamen Tongan) Food Industry Co., Ltd. • Go Harvest Aquatic Products. • Gold Star Fishery Zhoushan Co., Ltd.. • Gourmet Food (Zhongshan) Co., Ltd.. • Grand Harvest Seafoods (Zhanjiang) Co., Ltd.. • Guangdong Foshan Aquatic Products. • Guangxi Cereals Oils and Foodstuffs Imp./Exp. Beihai Aquatic Products Cold Processing Factory. • Guangxi Zhengwu Marine Ind. • Guangzhou Lingshan Aquatic Products. • Guangzhou Lingshan Aquatic Products Co., Ltd.. • Hai Li Aquatic Co., Ltd. Zhao An, Fujian. • Hai Pa Wang (Shantou) Foods Co., Ltd. (Seafood Workshop). •Haikui Aquatic Products. • Haili Aquatic Co., Ltd. Zhaoan Fujian. • Hainan Brich Aquatic Products Co., Ltd.. • Hainan Cereals Oils and Foodstuff Imp. & Exp. Co. Freezing Factory. • Hainan Dazhong Ocean Industry Co., Ltd.. •Hainan Dongfang Dongxin Aquatic Development Co., Ltd.. • Hainan Evernew Foods Co., Ltd.. • Hainan Fruit Vegetable Food Allocation Co., Ltd.. • Hainan Gaoyuan Foods Co., Ltd.. • Hainan Golden Spring Foods Co., Ltd.. • Hainan Golden Spring Foods Co., Ltd./Hainan Brich Aquatic Products Co., Ltd.. • Hainan Hailisheng Food Co., Ltd.. • Hainan Hualu Food Freezing Co., Ltd.. • Hainan Jiadexin Foodstuff. • Hainan Jiadexin Foodstuff Co., Ltd.. • Hainan North Aquatic Co., Ltd.. • Hainan Quebec Ocean Fishing Co., Ltd.. • Hainan Ruiying Food. • Hainan Sanya Yuanheng Aquatic Food Co., Ltd. • Hainan Seaberry Seafoods. • Hainan Sinalog Intl. Logistics. • Hainan Sky–Blue Ocean Foods Co., Ltd.. • Hainan Taisheng Fishery Co., Ltd. • Hainan Wenchang Yongli Fishery Trading Co., Ltd.. • Hainan Xiangtai Fishery Co., Ltd.. • Hainan Zhongyi Frozen Food Co., Ltd.. • Haiyang Gold Sun Food Processing Co., Ltd.. • Haizhou Aquatic. • Hangzhou Tianhai Aquatic Food Co., Ltd.. • Harvest Aquatic Products. • Hefei Meiling Washing Machine. • Hilltop International. • Homey Dongfang Aquatic Foods Co., Ltd.. • Hong Hu Dei Young Aquatic Products Co., Ltd.. • Hogiya Seafoods. • Homon Ind Dalian. • Hongzhou Aquatic Products Industry Co., Ltd., Shantou. • Huahai Frozen Food. • Huangshi Lianhai Foodstuffs Gr. • Hubei Sanwuchun Foodstuff Manufacturing Co., Ltd.. • Hunan Best Foods. • I T Logistics. • Intl Economic Techical. • Jiachang Aquatic Product Co., Ltd. Longhai. • Jiangmen Kings Food Waihai Branch Ltd.. • Jiangmen Yue Fung Marine Products Co., Ltd.. • Jiangsu Holly. • Jiangsu Jiushoutang Organisms–Manufacturers. • Jiangsu Younger Foods. • Jiangzhou Tianhe Fishery Products Co., Ltd.. • Jiansheng Aquatic Product. • Jiaonan City Aquatic Cold Storage Factory.	

PEOPLE'S REPUBLIC OF CHINA[3,4,5,6]	02/01/2007 - 01/31/2008
• Jinfu Trading Co., Ltd.. • Jinhang Aquatic Industry. • Jintown Enterprises. • Kaifeng Ocean Sky Industry Co., Ltd.. • King Bay Seafood Co., Ltd.. • King Royal Investments, Ltd.. • King Royal Investments, Ltd.. • Laiyang Hengrun Foodstuff. • Laiyang Luhua Foodstuffs. • Laizhou Xincheng Food Col., Ltd.. • Lee Shing Food (Dongguan) Co., Ltd.. • Leizhou Yuyuan Aquatic Products Co., Ltd.. • Leizhou Zhulian Frozen Food Co., Ltd.. • Liangcheng (Longhai) Freezing Co. Ltd.. • Long Sheng Trend Wide (Yuhuan) Seafood Co., Ltd.. • Longhai Gelin Seafoods Co., Ltd.. • Longhai Jiarong Foods Co., Ltd.. • Longhai Xinlianda Freezing Foods Co., Ltd.. • Longkou Jiabao Aquatic Foodstuffs Co., Ltd.. • Longsheng Aquatic Products. • Luk Ka Paper Industry. • Maoming Changxing Foods. • Maoming Jiahui Foods Co., Ltd.. • Marnex. • Meizhou Aquatic. • Meizhou Aquatic Products Quick–Frozen Industry Co., Ltd. Shantou. • Michael Lloyd Verm. • Meizhou Aquatic Products Quick–Frozen Industry Co., Ltd. Shenping Shantou. • Mingfeng. • Minnan Aquatic Development Co., Ltd. Jinjiang City. • Momoya Zhujiang Foods Industrial Co., Ltd.. • Muping Weiye Foods Co., Ltd.. • Nanhai Katolee Foods Co., Ltd.. • Ningbo Arts & Crafts Import and Export. • Ningbo Dayu Food Co., Ltd.. • Ningbo Fat Chef Food Co., Ltd. • Ningbo Hengkang Food. • Ningbo Jiuzhou Food Co., Ltd.. • Ningbo Today Food Co., Ltd. • Ningbo Wuling Taihsin Foods. • Ningbo Yuzhimei Seafoods Plant. • North Supreme Seafood (ZheJiang) Co., Ltd. • North Supreme Seafood (Zhuhai) Co., Ltd.. • Ocean (Tianjin) Corporation Ltd.. • Ocean Freezing Industry & Trade General. • Olanya. • Penglai Huaguang Foodstuff Co., Ltd.. • Penglai Jinglu Fishery Co., Ltd.. • Penglai Jinglu Fishery Co., Ltd. Processing Factory. • Penglai Jinming Aquatic Products Co., Ltd.. • Penglai Meibo Foodstuffs Co., Ltd.. • Perfection Logistics Service. • PingYang Xinye Aquatic Products Co., Ltd.. • Pingye Foreign Transportation. • Power Dekor Group Co., Ltd.. • Qianjiang Heyi Aquatic Products and Foodstuff Co., Ltd.. • Qianjiang Laike Seafood Co., Ltd.. • Qingdao A&K Foods Col., Ltd.. • Qingdao Anke Industrial Co., Ltd.. • Qingdao Biwan Foods Co., Ltd.. • Qingdao Biwan Marine Products Co., Ltd.. • Qingdao Canning & Foodstuffs. • Qingdao Chaoyang Foods Col., Ltd.. • Qingdao Dayang Jian Foodstuffs. • Qingdao Dong Gang Foodstuffs Co., Ltd.. • Qingdao Dongwon F & B Co., Ltd.. • Qingdao Gabsan Trdg. • Qingdao Kangda Foodstuffs Co., Ltd. No. 2 Refigeration Factory. • Qingdao Kangda Haiqing Foods Co. Ltd.. • Qingdao Katokichi Foodstuff Co., Ltd.. • Qingdao Rongli Aquatic Foods Co. Ltd.. • Qingdao Sanyang Aquatic Products Co., Ltd.. • Qingdao Sohshoku Refrigeration and Processing Co., Ltd.. • Qingdao Superior Foods Co., Ltd..	

PEOPLE'S REPUBLIC OF CHINA[3,4,5,6]	02/01/2007 - 01/31/2008
• Qingdao Tsukiji Suisan Co., Ltd.. • Qingdao Twins Co., Ltd.. • Qingdao Wanfang Foodstuff, Ltd.. • Qingdao Xinhaifeng Foods Co., Ltd.. • Qingdao Xuri Foodstuffs. • Qingdao Yilufa Foodstuffs Co., Ltd.. • Qingdao Yuanxing Foods Processing Plant. • Qingdao Yudong Foodstuffs Co., Ltd.. • Qingdao Zhengjin West Coast Aquatic Products Processing Plant. • Qinhuangdao Jiangxin Aquatic Food. • Quanzhou Yisheng Gifts. • Qunfa Seafood. • Raoping County Longfa Seafoods Co., Ltd.. • Raoping Jialong Freeze Food Co., Ltd.. • Raoping Jianli Foods Co., Ltd.. • Raoping Yongliang Foodstuffs Factory Co., Ltd. (Seafood Workshop). • Raoping Yuanteng Frozen Food Co., Ltd.. • Red Garden Food. • Red Garden Foodstuff. • Regal Integrated Marine Resour. • Rich Shipping. • Rixiang Ocean Foodstuff Co., Ltd. Shishi. • Rizhao Changhua Aquatic Foodstuff. • Rizhao Huayang Farming Aquatic Processing Co., Ltd.. • Rizhao Rirong Aquatic Products and Foods Co., Ltd.. • Rizhao Smart Foods. • Rongcheng Lijiang Aquatic and Foodstuffs Co., Ltd.. • Rongcheng Tongda Aquatic Food. • Rongcheng Yinhai Aquatic. • Round the World Logistics. • Ruian Huasheng Aquatic Products. • Rushan Huagreat Aquatic Products Co. Ltd.. • Sahndong Huashijia Foods. • San Francisco Bay Brand Far East. • Sanya Branch of Zhanjiang Runhai Food Co., Ltd.. • Sanya Dongji Aquatic Products Co., Ltd.. • Sanya Shengda Seafood Co., Ltd.. • Sanya Yuantiao Aquatic Products Trading Co., Ltd.. • Savvy Seafood Inc.. • Science & Technology Development. • Sea Mart. • Sea to Sea Seafood. • Sealord North America. • Second Aquatic Food. • SH Linghai Fisheries Trdg. • Shandong Chengshun Farm Produce Trd. • Shandong Foodstuffs Imp and Exp Corp. Qingdao Refigeration Plant. • Shandong Huashijia Foods. • Shandong Longkou Aquatic Product Comprehensive Corporation. • Shandong Oriental Ocean Sci–Tech Co., Ltd. Refrigerating and Processing Factory. • Shandong Rizhao Sanfod Foodstuffs Co., Ltd.. • Shandong Rushan Weimei Foodstuffs. • Shandong Sanfod Nissui Co., Ltd.. • Shandong Yongkang Food Co. Ltd.. • Shanghai Haidell Foods Co., Ltd. • Shanghai Ho Ho Food Factory. • Shanghai Linghai Fisheries Economic and Trading Co.. • Shanghai Royal Dragon Seafoods. • Shantou Chaoyang Zhansheng Freeze Factory. • Shantou City Qiaofeng Group. • Shantou City Qiaofeng Group Co., Ltd.. • Shantou Freezing Aquatic Product Food Stuffs Co.. • Shantou Freezing Factory. • Shantou Haimao Foodstuffs Factory Co., Ltd.. • Shantou Haixiang Aquatic Products Co., Ltd.. • Shantou Haiyou Aquatic Foodstuff Co., Ltd.. • Shantou Jiazhou Foods Industry Co., Ltd.. • Shantou Jinfa Seafood Co., Ltd.. • Shantou Jinhang Aquatic Industry Co., Ltd.. • Shantou Jinping District Mingfeng Quick–Frozen Factory. • Shantou Jinyuan District Mingfeng Quick–Frozen Factory. • Shantou Long Feng Foodstuffs Co., Ltd. (Shantou Longfeng Foodstuffs Co., Ltd.). • Shantou Longfeng Foodstuff Co., Ltd.. • Shantou Longsheng Aquatic Product.	

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• Shantou Longsheng Aquatic Product Foodstuff Co., Ltd.. • Shantou Nichi Len Foods Co., Ltd.. • Shantou Ocean Freezing Industry and Trade General Corporation. • Shantou Red Garden Food Processing Co., Ltd.. • Shantou Red Garden Foodstuff. • Shantou Ruiyuan Industry Co., Ltd.. • Shantou SEZ Dafeng Aquatic Product Enterprise Co., Ltd.. • Shantou SEZ Xu Hao Fastness Freeze Aquatic Factory Co., Ltd.. • Shantou Sez Xuhoa Fastness Freeze Aquatic Factory Co.. • Shantou Shengping District Yongping Shengnanhe Aquatic Products Process Facotry. • Shantou Shengping Jiacheng Aquatic Product Foodstuff Quick–Frozen Factory. • Shantou Shengping Oceanstar Business Co., Ltd.. • Shantou Wanya Food Factory Co., Ltd.. • Shantou Wanya Foods Fty. Co., Ltd. (Branch Factory). • Shantou Yuexing Enterprise Company. • Shanwei Cathay Food Industries Ltd.. • Shanwei Good Harvest Aquatic Products Co., Ltd.. • Shaotou Ocean Freezing Industry and Trade General Corporation. • Sharewin Intl Cargo Agent. • Shenzhen Allied Aquatic Products. • Shishi Zhengyuan Aquatic Product Science & Technology Development Co., Ltd.. • Silvertie Holding. • Sinda Intl Trdg. • Sino Champion. • Sky Blue Ocean Foods. • Spectrum Plastics. • St City Qiaofeng Group. • ST Wanya Foods Fty. • Suqian Foreign Trdg. • T.H.. • Taiwan Titan Enterprises. • Taizhou Lingyang Aquatic Products Co., Ltd.. • Taizhou Zhonghuan Industrial Co., Ltd.. • Tangshan Dongguang Foods Co., Ltd. • Thai Royal Frozen Food Zhanjiang Co., Ltd.. • The Aquaculture Processing Factory of Doumen Aquatic Products Import Co., Guangdong. • The Freezing Plant of Guangdong Shantou Aquatic Product Imp. and Exp. Co.. • The Second Aquatic Food. • The Second Aquatic Foodstuffs Factory Shandong Hisea Group. • Tianhe Hardware & Rigging. • Tianjin Dongjiang Food. • Tianjin Smart Gulf Foodstuffs Co., Ltd. • Tien Jiang Enterprises. • TingFond Aquatic Food Development Co., Ltd. Guangzhou. • Top One Intl. • Universal Freight Systems. • Weifang Taihua Food. • Weifang Yongqiang Food Ind. • Weihai Weidongri Comprehensive Food Co., Ltd.. • Weishan Zhaozhong Lake Foodstuffs. • Wenling Hotai Marine Processing Corp.. • Wenling Jiaoshan Fishing Harbour Freezing Plant. • Wenling Shatou Seafood Cold Storage Plant. • Wenling Xingdi Aquatic Products. • Wenling Xingdi Aquatic Products Co., Ltd.. • Xiamen Sungiven Imports & Exports. • Xiangshan Haiyang Food Co., Ltd. • Xiangshan Huayi Seafood Co., Ltd.. • Xiangshan South Aquatic Food Co., Ltd.. • Xiantao Mianyang Sanzheng Foods Co., Ltd.. • Xiashan Cold Storage Plant of Zhanjiang Foodstuffs I/E Co. of Guangdong. • Xinxing Aquatic Products Processing Factory. • Xuwen Hailang Breeding Co., Ltd.. • Yancheng Haiteng Aquatic Products & Foods Co., Ltd. • Yancheng Sea & Garden Beauty Foods Co., Ltd.. • Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd.. • Yangjiang Jiangcheng Huanghai Marine Food Enterprises Co., Ltd.. • Yangxi Add Host Aquatic Product Processing Factory. • Yantai Aquatic Products Supplying and Marketing Co., Aquatic Products Fazhan Branch. • Yantai Aquatic Products Supplying and Marketing Co., Aquatic Products Haifa Food Branch. • Yantai Dachen Food Products Co., Ltd.. • Yantai Defeng Aquatic Product Co., Ltd.. • Yantai Development Area Yulong Foods Co. Ltd.. • Yantai Foreign Trade No. 2 Refrigerator Factory.	

PEOPLE'S REPUBLIC OF CHINA[3,4,5,6]	02/01/2007 - 01/31/2008
• Yantai Fubao Foodstuffs Co., Ltd.. • Yantai Guangyuan Foods Co. • Yantai Haide Aquatic Products Co., Ltd.. • Yantai Haihe Foodstuffs Co., Ltd.. • Yantai Haixing Fishery Products Co., Ltd.. • Yantai Huake Foodstuffs Co. Ltd.. • Yantai Jinpeng Foodstuffs Co., Ltd.. • Yantai Lianfa Aquatic Products Co., Ltd.. • Yantai Liming Aquatic Products Co., Ltd.. • Yantai Longda Foodstuffs Co., Ltd.. • Yantai Longxiang Foodstuffs Co., Ltd.. • Yantai Luxing Foodstuffs Co., Ltd.. • Yantai M and K Foods Col., Ltd.. • Yantai Pengfu Fishery Products Co., Ltd.. • Yantai Sealucky Foodstuffs Co., Ltd.. • Yantai Tangmu Seafood Products Co., Ltd.. • Yantai Wei–Cheng Food Co., Ltd.. • Yantai Xingyang Aquatic & Foods Co., Ltd.. • Yantai Xinlai Trade. • Yantai Xinxing Foodstuffs Co., Ltd.. • Yantai Xuehai Foodstuffs. • Yantai Xuehai Foodstuffs Co., Ltd.. • Yantai Yuyuan Aquatic Products Co. Ltd.. • Yantai Zhaoyang Aquatic Products Co., Ltd.. • Yantai Zhengwang Seafood Co., Ltd.. • Yantai Zhicheng Aquatic Product Co., Ltd.. • Yelin Enterprise Co., Ltd. Hong Kong. • Yelin Frozen Seafood Co.21. • Yuhuan Minzhu Freezing Plant. • Zhan Jiang Green Environmental Protection Aquatic Foods Co., Ltd.. • Zhangjiang Bobogo Ocean Co., Ltd.. • Zhangjiang Jinguo Seafood Co., Ltd.. • Zhangzhou Changshan Haizhiwei Frozen Food Co.. • Zhangzhou Hsien–pin Frozen Foods Co., Ltd.. • Zhangzhou Oceanrich Foodstuffs Co., Ltd.. • Zhangzhou Quanfeng Foods Development Co., Ltd.. • Zhangzhou Yuanxin Foodstuff Co. Ltd. • Zhanjiang Allied Pacific Aquaculture Co., Ltd.. • Zhanjiang Allied Pacific Aquaculture Co., Ltd.. • Zhanjiang Baohui Sea Products PTE Co., Ltd.. • Zhanjiang Baoli Aquatic Products Co., Ltd.. • Zhanjiang Bo Bo Go Ocean Co., Ltd.. • Zhanjiang Dongyang Aquatic Products Co., Ltd.. • Zhanjiang East Sea Kelon Aquatic Products Co., Ltd.. • Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd.. • Zhanjiang Fuchang Aquatic Product Freezing Plant. • Zhanjiang Fuchang Aquatic Products. • Zhanjiang Go–harvest Aquatic Products Co., Ltd.. • Zhanjiang Guotong Aquatic Products Co., Ltd.. • Zhanjiang Haizhou Aquatic Product. • Zhanjiang Hi Press Machine Eqp. • Zhanjiang Longwei Aquatic. • Zhanjiang Newpro Foods Co., Ltd.. • Zhanjiang Puxin Aquatic Products Co., Ltd.. • Zhanjiang Regal Integrated Marine Resources. • Zhanjiang Runhai Foods Co., Ltd. • Zhanjiang Siyu Aquatic Products Co., Ltd.. • Zhanjiang Universal Seafood Corp.. • Zhanjiang Yueshui Fishery Co., Ltd.. • Zhejiang Cereals Oils & Foodstuffs Import & Export Corp. Yueqing Cooperative Cold Storage Plant. • Zhejiang Cereals, Oils & Foodstuff Import & Export Co., Ltd.. • Zhejiang Daishan Baofa Aquatic Products Co., Ltd.. • Zhejiang Dayang Aquatic Products Co., Ltd.. • Zhejiang Evergreen Aquatic Pro. • Zhejiang Evernew Seafood Co., Ltd.. • Zhejiang Evernew Seafood Co., Ltd. Cold Storage Plant. • Zhejiang Haizhiwei Aquatic Products Co., Ltd.. • Zhejiang Iceman Foods. • Zhejiang New Century Aquatic Food Co., Ltd.. • Zhejiang New Century Imp. & Exp. Group Co. Ltd. Seafood Factory. • Zhejiang Ocean Fisheries Group Ningbo Seafood Processing Co., Ltd. Corp Food Plant. • Zhejiang Taizhou Haierbao Aquatic Products Co., Ltd. • Zhejiang Tongxinrong Seafood Co., Ltd..	

PEOPLE'S REPUBLIC OF CHINA[3,4,5,6]	02/01/2007 - 01/31/2008
• Zhejiang Xingyang Import & Exports.	
• Zhejiang Xintianjiu Sea Products Co., Ltd..	
• Zhejiang Zhenglong Foodstuffs Co., Ltd.	
• Zhejiang Zhongda.	
• Zhejiang Zhoufu Food Co., Ltd.	
• Zhejiang Zhoushan Haisilk Aquatic Products Co., Ltd..	
• Zhenjiang Evergreen Aquatic Products Science & Technology Co., Ltd..	
• Zhenye Aquatic & Cool Storage.	
• Zhongshan Daisheng Frozen Food Company Ltd..	
• Zhongshan Fishery and Agricultural Products Freezing Factory Co., Ltd..	
• Zhongshan Metro Frozen Food Co., Ltd..	
• Zhoushan.	
• Zhoushan Cereals, Oils and Foodstuffs Import and Export Co., Ltd..	
• Zhoushan Changguo Foods Co., Ltd.	
• Zhoushan City Shengtai Aquatic Co., Ltd..	
• Zhoushan Diciyuan Aquatic Products.	
• Zhoushan Diciyuan Aquatic Products Co., Ltd..	
• Zhoushan Dinghai Hongxin Aquatic Products Coldstorage Plant.	
• Zhoushan Gangming Foods Co., Ltd..	
• Zhoushan Guotai Aquatic Products Co., Ltd..	
• Zhoushan Guotai Fisheries Co., Ltd..	
• Zhoushan Haichang Food Co., Ltd..	
• Zhoushan Haizhou Aquatic Products Co., Ltd. Foods Processing Factory.	
• Zhoushan Huading Seafood Co., Ltd.	
• Zhoushan Industrial Co., Ltd..	
• Zhoushan Industrial Co., Ltd. Cold Storage Factory.	
• Zhoushan Jingzhou Aquatic Foods Co., Ltd..	
• Zhoushan Jinyuan Aquatic Foods Co., Ltd..	
• Zhoushan Lizhou Fishery Co., Ltd..	
• Zhoushan Penglai Aquatic Co., Ltd..	
• Zhoushan Putuo Dongyu Frozen Aquatic Products Co., Ltd.	
• Zhoushan Putuo Huafa Sea Products Co., Ltd..	
• Zhoushan Putuo Zhuohai Marine Products Co., Ltd..	
• Zhoushan Qiangren Imp & Exp.	
• Zhoushan Thousand–Islands Aquatic Products Co., Ltd..	
• Zhoushan Toka Foods Co., Ltd..	
• Zhoushan Xifeng Aquatic Co., Ltd..	
• Zhoushan Yueyang Food Co., Ltd..	
• Zhoushan Zaohai Aquatic Products Co., Ltd..	
• Zhoushan Zhenyang Developing Co., Ltd..	
• ZJ CNF Sea Products Engineering Ltd. Viet Nhan Company.	

[3] If one of the listed companies does not qualify for a separate rate, all other exporters of frozen warmwater shrimp from the PRC that have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC–wide entity of which the named exporter is a part.

[4] Some companies appear to be listed twice, but there are two addresses provided in the administrative review requests for similar named companies and therefore, we are listing them separately.

[4] Some companies appear to be listed twice, but there are two addresses provided in the administrative review requests for similar named companies and therefore, we are listing them separately.

[5] Domestic producers requested a review of Zhanjiang Guolian Aquatic Products Co., Ltd., a company that was excluded from the antidumping duty order. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China*, 70 FR 5149 (February 1, 2005). Since this company was excluded from the order, we are not initiating an administrative review for Zhanjiang Guolian Aquatic Products Co., Ltd.

[6] As the Department stated in *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 6477 (February 4, 2008), '' for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location.'' Domestic producers requested an administrative review for five companies that the Department was unable to locate in prior segments. Therefore, the Department is not initiating an administrative review with respect to Formosa Plastics, Fuqing Chaohui Aquatic Food Co., Ltd., Round the Ocean Logistics, Seatrade International, and ZJ CNF Sea Products Engineering Ltd.

NOTICE OF NO SHIPMENTS

The companies on which we are initiating these reviews should notify the Department within 30 days of publication of this notice in the **Federal Register** if they had no shipments of the merchandise under consideration during the POR.

SEPARATE RATES

In proceedings involving non–market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2,1994) (''*Silicon Carbide*''). In accordance with the separate–rates criteria, the Department assigns separate rates to

companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

In order for exporters or producers to obtain separate rate status in NME administrative reviews, the Department requires parties to submit a separate-rate status application or certification. *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries, (April 5, 2005), available on the Department's website at http://ia.ita.doc.gov/policy/bull05-1.pdf.

Due to the large number of firms requesting/being requested for an administrative review in these proceedings, the Department is requiring all firms listed above that wish to qualify for separate–rate status in these administrative reviews to complete, as appropriate, either a separate–rate status application or certification, as described below.

For these administrative reviews, in order to demonstrate separate–rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's website at http://www.trade.gov/ia on the date of publication of this **Federal Register**. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than April 27, 2008. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

For entities that have not previously been assigned a separate rate, to demonstrate eligibility for such, the Department requires a Separate Rate Status Application. The Separate Rate Status Application will be available on the Department's website at http://www.trade.gov/ia on the date of publication of this **Federal Register**. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than May 27, 2008. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

SELECTION OF RESPONDENTS

Section 777A(c)(1) of the Tariff Act of 1930, as amended (''the Act''), directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to examine either (1) a sample of exporters, producers or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined. Due to the large number of firms requested for an administrative review and the Department's experience regarding the resulting administrative burden to review each company for which a request has been made, the Department is considering exercising its authority to limit the number of respondents selected for review using one of the two methods described above.

For these administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review (''POR''). The Department intends to place the CBP data on the record of this proceeding on the date of publication of this notice. We intend to make our decisions regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and the selection of respondents within seven days of publication of this **Federal Register** notice.

NOTIFICATION

This notice constitutes public notification to all firms requested for review and seeking separate–rate status in the administrative reviews of the antidumping duty orders on frozen warmwater shrimp from the Socialist Republic of Vietnam and the PRC that they must submit a separate–rate status application or certification, as appropriate, within the time limits established in this notice of initiation of administrative reviews in order to receive consideration for separate–rate status. The Department will not give consideration to any Separate Rate Certification or Separate Rate Status Application made by parties who fail to timely submit the requisite Separate Rate Certification or Application. All information submitted by respondents in these administrative reviews is subject to verification. To complete these segments within the statutory time frame, the Department will be limited in its ability to extend deadlines on the above submissions. As noted above, the Separate Rate Certification and the Separate Rate Status Application will be available on the Department's website at http://www.trade.gov/ia on the date of publication of this notice.

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's website at http://www.trade.gov/ia.

This initiation and notice are in accordance with section 751(a) of the Act, and 19 CFR 351.221(c)(1)(i).

Dated: March 31, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–7206 Filed 4–4–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–549–502)

Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Thailand, in response to a request from Allied Tube and Conduit Corporation and Wheatland Tube Company (collectively, petitioners). This review covers the period March 1, 2006 through February 28, 2007. We preliminarily determine that U.S. sales of subject merchandise have been made by Saha Thai Steel Pipe (Public) Company, Ltd. below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the export price (EP) and the NV. Interested parties are invited to

comment on these preliminary results. *See* the ''Preliminary Results of Review'' section of this notice.

EFFECTIVE DATE: April 7, 2008

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.; telephone: (202) 482–5255 OR (202) 482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1986, the Department published in the **Federal Register** an antidumping duty order on circular welded carbon steel pipes and tubes from Thailand. *See Antidumping Duty Order: Circular Welded Carbon Steel Pipes and Tubes from Thailand*. 51 FR 8341 (March 11, 1986). On March 2, 2007, the Department published a notice of opportunity to request an administrative review of this order covering the period March 1, 2006 through February 28, 2007. *See Antidumping or Countervailing Duty Order, Finding or Suspended Investigation; Opportunity to Request Administrative Review* 72 FR 9505 (March 2, 2007). The petitioners filed a timely request for an administrative review of the antidumping order with respect to exports by Saha Thai Steel Pipe (Public) Company, Ltd. (Saha Thai) during the period of review (POR). The Department published a notice of initiation of this antidumping duty administrative review on April 27, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 92086. We received timely responses to our questionnaires on July 23, 2007, February 19, 2008, and March 5, 2008. The Department intends to request further clarification from Saha Thai on a few minor issues for which the information on the record of this administrative review is not completely clear.

Scope of the Order

The products covered by this antidumping order are certain welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as ''standard pipe'' or ''structural tubing'' are hereinafter designated as ''pipes and tubes.'' The merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090. Although the HTSUS subheadings are provided for the convenience and purposes of CBP, our written description of the scope is dispositive.

Analysis

Date of Sale

Saha Thai reported contract date as the date of sale for U.S. sales. The Department considers invoice date to be the presumptive date of sale (*see* section 351.401(i)) of the Department's regulations). For purposes of this review, we examined whether invoice date or another date better represents the date on which the material terms of sale were established. The Department examined sales documentation, including contracts and invoices, provided by Saha Thai for its U.S. sales and found that the material terms of sale are set on the contract date and that there are no changes outside the parameters set forth in the contract between contract date and invoice date. We preliminarily determine that contract date is the appropriate date of sale for U.S. sales in this administrative review because it better represents the date upon which the material terms of sale were established. This is consistent with the most recently completed administrative reviews of this order. *See CircularWelded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 71 54266 FR (September 14, 2006) (*2004–2005 AR Final Results*).

In the home market, the date of invoice is when the material terms of sale are established. Therefore, we are using the invoice date as the date of sale for home market sales.

Export Price

In accordance with section 772(a) of the Tariff Act of 1930, as amended (the Act), export price is the price at which the subject merchandise is first sold (or agreed to be sold) by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser prior to the date of importation. We classified all of Saha Thai's sales to its U.S. customers as EP sales because, as in previous segments of the proceeding, we found that Saha Thai is not affiliated with its distributors, which are the first purchasers in the United States. *See, e.g., 2004–2005 AR Final Results.*

In accordance with section 772(c)(2) of the Act, we made deductions from the gross unit price for foreign inland freight, foreign brokerage and handling, foreign inland insurance, ocean freight, lighterage charges, bill of lading fees, U.S. brokerage and handling charges, and U.S. duties.

Section 772(c)(1)(B) of the Act states that EP should be increased by the amount of any import duties ''imposed by the country of exportation which have been rebated, or which have not been collected by reason, of the exportation of the subject merchandise to the United States...'' Saha Thai claimed an adjustment to EP for the amount of duties exempted on its imports of inputs into a bonded warehouse. In determining whether an adjustment should be made to EP for this exemption, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported input be traced directly from importation through exportation. We do require, however, that the company meet our ''two–pronged'' test in order for this addition to be made to EP. The first element is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another; the second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback or exemption granted for the export of the manufactured product. *See, e.g., 2004–2005 AR Final Results and Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 69 FR 61649 (October 20, 2004); see also Mittal Steel USA Inc. v. United States*, Slip Op. 07–117 (CIT 2007); and *Rajinder Pipes Ltd. v. United States*, 70 F. Supp. 2d 1350, 1358 (CIT 1999).

For these preliminary results, we are not making an upward adjustment to export price for duty drawback or exemption, because Saha Thai has not clearly demonstrated how it met the second prong of our ''two–pronged'' test. While Saha Thai provided data regarding imports into its bonded warehouse, its questionnaire response did not demonstrate that this imported material was sufficient to account for the total of the import duties exempted for the export of the manufactured product. However, the Department intends to provide Saha Thai with an opportunity to explain why the documentation it has already provided satisfies the second prong of our ''two–pronged'' test and is sufficient to allow this adjustment for the final results of this review.

Normal Value

Home Market Viability: In accordance with section 773(a)(1) of the Act, to determine whether there was sufficient volume of sales in the home market and/or a third country market to serve as a viable basis for calculating NV, we compared Saha Thai's volume of home market sales of foreign like product to the volume of U.S. sales of subject merchandise. Pursuant to section 773(a)(1) of the Act and section 351.404(b) of the Department's regulations, because the volume of Saha Thai's home market sales of foreign like product was greater than five percent of the volume of U.S. sales of the subject merchandise, we determine that the home market is viable. Therefore, we used home market sales as the basis for NV in accordance with section 773(a)(1).

Affiliated Party Transactions and Arm's–Length Test: The Department's practice with respect to the use of home market sales to affiliated parties for NV is to determine whether such sales are at arm's–length prices. To examine whether home market sales were made at arm's length, we compared the starting price of sales to affiliated customers to the starting price of sales to unaffiliated customers, net of all movement charges, direct selling expenses, discounts and packing. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the same or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated parties were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). In accordance with the Department's practice, in our margin analysis, we included only those sales to affiliated parties that were made at arm's length. Where the affiliated party transactions did not pass the arm's–length test, these sales were excluded from the NV calculation.

For each affiliated reseller, we requested Saha Thai to report the first sale to an unaffiliated customer. When the affiliated reseller did not pass the arm's–length test, we included the sale by the affiliated reseller to the first unaffiliated customer in our margin analysis instead of the Saha Thai sales to the affiliated reseller that were not made at arm's–length.

COP Analysis: In accordance with section 773(b)(2)(A)(ii) of the Act, in this POR, there were reasonable grounds to believe or suspect that Saha Thai had made home market sales at prices below its cost of production (COP) because in the 2004–2005 administrative review (the most recently completed administrative review) there were sufficient Saha Thai sales that failed the cost test that the Department disregarded them in accordance with section 773(b)(1) of the Act. *See 2004–2005 AR Final Results*.

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Saha Thai's cost of materials and fabrication for the foreign like product, plus administrative expenses, and interest expenses. We made some minor adjustments to Saha Thai's COP data as reported in its March 3, 2008 section D supplemental questionnaire response. For our complete analysis, *see* ''Analysis Memorandum of Saha Thai Steel Pipe (Public) Company, Ltd. for the Preliminary Results of the Antidumping Duty Administrative Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand for the period 03/01/2006 through 02/28/2007,'' (*Preliminary Analysis Memorandum*) dated concurrently with this notice.

Cost Test: In accordance with section 773(b) of the Act, we compared the COP to the home market sales price (less any applicable movement charges and discounts) of the foreign like product on a product–specific basis in order to determine whether home market sales had been made at prices below COP.

In determining whether to disregard sales below COP, the Department examined whether such sales were (1) in substantial quantities and (2) not at prices which permitted the recovery of all costs within a reasonable period of time in the ordinary course of trade. In accordance with section 773(b)(2)(C) of the Act, when less than 20 percent of the respondent's sales of a given product were at prices below the COP, we do not disregard any below–cost sales of that product that were not made in ''substantial quantities.'' When 20 percent or more of the respondent's sales of a given product during the period of review were at prices less than COP, in accordance with sections 773(b)(2)(B) and (C) of the Act, we determined such sales to have been made in substantial quantities within an extended period of time. In such cases, based on weighted–average costs in the cost reference period, we determined that these sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded sales below cost.

Home Market Price: To calculate Saha Thai's home market net price, we deducted discounts, inland freight, and warehousing where appropriate. Pursuant to section 773(a)(6)(C)(iii) and section 351.410(c) of the Department's regulations, we made a circumstance of sale adjustment for home market and U.S. credit expenses, as well as U.S. bank fees. In addition, pursuant to section 773(a)(6)(A) of the Act, we deducted home market packing costs and added U.S. packing costs. In addition, where applicable, we made adjustments for differences in costs attributable to physical characteristics pursuant to section 773(a)(6)(C)(ii) of the Act and section 351.410 of the Department's regulations.

Level of Trade

Pursuant to section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP. The NV LOT is that of the starting–price sale in the comparison market, or when NV is based on CV, that of the sales from which we derive SG&A and profit. For EP, the U.S. LOT is the level of the starting–price sale, which is usually from exporter to importer. To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing and selling functions along the chain of distribution between the producer and unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects the price comparability, as manifested in a pattern of consistent price differences between sales at different levels of trade in the country in which NV is determined, we make an LOT adjustment under section 773(a)(7)(A) of the Act and under section 351.410(c) of the Department's regulations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

For the U.S. market, Saha Thai reported only one LOT for its EP sales. For its home market sales, Saha Thai reported that its sales to unaffiliated customers were at the same level of trade as its U.S. sales. However, Saha Thai reported that, if the Department used the downstream sales of any of its affiliated resellers, these sales were made at a distinct level of trade, and Saha Thai's home market would consist of two levels of trade.

For Saha Thai's sales made through affiliated resellers, we consider the relevant functions to be the selling functions of both the producer and the reseller (i.e., the cumulative selling functions along the chain of

distribution) for purposes of comparing the selling activities related to each affiliate's sale with those related to the producer's sale to its unaffiliated customers. If the reseller performs selling functions that add substantial selling activity in making the sale, we may find that sales by the reseller are made at a different LOT than the sales made by the producer.

Saha Thai provided information about the affiliated resellers' marketing and selling functions performed for its sales to unaffiliated customers. This information is sufficient to conduct an analysis of whether Saha Thai's sales in the home market were made at more than one LOT. For those affiliated resellers whose sales did not pass the arm's length test, we have analyzed the information that Saha Thai provided regarding the marketing and selling functions for both Saha Thai and the affiliated resellers. Based on this analysis, we have concluded that Saha Thai's home market sales were made at two distinct levels of trade: sales directly from Saha Thai to its unaffiliated customers and sales from Saha Thai through its affiliated resellers to unaffiliated customers. For our complete analysis, *see Preliminary Analysis Memorandum; see also Circular Welded Steel Pipes and Tubes from Thailand: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 54266 (September 14, 2006).

We also find that all U.S. sales are made at one LOT. Furthermore, we find that the U.S. sales are at the same LOT as Saha Thai's home market sales to unaffiliated customers. *See* ''Level of Trade'' section in the *Preliminary Analysis Memorandum*.

Because we have preliminarily determined that there are two distinct levels of trade in the home market (LOT 1 and LOT 2) and that the LOT in the U.S. market matches LOT 1 in the home market, we examined whether an LOT adjustment is warranted for those U.S. sales for which there might not be a match in the home market at LOT 1. In accordance with section 773(a)(7)(ii) of the Act, such an adjustment is warranted when the difference in LOT is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the home market (the basis for NV). Our comparison of the prices at the two LOTs in the home market (the basis for NV) shows that there is a pattern of price differences and an LOT adjustment is warranted where there are no matches for U.S. sales at the same LOT in the home market. *See id.* Therefore, we made an LOT adjustment in instances when U.S. sales are being matched with home market sales at LOT 2.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations based on rates certified by the Federal Reserve.

Preliminary Results of Review

Manufacturer/Exporter	Margin (percent)
Saha Thai Steel Pipe (Public) Company, Ltd.	3.87

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries in accordance with section 351.212 of the Department's regulations. The Department intends to issue assessment instructions for Saha Thai directly to CBP 15 days after the date of publication of the final results of this administrative review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for any intermediate company involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 239254 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit rates will be effective with respect to all shipments of subject merchandise from Saha Thai entered, or withdrawn from warehouse for consumption, on or after the publication date of the final results, as provided for by section 751(a)(1) of the Act: (1) for Saha Thai, the cash deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company–specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer of the subject merchandise is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate shall be the ''all other'' rate established in the LTFV investigated, which is 15.67 percent. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

Pursuant to section 351.224(b) of the Department's regulations, the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to section 351.309 of the Department's regulations, interested parties may submit written comments in response to those preliminary results. Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) statement of the issues; and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with section 351.303(f) of the Department's regulations.

Also, pursuant to section 351.310(c) of the Department's regulations, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location.

The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, no later than 120 days after publication of the preliminary results, unless extended. *See* section 351.213(h) of the Department's regulations.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to

liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 31, 2008.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E8–7200 Filed 4–4–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–533–820)

Certain Hot–Rolled Carbon Steel Flat Products from India: Extension of Time Limits for the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Joy Zhang, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230; telephone: (202) 482–1168.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2007, the U.S. Department of Commerce (''Department'') published a notice of initiation of the administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from India, covering the period December 1, 2005, to November 30, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 5005 (February 2, 2007). On December 31, 2007, the Department published the preliminary results of the antidumping duty administrative review for certain hot–rolled carbon steel flat products from India. *See Certain Hot–Rolled Carbon Steel Flat Products from India: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 74267 (December 31, 2007). The final results of this review are currently due no later than April 29, 2008.

Extension of Time Limit of Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to a maximum of 180 days. *See also* 19 CFR 351.213(h)(2).

We determine that it is not practicable to complete the final results of this review within the original time limit. Petitioners requested additional time to review the verification reports and submit case briefs. Accordingly, we amended the schedule for interested parties to submit case briefs and rebuttal briefs, which are now due on Friday, April 4, 2008, and Friday, April 11, 2008, respectively. The Department is extending the final results by 15 days, in accordance with section 751(a)(3)(A) of the Act, to allow sufficient time to analyze interested parties' case briefs and rebuttal briefs. The final results are now due no later than May 14, 2008. This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: April 1, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–7201 Filed 4–4–08; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–552–801

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 7, 2008.

SUMMARY: The Department of Commerce (''Department'') has determined that two requests for new shipper reviews (''NSR'') of the antidumping duty order on certain frozen fish fillets (''fish fillets'') from the Socialist Republic of Vietnam (''Vietnam''), received on February 25, 2008, meet the statutory and regulatory requirements for initiation. The period of review (''POR'') for these two NSR is August 1, 2007 January 31, 2008.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: 202–482–0413.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on fish fillets from Vietnam was published in the **Federal Register** on August 12, 2003. *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003).[1] On February 25, 2008, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(c), the Department received NSR requests from Asia Commerce Fisheries Joint Stock Company (''Acom'') and Hiep Thanh Seafood Joint Stock Company (''Hiep Thanh''). Both companies certified that they are the producers and exporters of the subject merchandise upon which the requests were based.

On February 28, 2008, the Department requested that Acom and Hiep Thanh adequately summarize the proprietary information in their NSR requests or provide a clear explanation as to why the information is not capable of summarization. *See* the Department's February 28, 2008, letters to Acom and Hiep Thanh. In addition, on February 28, 2008, the Department requested a clarification of information contained within Hiep Thanh's NSR request. On February 29, 2008, Acom and Hiep Thanh submitted public versions which adequately summarized their proprietary information and provided explanations as to why certain proprietary information is not capable of summarization. Moreover, on March 3, 2008, Hiep Thanh clarified certain information contained within its NSR request. In addition, Hiep Thanh provided additional information on March 14, 2008.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Acom and Hiep Thanh certified that they did not export fish fillets to the United States during the period of investigation (''POI''). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Acom and Hiep Thanh certified that, since the initiation of the investigation,

[1] Therefore, a semi-annual request for a NSR, based on the annual anniversary month, August, was due to the Department by February 29, 2008. *See* 19 CFR 351.214(d)(1).

they have never been affiliated with any Vietnamese exporter or producer who exported fish fillets to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Acom and Hiep Thanh also certified that their export activities were not controlled by the central government of Vietnam.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Acom and Hiep Thanh submitted documentation establishing the following: (1) the dates on which Acom and Hiep Thanh first shipped fish fillets for export to the United States and the date on which the fish fillets were first entered, or withdrawn from warehouse, for consumption; (2) the volume of their first shipment; and (3) the date of their first sale to an unaffiliated customer in the United States.

The Department conducted U.S. Customs and Border Protection (''CBP'') database queries in an attempt to confirm that Acom and Hiep Thanh's shipments of subject merchandise had entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties. The Department also examined whether the CBP data confirmed that such entries were made during the NSR POR. The information we examined was consistent with that provided by Acom and Hiep Thanh.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), the Department finds that Acom and Hiep Thanh meet the threshold requirements for initiation of a NSR for the shipments of fish fillets from Vietnam they produced and exported. *See* ''Memorandum to File from Paul Walker, Senior Case Analyst, Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of AD New Shipper Review for Asia Commerce Fisheries Joint Stock Company,'' (March 26, 2008): *see also* ''Memorandum to File from Paul Walker, Senior Case Analyst, Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of AD New Shipper Review for Hiep Thanh Seafood Joint Stock Company,'' (March 26, 2008).

The Department intends to issue the preliminary results of these NSRs no later than 180 days from the date of initiation, and final results no later than 270 days from the date of initiation. *See* section 751(a)(2)(B)(iv) of the Act.

On August 17, 2006, the Pension Protection Act of 2006 (''H.R. 4'') was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct CBP to collect a bond or other security in lieu of a cash deposit in new shipper reviews. Therefore, the posting of a bond under section 751(a)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of fish fillets from Vietnam manufactured and/or exported by Acom and Hiep Thanh must continue to post cash deposits of estimated antidumping duties on each entry of subject merchandise at the current Vietnam–wide rate of 63.88 percent.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: March 26, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–7218 Filed 4–4–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–351–838, A–331–802, A–533–840, A–549–822

Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India and Thailand: Notice of Initiation of Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') received timely requests to conduct administrative reviews of the antidumping duty orders on certain frozen warmwater shrimp (''shrimp'') from Brazil, Ecuador, India and Thailand. The anniversary month of these orders is February. In accordance with 19 CFR 351.221, we are initiating these administrative reviews.

EFFECTIVE DATE: April 7, 2008.

FOR FURTHER INFORMATION CONTACT: Kate Johnson at (202) 482–4929 (Brazil), David Goldberger at (202) 482–4136 (Ecuador), Elizabeth Eastwood at (202) 482–3874 (India), and Irina Itkin at (202) 482–0656 (Thailand), AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from the petitioner[1], the Louisiana Shrimp Association (''LSA''), and certain individual companies, in accordance with 19 CFR 351.213(b), during the anniversary month of February 2008, for administrative reviews of the antidumping duty orders on shrimp from Brazil, Ecuador, India, and Thailand. The Department is now initiating administrative reviews of these orders covering 43 companies for Brazil, 81 companies for Ecuador, 336 companies for India, and 165 companies for Thailand, as noted in the ''Initiation of Reviews'' section of this notice.

In accordance with the Department's recent statement in its notice of opportunity to request administrative reviews (*see Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 6477, 6478 (February 4, 2008)), we have not initiated administrative reviews with respect to those companies which the Department was unable to locate in prior segments and for which no new information as to the party's location was provided by the requestor. We have also not initiated administrative reviews with respect to those companies we previously determined to be duplicates or to no longer exist. See ''Initiation of Reviews,'' ''Incomplete Requests for Review,'' and ''Requests for Review of Non–Existent Companies'' sections of this notice for country–specific lists of the companies for which we did not initiate an administrative review.

Initiation of Reviews

In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (''the Act''), we are initiating administrative reviews of the antidumping duty orders on shrimp from Brazil, Ecuador, India and Thailand. We intend to issue the final results of these reviews by February 28, 2009.

[1] The petitioner is the Ad Hoc Shrimp Trade Action Committee.

BRAZIL

Antidumping Duty Proceeding	Period to be Reviewed
Certain Frozen Warmwater Shrimp, A–351–838	2/1/07 - 1/31/08
Acarau Pesca Distr. de Pescado Imp. e Exp. Ltda..	
Amazonas Industria Alimenticias SA.	
Aquacultura Fortaleza Aquafort SA.	
Aquática Maricultura do Brasil Ltda. /Aquafeed do Brasil Ltda. - Note 1.	
Artico S/A.	
Bramex Brasil Mercantil Ltda..	
Camanor - Produtos Marinhos Ltda..	
Cida Central de Ind. E Distribuicao de Alimentos Ltda.- Note 2.	
Compescal - Comércio de Pescado Aracatiense Ltda..	
Compex Industria E Comercio de Pesca E Exportacao Ltd..	
Dafruta Ind. & Comercio.	
Empaf Empresa de Armazenagem Frigorifica Ltda./Maricultura Netuno SA - Note 3.	
Esperanca Pescados.	
Intermarin Servicios Nauticos.	
Ipesca.	
ITA Fish - S.W.F. Importacao e Exportacao Ltda..	
ITA Fish Transp. Comercio Pesca.	
J K Pesca Ltda..	
Leardini Pescados Ltda..	
Lusomar Maricultura Ltda..	
Maricultura Rio Grandense.	
Maricultura Tropical.	
Marine Maricultura do Nordeste SA - Note 4.	
MM Monteiro Pesca E Exportacao Ltda..	
Mucuripe Pesca Ltda., Epp..	
Natal Pesca.	
Norte Pesca SA.	
Orion Pesca Ltda..	
Pesqueira Maguary Ltda. - Note 5.	
Potiguar Alimentos do Mar Ltda..	
Potipora Aquacultura Ltda..	
Qualimar Comercio Importaçao E Exportacao Ltda..	
Santa Lavinia Comercio e Exportacio Ltda..	
Seafarm Criacao E Comercio de Produtos Aquaticos Ltda..	
Secom Aquicultura Comercio E Industria SA.	
Silva Embarcacao.	
SM Pescados Indústria Comrcio E Exportaç o Ltda. Note 6.	
Sohagro Marina do Nordeste SA.	
Tecmares Maricultura Ltda..	
Terracor Tdg. Exp. E Imp. Ltda..	
Torquato Pontes Pescados SA.	
Tropical Pesca Ltda..	
Valenca da Bahia Maricultura SA.	

Note 1 - In the 2004–2006 administrative review, the Department found that Aquática Maricultura do Brasil Ltda. and Aquafeed do Brasil Ltda. comprised a single entity. *See Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52061, 52064 (Sept. 12, 2007) (*Brazil Final Results AR1*). Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of the 2007–2008 administrative review.

Note 2 - We received a request for an administrative review of Cida Central de Ind. e Distribuicao de Alimentos Ltda. and of Cida Central de Industria. The latter company name, which was accompanied by an incomplete address in the review request, was determined in the 2006–2007 administrative review to be a variation of the name Cida Central de Ind. e Distribuicao de Alimentos Ltda. *See Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India and Thailand*, 72 FR 17100, 17109 (Apr. 6, 2007) (2006–2007 Administrative Review Initiation Notice). Therefore, we are initiating the 2007–2008 administrative review only with respect to Cida Central de Ind. e Distribuicao de Alimentos Ltda.

Note 3- We received a request for an administrative review of Empaf - Empresa de Armazenagem Frigorifica Ltda. (''Empaf'') and Maricultura Netuno S.A. (''Maricultura Netuno''). In the original investigation, we found that Empaf and Maricultura Netuno comprised a single entity. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (Dec. 23, 2004). In the 2006–2007 administrative review, we preliminarily determined that Netuno Alimentos S.A. is the successor in interest to Empaf. *See Certain Frozen Warmwater Shrimp from Brazil: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 12081 (Mar. 6, 2008). If the Department continues to make this finding in the final results of the 2006–2007 administrative review, we will rescind this review with respect to Empaf, and treat Netuno Alimentos S.A. and Maricultura Netuno as a single entity for purposes of the 2007–2008 administrative review, absent evidence to the contrary.

Note 4 - We received requests for review of Marine Maricultura do Nordeste SA, and Marine Maricultura do Nordeste with two different addresses. In the 2004–2006 administrative review, we confirmed that Marine Maricultura do Nordeste SA is the correct company name, and that the company operated from two locations. *See Brazil Final Results AR1*, 72 FR at 52062. Therefore, we are initiating the 2007–2008 administrative review only with respect to Marine Maricultura do Nordeste SA.

Note 5 - We received two review requests for Pesquira Maguary Ltda. with two different addresses. Information obtained in the 2006–2007 administrative review indicated that the two addresses apply to the same company. *See* Memorandum to the File entitled ''Placement of Information from the 2006–2007 Administrative Review on the Record of the 2007–2008 Administrative Review,'' dated March 31, 2008. Therefore, we have included this company only once for purposes of initiation of the 2007–2008 administrative review.

Note 6 - We received two review requests for SM Pescados Industria Comercio E Exportacao Ltda, both with virtually the same address. Therefore, we are including this company only once for purposes of initiation of the 2007–2008 administrative review.

ECUADOR	
Certain Frozen Warmwater Shrimp, A–331–802	2/1/07- 8/14/07
Agricola e Industrial Ecuaplantation SA ^.	
Agrol SA.	
Alberto Xavier Mosquera Rosado.	
Alquimia Marina SA.	
Babychic SA.	
Biolife SA.	
Braistar.	
Camaronera Jenn Briann.	
Camarones.	
Comar Cia Ltda. ^.	
Doblertel SA.	
Dumary SA.	
Dunci SA.	
El Rosario Ersa SA.	
Empacadora Bilbo SA (Bilbosa).	
Empacadora del Pacifico SA (EDPACIF SA)^.	
Empacadora Dufer Cia. Ltda. (DUFER).	
Empacadora Grupo Gran Mar (Empagran) SA^.	
Empacadora Nacional CA.	
Empacadora y Exportadora Calvi Cia. Ltda..	
Emprede SA.	
Estar CA.	
Exporclam SA.	
Exporklore SA.	
Exportadora Bananera Noboa.	
Exportadora de Productos de Mar (Produmar).	
Exportadora del Oceano (Oceanexa) CA.	
Exportadora Langosmar SA.	
Exportadora del Oceano Pacifico SA (OCEANPAC).	
Exports Langosmar SA.	
Fortumar Ecuador SA.	
Gambas del Pacifico SA.	
Gondi SA.	
Hector Canino Marty.	
Hectorosa SA.	
Industrial Pesquera Santa Priscila SA (Santa Priscila).	
Inepexa SA.	
Jorge Luis Benitez Lopez^.	
Karpicorp SA.	
Luis Loaiza Alvarez.	
Mardex Cia. Ltda..	
Marine.	
Marines CA.	
Mariscos de Chupadores Chupamar.	
Mariscos del Ecuador C. Ltda. (Marecuador) ^.	
Natural Select SA.	
Negocios Industriales Real Nirsa SA (NIRSA).	
Novapesca SA.	
Ocean Fish.	
Oceaninvest SA.	
Oceanmundo SA.	
Oceanpro SA.	
Operadora y Procesadora de Productos Marinos SA (Omarsa).	
Oyerly SA.	
P.C. Seafood SA.	
Pacfish SA^^.	
PCC Congelados & Frescos SA.	
Pescazul SA.	
Peslasa SA.	
Phillips Seafoods of Ecuador CA (Phillips).	
Pisacua SA.	
Procesadora del Rio SA (Proriosa) ^^.	
Productos Cultivados del Mar Proc..	
Productos Cultivados del Mar Proculmar Cia. Ltda..	
Productos del Mar Santa Rosa Cia. Ltda. (Promarosa) ^.	
Promarisco SA.	
Propemar SA.	
Provefrut.	
Rommy Roxana Alvarez Anchundia.	
Sea Pronto Hector Marty Canino (Sea Pronto).	
Sociedad Atlantico Pacifico SA.	
Sociedad Nacional de Galapagos SA (SONGA).	

ECUADOR—Continued

Certain Frozen Warmwater Shrimp, A–331–802	2/1/07- 8/14/07
Soitgar SA. Studmark SA. Tecnica y Comercio de la Pesca CA (TECOPESCA) ^. Tolyp SA. Trans Ocean. Transcity SA. Transmarina CA. Transocean Ecuador SA. Uniline Transport System.	

^ The petitioner's and/or respondents' requests for review included certain companies with similar names. For purposes of initiation, we have treated these companies as the same entity and initiated the review on the correct company names based on information obtained in the 2004–2006 or 2006–2007 administrative review. *See 2006–2007 Administrative Review Initiation Notice*, 72 FR at 17109, and Memorandum to the File entitled ''Placement of Information from the 2006–2007 Administrative Review on the Record of the 2007–2008 Administrative Review,'' dated March 31, 2008.

^^ The petitioner's requests for review included certain companies with the same or similar names but different addresses. For purposes of initiation, we have treated these companies as the same entity and initiated the review on the correct company names based on information obtained in the 2004–2006 or 2006–2007 administrative review. See 2006–2007 Administrative Review Initiation Notice, 72 FR at 17109, and Memorandum to the File entitled ''Placement of Information from the 2006–2007 Administrative Review on the Record of the 2007–2008 Administrative Review,'' dated March 31, 2008.

INDIA

Certain Frozen Warmwater Shrimp, A–533–840	2/1/07 - 1/31/08
Abad Fisheries. Accelerated Freeze–Drying Co.. A.S. Marine Industries Pvt. Ltd.. Adani Exports Ltd. Aditya Udyog. Agri Marine Exports Ltd.. AL Mustafa Exp & Imp. Alapatt Marine Exports. All Seas Marine P. Ltd.. Allana Frozen Foods Pvt. Ltd.. Allanasons Ltd.. Alsa Marine & Harvests Ltd.. Ameena Enterprises. AMI Enterprises. Amison Foods Ltd.. Amison Seafoods Ltd.. Amulya Sea Foods. Anand Aqua Exports. Ananda Aqua Exports (P) Ltd.. Ananda Foods. Andaman Seafoods Pvt. Ltd.. Angelique Intl. Anjaneya Seafoods. Anjani Marine Traders. Apex Exports #. Aqua Star Marine Foods. Arsha Seafood Exports Pvt. Ltd.. ASF Seafoods. Asvini Exports. Asvini Fisheries Limited ## / ######. Asvini Fisheries Private Limited ##. Aswin Associates. Ashwini Frozen Foods. Avanti Feeds Limited. Ayshwarya Seafood Private Limited. Baby Marine (Eastern) Exports. Baby Marine Exports. Baby Marine International. Baby Marine Products. Baby Marine Sarass. Balaji Seafood Exports I Ltd.. Baraka Overseas Traders. Bell Foods (Marine Division). Bharat Seafoods. Bhatsons Aquatic Products. Bhavani Seafoods. Bhisti Exports. Bijaya Marine Products.	

INDIA—Continued

Certain Frozen Warmwater Shrimp, A–533–840	2/1/07 - 1/31/08
Bilal Fish Suppliers.	
Blue Water Foods & Exports P. Ltd..	
Bluefin Enterprises.	
Bluepark Seafoods Pvt. Ltd..	
BMR Exports.	
Britto Exports.	
C P Aquaculture (India) Ltd..	
Calcutta Seafoods.	
Calcutta Seafoods Pvt. Ltd..	
Capital Freezing Complex.	
Capithan Exporting Co..	
Castlerock Fisheries Ltd..	
Cham Exports Ltd..	
Cham Ocean Treasures Co., Ltd..	
Cham Trading Organization.	
Chand International.	
Chemmeens (Regd).	
Cherukattu Industries (Marine Div.).	
Choice Canning Company.	
Choice Trading Corporation Pvt. Ltd. #.	
Coastal Corporation Ltd..	
Cochin Frozen Food Exports Pvt. Ltd..	
Corlim Marine Exports Pvt. Ltd..	
Coreline Exports.	
Danda Fisheries.	
Dariapur Aquatic Pvt. Ltd..	
Deepmala Marine Exports.	
Devi Fisheries Limited.	
Devi Marine Food Exports Private Limited ###.	
Devi Sea Foods Limited.	
Dhanamjaya Impex P. Ltd..	
Diamond Seafoods Exports #######.	
Digha Seafood Exports.	
Dorothy Foods.	
Edhayam Frozen Foods Pvt. Ltd. #######.	
El–Te Marine Products.	
Esmario Export Enterprises.	
Excel Ice Services/Chirag Int'l.	
Exporter Coreline Exports.	
Falcon Marine Exports Limited ######.	
Firoz & Company.	
Five Star Marine Exports Private Limited.	
Forstar Frozen Foods Pvt. Ltd..	
Freeze Engineering Industries (Pvt. Ltd.).	
Frigerio Conserva Allana Limited.	
Frontline Exports Pvt. Ltd..	
G A Randerian Ltd..	
G.KS Business Associates Pvt. Ltd..	
Gadre Marine Exports.	
Gajula Exim P. Ltd..	
Galaxy Maritech Exports P. Ltd..	
Gausia Cold Storage P. Ltd..	
Gayatri Seafoods.	
Geo Aquatic Products (P) Ltd..	
Geo Seafoods.	
Global Sea Foods & Hotel Ltd..	
Goan Bounty.	
Gold Farm Foods (P) Ltd..	
Golden Star Cold Storage.	
Gopal Seafoods.	
Grandtrust Overseas (P) Ltd..	
Gtc Global Ltd..	
GVR Exports Pvt. Ltd..	
HA & R Enterprises.	
HIC ABF Special Foods Pvt. Ltd..	
Hanswati Exports P. Ltd..	
Haripriya Marine Export Pvt. Ltd..	
Hindustan Lever, Ltd..	
Hiravata Ice & Cold Storage.	
Hiravati Exports Pvt. Ltd..	
Hiravati International Pvt. Ltd. #.	
HMG Industries Ltd..	

INDIA—Continued

Certain Frozen Warmwater Shrimp, A–533–840	2/1/07 - 1/31/08
Honest Frozen Food Company.	
IFB Agro Industries Limited #.	
India CMS Adani Exports.	
India Seafoods.	
Indian Aquatic Products.	
Indian Seafood Corporation.	
Indo Aquatics.	
Innovative Foods Limited.	
Interfish.	
International Freezefish Exports.	
InterSea Exports Corporation.	
Interseas.	
ITC Ltd..	
J R K Seafoods Pvt. Ltd..	
Jagadeesh Marine Exports.	
Jaya Satya Marine Exports.	
Jaya Satya Marine Exports Pvt. Ltd..	
Jayalakshmi Sea Foods Private Limited.	
Jinny Marine Traders.	
Jiya Packagings.	
K R M Marine Exports Ltd..	
K V Marine Exports #.	
Kadalkanny Frozen Foods #######.	
Kader Exports Private Limited ###.	
Kader Investment and Trading Company Private Limited ###.	
Kalyanee Marine.	
Kaushalya Aqua Marine Product Exports Pvt. Ltd..	
Kay Kay Exports.	
Keshodwala Foods.	
Key Foods.	
King Fish Industries.	
Kings Marine Products #.	
Koluthara Exports Ltd..	
Konark Aquatics & Exports Pvt. Ltd..	
Konkan Fisheries Pvt. Ltd..	
L.G Seafoods.	
Lakshmi Marine Products.	
Lansea Foods Pvt. Ltd..	
Laxmi Narayan Exports.	
Lewis Natural Foods Ltd..	
Liberty Frozen Foods Pvt. Ltd..	
Liberty Oil Mills Ltd. ###.	
Libran Cold Storages (P) Ltd..	
Lotus Sea Farms.	
Lourde Exports.	
M K Exports.	
M. R. H. Trading Company.	
Magnum Estate Private Limited.	
Magnum Export.	
Magnum Sea Foods Pvt. Ltd..	
Malabar Arabian Fisheries.	
Malabar Marine Exports).	
Malnad Exports Pvt. Ltd..	
Mamta Cold Storage.	
Mangala Marine Exim India Private Ltd. ######.	
Mangala Sea Products.	
Manufacturer Falcon Marine Exports.	
Marina Marine Exports.	
Marine Food Packers.	
Meenaxi Fisheries Pvt. Ltd..	
Miki Exports International.	
MSC Marine Exporters.	
MTR Foods.	
Mumbai Kamgar MGSM Ltd..	
N.C. Das & Company.	
Naga Hanuman Fish Packers.	
Naik Frozen Foods.	
Naik Ice & Cold Storage.	
Naik Seafoods Ltd..	
Nas Fisheries Pvt Ltd..	
National Seafoods Company.	
National Steel.	

INDIA—Continued

Certain Frozen Warmwater Shrimp, A–533–840	2/1/07 - 1/31/08
National Steel & Agro Ind..	
Navayuga Exports Ltd. # / ######.	
Nekkanti Sea Foods Limited.	
New Royal Frozen Foods.	
NGR Aqua International.	
Nila Sea Foods Pvt. Ltd..	
Noble Aqua Pvt. Ltd..	
Nsil Exports.	
Omsons Marines Ltd..	
Overseas Marine Export.	
Padmaja Exports.	
Partytime Ice Pvt Ltd..	
Penver Products (P) Ltd..	
Philips Foods India Pvt Ltd..	
Pijikay International Exports P Ltd..	
Pisces Seafood International.	
Premier Exports International.	
Premier Marine Foods.	
Premier Marine Products ###.	
Premier Seafoods Exim (P) Ltd..	
R. F. Exports.	
R K Ice & Cold Storage.	
Raa Systems Pvt. Ltd..	
Rahul Foods (GOA).	
Rahul International.	
Raj International.	
Raju Exports.	
Ramalmgeswara Proteins & Foods Ltd..	
Rameshwar Cold Storage.	
Ram's Assorted Cold Storage Ltd..	
Raunaq Ice & Cold Storage.	
Ravi Frozen Foods Ltd..	
Raysons Aquatics Pvt. Ltd..	
Razban Seafoods Ltd..	
RBT Exports.	
Regent Marine Industries.	
Relish Foods.	
Riviera Exports Pvt. Ltd..	
Rohi Marine Private Ltd..	
Royal Cold Storage India P Ltd. #.	
Royal Link Exports.	
Rubian Exports.	
Ruby Marine Foods.	
Ruchi Worldwide.	
RVR Marine Products Private Limited ######.	
S A Exports.	
S Chanchala Combines.	
S K Exports (P) Ltd..	
SLS Exports Pvt. Ltd..	
S S International.	
S & S Seafoods.	
Sabri Food Products.	
Safa Enterprises.	
Sagar Foods.	
Sagar Grandhi Exports Pvt. Ltd..	
Sagar Samrat Seafoods.	
Sagarvihar Fisheries Pvt. Ltd. ####.	
Sai Sea Foods.	
Sai Marine Exports Pvt. Ltd. #.	
Sai Sea Foods a.k.a. Sai Marine Exports Pvt. Ltd..	
Salet Seafoods Pvt Ltd..	
Samrat Middle East Exports (P) Ltd..	
Sanchita Marine Products P Ltd.	
Sandhya Aqua Exports Pvt. Ltd..	
Sandhya Aqua Exports.	
Sandhya Marines Limited.	
Santhi Fisheries & Exports Ltd..	
Sarveshwari Ice & Cold Storage P Ltd..	
Satya Seafoods Private Limited.	
Satyam Marine Exports.	
Sawant Food Products.	
Sea Rose Marines (P) Ltd..	

INDIA—Continued

Certain Frozen Warmwater Shrimp, A–533–840	2/1/07 - 1/31/08
Seagold Overseas Pvt. Ltd..	
Sealand Fisheries Ltd..	
Seaperl Industries.	
Selvam Exports Private Limited #.	
Sharat Industries Ltd.######.	
Shimpo Exports.	
Shipper Exporter National Steel.	
Shippers Exports.	
Shroff Processed Food & Cold ZStorage P Ltd..	
Siddiq Seafoods.	
Silver Seafood.	
Sita Marine Exports.	
Skyfish.	
Sonia Fisheries.	
Sourab.	
Sprint Exports Pvt. Ltd. ######.	
Sreevas Export Enterprises.	
Sri Chandrakantha Marine Exports, Ltd. ########.	
Sri Sakkthi Cold Storage.	
Sri Sakthi Marine Products P Ltd..	
Sri Satya Marine Exports.	
Sri Sidhi Freezers & Exporters Pvt. Ltd..	
Sri Venkata Padmavathi Marine Foods Pvt. Ltd..	
SSF Ltd..	
Star Agro Marine Exports Private Limited.	
Star Fish Exports.	
Sterling Foods.	
Sun Bio–Technology Ltd..	
Supreme Exports.	
Surya Marine Exports #####.	
Suryamitra Exim (P) Ltd. #####.	
Suvarna Rekha Exports Private Limited.	
Suvarna Rekha Marines P Ltd..	
TBR Exports Pvt Ltd..	
Teekay Maine P. Ltd..	
The Canning Industries (Cochin) Ltd..	
The Waterbase Limited.	
Theva & Company #######.	
Tejaswani Enterprises.	
Tony Harris Seafoods Ltd..	
Tri Marine Foods Pvt. Ltd..	
Trinity Exports.	
Tri–Tee Seafood Company.	
Triveni Fisheries P Ltd..	
Ulka Seafoods (P) Ltd..	
Uniroyal Marine Exports Ltd..	
Universal Cold Storage Private Limited ### / ######.	
Upasana Exports.	
Usha Seafoods.	
V Marine Exports.	
V.S Exim Pvt Ltd..	
Vaibhav Sea Foods.	
Varnita Cold Storage.	
Veejay Impex.	
Veraval Marines & Chemicals P Ltd..	
Victoria Marine & Agro Exports Ltd..	
Vijayalaxmi Seafoods.	
Vinner Marine.	
Vishal Exports.	
Wellcome Fisheries Limited.	
Winner Seafoods.	
Z A. Food Products.	

We have received multiple review requests for companies with the same name but different addresses. For purposes of initiation, we have treated these companies as separate entities, pending resolution of the issue as to whether these comprise distinct entities (or whether they are multiple locations of the same entity).

In the 2006–2007 administrative review, the Department preliminarily found that Asvini Fisheries Private Limited is the successor–in-interest to Asvini Fisheries Limited. *See Certain Frozen Warmwater Shrimp from India: Preliminary Results and Preliminary Partial Rescission of Anti-dumping Duty Administrative Review*, 73 FR 12103, 12105–06 (Mar. 6, 2008) (2006–2007 *Indian Shrimp Preliminary Results*). If the Department continues to make this finding in the final results of the 2006–2007 administrative review, we will rescind this review with respect to Asvini Fisheries Limited.

In the 2004–2006 administrative review, the Department found that the following companies comprised a single entity: Devi Marine Food Exports Private Limited, Kader Investment and Trading Company Private Limited, Kader Exports Private Limited, Liberty Frozen Foods Private Limited, Liberty Oil Mills Limited, Premier Marine Products, and Universal Cold Storage Private Limited. *See Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52055, 52058 (Sept. 12, 2007). Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

In the 2004–2006 administrative review, Sagarvihar Fisheries Pvt. Ltd. informed the Department that it is now doing business as Indepesca Overseas Pvt. Ltd. However, in the course of that review, the petitioner withdrew its review request for Sagarvihar Fisheries Pvt. Ltd. *See Certain Frozen Warmwater Shrimp From India; Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 41419, 41421 (July 21, 2006). Therefore, the Department will only include Sagarvihar Fisheries Pvt. Ltd. in this review (via its exports under the name Indepesca Overseas Pvt. Ltd.) if it determines that Indepesca Overseas Pvt. Ltd. is the successor in interest to this company.

In the 2006–2007 administrative review, the Department preliminarily found that Suryamitra Exim (P) Ltd. is the successor–in-interest to Surya Marine Exports. *See 2006–2007 Indian Shrimp Preliminary Results*, 73 FR at 12106. If the Department continues to make this finding in the final results of the 2006–2007 administrative review, we will rescind this review with respect to Surya Marine Exports.

The petitioner's request for review included certain companies with similar names. For purposes of initiation, we have treated these companies as the same entity based on information obtained in the 2004–2006 or 2006–2007 administrative review. *See* the March 31, 2008, memorandum from Elizabeth Eastwood to the File entitled, ''Placing Public Information from the 2004–2006 and 2007–2008 Antidumping Duty Administrative Reviews on the Record of the 2007–2008 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India.'' For RVR Marine Products Private Limited, Sprint Exports Pvt. Ltd., and Universal Cold Storage Private Limited, see *Certain Frozen Warmwater Shrimp from India; Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 6125, 6127 (Feb. 1, 2008) (*Indian Shrimp Rescission FR*).

####### In the 2006–2007 administrative review, the Department found that the following companies comprised a single entity: Diamond Seafoods Exports, Edhayam Frozen Foods Pvt. Ltd., Kadalkanny Frozen Foods, and Theva & Company. *See 2006–2007 Indian Shrimp Preliminary Results*, 73 FR at 12106. Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

######## The petitioner's request for review included the company Sri Chandrakantha Marine Exports, Ltd. For purposes of initiation, we have initiated a review on the correct company name (*i.e.*, Sri Chandrakantha Marine Exports), but have not initiated a review on the duplicate name (*i.e.*, Sri Chandrakantha Marine Exports, Ltd.) based on information on the record of this review. *See* the March 27, 2008, memorandum from Elizabeth Eastwood to the File entitled, ''2007–2008 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India: Clarification of the Name and Address of Sri Chandrakantha Marine Exports.''

THAILAND

Certain Frozen Warmwater Shrimp, A–549–822	2/1/07 - 1/31/08
ACU Transport Co., Ltd..	
Andaman Seafood Co., Ltd.*.	
Ampai Frozen Food Co., Ltd..	
Anglo–Siam Seafoods Co., Ltd..	
Applied DB Ind.	
A.S. Intermarine Foods Co., Ltd..	
Asia Pacific (Thailand) Co., Ltd.***.	
Asian Seafoods Coldstorage Public Co., Ltd..	
Asian Seafoods Coldstorage (Suratthani) Co., Ltd..	
Assoc. Commercial Systems.	
A. Wattanachai Frozen Products Co., Ltd..	
Bangkok Dehydrated Marine Product Co., Ltd..	
Bright Sea Co., Ltd..	
C P Mdse.	
C Y Frozen Food Co., Ltd..	
Chaiwarut Co., Ltd..	
Chaivaree Marine Products Co., Ltd..	
Chanthaburi Seafoods Co., Ltd.*/******.	
Chanthaburi Frozen Food Co., Ltd.*.	
Charoen Pokphand Foods Public Co., Ltd..	
Chonburi L C.	
Chue Eie Mong Eak Ltd. Part..	
Core Seafood Processing Co., Ltd..	
Crystal Seafood.	
Daedong (Thailand) Co. Ltd..	
Daiei Taigen (Thailand) Co., Ltd..	
Daiho (Thailand) Co., Ltd..	
Dynamic Intertransport Co., Ltd..	
Earth Food Manufacturing Co., Ltd..	
Euro–Asian International Seafoods Co., Ltd.*.	
F.A.I.T. Corporation Limited.	
Far East Cold Storage Co., Ltd..	
Findus (Thailand) Ltd..	
Fortune Frozen Foods (Thailand) Co., Ltd..	
Frozen Marine Products Co., Ltd..	
Gallant Ocean (Thailand) Co., Ltd..	
Gallant Ocean Seafood Corporation.	
Good Fortune Cold Storage Co., Ltd..	
Good Luck Product Co., Ltd..	
Grobest Frozen Foods Co., Ltd..	
Gulf Coast Crab Intl.	
H.A.M. International Co., Ltd..	
Haitai Seafood Co., Ltd..	
Heng Seafood Limited Partnership.	
Heritrade Co., Ltd..	

THAILAND—Continued

Certain Frozen Warmwater Shrimp, A–549–822	2/1/07 - 1/31/08
HIC (Thailand) Co., Ltd..	
High Way International Co., Ltd..	
I.T. Foods Industries Co., Ltd..	
Inter–Oceanic Resources Co., Ltd..	
Inter–Pacific Marine Products Co., Ltd.*******.	
Intersia Foods Co., Ltd..	
K .D. Trading Co., Ltd..	
K Fresh.	
KF Foods.	
K.L. Cold Storage Co., Ltd..	
Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd..	
Kingfisher Holdings Ltd..	
Kibun Trdg.	
Klang Co., Ltd.********.	
Kitchens of the Ocean (Thailand) Ltd..	
Kongphop Frozen Foods Co., Ltd..	
Kosamut Frozen Foods Co., Ltd..	
Lee Heng Seafood Co., Ltd..	
Leo Transports.	
Li–Thai Frozen Foods Co., Ltd..	
Lucky Union Foods Co., Ltd.*******.	
Maersk Line.	
MKF Interfood (2004) Co., Ltd..	
Magnate & Syndicate Co., Ltd..	
Mahachai Food Processing Co., Ltd..	
Marine Gold Products Limited.	
May Ao Co., Ltd..	
May Ao Foods Co., Ltd..	
Merkur Co., Ltd..	
Ming Chao Ind Thailand.	
N&N Foods Co., Ltd..	
Namprik Maesri Ltd. Part..	
Narong Seafood Co., Ltd.*****.	
Nongmon SMJ Products.	
NR Instant Produce Co., Ltd..	
Ongkorn Cold Storage Co., Ltd..	
Pacific Queen Co., Ltd..	
Pakfood Public Company Limited***.	
Penta Impex Co., Ltd..	
Phattana Frozen Food Co., Ltd.*.	
Phattana Seafood Co., Ltd.*.	
Pinwood Nineteen Ninety Nine.	
Piti Seafoods Co., Ltd..	
Premier Frozen Products Co., Ltd..	
Preserved Food Specialty Co., Ltd..	
Queen Marine Food Co., Ltd..	
Rayong Coldstorage (1987) Co., Ltd..	
S&D Marine Products Co., Ltd..	
S&P Aquarium.	
S&P Syndicate Public Company Ltd..	
S. Chaivaree Cold Storage Co., Ltd..	
S.C.C. Frozen Seafood Co., Ltd.*.	
SCT Co., Ltd..	
S. Khonkaen Food Industry Public Co., Ltd.*****.	
SMP Foods Products Co., Ltd.*****.	
Samui Foods Company Limited.	
Sea Bonanza Food Co., Ltd.*****.	
Sea Wealth Frozen Food Co., Ltd..	
Seafoods Enterprise Co., Ltd..	
Seafresh Fisheries.	
Seafresh Industry Public Co., Ltd..	
Search & Serve.	
Shianlin Bangkok Co., Ltd..	
Siam Canadian Foods Co., Ltd..	
Siam Food Supply Co., Ltd..	
Siam Intersea Co., Ltd..	
Siam Marine Products Co. Ltd..	
Siam Ocean Frozen Foods Co. Ltd..	
Siam Union Frozen Foods.	
Siamchai International Food Co., Ltd..	
Sky Fresh Co., Ltd..	
Smile Heart Foods Co. Ltd..	

THAILAND—Continued

Certain Frozen Warmwater Shrimp, A–549–822	2/1/07 - 1/31/08
Songkla Canning PCL.	
Southport Seafood.	
Star Frozen Foods Co., Ltd..	
STC Foodpak Ltd..	
Suntechthai Intertrading Co., Ltd..	
Surapon Foods Public Co., Ltd..	
Surapon Nichirei Foods Co., Ltd..	
Surapon Seafood.	
Surat Seafoods Co., Ltd..	
Suratthani Marine Products Co., Ltd.******.	
Suree Interfoods Co., Ltd..	
T.S.F. Seafood Co., Ltd..	
Tanaya International Co., Ltd..	
Takzin Ssmut***.	
Teppitak Seafood Co., Ltd..	
Tey Seng Cold Storage Co., Ltd..	
Tep Kinsho Foods Co., Ltd..	
Thai–Ger Marine Co., Ltd..	
Thai Agri Foods Public Co., Ltd..	
Thai Excel Foods Co., Ltd..	
Thai I–Mei Frozen Foods Co., Ltd..	
Thai International Seafoods Co., Ltd.*.	
Thai Mahachai Seafood Products Co., Ltd..	
Thai Ocean Venture Co., Ltd..	
Thai Patana Frozen.	
Thai Prawn Culture Center Co., Ltd..	
Thai Royal Frozen Food Co. Ltd..	
Thai Spring Fish Co., Ltd..	
Thai Union Frozen Products Public Co., Ltd.****.	
Thai Union Manufacturing Co., Ltd..	
Thai Union Seafood Co., Ltd.****.	
Thai World Imports & Exports.	
Thai Yoo Ltd., Part..	
Thailand Fishery Cold Storage Public Co., Ltd.*/*******.	
The Siam Union Frozen Food Co., Ltd..	
The Union Frozen Products Co., Ltd.*******.	
Trang Seafood Products Public Co., Ltd..	
Transamut Food Co., Ltd..	
Tung Lieng Trdg.	
United Cold Storage Co., Ltd..	
V Thai Food Product.	
Wales & Co. Universe Ltd.*.	
Wann Fisheries Co., Ltd..	
Xian–Ning Seafood Co., Ltd..	
Y2K Frozen Foods Co., Ltd.*.	
Yeenin Frozen Foods Co., Ltd..	
YHS Singapore Pte.	
ZAFCO TRDG.	

* In the original investigation and the 2006–2007 administrative review of this proceeding, the Department found that the following companies comprised a single entity: Andaman Seafood Co., Ltd., Chanthaburi Seafood Co., Ltd., Chanthaburi Frozen Foods Co., Ltd., Euro–Asian International Seafoods Co., Ltd., Intersia Foods Co, Ltd. (formerly Y2K Frozen Foods Co., Ltd.), Phattana Frozen Food Co., Ltd., Phattana Seafood Co., Ltd., S.C.C. Frozen Seafood Co., Ltd., Thai International Seafoods Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., and Wales & Co. Universe Ltd. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918, 76920 (Dec. 23, 2004) (*Thai Shrimp Final LTFV Determination*). Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

*** In the 2004–2006 administrative review of this proceeding, the Department found that the following companies comprised a single entity: Pakfood Public Company Limited, Asia Pacific (Thailand) Co., Ltd. and Takzin Samut Company Limited. *See Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (Sept. 12, 2007). Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

**** In the 2006–2007 administrative review of this proceeding, the Department preliminarily found that the following companies comprised a single entity: Thai Union Frozen Products Co., Ltd. and Thai Union Seafood Co., Ltd. *See Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 12088 (Mar. 6, 2008) (*Thai Shrimp 06–07 Prelim*). If the Department makes a final determination that these companies comprise a single entity in the 2006–2007 administrative review, we will also treat these companies as a single entity for purposes of this administrative review, absent information to the contrary.

***** The petitioner's request for review included certain companies with identical/similar names but different addresses. For purposes of initiation, we have treated these companies as the same entity based on information obtained in the 2004–2006 administrative review. *See 2006–2007 Administrative Review Initiation Notice*, 72 FR at 17107.

****** The petitioner's request for review included certain companies with identical names but different addresses. For purposes of initiation, we have treated these companies as separate entities.

******* The petitioner's request for review included certain companies with duplicate names. We have initiated a review on the correct company names (*i.e.*, Chanthaburi Seafoods Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Inter–Pacific Marine Products Co., Ltd., Lucky Union Foods Co., Ltd., and The Union Frozen Products Co., Ltd.), but have not initiated a review on the duplicate names (*i.e.*, Chantaburi Seafood Co., Ltd., Fishery Cold Storage Public, International Pacific Marine Products, Lucky Union Foods, and Union Frozen Products) based on information obtained in the 2006–2007 administrative review and information on the record of this review. *See Certain Frozen Warmwater Shrimp from Thailand; Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 50931, 50932 (Sept. 5, 2007); *Thai Shrimp 06–07 Prelim*, 73 FR at 12090; and the March 21, 2008, memorandum from Irina Itkin to the File entitled, ''2007–2008 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Thailand: Clarification of Names and Addresses for Certain Companies for Which the Petitioners Requested a Review'' (Thai Shrimp Clarification memo).

******** The petitioner's request for review included certain companies with identical names but different addresses. For purposes of initiation, we have treated these companies as the same entity based on information on the record of this proceeding. See the Thai Shrimp Clarification memo.

Incomplete Requests for Review

We have not initiated administrative reviews with respect to the companies listed below which the Department was unable to locate in prior segments and for which no new information as to the party's location was provided by the requestor. *See, e.g., 2006–2007 Administrative Review Initiation Notice*, 72 FR at 17110.

BRAZIL.
Camexim Captura Mec Exports Imports.
ECUADOR.
Brimon SA.
INDIA.
AMI Food Products.
Atta Export.
Brilliant Exports.
Fernando Intercontinental.
Hanjar Ice and Cold Storage.
I Ahamed & Company.
KNR Marine Exports.
Nezami Rekha Sea Food.
Royal Cold Storage (India) Pvt. Ltd..
S B Agro (India) Ltd..
Sharon Exports.
Sheimar Seafoods Ltd..
Sree Vaialakshrm Exports.
Swarna Seafoods Ltd..
Wisdom Marine Exports.
THAILAND.
None..

Requests for Review of Non–Existent Companies

We have not initiated administrative reviews with respect to the companies listed below for India, which the Department determined in the 2006–2007 administrative review no longer exist. *See Indian Shrimp Rescission FR*, 73 FR at 6127.

INDIA
Coastal Trawlers, Ltd..
Haripriya Marine Food Exports.
KRM Group.
Pronto Foods Pvt. Ltd..
Saanthi Seafoods Ltd..

Notice of No Sales

The companies on which we are initiating this review should notify the Department within 30 days of publication of this notice in the **Federal Register** if they had no shipments, entries, or sales of the merchandise under consideration during the POR.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise because of the large number of such companies, section 777A(c)(2) of the Act permits the Department to limit its examination to either: (1) a sample of exporters, producers or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of subject merchandise from the exporting country that can be reasonably examined. Due to the large number of firms requested for these administrative reviews and the resulting administrative burden to review each company for which a request has been made, the Department is exercising its authority to limit the number of respondents selected for review. *See* section 777A(c)(2) of the Act. In selecting the respondents for individual review, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review.

We intend to release the CBP data under administrative protective order (APO) to all parties having an APO within five days of publication of this **Federal Register** notice, and to make our decisions regarding respondent

selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within 10 days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's website at *http://ia.ita.doc.gov/apo.*

This initiation and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 351.221(c)(1)(i).

Dated: March 31, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–7222 Filed 4–4–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–549–817)

Initiation of Antidumping Duty Changed Circumstances Review: Certain Hot–Rolled Carbon Steel Flat Products from Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b), United States Steel Corporation (petitioner) filed a request for the Department of Commerce (the Department) to initiate a changed circumstances review of the antidumping duty order on certain hot–rolled carbon steel flat products (hot–rolled steel) from Thailand. Petitioner alleges that Sahaviriya Steel Industries Public Company Limited (SSI), a Thai hot–rolled steel producer previously revoked from the antidumping duty order, has resumed sales at prices below normal value (NV). Petitioner notes that SSI agreed in writing to reinstatement in the antidumping duty order if it was found to have resumed dumping, and contends that SSI violated this agreement by selling hot–rolled steel at less than NV in the United States subsequent to its revocation from the order. Therefore, petitioner requests that the Department reinstate the antidumping duty order with respect to SSI.

The Department finds the information submitted by petitioner sufficient to warrant initiation of a changed circumstances review of the antidumping duty order on hot–rolled steel from Thailand with respect to SSI. In this changed circumstances review, we will determine whether SSI sold hot–rolled steel at less than NV subsequent to its revocation from the order. If we determine in this changed circumstances review that SSI sold hot–rolled steel at less than NV and resumed dumping, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of hot–rolled steel manufactured and exported by SSI.

EFFECTIVE DATE: April 7, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–0193 and (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2001, the Department published the antidumping duty order on hot–rolled steel from Thailand. *See Notice of Antidumping Duty Order: Certain Hot–Rolled Carbon Steel Flat Products From Thailand*, 66 FR 59562 (November 29, 2001) (*Hot–Rolled Steel Order*). In November of 2004, in the course of the 2003 - 2004 administrative review, SSI requested revocation of the *Hot–Rolled Steel Order* with respect to its sales of subject merchandise. *See Certain Hot–Rolled Carbon Steel Flat Products From Thailand; Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke and Rescind in Part*, 70 FR 73197 (December 9, 2005).

In its revocation request, SSI agreed to immediate reinstatement in the *Hot–Rolled Steel Order*, so long as any producer or reseller is subject to the order, should the Department determine that SSI ''sold the subject merchandise at less than normal value.'' *See* SSI's November 30, 2004, letter to the Department requesting revocation. On May 17, 2006, the Department revoked the antidumping duty order with respect to SSI after having determined that SSI sold the merchandise at not less than normal value for a period of at least three consecutive years.[1] *See Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review, Partial Revocation of Antidumping Duty Order and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 28659 (May 17, 2006) (Revocation).

On November 8, 2006, petitioner submitted an allegation arguing that SSI has resumed dumping hot–rolled steel in the United States since revocation from the *Hot–Rolled Steel Order*, and requested a changed circumstances review. *See* Petitioner's November 8, 2006, letter to the Department. Petitioner requested that the Department reinstate the *Hot–Rolled Steel Order* with respect to SSI's exports to the United States of hot–rolled steel produced by SSI. Petitioner used constructed value (CV) as normal value (NV) claiming it could not find home market prices of hot–rolled steel for SSI.

The Department requested additional information from petitioner on December 1, 2006, December 22, 2006, February 1, 2007, and December 11, 2007. Petitioner filed responses to the Department's request for additional information on December 5, 2006, January 12, 2007, February 26, 2007, and January 29, 2008, respectively.

In its February 1, 2007, request for additional information, the Department requested that petitioner update its U.S., home market, and cost data for SSI for the period October 1, 2005 through September 30, 2006. *See* the Department's February 1, 2007, request for additional information at question 1. In its February 26, 2007, response, petitioner updated its request by using the time period October 1, 2005, through September 30, 2006, for its margin analysis as requested by the Department. Petitioner also utilized a Kim Eng Live (Kelive) Market Analysis report dated February 14, 2007, to value slab for use in CV because it could not find home market or third country prices for hot–rolled steel for the period October 1, 2005, through September 30, 2006, to use as the basis for NV. *See* Exhibit 2, pages 1–4 of petitioner's February 26, 2007, submission.

On May 11, 2007, the Department met with petitioner to discuss its request for a changed circumstances review for SSI. On September 27, 2007, petitioner

[1] The three administrative reviews forming the basis of the revocation are: 1) the May 3, 2001, through October 31, 2002, review, *Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 19388 (April 13, 2004) (first administrative review); 2) the November 1, 2002 through October 31, 2003, review, *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Rescission of Antidumping Duty Administrative Review*, 69 FR 18349 (April 7, 2004) (second administrative review); and 3) the November 1, 2003, through October 31, 2004, review, *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review, Partial Revocation of Antidumping Duty Order and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 28659, (May 17, 2006).

submitted slab cost data for SSI from two sources independent of Kelive Market Analysis. On November 20, 2007, the Department released to parties information regarding its inquiries into petitioner's use of slab cost from a February 14, 2007, Kim Eng Live (Kelive) Market Analysis. *See* the Department's November 20, 2007, Memorandum to the File and accompanying email attachments.

On December 11, 2007, the Department requested that petitioner update its changed circumstances review request to use more contemporaneous information for its margin analysis (*i.e.*, July 1, 2006, through June 30, 2007). Additionally, the Department requested that petitioner update its request for the October 1, 2005, through September 30, 2006, period using the two sources of data provided in its September 27, 2007, submission to value steel slab. *See* the Department's December 11, 2007, request for additional information at question 1. In its January 29, 2008, response, petitioner updated its review request pursuant to the requests of the Department. On March 5, 2008, petitioner explained that it could not locate home market or third country prices for hot–rolled steel for the period July 1, 2006, through June 30, 2007, to use as the basis for NV.

On January 17, 2007, February 22, 2007, and February 5, 2008, SSI submitted letters to the Department requesting that it be granted an Administrative Protective Order (APO) in order to have access to proprietary information submitted by petitioner. On February 16, 2007, March 2, 2007, and February 14, 2008, respectively, the Department responded to these requests, explaining, in part, that the Department could not grant APO access pursuant to 19 C.F.R. 351.104(a) to SSI because a changed circumstances review had not been initiated. *See* the Department's February 16, 2007, March 2, 2007, and February 14, 2008, letters to SSI.

On December 12, 2006, January 4, 2007, January 17, 2007, March 7, 2007, March 28, 2007, April 5, 2007, April 10, 2007, November 28, 2007, February 12, 2008, and March 21, 2008, SSI filed letters contesting petitioner's request for a changed circumstances review. SSI asserts that section 751(b) of the Act, the statutory provision governing changed circumstance reviews, does not cover reinstatement of a revoked company into an antidumping duty order. SSI argues that a changed circumstances review of affirmative dumping or injury determinations is allowed, but that the statute does not mention the reinstatement of a previously revoked company. SSI maintains that once an antidumping duty order is revoked, whether in whole or in part, the underlying injury and dumping determinations no longer apply to the merchandise that has been revoked, and that the Department relinquishes jurisdiction over the merchandise covered.

SSI argues that section 751(b) of the Act grants authority to the Department and the International Trade Commission (ITC) to conduct changed circumstance reviews of a final affirmative determination that resulted in an antidumping duty order provided there are sufficient changed circumstances to warrant a review of such determination. Citing 19 USC 1673, SSI argues that the only two affirmative final determinations that result in an antidumping order are: (1) a final dumping determination by the Department in a less–than-fair value investigation, and (2) a final injury determination by the ITC. SSI contends that the statute does not grant authority to the Department to review a determination to revoke an order, in addition to a final affirmative determination that resulted in an order. SSI further argues that section 751(d)(1) of the Act is the only other section of the statute referencing section 751(b), but that it too fails to mention reinstatement of an order.

SSI argues that the Court of International Trade's (CIT's) decision in *Asahi Chemical Industry Co., Ltd. v. United States*, 727 F. Supp. 625 (CIT 1989) (*Asahi*), prevents the Department from reinstating an order against merchandise that was previously revoked. SSI contends that the CIT in *Asahi* determined that revocation of the order renders the order non–operative and that it cannot be reinstated because of the necessity of an ITC injury finding to accompany the dumping determination by the Department. *See Asahi*, 727 F. Supp at 628. SSI contends that the Department regulation in affect now is essentially the same regulation in affect at the time of *Asahi*, in that both regulations require immediate reinstatement of the order if it resumes dumping. SSI further contends that the CIT determined that the Department may not condition a party's exclusion from an antidumping duty order on its agreement to be brought within the order, as only the statute provides the authority to impose duties. *See Chang Tieh Ind. Co. V. United States*, 850 F. Supp. 141, 149 (Ct. Int'l Trade 1993).

SSI maintains that in previous cases, rather than reinstating the original antidumping duty order with respect to revoked companies, the Department initiated a new investigation against the companies in question. *See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (January 13, 2006) (*Orange Juice from Brazil*), and *Final Determination; Antidumping Duty Investigation of Pads for Woodwind Instruments from Italy Manufactured by Music Center s.n.c. di Luciano Pisoni and Luciem s.n.c. di Danilo Pisoni & C.*, 58 FR 42295 (August 9, 1993).

SSI argues that the Department's regulations do not specify the circumstances under which it will consider reinstatement, nor the type of investigation that will precede reinstatement. SSI contends that the new regulation, similar to the regulation in effect at the time of the *Asahi* case, remains silent on the interrelationship between reinstatement and the existing framework for imposing duties and that the problems raised in *Asahi* still exist in the current ''reinstatement'' regulations.

SSI argues that since the statute does not address reinstatement of a company into an antidumping duty order, as a matter of law, the only way SSI's exports may be subject to antidumping duties would be if the Department initiated a new investigation that leads to an antidumping determination by the Department and an injury determination by the ITC.

SSI contends that, should the Department determine that it possesses the legal authority to conduct a changed circumstances review, it must impose a rigorous evidentiary standard. SSI argues that the statute and regulations require the Department to find that the request ''shows changed circumstances sufficient to warrant a review,'' and ''whether the continued application of the antidumping duty order is otherwise necessary to offset dumping''; *i.e.*, the Department must find proof that the company involved is engaging in a pattern of dumping and that dumping is likely in the future.

Additionally, in its January 4, 2007, comments, SSI argues that the Department's regulations require a party to certify that it will not dump after revocation of the antidumping duty order. SSI notes that revocation occurred with the publication of the revocation notice in the **Federal Register** on May 17, 2006, five months after the December 2005 shipment listed in petitioner's November 8, 2006, and revised February 26, 2007, submissions. Therefore, SSI argues that it is not bound by the certification as it did not apply to the sale in question. SSI further

notes that the preliminary decision was made after the sale in question was shipped and had no affect on SSI's decision to sell in the United States.

SSI argues that the CIT's decision in *Sebacic Acid from China* (USITC 3775 May 2005) does not support petitioner because the case sunsetted immediately following the final results and was never tested in court. SSI also contends that in *Silicon Metal from Brazil*, the Department postponed initiating a changed circumstances review in order to allow the case to sunset. *See Silicon Metal from Brazil: Revocation of Antidumping Duty Order*, 71 FR 76635 (December 21, 2006) (*Silicon Metal from Brazil*).

SSI also maintains that the Department has passed the 45–day deadline mandated in the regulations for initiating a changed circumstances review and therefore cannot do so now. SSI further contends that the Department could have reversed its decision in the preliminary results that led to the revocation, resulting in the December 2005 sale being reviewed in a subsequent review process and not escaping review as petitioner claims. SSI explains that if the Department had denied SSI's revocation request for the final results of the 03–04 administrative review, and in turn conducted an administrative review for the 04–05 period for SSI, the December 2005 entry would have been captured in the review process.

In its January 17, 2007 comments, SSI argues that the plain language of the statute refers to a party certifying not to dump after the revocation, with no mention of dumping after the effective date of revocation. SSI notes that the statute speaks to the facts of the case as they existed at the time of sale, not at time of the revocation, which occurred in May of 2006.

Rebuttal Comments

On December 21, 2006, January 12, 2007, March 23, 2007, April 2, 2007, and April 9, 2007, petitioner filed rebuttal comments to SSI's comments. Petitioner argues that in *Sebacic Acid from China*, the Department rejected arguments similar to SSI's contentions regarding the Department's legal authority to reinstate the order. *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order*, 70 FR 16218 (March 30, 2005) (*Sebacic Acid from China*). Petitioner also argues that SSI's contention, that the Department impose a rigorous evidentiary standard for initiation for a changed circumstances review, is incorrect. Petitioner claims that the Department should not impose a higher standard for a respondent with a prior history of dumping than it would for a respondent without a prior history of dumping. Petitioner maintains that the standard for initiation of a changed circumstances review should be lower than that for an investigation. However, regardless of the standard, petitioner claims that it has demonstrated that SSI has resumed dumping.

Petitioner argues that SSI's claim, that reinstatement of an order requires petitioner to establish that the reinstatement be necessary to ''otherwise offset dumping,'' is incorrect. Petitioner maintains that the requirement of ''otherwise necessary to offset dumping'' only appears as a caveat in the Department's regulations regarding partial revocation of an antidumping duty order, with no similar requirement in an initiation for a changed circumstances review.

Allegation of Resumed Dumping

On December 1, 2006, the Department sent a letter to petitioner requesting additional information concerning the U.S., home market, and cost data provided by petitioner in its November 8, 2006, submission. Petitioner provided its response on December 5, 2006. On December 22, 2006, the Department requested additional information from petitioner concerning its submissions of November 8, 2006, and December 5, 2006. Petitioner submitted its response to our second request for additional information on January 12, 2007. Initially, the Department instructed petitioner to base its allegation on sales and cost information for the period October 1, 2005, through September 30, 2006, which petitioner did in its February 26, 2007, submission. Finally, on December 11, 2007, the Department instructed petitioner to base its allegation on sales and cost information for the period July 1, 2006, through June 30, 2007 (*i.e.*, the POR), which petitioner did in its January 29, 2008, response.

In its January 29, 2008, submission, petitioner provided price quotes concerning SSI's sales activity in the U.S. and cost information for its NV (CV) calculation, and argued that SSI had sold hot–rolled steel at less than NV during the period July 1, 2006, through June 30, 2007. The allegation of resumed dumping upon which the Department has based its decision to initiate a changed circumstances review is detailed below. The sources of data for the deductions and adjustments relating to NV and U.S. price are discussed in greater detail in the *Changed Circumstances Review Initiation Checklist* dated concurrently with this notice. Should the need arise to use any of this information as facts available under section 776 of the Act, we may reexamine the information and revise the margin calculation, if appropriate.

1. Export Price (EP)

Petitioner based its calculation of U.S. price upon import statistics obtained from the United States Department of Commerce, Bureau of Census IM–145 import data for 14 different HTS numbers of hot–rolled steel commonly sold in the United States, depending on the source and the time period used. *See* Attachment II of the *Changed Circumstances Review Initiation Checklist*, dated March 21, 2008, for the margin ranges. Petitioner obtained and compared bill of lading summaries from Trade Intelligence PIERS, which is specific to SSI, with quantities from IM–145 data in order to isolate those specific shipments of subject merchandise from SSI. Petitioner divided the entered value by the reported quantity and made no adjustments.

2. Normal Value

Normal Value (NV)

The petitioner was unable to obtain SSI's home market or third country prices for the proposed 05–06 and 06–07 PORs. *See* petitioner's February 26, 2007, and March 5, 2008, submissions. Therefore, the petitioner based normal value for sales made by SSI in the United States during the proposed PORs on CV.

3. Constructed Value

Price–to-Constructed Value Comparisons

Because petitioner could not obtain home market or third country pricing information for SSI, petitioner calculated normal value based on a constructed value and provided a comparison of U.S. price to CV. *See* Exhibit 2 pages 1–4 of petitioner's February 26, 2007, submission for the 05–06 period and pages 2–5 of petitioner's March 5, 2008, submission for the 06–07 period. Pursuant to section 773(e) of the Act, CV consists of the cost of manufacturing (COM), selling, general, and administrative (SG&A), financial expenses, packing expenses, and profit. Petitioner calculated COM based on its own production experience, adjusted for known differences between costs incurred to produce hot–rolled carbon steel flat products in the United States

and in Thailand. Petitioner calculated the COM as the sum of raw materials, direct labor, electricity, natural gas, manufacturing overhead, and depreciation expenses.

To calculate SG&A, petitioner relied upon the amounts reported in SSI's 2006 calendar year unconsolidated financial statements. To calculate interest expense, petitioner relied upon the amounts reported in the 2006 calendar year consolidated financial statements of SSI. For packing cost, petitioner did not include any amount. Consistent with section 773(e)(2) of the Act, petitioner included in CV an amount for profit. For profit, petitioner relied upon the amounts reported in SSI's 2006 calendar year unconsolidated financial statements. *See* the Initiation Checklist.

4. Alleged Margins of Dumping

Based upon the information summarized above, petitioner argues that SSI has resumed dumping hot–rolled steel. Depending upon the HTS number of the hot–rolled steel, petitioner estimates margins of 2.91 percent to 19.64 percent using the first source of data provided by petitioner, and 2.00 percent to 23.89 percent using the second source of data provided by petitioner, for the 05–06 period. Estimated dumping margins range from 0.60 percent to 26.24 percent using the first source of data provided by petitioner, and 0.78 percent to 28.22 percent for the second source of data provided by petitioner, for the 06–07 period. *See Changed Circumstances Review Initiation Checklist*, dated March 21, 2008, for the first and second sources of data used to value SSI's steel slab.

Scope of the Review

For purposes of this review, the products covered are certain hot–rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review.

Specifically included within the scope of this review are vacuum degassed, fully stabilized (commonly referred to as interstitial–free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this review, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this review unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this review:

- Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- of Automotive Engineers (SAE)/ American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion–resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this review is currently classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled carbon steel flat products covered by this review, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and CBP purposes, the written description of the merchandise under review is dispositive.

Initiation of Changed Circumstances Review

We find petitioner has provided sufficient evidence to initiate a changed circumstances review in which we will determine whether SSI has resumed dumping sufficient to warrant reinstatement within the order of hot–rolled steel from Thailand. *See Changed*

Circumstances Review Initiation Checklist, dated March 21, 2008. SSI argues that in *Asahi* the CIT ruled that the Department is not permitted by the statute to reinstate a revoked order without a new injury finding by the ITC. SSI also contends that the Department has no authority to reinstate a revoked order, and has further argued that the statutory provision governing changed circumstance reviews does not cover an attempt to reinstate a revoked company into an antidumping duty order. For the reasons outlined below, we disagree with SSI.

Pursuant to section 751(b) of the Act, the Department will conduct a changed circumstances review upon receipt of a request ''from an interested party for review of an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order.'' Petitioner's allegation, with supporting documentation, that SSI has resumed dumping hot–rolled steel subsequent to its revocation from the order is an appropriate basis for a changed circumstances review.

The Department's authority to reinstate a revoked company into an antidumping duty order derives from sections 751(b) and (d) of the Act and 19 CFR 351.222(b) and (e). In particular, the Department's authority to partially revoke an order is expressed in section 751(d) of the Act. The statute, however, provides no detailed description of the criteria, procedures or conditions relating to the Department's exercise of this authority. Accordingly, the Department has issued regulations setting forth in detail how the Department will exercise the authority granted to it under the statute. In particular, the Department has reasonably interpreted the authority to partially revoke the antidumping duty order with respect to a particular company it finds to be no longer dumping to include the authority to impose a condition that the partial revocation may be withdrawn (*i.e.*, the company may be reinstated) if dumping is resumed during a time in which an antidumping order continues to exist. To interpret the statute otherwise would permit the Department to abdicate its responsibility to ensure that injurious dumping is remedied by imposition of offsetting antidumping duties. Therefore, our determination to conduct this changed circumstances review to determine whether SSI should be reinstated under the *Hot–Rolled Steel Order* is supported by the statute and regulations. Additionally, as noted by the petitioner, conducting a changed circumstances review pursuant to section 751(b) of the Act to determine whether to reinstate a company previously revoked from an antidumping duty order is consistent with the agency's practice. *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Reinstatement of the Antidumping Order*, 70 FR 16218 (March 30, 2005).

Moreover, we find that SSI's reliance on *Asahi*, to support its assertion that the Department lacks legal authority to reinstate a company in an antidumping duty order, is misplaced. The CIT in *Asahi* was reviewing an earlier regulation (19 CFR 353.54(e)(1988)), which stated:

> Before the Secretary may tentatively revoke a Finding or an Order or terminate a suspended investigation pursuant to paragraph (a) of this section, the parties who are subject to the revocation or the termination must agree in writing to an immediate suspension of liquidation and reinstatement of the Finding or Order or continuation of the investigation, as appropriate, if circumstances which indicate that the merchandise thereafter imported into the United States is being sold at less than fair value. Opportunity for interested parties to present views with respect to the tentative revocation will be provided.

19 CFR 353.54(e)(1988).

The CIT in *Asahi* acknowledged that the purpose of the 1988 regulation was to discourage the resumption of dumping after revocation, and that there were policy concerns about having to undertake an entirely new investigation. *See Asahi*, 727 F. Supp. at 628. The CIT found that the old regulation was so ambiguous as to make the standard of reinstatement conjectural. *Id.* However, the CIT did not address whether reinstatement could be accomplished through an amendment to 19 CFR 353.54, or through a new regulatory provision. *Id.*

We find that our current regulation governing reinstatement (as did the earlier 1988 regulation) addresses the concerns enumerated by the CIT in *Asahi*. This regulation places exporters and producers which the Department has previously found to be dumping on notice that they are subject to immediate reinstatement once they are revoked from an order, if the Secretary later concludes they have resumed dumping. 19 CFR 351.222(b)(2)(i)(B) and (e). Indeed, revoked companies agree in writing to immediate reinstatement upon a finding of resumed dumping. 19 CFR 351.222(b)(2)(i)(B) and 351.222(e)(1). The present regulation makes clear that reinstatement can only occur as long as any exporter or producer is subject to the order. Several other companies remain subject to the antidumping duty order on hot–rolled steel from Thailand. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 73315 (December 27, 2007). Thus, the ITC's determination that subject merchandise sold at less than NV is injurious to the domestic industry continues to support application of antidumping duties to subject merchandise sold at less than NV. *See Hot–Rolled Steel Order*.

Moreover, any guidance provided by *Asahi* must be read in light of general principles of administrative law. One such basic principle of administrative law is that an administering agency must abide by its own rules to safeguard expectations. Thus, section 351.222(b)(2)(i)(B) of the Department's regulations suggests that a partial revocation determination is not a dispositive administrative pronouncement. Such a conclusion logically follows from the terms of the regulation, which directs the Department to rescind its partial revocation determination and to reinstate the revoked company under the existing antidumping duty order. In the instant case, the order on hot–rolled steel from Thailand has not been revoked. The Department's partial revocation with respect to SSI was expressly conditioned upon the possibility of reinstatement should dumping resume. The Department's regulation is reasonable because it imposes a reasonable condition upon partial revocation which is limited to circumstances under which the statute authorizes the Department to impose antidumping duties to remedy injurious dumping of subject merchandise.

SSI's claim that the Department's reinstatement regulation has no statutory authority is without merit. Specifically, SSI implies that the Act requires an injury determination by the ITC prior to the imposition of an order, and that, because the order on hot–rolled steel from Thailand has been partially revoked as to SSI, a new petition must be filed with respect to SSI, and separate affirmative determinations must be made by the ITC and the Department concerning injury and dumping. We disagree. In the instant case, the Department made its final determination of dumping and the ITC made its final injury determination. *See Hot–Rolled Steel Order*. Additionally, the antidumping duty order on hot–rolled steel from Thailand remains in place. Therefore, the ITC has found that dumping of hot–rolled steel

from Thailand causes material injury to the domestic industry; that finding was undisturbed by the partial revocation of SSI. Further, that revocation was premised on the absence of dumping rather than the absence of injury and was expressly conditioned on the possibility of reinstatement should dumping resume.

The partial revocation of the order with respect to SSI did not nullify the validity of the underlying injury and less than fair value determinations that resulted in the issuance of an antidumping duty order which remains in force, particularly when the partial revocation is the result of behavior subsequent to those earlier determinations. The ITC's injury determination, furthermore, does not examine the injury caused by discrete companies, but rather the injury caused by all dumped exports originating in a particular exporting country. Even if one or more exporters in that country may have been revoked from the order on the basis of absence of dumping, all dumped exports of subject merchandise from that country continue to cause or threaten material injury, pursuant to the ITC's affirmative injury determination. Thus, unless all exporters are revoked from the order, the order continues to exist, as does the potential for reinstatement. SSI itself agreed to such a reinstatement as a condition of its partial revocation, if the Department were to conclude that it has sold the merchandise at below NV. Specifically, SSI filed a certification from a company official pursuant to the Department's regulations that it agreed to the immediate reinstatement in the order, so long as any exporter or producer is subject to the order, if the Secretary concludes that, subsequent to the revocation, it sold hot–rolled steel at less than NV. Thus, a new injury finding specific to SSI is neither necessary nor appropriate for reinstatement pursuant to 19 CFR 351.222(h)(2)(i)(B).

The standard for initiation of a changed circumstances review under 751(b) of the Act is whether a request from an interested party for a review of a final affirmative determination that resulted in an antidumping duty order, a suspension agreement, or a final affirmative determination shows changed circumstances sufficient to warrant a review of such determination or agreement. The information submitted by petitioner in its letters of November 8, 2006, December 5, 2006, January 12, 2007, and February 26, 2007, September 27, 2007, and January 29, 2008, concerning SSI's COP and U.S. sales activity, suggest SSI may have resumed dumping subsequent to SSI's revocation from the order. Depending on the source of data used to value SSI's steel slab prices, petitioner alleges underselling of hot–rolled steel by SSI in the United States at prices between 2.00 and 23.89 percent below NV during the 05–06 period, and 0.60 percent and 28.22 percent below NV during the 06–07 period. The Department finds that the petitioner's changed circumstances request, which suggests a resumption of dumping, satisfies that standard for initiating.

Based on the foregoing, we find that petitioner has provided sufficient evidence to initiate a changed circumstances review to examine SSI's pricing and determine whether SSI has resumed dumping sufficient to reinstate the company within the order of hot–rolled steel from Thailand.

For purposes of this initiation, the evidence provided by petitioner indicates that SSI may have resumed dumping in not just one, but two periods. This evidence further supports the Department's determination to initiate a review to determine whether in fact SSI has resumed dumping.

Period of Changed Circumstances Review

The Department expects to request data from SSI for the July 1, 2006, through June 30, 2007 period in order to determine whether SSI has resumed dumping sufficient to warrant reinstatement within the order of hot–rolled steel from Thailand.

Public Comment

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the Department's preliminary factual and legal conclusions. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results. The Department will issue its final results of review in accordance with the time limits set forth in 19 CFR 351.216(e).

This notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b) of the Department's regulations.

Dated: March 28, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–7204 Filed 4–4–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

(C–580–851)

Dynamic Random Access Memory Semiconductors from the Republic of Korea: Extension of Time Limit for Preliminary Results of the Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: April 7, 2008.

FOR FURTHER INFORMATION CONTACT: Shane Subler at (202) 482–0189 or David Neubacher at (202) 482–5823; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 25, 2007, the Department published a notice of initiation of administrative review of the countervailing duty order on dynamic random access memory semiconductors from the Republic of Korea, covering the period January 1, 2006 through December 31, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 54428 (September 25, 2007). On December 14, 2007, the petitioner alleged that Hynix Semiconductor, Inc., received new subsidies.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''the Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Extension of Time Limits for Preliminary Results

This administrative review is extraordinarily complicated due to the complexity of the countervailable

subsidy practices found in the investigation and the new subsidy allegations. Because the Department requires additional time to review, analyze, and possibly verify the information, and to issue supplemental questionnaires, if necessary, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, by May 2, 2008). Therefore, the Department is extending the time limit for completion of the preliminary results by 90 days to not later than July 31, 2008, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 31, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–7212 Filed 4–4–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–851)

Certain Preserved Mushrooms from the People(s Republic of China: Initiation of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 7, 2008.

SUMMARY: The Department of Commerce (the ''Department'') has received a request from Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd. (''Golden Banyan''),[1] a producer and exporter of preserved mushrooms, to conduct a new shipper review (''NSR'') of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC''). Since this request meets the statutory and regulatory requirements for initiation, the Department is initiating a NSR of Golden Banyan, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(d).

FOR FURTHER INFORMATION CONTACT: Shawn Higgins; AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–0679.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1999, the Department published the antidumping duty order on certain preserved mushrooms from the PRC. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From the People(s Republic of China*, 64 FR 8308 (February 19, 1999). Thus, the antidumping duty order on certain preserved mushrooms from the PRC has a February anniversary month. The Department received a request for a NSR from Golden Banyan on February 29, 2008, which is during the annual anniversary month.

Golden Banyan identified itself as a producer and exporter of preserved mushrooms. Pursuant to section 751(a)(2)(B)(i)(I) of the Act, and 19 CFR 351.214(b)(2)(i), Golden Banyan certified that it did not export preserved mushrooms to the United States during the period of investigation (''POI''). Pursuant to section 751(a)(2)(B)(i)(II) of the Act, and 19 CFR 351.214(b)(2)(iii)(A), Golden Banyan also certified that it has never been affiliated with any exporter or producer that exported preserved mushrooms to the United States during the POI. Furthermore, the company also certified that its export activities are not controlled by the government of the PRC, satisfying the requirement of 19 CFR 351.214(b)(2)(iii)(B).

Pursuant to 19 CFR 351.214(b)(2)(iv), Golden Banyan submitted documentation establishing the date on which the subject merchandise was first entered for consumption in the United States, the volume of that first shipment and any subsequent shipments, and the date of the first sale to an unaffiliated customer in the United States. The Department queried the U.S. Customs and Border Protection (''CBP'') entry database, which confirmed that Golden Banyan had officially entered subject merchandise into the United States via assignment of an entry date in the Customs database by CBP. The Department issued Golden Banyan a supplemental questionnaire, focused on inconsistencies we observed between information supplied in Golden Banyan's NSR request and the CBP data, on March 11, 2008. On March 20, 2008, the Department received a timely response from Golden Banyan to the supplemental questionnaire.

We note that although Golden Banyan submitted documentation regarding the volume of its shipment and the date of their first sale to an unaffiliated customer in the United States, our customs query shows that Golden Banyan's shipment entered the United States shortly after the anniversary month. Under 19 CFR 351.214(f)(2)(ii), when the sale of the subject merchandise occurs within the period of review (''POR''), but the entry occurs after the normal POR, the POR may be extended unless it would be likely to prevent the completion of the review within the time limits set by the Department's regulations. The preamble to the Department's regulations states that both the entry and the sale should occur during the POR, and that under ''appropriate'' circumstances the Department has the flexibility to extend the POR. *See* Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27319–27320 (May 19, 1997). In this instance, Golden Banyan's shipment entered a few days into the month following the end of the POR. The Department does not find that this delay prevents the completion of the review within the time limits set by the Department's regulations.

Initiation of Review

Based on the information on the record, and in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we have determined that Golden Banyan has met the statutory and regulatory requirements for the initiation of a NSR. Therefore, we are initiating a NSR for Golden Banyan. See Memorandum to the File, from Shawn Higgins, International Trade Compliance Analyst, through Abdelali Elouaradia, Director, Office 4, AD/CVD Operations, ''Initiation of Antidumping Duty New Shipper Review: Certain Preserved Mushrooms from the People(s Republic of China,'' dated March 31, 2008.

We intend to issue the preliminary results of this review not later than 180 days after the date on which this review is initiated, and the final results of this review within 90 days after the date on which the preliminary results are issued. *See* section 751(a)(2)(B)(iv) of the Act; 19 CFR 351.214(h)(i).

Pursuant to 19 CFR 351.214(g)(1)(i)(A), the POR for a NSR initiated in the month immediately following the anniversary month will be

[1] Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd., has applied to the Zhangzhou Municipal Industrial and Commercial Administrative Bureau (''Commercial Administrative Bureau'') to change its name to Fujian Golden Banyan Foodstuffs Industrial Co., Ltd. On December 21, 2007, the Commercial Administrative Bureau granted Golden Banyan advanced approval for the company's requested name change. However, Golden Banyan is still waiting for the name change to apply to the company's business license and certificate of approval. Accordingly, Golden Banyan submitted its request for a new shipper review under both the company's current and pending corporate names.

the twelve—month period immediately preceding the anniversary month. As discussed above, under 19 CFR 351.214(f)(2)(ii), when the sale of the subject merchandise occurs within the POR, but the entry occurs after the normal POR, the POR may be extended. Therefore, the POR for the NSR of Golden Banyan is February 1, 2007, through February 29, 2008.

In cases involving non—market economies, the Department requires that a company seeking to establish eligibility for an antidumping duty rate separate from the country—wide rate provide evidence of *de jure* and *de facto* absence of government control over the company(s export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People(s Republic of China*, 61 FR 19026, 19027 (April 30, 1996). Accordingly, we will issue a questionnaire to Golden Banyan, including a separate rates section. The review will proceed if the responses provide sufficient indication that Golden Banyan is not subject to either *de jure* or *de facto* government control with respect to its exports of preserved mushrooms. However, if Golden Banyan does not demonstrate its eligibility for a separate rate, then the company will be deemed not separate from other companies that exported during the POI and the NSR will be rescinded as to the company.

On August 17, 2006, the Pension Protection Act of 2006 (H.R. 4) was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct CBP to collect a bond or other security in lieu of a cash deposit in NSRs. Therefore, the posting of a bond or other security under section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e) in lieu of a cash deposit is not available in this case. Importers of subject merchandise produced and exported by Golden Banyan must continue to pay a cash deposit of estimated antidumping duties on each entry of subject merchandise at the current PRC–wide rate of 198.63 percent.

Interested parties that require access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act, 19 CFR 351.214, and 19 CFR 351.221(c)(1)(i).

Dated: March 31, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–7208 Filed 4–4–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–351–840

Certain Orange Juice from Brazil: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by the petitioners and two producers/exporters of the subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain orange juice (OJ) from Brazil with respect to two producers/exporters of the subject merchandise to the United States. This is the first period of review (POR), covering August 24, 2005, through February 28, 2007.

We have preliminarily determined that sales to the United States have been made below normal value (NV). If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

In addition, we have preliminarily determined to rescind the review with respect to one company because it had no shipments of subject merchandise during the POR. Interested parties are invited to comment on the preliminary results.

EFFECTIVE DATE: April 7, 2008.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3874.

SUPPLEMENTARY INFORMATION:

Background

In March 2006, the Department published in the **Federal Register** an antidumping duty order on certain orange juice from Brazil. *See Antidumping Duty Order: Certain Orange Juice from Brazil*, 71 FR 12183 (Mar. 9, 2006) (*OJ Order*). Subsequently, on February 2, 2007, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain orange juice from Brazil for the period August 24, 2005, through February 28, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 9505 (Feb. 2, 2007).

In accordance with 19 CFR 351.213(b)(2), on March 12 and 14, 2007, the Department received requests to conduct an administrative review of the antidumping duty order on OJ from Brazil from Fischer S/A - Agroindustria (Fischer) and Sucocitrico Cutrale, S.A. (Cutrale), respectively. In accordance with 19 CFR 351.213(b)(1), on March 30, 2007, the petitioners (Florida Citrus Mutual, A. Duda & Sons, Citrus World Inc., and Southern Gardens Citrus Processing Corporation), also requested that the Department conduct an administrative review for Cutrale and Fischer, as well as for one additional producer/exporter, Coinbra–Frutesp (SA)/Louis Dreyfus Citrus (Coinbra–Frutesp).

In April 2007, the Department initiated an administrative review for each of these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 20986 (Apr. 27, 2007). Also in April 2007, we issued questionnaires to them.

On May 1, 2007, Coinbra–Frutesp informed the Department that it made no entries of subject merchandise during the POR. We confirmed this claim with CBP information; therefore, we are preliminarily rescinding the review with respect to this company. For further discussion, see the ''Partial Rescission of Review'' section of this notice, below.

On May 21 and 22, 2007, we received responses to section A of the questionnaire (*i.e.*, the section covering general information) from Cutrale and Fischer, respectively. We received responses to sections B and C of the questionnaire (*i.e.*, the sections covering sales in the home market and United States) from Fischer on June 1, 2007, and from Cutrale on June 12, 2007. We received responses to section D of the questionnaire (*i.e.*, the section covering cost of production (COP)/constructed value (CV)) from Cutrale on June 12, 2007, and from Fischer on June 25, 2007.

From August 2007 through March 2008, we issued supplemental sales and cost questionnaires to Cutrale and Fischer. We received responses to these

questionnaires from September 2007 through March 2008.

On September 11, 2007, in a separate segment of this proceeding, the Department initiated a changed circumstances review for Fischer to determine whether a change in the company's corporate organization in December 2006 was significant enough to warrant treating the company as a new entity (or alternatively to find that the new company was the successor–in-interest to Fischer). *See Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Orange Juice from Brazil*, 72 FR 51798 (Sept. 11, 2007). On October 22, 2007, the Department determined that the new company, Fischer S.A. Comercio, Industria and Agricultura (Fischer Comercio), is the successor–in-interest to Fischer. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Orange Juice from Brazil*, 72 FR 59512 (Oct. 22, 2007). Therefore, we have treated these two companies as the same entity in this administrative review.

On November 13, 2007, the Department extended the deadline for the preliminary results in this review until no later than March 31, 2007. *See Certain Orange Juice from Brazil: Notice of Extension of Time Limits for the Preliminary Results of the First Administrative Review*, 72 FR 63874 (Nov. 13, 2007).

Scope of the Order

The scope of this order includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) Frozen orange juice in a highly concentrated form, sometimes referred to as frozen concentrated orange juice for manufacture (FCOJM); and (2) pasteurized single–strength orange juice which has not been concentrated, referred to as not–from-concentrate (NFC). At the time of the filing of the petition, there was an existing antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. *See Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil*, 52 FR 16426 (May 5, 1987). Therefore, the scope of this order with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre–existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada (Cargill), Coinbra–Frutesp, Cutrale, Fischer, and Montecitrus Trading S.A.

Excluded from the scope of the order are reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42 Brix, in a frozen state, packed in retail–sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further manufacture of FCOJM, a bulk manufacturer's product.

The subject merchandise is currently classifiable under subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS). These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive. Rather, the written description of the scope of the order is dispositive.

Partial Rescission of Review

As noted above, on May 1, 2007, Coinbra–Frutesp informed the Department that it had no entries of subject merchandise to the United States during the POR. We have confirmed this with CBP. See the Memorandum to the File from Elizabeth Eastwood entitled, ''Placing Customs Entry Data on the Record of the 2005–2006 Antidumping Duty Administrative Review of Certain Orange Juice from Brazil,'' dated March 31, 2008. Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with the Department's practice, we are preliminarily rescinding our review with respect to Coinbra–Frutesp. *See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665, 67666 (Nov. 8, 2005).

Comparisons to Normal Value

To determine whether sales of OJ by Cutrale and Fischer to the United States were made at less than NV, we compared constructed export price (CEP) to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), we compared the CEPs of individual U.S. transactions to the weighted–average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Curtrale and Fischer covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of OJ to sales of OJ in the home market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the last U.S. sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: product type and organic designation. Where there were no sales of identical or similar merchandise made in the ordinary course of trade, we made product comparisons using CV.

Constructed Export Price

For all U.S. sales made by Cutrale and Fischer, we used the CEP methodology specified in section 772(b) of the Act because the subject merchandise was sold for the account of these respondents by their U.S. subsidiaries in the United States to unaffiliated purchasers.

A. Cutrale

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of Cutrale's U.S. sales as CEP sales because they were made in the United States by Cutrale's U.S. affiliates on behalf of Cutrale, within the meaning of section 772(b) of the Act.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. For sales made pursuant to futures contracts, we adjusted the reported gross unit price (*i.e.*, the notice price) to include gains and losses incurred on the futures contract which resulted in the shipment of subject merchandise. All other gains and losses related to futures

trading activities have been included in indirect selling expenses. Where appropriate, we included as part of the starting price certain additional revenue items received from the customer. Also where appropriate, we made adjustments for billing adjustments, discounts, and rebates.

In addition, we made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign warehousing expenses, foreign brokerage and handling expenses, ocean freight, U.S. brokerage and handling, U.S. customs duties (including harbor maintenance fees and merchandise processing fees) offset by U.S. duty drawback and customs duty reimbursements, U.S. inland freight expenses (*i.e.*, freight from port to warehouse), and U.S. warehousing expenses.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, bank charges, commissions, imputed credit expenses, and repacking), and indirect selling expenses (including inventory carrying costs, gains and losses on ''rolled over'' futures contracts, and other indirect selling expenses). We recalculated inventory carrying costs using the manufacturing costs reported in Cutrale's most recent COP database, adjusted as noted in the ''Calculation of Cost of Production'' section of this notice, below.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Cutrale and its U.S. affiliates on their sales of the subject merchandise in the United States and the profit associated with those sales.

B. Fischer

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of Fischer's U.S. sales as CEP sales because they were made in the United States by Fischer's U.S. affiliate on behalf of Fischer, within the meaning of section 772(b) of the Act.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for billing adjustments and rebates. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses, foreign warehousing expenses, foreign brokerage and handling expenses, ocean freight expenses, bunker fuel surcharges, marine insurance expenses, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees) offset by U.S. duty drawback and customs duty reimbursements, U.S. inland freight expenses (*i.e.*, freight from port to warehouse or to customer), and U.S. warehousing expenses.

In accordance with sections 772(d)(1) and (2) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (i.e., additional processing expenses, imputed credit expenses, and repacking), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Fischer and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

Normal Value

A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

We determined that the aggregate volume of home market sales of the foreign like product for both respondents was sufficient to permit a proper comparison with its U.S. sales of the subject merchandise.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the export price (EP) or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id. See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),[1] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa*, 62 FR at 61732–33.

In this administrative review, we obtained information from each respondent regarding the marketing stages involved in making the reported home market and U.S. sales, including

[1] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

a description of the selling activities performed by each respondent for each channel of distribution. Company–specific LOT findings are summarized below.

1. Cutrale

Cutrale reported that it made CEP sales through one channel of distribution in the United States (*i.e.*, sales via affiliated resellers) and thus the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for this channel and found that Cutrale performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services; and inventory maintenance. These selling activities can be generally grouped into four core selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Accordingly, based on the core selling functions, we find that Cutrale performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Cutrale reported that it made sales through one channel of distribution (*i.e.*, direct sales to soft drink manufacturers). We examined the selling activities performed for home market sales, and found that Cutrale performed the following selling functions: sales forecasting, strategic planning, order processing, limited advertising, engineering services/technical assistance, inventory maintenance and post–sale warehousing, guarantees, and packing. Accordingly, based on the core selling functions, we find that Cutrale performed sales and marketing, inventory maintenance and warehousing, and warranty and technical support for home market sales. Because all home market sales are made through a single distribution channel, we preliminarily determine that there is one LOT in the home market for Cutrale.

Finally, we compared the CEP LOT to the home market LOT and found that the core selling functions performed for U.S. and home market customers do not differ significantly. Therefore, we determine that sales to the U.S. and home markets during the POR were made at the same LOT, and as a result, neither an LOT adjustment nor a CEP offset is warranted for Cutrale. We note that, while Cutrale is claiming a CEP offset in this proceeding, Cutrale itself admits that there are no significant differences between its sales process during the period of investigation of the less–than-fair–value (LTFV) investigation and the POR. *See* Cutrale's May 15, 2007, section A supplemental response at page 3. Consequently, because no compelling evidence exists that Cutrale's sales process changed during the POR of this administrative review, we continue to find that no CEP offset is warranted for Cutrale, as we did in the LTFV investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Critical Circumstances Determination: Certain Orange Juice from Brazil*, 70 FR 49557, 49563 (Aug. 24, 2005) (*LTFV Preliminary Determination*), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (Jan. 13, 2006) (*LTFV Final Determination*).

2. Fischer

Fischer reported that it made CEP sales through one channel of distribution in the United States (*i.e.*, sales via an affiliated reseller) and thus the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for this channel and found that Fischer performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services; and inventory maintenance. These selling activities can be generally grouped into four core selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Accordingly, based on the core selling functions, we find that Fischer performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Fischer reported that it made sales through one channel of distribution and that the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for home market sales, and found that Fischer performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight; cold storage and inventory maintenance; and packing services. Accordingly, based on the core selling functions, we find that Fischer performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for home market sales. Because all home market sales are made through a single distribution channel, we preliminarily determine that there is one LOT in the home market for Fischer.

Finally, we compared the CEP LOT to the home market LOT and found that the core selling functions performed for U.S. and home market customers do not differ significantly. Therefore, we determine that sales to the U.S. and home markets during the POR were made at the same LOT, and as a result, neither an LOT adjustment nor a CEP offset is warranted for Fischer.

C. Cost of Production Analysis

We found that both Cutrale and Fischer had made sales below the COP in the LTFV investigation, the most recently completed segment of this proceeding as of the date the questionnaire was issued in this review, and such sales were disregarded. For Fischer, see *LTFV Preliminary Determination*, 70 FR at 49564; unchanged in *LTFV Final Determination*. For Cutrale, see the Memorandum to the File from Elizabeth Eastwood entitled, ''Placing Sucocitrico Cutrale S.A.'s Comparison Market Program from the Final Determination of the Less Than Fair Value Investigation on the Record of the 2005–2007 Administrative Review of Certain Orange Juice from Brazil,'' dated March 31, 2008. Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Cutrale and Fischer made home market sales at prices below the cost of producing the merchandise in the current review period.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for G&A expenses and interest expenses (*see* ''Test of Comparison Market Sales Prices'' section, below, for treatment of home market selling expenses).

The Department relied on the COP data submitted by each respondent in its most recently submitted cost database

for the COP calculation, except for the following instances:

a. Cutrale

i. In accordance with the transactions disregarded rule, *i.e.*, section 773(f)(2) of the Act, we adjusted Cutrale's cost of manufacturing to reflect the market value of oranges that were purchased from an affiliate.

ii. We revised the calculation of the financial expense ratio to include all financial expenses and net foreign exchange gains and losses from the consolidated financial statements of Cutrale's highest level parent company in the numerator of the calculation and to reduce the denominator of the calculation by the revenue from the sales of by–products.

iii. We revised the calculation of the G&A expense ratio to include the cost of sales related to cattle in the denominator and to reduce the denominator by the revenue from the sales of by–products.

For further discussion of these adjustments, see the Memorandum from James Balog, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, ''Cost of Production and Constructed Value Adjustments for the Preliminary Results - Sucocitrico Cutrale Ltda,'' dated March 31, 2008.

b. Fischer

i. The Department values the self–produced agricultural input used in the production of subject merchandise by multiplying the average per–unit cost to produce the input during the 12-month growing season by the quantity of the self–produced agricultural input used in the production of subject merchandise. In this segment of the proceeding, Fischer did not value the self–produced oranges used in the production of subject merchandise per the Department's normal methodology. Instead, Fischer valued the self–produced oranges used in the production of subject merchandise by dividing the total POR agricultural cost by the associated harvested quantity as opposed to dividing the 12-month growing season cost by the harvested quantity during the growing season. Because Fischer's reporting methodology of self–produced oranges is conservative and does not understate the cost of self–produced oranges, as neutral facts available, we have relied upon the reported cost of self–produced oranges for the preliminary results. However, the appropriate methodology for calculating the cost of self–produced oranges in this case and in future reviews is to calculate the average per–unit cost to produce oranges during the 12-month growing season that most appropriately matches the POR.

ii. We revised Fischer's reported product–specific manufacturing costs to allocate the common material and conversion costs to FCOJM, ''Dairy Pak'' orange juice (''Dairy Pak''), and NFC based on the relative quantity of finished production of each type of orange juice converted into an equivalent brix level. We note that Fischer allocated these costs to FCOJM, ''Dairy Pak,'' and NFC based on the relative quantities of orange inputs used in the production of each type of orange juice.

iii. We revised Fischer's G&A expense ratio to include a provision for losses on fruit contracts and labor claims, as well as expenses other than depreciation incurred by a collapsed affiliated entity during the 2006 fiscal year. Finally, we excluded by–product costs, packing, freight, storage, and other movement expenses from the cost of goods sold denominator of the G&A expense ratio.

For further discussion of these adjustments, see the Memorandum from Sheikh M. Hannan, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, ''Cost of Production and Constructed Value Adjustments for the Preliminary Results - Fischer S/A - Agroindustria,'' dated March 31, 2008.

2. Test of Comparison Market Sales Prices

On a product–specific basis, we compared the adjusted weighted–average COP to the home market sales prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sales prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, rebates, direct and indirect selling expenses and packing expenses, revised where appropriate, as discussed below under the ''Price–to-Price Comparisons'' section.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) or the Act: 1) whether, within an extended period of time, such sales were made in substantial quantities; and 2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's home market sales of a given product are at prices less than the COP, we do not disregard any below–cost sales of that product, because we determine that in such instances the below–cost sales were not made within an extended period of time and in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below–cost sales when: 1) they were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act, and 2) based on our comparison of prices to the weighted–average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Cutrale's and Fischer's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of subject merchandise for which there were no useable home market sales in the ordinary course of trade, we compared CEPs to the CV in accordance with section 773(a)(4) of the Act. *See* ''Calculation of Normal Value Based on Constructed Value'' section below.

D. Calculation of Normal Value Based on Comparison Market Prices

1. Cutrale

For Cutrale, we calculated NV based on ex–factory prices to unaffiliated customers. We included warehousing revenue in the starting price. We made adjustments, where appropriate, to the starting price for Brazilian taxes and billing adjustments in accordance with section 773(a)(6)(B)(iii) of the Act. We made deductions from the starting price for home market credit expenses (offset

by interest revenue) pursuant to section 773(a)(6)(C) of the Act. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

Finally, we deducted home market packing costs and added U.S. packing costs, where appropriate, in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

2. Fischer

We calculated NV based on delivered prices to unaffiliated customers. We made adjustments, where appropriate, to the starting price for discounts in accordance with 19 CFR 351.401(c). We made adjustments, where appropriate, to the starting price for Brazilian taxes in accordance with section 773(a)(6)(B)(iii) of the Act. We deducted foreign inland freight expenses and inland insurance expenses in accordance with section 773(a)(6)(B)(ii) of the Act.

In addition, we made deductions under section 773(a)(6)(C) of the Act for credit expenses (offset by interest revenue). Finally, we deducted home market packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison–market sales, NV may be based on CV. Accordingly, for those OJ products for which we could not determine the NV based on comparison–market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on CV.

Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts G&A expenses, profit, and U.S. packing costs. For Fischer, we calculated the cost of materials and fabrication based on the methodology described in the ''Cost of Production Analysis'' section, above. We based G&A and profit for Fischer on the actual amounts incurred and realized by it in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in circumstances of sale in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to CEP, we made circumstance–of-sale adjustments by deducting comparison market direct selling expenses from CV. *See* 19 CFR 351.410(c).

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

We preliminarily determine that weighted–average dumping margins exist for the respondents for the period August 24, 2005, through February 28, 2007, as follows:

Manufacturer/Exporter	Percent Margin
Sucocitrico Cutrale, S.A.	0.51
Fischer S/A Agroindustria/Fischer S.A. Comercio, Industria, and Agricultura	2.46

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. *See* 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: 1) the party's name, address and telephone number; 2) the number of participants; and, 3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

We will calculate importer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales which entered value was reported. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis*. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. *See* 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in this final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company–specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.51 percent, the all–others rate made effective by the LTFV investigation. *See OJ Order,* 71 FR at 12184. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: March 31, 2008.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E8–7220 Filed 4–4–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Coral Reef Conservation Program Administration

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

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

DATES: Written comments must be submitted on or before June 6, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Bill Millhouser, 301–713–3155, ext. 189 or *Bill.Millhouser@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Coral Reef Conservation Act of 2000 (Act) was passed to provide a framework for conserving coral reefs. The Coral Reef Conservation Grant Program, under the Act, provides funds to broad-based applicants with experience in coral reef conservation to conduct activities to protect and conserve coral reef ecosystems. The information submitted is used to determine: (1) Whether the applicant qualifies for a waiver of matching funds, and (2) if a proposed project is consistent with the coral reef conservation priorities of authorities with jurisdiction over the area where the project will be carried out.

II. Method of Collection

The information may be submitted via e-mail or fax.

III. Data

OMB Number: 0648–0448.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, local or tribal government; federal government; not-for-profit institutions.

Estimated Number of Respondents: 53.

Estimated Time Per Response: Matching funds waiver request, 30 minutes; Proposal comment, 1 hour and 30 minutes.

Estimated Total Annual Burden Hours: 106.

Estimated Total Annual Cost to Public: $600.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 1, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–7096 Filed 4–4–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Marine Recreational Fisheries Statistics Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

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

DATES: Written comments must be submitted on or before June 6, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Erik Zlokovitz, (301) 713–2328, or *Erik.Zlokovitz@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The marine recreational anglers are surveyed for catch and effort data, fish biology data, and angler socioeconomic characteristics. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), as amended, regarding conservation and management of fishery resources.

II. Method of Collection

Information is collected by telephone interviews and on-site intercept interviews. A random-digit-dialing telephone survey of coastal zone households is used to collect data on the proportion of marine fishing households and the number of shore and private/rental boat fishing trips by residents of those households. Directory-based surveys of boat operators and licensed saltwater anglers collect data on the number of for-hire fishing trips and the number of fishing trips by licensed anglers, respectively. On-site intercept interviews of marine recreational anglers are conducted to collect data on the catch per trip by species. Data on fishing effort and number of trips from the telephone surveys are combined with the catch per unit effort data from the on-site intercept data to generate recreational catch estimates. Supplemental surveys collect economic data about marine recreational fishing.

III. Data

OMB Number: 0648–0052.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households, business or other for-profit organizations.

Estimated Number of Respondents: 838,193.

Estimated Time Per Response: 7 minutes for fishing households; 1 minute for non-fishing households; 30 seconds for non-households; 4 minutes, 30 seconds for intercepted anglers; 1 minute, 30 seconds for intercept survey verification calls; 3 minutes for supplemental economic data from fishing households; 8 minutes for supplemental economic data from intercepted anglers and Telephone Follow-Up survey; 15 minutes for Economic Intercept and Mail Follow-Up Survey; 7 minutes for For-Hire Telephone Survey of Angler Fishing; 60 minutes for Economic For-hire In-person survey; 8 minutes for Economic Telephone Survey of For-hire Businesses; and 1 minute for Biological Data Collection.

Estimated Total Annual Burden Hours: 46,296.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 1, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–7109 Filed 4–4–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Region Logbook Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

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

DATES: Written comments must be submitted on or before June 6, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7008 or *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS), Alaska Region manages the U.S. groundfish fisheries of the Exclusive Economic Zone (EEZ) off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (FMP). The North Pacific Fishery Management Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. The regulations implementing the FMP are at 50 CFR part 679.

The recordkeeping and reporting requirements at 50 CFR part 679 form the basis for this collection of information. NMFS, Alaska Region requests information from participating groundfish participants. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of the groundfish fisheries of the EEZ off Alaska.

II. Method of Collection

Paper logbooks, electronic reports, and telephone calls are required from participants, and methods of submittal include the Internet and facsimile transmission of paper forms.

III. Data

OMB Number: 0648–0213.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,132.

Estimated Time Per Response: 18 minutes for Catcher Vessel trawl gear daily fishing logbook (DFL); 28 minutes for Catcher Vessel longline and pot gear DFL; 30 minutes for Catcher/processor trawl gear daily cumulative production logbook (DCPL); 41 minutes for Catcher/processor longline and pot gear DCPL; 31 minutes for Shoreside processor DCPL; 31 minutes for Mothership DCPL; 8 minutes for Shoreside Processor Check-in/Check-out Report; 7 minutes for Mothership or Catcher/processor Check-in/Check-out Report; 11 minutes for Product transfer report; 17 minutes for Weekly Production Report; 11 minutes for Daily Production Report; 5 minutes to electronically submit the Weekly Production Report; 5 minutes to electronically submit the Check-in/Check-out Report; 35 minutes for Weekly Cumulative Mothership ADF&G Fish Tickets; 14 minutes for U.S. Vessel Activity Report; and 23 minutes for buying station report.

Estimated Total Annual Burden Hours: 35,504.

Estimated Total Annual Cost to Public: $187,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 1, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–7110 Filed 4–4–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Atlantic Highly Migratory Species Observer Notification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

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

DATES: Written comments must be submitted on or before June 6, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue NW., Washington DC 20230 (or via Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Craig Cockrell, (301) 713–2347 or *craig.cockrell@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under current regulations, the National Marine Fisheries Service (NMFS) may select for observer coverage any fishing trip by a vessel that has a permit for Atlantic Highly Migratory Species (HMS), notifies vessel owners, in writing, when their vessels have been selected. The owners of those vessels are then required to notify NMFS before commencing any fishing trip for Atlantic HMS. The notification allows NMFS to arrange for observer placements and assignments.

The vessels are selected randomly from a list of active vessels that have reported landings of targeted species during the previous year. Observers are placed aboard vessels to collect, among other things, information on species caught, catch disposition, gear, effort, and bycatch. The information is used in stock assessments to estimate rates of bycatch of non-targeted and protected species such as sea turtles, and to improve overall management of the fishery.

A Biological Opinion (BiOp) issued on June 1, 2004, under the Endangered Species Act, requires a minimum of eight percent observer coverage in the pelagic longline fishery. In order to better monitor incidental landings of bluefin tuna in the Gulf of Mexico during bluefin tuna spawning season, pelagic longline vessels fishing in the gulf will be subject to 100 percent observer coverage from March 9–June 9 (41 vessels).

The shark bottom longline observer program has set a target of five percent observer coverage in the shark bottom longline fishery. A BiOp issued in October 2003 requires NMFS to maintain or increase this level of observer coverage. Additionally, upcoming management measures will establish a shark research fishery including approximately 10 vessels with 100 percent coverage throughout the year. Observer coverage for the shark gillnet fishery fluctuates from approximately 50 percent to 100 percent, depending on the time of year. Although technically not required, vessels operating in other HMS fisheries may be selected for observer coverage depending on factors including limited funding. The burden estimates include a ten percent adjustment upward from current levels to account for future expansion of observer coverage other fisheries.

II. Method of Collection

The notification may be made by phone, fax, or in writing prior to each trip for which a vessel is selected. A form is provided by NMFS for written responses.

III. Data

OMB Number: 0648–0374.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 241.

Estimated Time Per Response: 2 minutes.

Estimated Total Annual Burden Hours: 166 hours.

Estimated Total Annual Cost to Public: $2,488.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 1, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–7111 Filed 4–4–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG63

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 18

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent (NOI) to prepare a draft environmental impact statement (DEIS); notice of scoping meetings; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) intends to prepare a DEIS to assess the impacts on the natural and human environment of the management measures proposed in its revised draft Amendment 18 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP).

DATES: Written comments on the scope of issues to be addressed in the DEIS must be received by 5 p.m., eastern time, on May 16, 2008.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: 0648–XG63@noaa.gov.
- Fax: 727–824–5308, Attn: Kate Michie.
- Mail: Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.Scoping documents are available at the Council's Web site at *www.safmc.net*.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fisheries Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: 843–571–4366, toll free 1–866–SAFMC–10; fax: 843–769–4520; e-mail: *Kim.Iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the South Atlantic states in the exclusive economic zone is managed under the FMP. Following Council preparation, the FMP was approved and implemented by NMFS under that authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) in March of 1983.

An NOI for Amendment 18 was published January 22, 2008 (73 FR 3701); however, the plan amendment contained in that notice considered the implementation of a limited access privilege (LAP) program for the commercial snapper-grouper fishery in the South Atlantic. The Council has postponed consideration of a LAP program to a future amendment, and different actions are now being considered in Amendment 18. This NOI seeks public comment on the new Amendment 18 and associated DEIS.

The reauthorized Magnuson-Stevens Act of 2006 requires regional fishery management councils to establish annual catch limits (ACLs) for each stock/stock complex and accountability measures to ensure these ACLs are not exceeded. Among other things, Amendment 18 addresses these requirements for South Atlantic red snapper.

A stock assessment has been completed for red snapper through the Southeast Data, Assessment, and Review (SEDAR) process, which indicates the stock is undergoing overfishing and is overfished. The stock assessment will be reviewed by the Council's Scientific and Statistical Committee (SSC) at its June 8 10, 2008, meeting. If the SSC agrees with the SEDAR determination, the Council will continue development of Amendment 18.

To prevent overfishing, the Council intends to set biological parameters in Amendment 18 for red snapper, consistent with the national standards of the Magnuson-Stevens Act. These parameters include maximum sustainable yield, optimum yield (OY), minimum stock size threshold, and maximum fishing mortality rate threshold, which are used to help rebuild overfished stocks.

The Council is required by the Magnuson-Stevens Act to implement rebuilding plans for overfished species. Amendment 18, and the associated DEIS, would also specify a rebuilding plan for the red snapper stock and consider various management measures to end overfishing. Some of the possible management measures the Council could consider include: quotas, seasonal closures (for both commercial and recreational fisheries), area closures, size limit modifications, and bag limit adjustments. These measures would help to increase the biomass of overfished red snapper and at the same time help to achieve OY for the fishery.

The Council will review public comments and the SSC's determinations at its June 9 13, 2008, meeting and decide whether or not to continue preparation of the DEIS. If the Council does prepare a DEIS, a comment period is planned, which will include public hearings to receive comments. A **Federal Register** notice will announce the availability of the DEIS associated with this amendment, as well as a 45-day public comment period, pursuant to regulations issued by the Council on Environmental Quality for implementing the National Environmental Policy Act and to NOAA's Administrative Order 216–6. The Council will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS), and before voting to submit the final amendment to NMFS for Secretarial review, approval, and implementation. NMFS will announce in the **Federal Register** the availability of the final amendment and FEIS for public review during the Secretarial review period, and will consider all public comments prior to final agency action to approve, disapprove, or partially approve the final amendment.

Scoping Meetings, Times, and Locations

All scoping meetings will begin at 3 p.m. The meetings will be physically accessible to people with disabilities. Requests for information packets or for sign language interpretation or other auxiliary aids should be directed to the Council (see **FOR FURTHER INFORMATION CONTACT**).

Wednesday, May 7, 2008—Key Largo Grande, 97000 South Overseas Highway, Key Largo, FL 33037; phone: 866–597–5397.

Friday, May 9, 2008—Radisson Resort at the Port, 8701 Astronaut Boulevard, Cape Canaveral, FL 32920; phone: 321–784–0000.

Monday, May 12, 2008—Mighty Eighth Air Force Museum, 175 Bourne Avenue, Pooler, GA 31322; phone: 912–748–8888.

Tuesday, May 13, 2008—Town and Country Inn, 2008 Savannah Highway,

Charleston, SC 29407; phone: 843–571–1000.

Thursday, May 16, 2008—Sheraton New Bern, 100 Middle Street, New Bern, NC 18560; phone: 252–638–3585.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 2008.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–7213 Filed 4–4–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF67

Schedule for Atlantic Shark Identification Workshops; Changing the Location of an Atlantic Shark Identification Workshop; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public workshops; correction.

SUMMARY: Due to unanticipated construction activity at the North Tampa Branch Library, NMFS is changing the location of its April 24, 2008, Atlantic Shark Identification Workshop that published in the **Federal Register** on March 4, 2008. The May and June workshop locations remain unchanged. Shark dealers are required to attend a workshop to meet new regulatory requirements and maintain valid permits. The Atlantic Shark Identification Workshops are mandatory for all federally permitted Atlantic shark dealers. Additional free workshops will be held in 2008 and announced in the **Federal Register**.

DATES: The dates and times for the Atlantic Shark Identification Workshops have not been changed and will be held April 24, May 22, and June 19, 2008.

See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Tampa, FL; Wilmington, NC; and Jefferson, LA. See **SUPPLEMENTARY INFORMATION** for the corrected Tampa, FL, workshop location.

FOR FURTHER INFORMATION CONTACT: Greg Fairclough by phone:(727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 4, 2008, in FR Doc. E8–4126, on page 11622, in the first column, correct the location of the first workshop listed under the heading ''Workshop Dates, Times, and Locations'' to read:

Workshop Dates, Times, and Locations

1. April 24, 2008, from 10:30 a.m. - 3:30 p.m. Town 'N Country Regional Public Library, Thompson Center Waters Complex, 5455 West Waters Avenue - Suite 208, Tampa, FL 33634.

Atlantic Shark Identification Workshop

Effective December 31, 2007, an Atlantic shark dealer may not receive, purchase, trade, or barter for Atlantic shark unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop will be issued a certificate for each place of business that is permitted to receive sharks.

Dealers may send a proxy to an Atlantic Shark Identification Workshop, however, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit. Only one certificate will be issued to each proxy. A proxy must be a person who: is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports. Additionally, after December 31, 2007, an Atlantic shark dealer may not renew a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location has been submitted with the permit renewal application. Sixteen free Atlantic Shark Identification Workshops were held in 2007.

The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops*.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander by email at *esander@peoplepc.com* or by phone at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following items to the workshop:

Atlantic shark dealer permit holders must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.

Atlantic shark dealer proxies must bring documentation from the shark dealer acknowledging that the proxy is attending the workshop on behalf of the Atlantic shark dealer, a copy of the appropriate permit, and proof of identification.

Workshop Objectives

The shark identification workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Dated: April 1, 2008.

Alan D. Risenhoover

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–7230 Filed 4–4–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Recording Assignments.

Form Number(s): PTO–1594, PTO–1595.

Agency Approval Number: 0651–0027.

Type of Request: Revision of a currently approved collection.

Burden: 181,695 hours annually.

Number of Respondents: 363,388 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 30 minutes (0.5 hours) to prepare and submit a patent or

trademark assignment recordation request.

Needs and Uses: Under 35 U.S.C. 261 and 262 and 15 U.S.C. 1057 and 1060, the United States Patent and Trademark Office (USPTO) records patent and trademark assignment documents that show the transfer of ownership of applications, patents, and trademark registrations from one entity to another. The USPTO provides cover sheets to ensure all the necessary assignment data is submitted for accurate recording. In order to file a request to record an assignment, the respondent must submit an appropriate cover sheet along with copies of the assignment documents to be recorded and payment of the appropriate fee. The recorded documents are available for public inspection, except for those documents that are sealed under secrecy orders or related to unpublished patent applications.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

E-mail: Susan.Fawcett@uspto.gov. Include ''0651–0027 copy request'' in the subject line of the message.

Fax: 571–273–0112, marked to the attention of Susan Fawcett.

Mail: Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before May 7, 2008 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: April 1, 2008.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E8–7171 Filed 4–4–08; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0155]

Submission for OMB Review; Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement regarding prohibition on acquisition of products produced by forced or indentured child labor. A request for public comments was published in the **Federal Register** at 72 FR 67920 on December 3, 2007. No comments were received.

DATES: Submit comments on or before: May 7, 2008.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VPR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 9000–0155, Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor, in all correspondence.

FOR FURTHER INFORMATION CONTACT Mr. Ernest Woodson, Contract Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection complies with Executive Order 13126, Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor, signed by the President on June 12, 1999. Executive Order 13126 requires that this prohibition be enforced within the federal acquisition system by means of: (1) A provision that requires the contractor to certify to the contracting officer that the contractor or, in the case of an incorporated contractor, a responsible official of the contractor has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor; and (2) A provision that obligates the contractor to cooperate fully in providing reasonable access to the contractor's records, documents, persons, or premises if reasonably requested by authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice, for the purpose of determining whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract.

The information collection requirements of the Executive Order are evidenced via the certification requirements delineated at FAR 22.1505, 52.212–3, 52.222–18, and 52.222–19.

To eliminate some of the administrative burden on offerors who must submit the same information to various contracting offices, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) decided to amend the Federal Acquisition Regulation (FAR) to require offerors to submit representations and certifications electronically via the Business Partner Network (BPN), unless certain exceptions apply. Online Representations and Certifications Application (ORCA) is the specific application on the BPN to replace the paper based Representations and Certifications (Reps and Certs) process. The change to the FAR is being accomplished by FAR Case 2002—024. The clearance associated with this case referenced this OMB Control No. 9000–0155 and reduced the hours of burden by 35%—attributable to mandated use of ORCA. This reduction is already reflected in the figures below.

B. Annual Reporting Burden

Respondents: 500.
Responses Per Respondent: 1.
Hours Per Response: 0.325.
Total Burden Hours: 162.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No.

9000–0155, Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor, in all correspondence.

Dated: April 1, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–7197 Filed 4–4–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0035]

Federal Acquisition Regulation; Information Collection; Claims and Appeals

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning claims and appeals. The clearance currently expires on May 31, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, 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; ways to enhance the quality, utility, and clarity of the information to be collected; 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.

DATES: Submit comments on or before June 6, 2008.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0035, Claims and Appeals, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Contract Policy Division, GSA, (202) 208–6925.

SUPPLEMENTARY INFORMATION:

A. Purpose

It is the Government's policy to try to resolve all contractual issues by mutual agreement at the contracting officer's level without litigation. Contractor's claims must be submitted in writing to the contracting officer for a decision. Claims exceeding $100,000 must be accompanied by a certification that (1) the claim is made in good faith; (2) supporting data are accurate and complete; and (3) the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. Contractors may appeal the contracting officer's decision by submitting written appeals to the appropriate officials.

B. Annual Reporting Burden

Respondents: 4,500.
Responses Per Respondent: 3.
Annual Responses: 13,500.
Hours Per Response: 1.
Total Burden Hours: 13,500.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VPR), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0035, Claims and Appeals, in all correspondence.

Dated: April 1, 2008

Al Matera,

Director,Office of Acquisition Policy.

[FR Doc. E8–7203 Filed 4–4–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2007–OS–0136]

Defense Transportation Regulation, Part IV

AGENCY: Department of Defense; United States Transportation Command (USTRANSCOM).

ACTION: Notice; correction.

SUMMARY: The Department of Defense is correcting a Notice to Defense Transportation Regulation, Part IV that appeared on April 1, 2008 (73 FR 17327). The document corrects the docket number and comment period.

DATES: This correction is effective April 1, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Teague, United States Transportation Command, TCJ5/4–PT, 508 Scott Drive, Scott Air Force Base, IL 62225–5357; (618) 229–1985 or Ms. Rosia Lindsey, Surface Deployment and Distribution Command, SDDC–PPP–OPS, 709 Ward Drive, Bldg. 1990, Scott Air Force Base, IL 62225; (618) 220–5484.

Correction

In the **Federal Register** of April 1, 2008, in FR Doc. E8–6660. on page 17327, correct the docket number and public comment period to read as follows:

1. ''[DoD–2007–OS–0137]'' is corrected to read ''[DoD–2007–OS–0136]''.

2. The comment period is corrected to read ''June 6, 2008''.

Dated: April 1, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–7158 Filed 4–4–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Department of Defense; Uniformed Services University of the Health Sciences (USU).

ACTION: Quarterly Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) announcement of the following meeting:

Name of Committee: Board of Regents of the Uniformed Services University of the Health Sciences.

Date of Meeting: Friday, May 16, 2008.

Location: Board of Regents Conference Room (D3001), Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

Time: 9 a.m. to 3 p.m.

Purpose of the Meeting: Meetings of the Board of Regents assure that USU operates in the best traditions of academia. An outside Board is necessary for institutional accreditation.

Agenda: The actions that will take place include the approval of minutes from the Board of Regents Meeting held February 5, 2008; acceptance of administrative reports; approval of faculty appointments and promotions; and the awarding of post-baccalaureate degrees as follows: Doctor of Medicine, Master of Science in Nursing, and masters and doctoral degrees in the biomedical sciences and public health. The President, USU; Dean, USU School of Medicine; Acting Dean, USU Graduate School of Nursing; Director, Armed Forces Radiobiology Research Institute; and Director, U.S. Military Cancer Institute will also present reports. These actions are necessary for the University to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

Meeting Accessibility: Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

SUPPLEMENTARY INFORMATION: Interested persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Designated Federal Officer at the address detailed above. If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered by the Board of Regents until its next open meeting. The Designated Federal Officer will review all timely submissions with the Board of Regents Chairman and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally present their issues during the May 2008 meeting or at a future meeting.

For Further Information and Base Access Procedures Contact: Janet S. Taylor, Designated Federal Officer.

Dated: April 1, 2008

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E8–7154 Filed 4–4–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice Announcing OMB Approval of Information Collection

AGENCY: Office of Vocational and Adult Education, U.S. Department of Education.

ACTION: Notice announcing OMB Approval of Information Collection.

SUMMARY: The Department of Education (Department) announces that the Office of Management and Budget (OMB) has approved the collection of information identified in this notice, following the Department's submission of a request for approval under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). This notice describes the information collection that has been approved, the OMB control number of that collection, and the current expiration date of the collection.

FOR FURTHER INFORMATION CONTACT: Mike Dean, U.S. Department of Education, 400 Maryland Avenue, SW., room 11152, Potomac Center Plaza, Washington, DC 20202–7240. Telephone: (202) 245–7828 or via Internet: *Mike.Dean@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to any of the contact people listed in this section.

SUPPLEMENTARY INFORMATION: The PRA and its implementing regulations require Federal agencies to display OMB control numbers and inform respondents of their legal significance after OMB has approved an agency's information collections. In accordance with those requirements, the Department notifies the public that the following information collection has been approved (or re-approved) by OMB following the Department's submission of an information collection request (ICR):

• OMB Control No. 1830–0567, Measuring Educational Gain in the National Reporting System for Adult Education. The expiration date for this information collection is February 28, 2011.

Electronic Access to This Document

You may 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: *http://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: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 2, 2008.

Troy R. Justesen,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. E8–7215 Filed 4–4–08; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission (EAC).

ACTION: Notice of Virtual Public Forum for EAC Standards Board.

DATE & TIME: Monday, April 21, 2008, 9 a.m. EDT through Friday, April 25, 2008, 5 p.m. EDT.

PLACE: EAC Standards Board Virtual Meeting Room at *http://www.eac.gov.* Once at the main page of EAC's Web site, viewers should click the link to the Standards Board Virtual Meeting Room. The virtual meeting room will open on Monday, April 21, 2008, at 9 a.m. EDT and will close on Friday, April 25, 2008, at 5 p.m. EDT. The site will be available 24 hours per day during that 5-day period.

PURPOSE: The EAC Standards Board will review and provide comment on eight draft chapters of the Election Management Guidelines. The draft chapters contain recommendations and best practices regarding: Absentee voting and vote by mail; acceptance testing; ballot building; contingency planning and change management; developing an audit trail; polling place and vote center management; pre-election and parallel testing; and uniformed and overseas voters.

The EAC Standards Board Virtual Meeting Room was established to enable the Standards Board to conduct business in an efficient manner in a public forum, including being able to review and discuss draft documents, when it is not feasible for an in-person board meeting. The Standards Board will not take any votes or propose any

resolutions during the 5-day forum of April 21–25, 2008. Members will post comments about the eight draft chapters of the Election Management Guidelines

This activity is open to the public. The public may view the proceedings of this special forum by visiting the EAC Standards Board Virtual Meeting Room at *http://www.eac.gov* at any time between Monday, April 21, 2008, 9 a.m. EDT and Friday, April 25, 2008, 6 p.m. EDT. The public also may view the draft chapters of the Election Management Guidelines, which will be posted on EAC'S Web site beginning April 21, 2008. The public may file written statements to the EAC Standards Board at *standardsboard@eac.gov.* Data on EAC's Web site is accessible to visitors with disabilities and meets the requirements of section 508 of the Rehabilitation Act.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Caroline Hunter,

Vice-Chair, U.S. Election Assistance Commission.

[FR Doc. E8–7135 Filed 4–4–08; 8:45 am]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

National Coal Council

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council (NCC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stats. 770) requires notice of these meetings be announced in the **Federal Register**.

DATES: May 22, 2008, 9 a.m–12 Noon.

ADDRESSES: DoubleTree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Kane, Phone: (202) 586–4753, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters related to coal and coal industry issues. The purpose of this meeting is to recognize the important contributions that the NCC has made to the Department and other Federal agencies over the past years.

Tentative Agenda

- Welcome and Call to Order by Ms. Georgia Nelson, Chair.
- Remarks by Secretary of Energy, Samuel W. Bodman (Invited).
- Council Business.

Finance Report by Committee Chairman Richard Eimer.

Secretary's Report by NCC Secretary Larry Grimes.

Reporting Nominating Committee by Committee Chairman Steve Leer.

Election of Officers for 2008–2009 Term.

- Presentation by Bill Fang, EEI Deputy General Counsel, on Climate Change Legislative Proposals and Potential Economic Impacts.
- NCC Study Presentation by Study Work Group Chairman Mark David Goss.
- Other Business.
- Adjourn.

Public Participation: The meeting is open to the public. The Chairman of the NCC will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Robert Kane at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Transcripts: The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on April 2, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–7164 Filed 4–4–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Coal Council

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, May 1, 2008, 10 a.m.–3 p.m. (CDT).

ADDRESSSES: Hilton St. Louis at the Ball Park, One S. Broadway Street, St. Louis, MO.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Kane, Phone: (202) 586–4753, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues:

Tentative Agenda

- Call to Order and Opening Remarks by the Chair.
- Approval of Draft Agenda.
- Discussion of Draft Study Requested by Secretary Samuel W. Bodman by Letter Dated October 12, 2007.
- Action on Draft Study.
- Other Business.
- Adjourn.

Public Participation: The meeting is open to the public. The Chairman of the NCC will conduct the meeting to facilitate orderly business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Mr. Robert Kane at the address and telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Minutes: The minutes will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on April 2, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–7166 Filed 4–4–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1888–025]

York Haven Power Company; York Haven Power Company, LLC; Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protests

March 28, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 1888–025.

c. *Date Filed:* March 24, 2008.

d. *Applicants:* York Haven Power Company. (Transferor) York Haven Power Company, LLC (Transferee).

e. *Name and Location of Project:* York Haven Hydroelectric Project is located on the Susquehanna River in Lancaster and York Counties Pennsylvania.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contacts:* For the transferor: Mr. Michael E. Haddad, York Haven Power Company, C/O Hunton & Williams LLP, 1900 K Street, NW., Suite 1200, Washington, DC 20006–1500.

For the transferee: Mr. Michael E. Haddad, York Haven Power Company, C/O Hunton & Williams LLP, 1900 K Street, NW., Suite 1200, Washington, DC 20006–1500

h. *FERC Contact:* Robert Bell at (202) 502–6062.

i. *Deadline for filing comments, protests, and motions to intervene:* 15 days after the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the Project Number on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* Applicants seek Commission approval to transfer the license for the York Haven Hydroelectric Project from York Haven Power Company, to York Haven Power Company, LLC.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number (P–2512) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the particular application.

o. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicants. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants' representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–7105 Filed 4–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC Docket No. PF08–9–000]

Notice of Pre-Filing Environmental Review for the Ruby Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings; Ruby Pipeline, LLC

March 28, 2008.

On January 31, 2008, the staff of the Federal Energy Regulatory Commission (FERC or Commission) initiated its pre-filing environmental review of the Ruby Pipeline Project, planned by Ruby Pipeline, LLC (Ruby). FERC staff is now beginning to obtain and evaluate information for the preparation of an environmental impact statement (EIS) that will assess and disclose the environmental impacts of the project, which would involve construction and operation of facilities by Ruby in Wyoming, Utah, Nevada, and Oregon. These facilities would consist of about 680 miles of 42-inch-diameter pipeline, 2 new compressor stations, and related appurtenant facilities. The EIS will be used by the Commission in its decision-making process to determine if the project is in the public convenience and necessity.

This notice announces the opening of a scoping period that will be used to gather environmental input from the public and agencies during the early stages of the project. Comments may be submitted either in written form or verbally. In lieu of or in addition to sending written comments, you are invited to attend the public scoping meetings scheduled in the project area. Further instructions on how to submit written comments and additional details of the public scoping meetings are provided in the *Public Participation* section of this notice. The scoping period will close on April 30, 2008.

WEEK 1

April 15, 2008—Elko, Nevada, Hilton Garden Inn, 3650 East Idaho St., (775) 777–1200.

April 16, 2008—Kemmerer, Wyoming, Kemmerer Senior Center, 105 JC Penney Drive, (307) 877–3806.

April 17, 2008—Brigham City, Utah, Box Elder High School Auditorium, 380 South 600 West, (435) 734–4840.

WEEK 2

April 22, 2008—Malin, Oregon, Malin Community Hall, 2307 Front Street, (541) 947–2258.

April 23, 2008—Lakeview, Oregon, Elks Lodge, 323 N. F Street, (541) 947–2258.

April 24, 2008—Winnemucca, Nevada, Winnemucca Convention Center, 50 W. Winnemucca Blvd., (775) 23–5071.

These meetings are designed to provide state and local agencies, interested groups, affected landowners, and the general public with an opportunity to offer comments on the project and on the environmental issues they believe should be addressed in the EIS. A transcript of each meeting will be made so that your comments will be accurately recorded. All meetings are scheduled to begin at 7 p.m. in each respective time zone. All public meetings will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Comments collected during scoping will be a valuable part of the Pre-Filing Process and will help us [1] determine which issues/impacts need to be evaluated in the EIS. As more details of the project route and design become available, additional scoping may be warranted and the public will be provided with additional opportunities to comment.

A ''Pre-Filing Process'' Has Begun

The Commission is initiating its National Environmental Policy Act (NEPA) review for the Ruby Pipeline Project prior to receiving Ruby's formal application. This Pre-Filing Process allows interested stakeholders to become involved early in the project planning with the intent of identifying and resolving issues before a formal application is filed with the FERC. A docket number (PF08–9–000) has been established to place information filed by Ruby and related documents issued or received by the Commission into the public record.[2] Once a formal application is filed with the FERC, a new docket number will be established.

The U.S. Bureau of Land Management (BLM) is participating as a cooperating agency in the preparation of the EIS because the project would cross federally administered lands in Wyoming, Utah, Nevada, and Oregon. The U.S. Forest Service (USFS) is also participating as a cooperating agency because the project would cross the Cache and Fremont-Winema National Forests in Utah and Oregon, respectively. As a cooperating agency, the BLM intends to adopt the EIS per Title 40 of the Code of Federal Regulations (CFR), Part 1506.3 to meet its responsibilities under NEPA regarding Ruby's application for a Right-of-Way Grant and Temporary Use Permit for crossing federally administered lands, including the Cache and Fremont-Winema National Forests. The concurrence or non-concurrence of the USFS would be considered in the BLM's decision as well as impacts on resources and programs, and the proposed project's conformance with land use plans.

With this notice, we are asking other federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues in the project area to formally cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated Ruby's proposal relative to their responsibilities. Agencies which would like to request cooperating status should follow the instructions for filing comments described later in this notice. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

This notice is being sent to potentially affected landowners along and adjacent to the project route and within 0.5 mile of proposed compressor station sites; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; local libraries and newspapers; and other interested parties.

To assist potentially affected landowners, a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including the potential use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Ruby is proposing to construct a new pipeline system in order to transport natural gas reserves in the Rocky Mountain region to the growing markets in the Western United States. Specifically, Ruby is proposing to construct the following facilities:

- Approximately 680 miles of 42-inch-diameter pipeline between the Opal Hub in Lincoln County, Wyoming and the Malin Hub in Klamath County, Oregon;
- Two new compressor stations located in Lincoln County, Wyoming and Elko County, Nevada;
- 5 metering facilities;
- 40 mainline block valves; and
- 10 pig launcher/receivers facilities.[3]

A map depicting the general location of project facilities is shown in Figure 1.[4] Ruby has identified a preferred project route, which is shown on the map as a dark solid line. Ruby had originally considered a more northern route coming out of Wyoming, as shown on the map as a dotted red line. Although no longer preferred by Ruby, we are currently including the northern route in our evaluation as a route alternative.

The project, if completed, would have a capacity for transporting approximately 1.2 billion cubic feet of natural gas per day. Ruby anticipates filing its formal application with the FERC in January 2009 and would request approval such that the proposed facilities are put into service in the first quarter of 2011. By this schedule, construction of the Ruby Pipeline Project would begin in the first or second quarter of 2010.

Land Requirements for Construction

Ruby would use a nominal 115-foot-wide construction right-of-way for the project. Additional work area would be required at certain feature crossings (*e.g.*, waterbodies, wetlands, roads, and railroads), staging areas, pipe yards, contractor's yards, and widening of certain access roads.

Based on preliminary information, we estimate that construction of the

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[2] To view information in the docket, follow the instructions for using the eLibrary link at the end of this notice.

[3] A pipeline ''pig'' is a device designed to internally clean or inspect the pipeline. A pig launcher/receiver is an aboveground facility where pigs are inserted or retrieved from the pipeline.

[4] Figure 1 (general project map) is not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (*www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference Room at (202) 502–8371. For instructions on connecting to eLibrary, refer to the *Additional Information* section at the end of this notice. The project map was sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Ruby by calling 1–877–598–5263 (toll free) or 719–520–4450.

proposed facilities would disturb about 12,000 acres of land. Of the 12,000 acres, about 8,000 acres would be temporarily disturbed and about 4,000 acres would be permanently maintained for operation of the pipeline within a 50-foot-wide permanent right-of-way and as aboveground facility sites. Following construction, all temporary workspaces would be restored and allowed to revert to former use. About 60 percent of the proposed route would cross federally administered land managed by the BLM or USFS.

The EIS Process

The FERC will be the lead federal agency for the preparation of the EIS. As noted above, the BLM and USFS will be cooperating agencies. NEPA requires the FERC to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity under Section 7 of the Natural Gas Act. NEPA also requires us to identify and address concerns the public may have about proposals. This is the ''scoping'' process referred to earlier. The main goal of the scoping process is to focus the analysis in the EIS on important environmental issues and reasonable alternatives. By this Notice, we are requesting agency and public comments on the scope on the issues to be addressed in the EIS. All comments received will be considered during the preparation of the EIS.

We have already started to meet with Ruby personnel, agencies, and other interested stakeholders to discuss the project and identify issues/impacts and concerns. Between February 19 and March 18, 2008, representatives of FERC staff participated in public open houses sponsored by Ruby in the project area. FERC staff explained the NEPA environmental review process to interested stakeholders and noted comments related to the project.

Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A comment period will be allotted for review of the draft EIS. We will consider all timely comments on the draft EIS and revise the document, as necessary, before issuing a final EIS.

Public Participation

You are encouraged to become involved in this process and provide your specific comments or concerns about Ruby's planned project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. If you wish to mail comments, please carefully follow these instructions:

- Send an original and two copies of your letter to:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE.; Room 1A, Washington, DC 20426.

- Label one copy of your comments for the attention of Gas 1, DG2E; and
- Reference Docket No. PF08–9–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC, on or before April 30, 2008.

The Commission encourages electronic filing of comments. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the link to ''*Documents and Filings*'' and ''*eFiling.*'' eFiling is a file attachment process and requires that you prepare your submission in the same manner as you would if filing on paper, and save it to a file on your computer's hard drive. New eFiling users must first create an account by clicking on ''*Sign up*'' or ''*eRegister.*'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.'' In addition, there is a ''*Quick Comment*'' option available, which is an easy method for interested persons to submit text only comments on a Project. The Quick-Comment User Guide can be viewed at *www.ferc.gov/docs-filing/efiling/quick-comment-guide.pdf.* Quick Comment does not require a FERC eRegistration account; however, you will be asked to provide a valid e-mail address. All comments submitted under either eFiling or the Quick Comment option are placed in the public record for the specified docket or Project number(s). Comments submitted electronically must be submitted by April 30, 2008.

Availability of Additional Information

Additional information about the Project is available from the FERC's Office of External Affairs at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.*, PF08–9). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the text of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to the eSubscription link on the FERC Internet Web site (*http://www.ferc.gov/docs-filing/esubscription.asp*). Information concerning the involvement of the BLM in the EIS process may be obtained from Mark Mackiewicz, PMP, National Project Manager, at (435) 636–3616. Information concerning the involvement of the USFS may be obtained from Catherine Callaghan at the Fremont-Winema National Forest at (541) 947–2151, and David Ream (801) 236–3400 at the Wasatch-Cache National Forest.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–7104 Filed 4–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD08–1–004]

Review of Cost Submittals by Other Federal Agencies for Administering Part I of the Federal Power Act; Notice Requesting Questions and Comments on Fiscal Year 2007 Other Federal Agency Cost Submissions

March 28, 2008.

In its Order On Rehearing Consolidating Administrative Annual Charges Bill Appeals And Modifying Annual Charges Billing Procedures (109 FERC 61,040), the Commission set forth an annual deadline for Other Federal Agencies (OFAs) to submit their costs related to Administering Part I of the Federal Power Act. The Commission required the OFAs to submit their costs by December 31st of each fiscal year (FY) using the OFA Cost Submission Form. The order also announced that a technical conference would be held for

the purpose of reviewing the submitted cost forms and detailed supporting documentation.

On March 27, 2008, the Commission held a technical conference to review the FY 2007 OFA cost submissions, which was attended by OFAs and licensees. As of the date of this notice, the Commission has not received any further information that would change the analysis or figures discussed during the Technical Conference.

Within three weeks of the date of this notice, interested parties may file their specific questions and comments on the FY 2007 OFA cost submissions with the Commission under Docket No. AD08–1–004. Once filed, the Commission will forward the questions and comments to the OFAs for response.

Anyone with questions pertaining to the technical conference or this notice should contact Fannie Kingsberry at (202) 502–6108 (via e-mail at *fannie.kingsberry@ferc.gov*), or Norman Richardson at (202) 502–6219 (via e-mail at *norman.richardson@ferc.gov*).

Kimberly D. Bose,

Secretary.

[FR Doc. E8–7106 Filed 4–4–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2007–0126; FRL–8551–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Petroleum Refineries (Renewal), EPA ICR Number 1692.06, OMB Control Number 2060–0340

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 7, 2008.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2007–0126, to: (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: María Malavé, Compliance Assessment and Media Programs Division (Mail Code 2223A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malave.maria@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 9, 2007 (72 FR 10735), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2007–0126, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Petroleum Refineries (Renewal).

ICR Numbers: EPA ICR Number 1692.06, OMB Control Number 2060–0340.

ICR Status: This ICR is scheduled to expire on April 30, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Petroleum Refineries, published at 40 CFR part 63, subpart CC, were proposed on July 15, 1994, and promulgated on August 18, 1995. These regulations apply to the following existing and new petroleum refining process units and emission points located at refineries that are major sources of hazardous air pollutants (HAPs): Miscellaneous process vents, storage vessels, wastewater streams and treatment operations, equipment leaks, gasoline loading racks, and marine vessel loading operations. These regulations also apply to storage vessels and equipment leaks associated with bulk gasoline terminals or pipeline breakout stations that are related to an affected petroleum refinery. New facilities include those that commenced construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart CC.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all

sources subject to NESHAP. In addition, respondents are required to comply with the recordkeeping and reporting requirements contained in the following rules: either 40 CFR part 61, subpart VV or 40 CFR part 63, subpart H for equipment leaks (which includes an initial report and semiannual summaries of leak detection and repair); 40 CFR part 61, subpart FF for wastewater operations; portions of 40 CFR part 63, subpart R for gasoline loading racks; and 40 CFR part 63, subpart Y for marine tank vessel loading operations.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the United States Environmental Protection Agency (EPA) regional office.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 320 (rounded) hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Petroleum refineries that are major sources of HAP emissions

Estimated Number of Respondents: 134

Frequency of Response: Annual, semiannual, on occasion, and quarterly

Estimated Total Annual Hour Burden: 411,889 hours

Estimated Total Annual Costs: There are $37,026,877 in labor costs and no annualized capital/startup or O&M costs

Changes in the Estimates: The increase of 1,835 hours in labor burden to industry compared to the most recently approved ICR is due to various revisions and refinements to the calculation of burden hours for ongoing recordkeeping and reporting as applied to the existing respondents.

The revisions and refinements made to the calculation of burden hours also caused an increase in labor burden cost to the regulatory agencies when compared to the figures in the most recently approved ICR.

Dated: March 31, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–7207 Filed 4–4–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2007–0059; FRL–8551–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Solvent Extraction for Vegetable Oil Production (Renewal), EPA ICR Number 1947.04, OMB Control Number 2060–0471

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 7, 2008.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2007–0059, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *regulations.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 9, 2007 (72 FR 10735), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2007–0059, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Solvent Extraction for Vegetable Oil Production (Renewal).

ICR Numbers: EPA ICR Number 1947.04, OMB Control Number 2060–0471.

ICR Status: This ICR is scheduled to expire on July 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Solvent Extraction for Vegetable Oil Production were proposed on May 26, 2000 (65 FR 34252), and promulgated on April 21, 2001.

These standards apply to any existing, reconstructed, or new vegetable oil production process, which are defined as a group of continuous process equipment used to remove oil from oilseeds through direct contact with an organic solvent such as n-hexane. The term ''oilseed'' refers to the following agricultural products: corn germ, cottonseed, flax, peanut, rapeseed (source of canola oil), safflower, soybean, and sunflower. A vegetable oil production process is only subject to the regulation if it is a major source of hazardous air pollutant (HAP) emissions, or is collocated with other sources that are individually or collectively a major source of HAP emissions.

Notification reports are required upon the construction, reconstruction, or modification of any vegetable oil production processor. Also required is one-time-only initial notification for existing, new and reconstructed sources, and notification of an actual startup date. Annual compliance reports are required, along with a deviation report, an immediate startup, shutdown, and malfunction (SSM) report, and a periodic SSM report. Affected entities must retain reports and records for five years.

Owners or operators of solvent extraction for vegetable oil production facilities subject to the rule must maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart GGGG, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

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 OMB Control Number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 185 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Solvent extraction for vegetable oil production.

Estimated Number of Respondents: 101.

Frequency of Response: Annually, initially and occasionally.

Estimated Total Annual Hour Burden: 39,385.

Estimated Total Annual Cost: $2,512,947 in labor costs. There are no annualized capital/startup and annual O&M costs associated with this ICR.

Changes in the Estimates: There is no change in the labor hours or cost in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden.

Since there are no changes in the regulatory requirements and there is no significant industry growth, the labor hours and cost figures in the previous ICR are used in this ICR and there is no change in burden to industry.

Dated: March 31, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–7210 Filed 4–4–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8552–2]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Kerr-McGee Gathering, LLC—Frederick Compressor Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to an operating permit issued by the Colorado Department of Public Health and Environment (CDPHE). Specifically, the Administrator has granted the January 3, 2007 petition, submitted by Rocky Mountain Clean Air Action (Petitioner), to object to January 1, 2007 operating permit issued to Kerr-McGee Gathering to operate the Frederick Natural Gas Compressor Station (Kerr-McGee-Frederick Station).

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioners may seek judicial review of those portions of the petitions, which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final Order, the petition, and other supporting information at the EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the copies of the final order, the petition, and other supporting information. You may view the hard copies Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before the visiting day. Additionally, the final order for Kerr-McGee-Frederick Station is available electronically at: *http://www.epa.gov/region7/programs/artd/air/title5/petitiondb/petitions/kerrmcgee_frederick_decision2007.pdf.*

FOR FURTHER INFORMATION CONTACT: Donald Law, Office of Partnerships and Regulatory Assistance, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7015, *law.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, a Title V operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator, within 60 days after the expiration of this review period, to object to a Title V operating permit if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issue arose after this period.

The EPA received a petition from Rocky Mountain Clean Air Action dated January 3, 2007, requesting that EPA object to the issuance of the Title V operating permit to Kerr-McGee Gathering, LLC for the operation of the Frederick Natural Gas Compressor Station for the following reasons: (I) The Title V permit failed to assure compliance with PSD requirements because CDPHE failed to consider whether emissions from adjacent and interrelated pollutant emitting activities triggered PSD review, specifically Kerr-McGee owned natural gas wells that supply gas to the Frederick Station; (II) in light of CDPHE's failure to consider PSD compliance, it is likely that the Title V permit must include a compliance schedule; (III) CDPHE failed to respond to significant comments submitted by the Petitioner during the Title V public comment period; and (IV) CDPHE failed to consider adjacent and interrelated pollutant emitting activities in defining the ''source'' subject to Title V.

On February 7, 2008, the Administrator issued an order granting the petition. The order explains the reasons behind EPA's conclusion to grant the petition for objection.

Dated: March 27, 2008.

Stephen S. Tuber,

Acting Deputy Regional Administrator, Region 8.

[FR Doc. E8–7211 Filed 4–4–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1196; FRL–8551–8]

Recent Postings of Broadly Applicable Alternative Test Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the broadly applicable alternative test method approval decisions the EPA has made under and in support of New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) in 2007.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each alternative test method approval document is available on EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html.* For questions about this notice, contact Jason M. DeWees, Air Quality Assessment Division, Office of Air Quality Planning and Standards (E143–02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–9724; fax number: 919–541–0516; e-mail address: *dewees.jason@epa.gov.* For technical questions about individual alternative test method decisions, refer to the contact person identified in the individual approval documents.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This notice will be of interest to entities regulated under 40 CFR parts 60, 61, and 63, and State, local, Tribal agencies, and EPA Regional Offices responsible for implementation and enforcement of regulations under 40 CFR parts 60, 61, and 63.

B. How Can I Get Copies Of this Information?

You may access copies of the broadly applicable alternative test method approval documents from the EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html.*

II. Background

This notice identifies EPA's broadly applicable alternative test method approval decisions issued between February 1, 2007, and December 31, 2007, under the New Source Performance Standards (NSPS), 40 part 60, and the National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR parts 61 and 63 (see Table 1). Source owners and operators may voluntarily use these broadly applicable alternative test methods. Use of these broadly applicable alternative test methods does not change the applicable emission standards.

As explained in a previous **Federal Register** notice published at 72 FR 4257, 1/30/07, the EPA Administrator has the authority to approve the use of alternative test methods to comply with requirements under 40 CFR parts 60, 61, and 63. This authority is found in sections 60.8(b)(3), 61.13(h)(1)(ii), and 63.7(e)(2)(ii). Over the years, we have performed thorough technical reviews of numerous requests for alternatives and modifications to test methods and procedures. Based on these experiences, we have found that often these changes or alternatives would be equally valid and appropriate to apply to other sources within a particular class, category, or subcategory. Consequently, we have concluded that where a method modification or a change or alternative is clearly broadly applicable to a class, category, or subcategory of sources, it is both more equitable and efficient to approve its use for all appropriate sources and situations at the same time. It is important to clarify that alternative methods are not mandatory but permissive. Sources are not required to employ such a method but may choose to do so in appropriate cases. By electing to use an alternative method, the source owner or operator consents to thereafter demonstrating compliance with applicable requirements based on the results of the alternative method until approved to do so otherwise. The criteria for approval and procedures for submission and review of broadly applicable alternative test methods are outlined at 72 FR 4257, 1/30/07. EPA will continue to announce approvals for broadly applicable alternative test methods on the EPA's Web site *http://www.epa.gov/ttn/emc/approalt.html* and intends to publish a notice annually that summarizes approvals for broadly applicable alternative test methods.

This notice comprises a summary of six such approval documents added to our technology transfer network from February 1, 2007, through December 31, 2007. The alternative test number, the reference method affected, sources affected, and modification or alternative method allowed are listed in *Table 1* of this notice. Complete copies of these approval documents can be obtained from the EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html.* If you are aware of reasons why a particular alternative test method approval that we issue should not be broadly applicable, we request that you make us aware of the reasons within 60

days of the **Federal Register** notice announcing the broad approval, and we will revisit the broad approval. Any objection to a broadly applicable alternative test method as well as the resolution of that objection will be announced on the EPA's Web site *http://www.epa.gov/ttn/emc/approalt.html* and in the subsequent **Federal Register** notice. If we should decide to retract a broadly applicable test method, we would continue to grant case-by-case approvals, as appropriate, and would (as States, local and Tribal agencies and EPA Regional Offices should) consider the need for an appropriate transition period for users either to request case-by-case approval or to transition to an approved method.

Dated: March 28, 2008.

Jennie N. Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

TABLE 1.—APPROVED ALTERNATIVE TEST METHODS AND MODIFICATIONS TO TEST METHODS UNDER APPENDICES A OR B IN CFR 60, 61, AND 63 MADE BETWEEN FEBRUARY 2007 AND DECEMBER 2007

Alternative No.	As an alternative or modification to . . .	For . . .	You may . . .
Alt–032	Default thermal efficiency values in Subpart AAA in § 60.536(i)(3).	Wood Stoves affected under the NSPS for Residential Wood Heaters in 40 CFR part 60, subpart AAA.	Use CSA B415.1 test protocol for determination of actual thermal efficiency rating in lieu of default values.
Alt–034	Method 23—Determination of Polychlorinated Dibenzo-p dioxins and Polychlorinated Dibenzofurans from Municipal Waste Combustors.	Sources subject to 40 CFR part 63, subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.	Omit the sample gas filtration temperature sensor; Omit the methylene chloride rinse; and Use a Teflon coated stainless steel nozzle in gas streams less than 290°C (554°F).
Alt–035	Method 308—Procedure for Determination of Methanol Emission from Stationary Sources.	Sources subject to 40 CFR part 63, subpart S, National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry.	Use NCASI Method CI/SG/PULP–94.03 in lieu of Method 308.
Alt–036	Method 23—Determination of Polychlorinated Dibenzo-p dioxins and Polychlorinated Dibenzofurans from Municipal Waste Combustors.	Sources subject to 40 CFR part 63, subpart LLL—National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry.	Substitute the toluene rinse for the methylene chloride rinse; and Combine all fractions including the toluene rinse before analysis.
Alt–037	Method 18—Measurement of Gaseous Organic Compound Emissions by Gas Chromatography.	Sources subject to 40 CFR part 63, subpart GGG, National Emissions Standards for Hazardous Air Pollutants for Pharmaceutical Production.	Use Method 320 in lieu of Method 18 to demonstrate by definition (§ 63.536) that a vent is not a process vent because it is emitting less than 50 ppmv of HAPs.
Alt–038	Method 18—Measurement of Gaseous Organic Compound Emissions by Gas Chromatography.	Sources subject to 40 CFR part 63, subpart UUUU—National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing.	Use Method 320 in lieu of Method 18 to demonstrate compliance with 40 CFR part 63, subpart UUUU.

[FR Doc. E8–7199 Filed 4–4–08; 8:45 am]
BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 10, 2008, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- March 13, 2008

B. New Business—Regulations

- Farmer Mac Risk-Based Capital Stress Test Revisions (Version 3.0)—Final Rule
- Financing for Processing or Marketing Operations—Final Rule

C. Reports

- Auditors' Report on FCSBA FY 2007 Financial Statements

Closed Session *

- OSMO Supervisory and Oversight Activities

Dated: April 1, 2008.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 08–1110 Filed 4–3–08; 2:19 pm]
BILLING CODE 6705–01–P

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 08–15; DA 08–292]

Consumer & Governmental Affairs Bureau Seeks Comment on Request for Clarification That Internet Protocol Speech-to-Speech Service Is a Form of Telecommunications Relay Service Compensable From the Interstate TRS Fund

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Consumer & Governmental Affairs Bureau (Bureau) seeks comment on the request for clarification filed by Hawk Relay, LLC (Hawk Relay), that Internet Protocol Speech-to-Speech (IP STS) is a form of Telecommunications Relay Service (TRS). Specifically, the Bureau seeks comment on whether IP STS qualifies as a TRS under section 225(a)(3) of the Communications Act of 1934.

DATES: Comments are due on or before May 7, 2008. Reply comments are due on or before May 22, 2008.

ADDRESSES: Interested parties may submit comments identified by [CG Docket No. 08–15 and/or DA 08–292], by any of the following methods:

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*, or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and CG Docket No. 08–15. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in response.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

• Commercial mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Parties who choose to file by paper should also submit their filings on compact disc. The compact disc should be submitted, along with three paper copies to: Dana Wilson, Consumer & Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room 3-C418, Washington, DC 20554. Such a submission should be on a compact disc formatted in an IBM compatible format using Word 2003 or a compatible software. The compact disc should be accompanied by a cover letter and should be submitted in ''read only'' mode. The compact disc should be clearly labeled with the commenter's name, proceeding (CG Docket No. 08–15), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the compact disc. The label should also include the following phrase ''CD-Rom Copy—Not an Original.'' Each compact disc should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters filing by paper must send a compact disc copy to the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gregory Hlibok, (800) 311–4381 (voice), (202) 418–0431 (TTY), or e-mail: *Gregory.Hlibok@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 08–292. Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the Dates section. The full text of document DA 08–292 and subsequently filed documents in this matter are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160. Document DA 08–292 and subsequently filed documents in this matter may also be found by searching ECFS at *http://www.fcc.gov/cgb/ecfs* (insert CG Docket No. 08–15 into the Proceeding block).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document DA 08–292 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html.*

Synopsis

On December 21, 2007, Hawk Relay, LLC (Hawk Relay) filed a request for clarification that Internet Protocol Speech-to-Speech Relay Service (IP STS) is a form of Telecommunications Relay Service (TRS) eligible for compensation from the Interstate TRS Fund. *See* Hawk Relay, *Request for Expedited Clarification for the Provision and Cost Recovery of Internet Protocol Speech to Speech Relay Service,* CG Docket No. 03–123, filed December 21, 2007 (*Request*). In its *Request,* Hawk Relay describes IP STS as a type of Speech-to-Speech service (STS) that uses the Internet, rather than a traditional telephone line, to connect the consumer to the relay provider. STS enables persons with a speech disability to make telephone calls using their own voice through relay centers with specially trained communications assistants who re-voice to the calling party what the STS user says.

The Bureau hereby seeks comment on the *Request.* In addition, assuming that IP STS qualifies as a TRS under section 225(a)(3) of the Communications Act of 1934, the Bureau seeks comment on the jurisdictional separation of costs, the applicability of the TRS mandatory minimum standards, and on any other issues relevant to the provision of IP STS.

Federal Communications Commission.

Nicole McGinnis,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. E8–7202 Filed 4–4–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2856]

Petition for Reconsideration of Action in Rulemaking Proceeding

March 26, 2008.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by April 22, 2008. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules (CS Docket No. 98–120).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–7221 Filed 4–4–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 08–129]

Notice of Suspension and Initiation of Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (Bureau) gives notice of Mr. Keith J. Madeiros suspension from the schools and libraries universal service support mechanism (or E-Rate Program). Additionally, the Bureau gives notice that debarment proceedings are commencing against him. Mr. Madeiros, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation.

DATES: Opposition requests must be received by May 7, 2008. However, an opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or May 7, 2008 whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

ADDRESSES: Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418–0843 or e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 47 CFR 0.111. Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Below is the suspension letter, DA 08–129, which was mailed to Mr. Madeiros and released on January 18, 2008. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov*. The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com*.

Federal Communications Commission.

Trent B. Harkrader,

Deputy Chief, Investigations and Hearings Division, Enforcement Bureau.

January 18, 2008

DA 08–129

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED AND FACSIMILE (860–522–2490)

Mr. Keith J. Madeiros
c/o Richard R. Brown, Esq.
Brown Paindiris & Scott, LLP
100 Pearl Street, Suite 1100
Hartford, CT 06103
E-Mail: *rbrown@bpslawers.com*

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–07–IH–9550

Dear Mr. Madeiros:

The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction for mail fraud in violation of 18 U.S.C. 1341 in connection with your participation in the schools and libraries universal service support mechanism (''E-Rate program'').[1] Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[2]

[1] Any further reference in this letter to ''your conviction'' refers to your February 13, 2007 guilty plea and subsequent conviction of mail fraud. *United States* v. *Keith J. Madeiros.*, Criminal Docket No. 3:07–CR–29–RNC–2, Plea Agreement (D. Conn. filed Feb. 13, 2007 and entered Feb. 15, 2007) (''*Madeiros Plea Agreement*''); *United States* v. *Keith J. Madeiros*, 3:07–CR–29–RNC–2, Judgment (D. Conn. filed and entered Dec. 10, 2007) (''*Madeiros Judgment*'').

[2] 47 CFR 54.8; 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (''*Second Report and Order*'') (adopting section 54.521 to suspend and debar parties from the E-rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[3] You pled guilty to mail fraud for activities in connection with your participation in the E-Rate program involving telecommunications upgrade projects in four Connecticut school districts.[4] While employed at Southwestern Bell Communications (''SBC''), you and Richard E. Brown, both SBC account managers, recommended subcontractors to perform telecommunications upgrades for the school districts.[5] In addition, you and Mr. Brown reviewed invoices submitted by subcontractors to SBC for payment, which SBC then submitted to the Universal Service Administrative Company (''USAC'') for reimbursement from the E-Rate fund.[6] You admitted to participating in a scheme with Brown and Scott A. Federowicz, a manager of a SBC first-tier subcontractor, to defraud USAC.[7] You and Mr. Brown each created a sham company and submitted fictitious invoices totaling approximately $452,203 to Mr. Federowicz, who approved those invoices for payment on behalf of the SBC subcontractor.[8] The SBC subcontractor, unaware that no work had been performed, in turn billed SBC and SBC ultimately sought from USAC reimbursement for those fictitious expenses from the E-Rate program.[9]

Pursuant to section 54.8(a)(4) of the Commission's rules,[10] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[11] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[12]

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[13] Such requests, however, will not ordinarily be granted.[14] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[15] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[16]

II. Initiation of Debarment Proceedings

Your guilty plea to and conviction of criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.8(c) of the Commission's rules.[17] Therefore, pursuant to section 54.8(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[18] Absent extraordinary circumstances, the Bureau will debar you.[19] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[20] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[21]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[22] The Bureau may, if necessary to protect the public interest, extend the debarment period.[23]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4– C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and

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[3] *See Second Report and Order*, 18 FCC Rcd at 9225, para. 66; *Program Management Order*, 22 FCC Rcd at 16387, para. 32. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized.'' 47 CFR 54.8(a)(6).

[4] *See Madeiros Plea Agreement* at 1; *United States* v. *Richard E. Brown and Keith J. Madeiros.*, Criminal Docket No. 3:07–CR–29–RNC–2, Information, paras. 1–21 (D. Conn. filed Feb. 13, 2007 and entered Feb. 14, 2007) (''*Madeiros/Brown Information*'').

[5] *See Madeiros/Brown Information* at paras. 8–9; *http://newhaven.fbi.gov/dojpressrel/2007/nh120707.htm* (last accessed Dec. 11, 2007) (''*DOJ December 7 Press Release*''). The Bureau has debarred Richard E. Brown from the E-Rate program. *See* Letter from Hillary S. DeNigro to Richard E. Brown, Notice of Debarment, DA 07–4732 (Enf. Bur., Investigations & Hearings Div., rel. Nov. 27, 2007).

[6] *See Madeiros/Brown Information* at para. 9; *DOJ December 7 Press Release* at 1.

[7] *See Madeiros/Brown Information* at paras. 11–21. The Bureau also has debarred Scott A. Federowicz from the E-Rate program. See Letter from Hillary S. DeNigro to Scott A. Federowicz, Notice of Debarment, 22 FCC Rcd 17258 (Enf. Bur., Investigations & Hearings Div., rel. Sept. 24, 2007).

[8] *See Madeiros/Brown Information* at paras. 11–21; *DOJ December 7 Press Release* at 1.

[9] *See DOJ December 7 Press Release* at 1.

[10] 47 CFR 54.8(a)(4). *See Second Report and Order*, 18 FCC Rcd at 9225–9227, paras. 67–74.

[11] 47 CFR 54.8(a)(1), (d).

[12] *Second Report and Order*, 18 FCC Rcd at 9226, para. 69; 47 CFR 54.8(e)(1).

[13] 47 CFR 54.8(e)(4).

[14] *Id.*

[15] 47 CFR 54.8(e)(5).

[16] *See Second Report and Order*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5), 54.8(f).

[17] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism.'' 47 CFR 54.8(c). Such activities ''include the receipt of funds or discounted services through [the Federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the Federal universal service] support mechanisms.'' 47 CFR 54.8(a)(1).

[18] *See Second Report and Order*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(3).

[19] *Second Report and Order*, 18 FCC Rcd at 9227, para. 74.

[20] *See id.*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5).

[21] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

[22] *Second Report and Order*, 18 FCC Rcd at 9225, para. 67; 47 CFR 54.8(d), 54.8(g).

[23] *Id.*

Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of the response via email to *diana.lee@fcc.gov* and to *vickie.robinson@fcc.gov*.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov*.

Sincerely yours,

Trent B. Harkrader,
Deputy Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail) Anthony E. Kaplan, Esq., Supervisory Assistant United States Attorney Calvin B. Kurimai, Esq., Assistant United States Attorney

[FR Doc. E8–7060 Filed 4–3–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, April 9, 2008. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

MATTER TO BE CONSIDERED AT THE OPEN PORTION: Affordable Housing Program Amendments.

MATTER TO BE CONSIDERED AT THE CLOSED PORTION: Periodic Update of Examination Program Development and Supervisory Findings.

CONTACT PERSON FOR MORE INFORMATION: Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202–408–2876 or *williss@fhfb.gov.*

Dated: April 2, 2008.

By the Federal Housing Finance Board.

Neil R. Crowley,

Acting General Counsel.

[FR Doc. 08–1108 Filed 4–3–08 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 22, 2008.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Robert I. Guenthner, Newton, Kansas, and Ivan D. Knudsen, Wichita, Kansas, as co–trustees of the V. Jerry Blue Master Trust; to acquire control of Republic Financial Corporation, and thereby indirectly acquire control of Southwest National Bank, both in Wichita, Kansas.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Laura Lankford, West, Texas; George B. Graves, Jr., and Sarah Lou Bracken, both of Waco, Texas; to acquire voting shares of West Bancshares, Inc., West, Texas, and thereby indirectly acquire voting shares of Pointwest Bank, West, Texas.

Board of Governors of the Federal Reserve System, April 2, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–7184 Filed 4–4–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E8-6162) published on page 16015 of the issue for Wednesday, March 26, 2008.

Under the Federal Reserve Bank of San Francisco heading, the entry for Wells Fargo & Company, San Francisco, California, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of The Jackson State Bank & Trust, Jackson, Wyoming; Shoshone First Bank, Cody, Wyoming; Sheridan State Bank, Sheridan, Wyoming; and First State Bank of Pinedale, Pinedale, Wyoming, and to acquire certain assets and assume certain liabilities of United Bancorporation of Wyoming, Inc., Jackson, Wyoming.

Comments on this application must be received by April 21, 2008.

Board of Governors of the Federal Reserve System, April 2, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–7185 Filed 4–4–08 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has

determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 21, 2008.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Franklin Financial Network, Inc.; to acquire the assets and assume the liabilities of Banc Compliance Group, LLC, and thereby engage through its wholly–owned subsidiary, Banc Compliance Group, Inc., all of Franklin, Tennessee, in providing management consulting and counseling activities, pursuant to section 225.28(b)(9)(i)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, April 1, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–7086 Filed 4–4–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–NEW]

Agency Information Collection Request: 60-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 at (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: Evaluation of the Afghanistan Health Initiative—OMB No. 0990–NEW–Office of the Assistant Secretary for Planning and Evaluation (ASPE).

Abstract: The Offices of Global Health Affairs (OGHA) and the Assistant Secretary for Planning and Evaluation (ASPE), within the U.S. Department of Health and Human Services (HHS), are requesting Office of Management and Budget (OMB) approval for collection of information to evaluate two components of the *Afghanistan Health Initiative (AHI).* The Afghanistan Health Initiative is authorized by the Afghanistan Freedom Support Act of 2002 [Pub. L. 107–327 section 103(a)]. The *AHI's* goal is to improve maternal and child health and to reduce maternal and child mortality in Afghanistan, primarily through strengthening and updating the knowledge and skills of clinical service providers and managers at the Rabia Balkhi Hospital (RBH) in Kabul. Under the *AHI,* HHS has funded separate cooperative agreements with International Medical Corps (IMC) and CURE International (CURE).

The evaluation includes two approaches for data collection: (1) A set of qualitative interviews with four respondent groups (OB/GYN residents, attending physicians, midwives, and Rabia Balkhi Hospital management staff) and (2) administering a subset of the clinical Standards Based Management (SBM) assessment with two respondent groups (OB/GYN residents and midwives). Estimates of annualized reporting burden are as follows:

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Management Interview Guide	Management Staff	21	1	30/60	11
Clinician Interview Guide	Attending Physicians	8	1	30/60	4
Clinician Interview Guide	1st–4th Year Resident Physicians	11	1	30/60	6
Clinician Interview Guide	Midwives	15	1	30/60	8
1st Year Resident, Standards-Based Management Assessment.	1st Year Resident physician staff	31	1	1.5	47
2nd Year Resident, Standards-Based Management Assessment.	2nd Year Resident physician staff	8	1	1.5	12
3rd Year Resident, Standards-Based Management Assessment.	3rd Year Resident physician staff	9	1	1	9
4th Year Resident, Standards-Based Management Assessment.	4th Year Resident physician staff	8	1	1.5	12

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Midwife, Standards-Based Management Assessment.	Midwives	75	1	2	150
Total					259

Debbie Kramer,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–7242 Filed 4–4–08; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project:

Title: Tracking of Participants in the Head Start Impact Study.

OMB No.: 0970–0229.

Description: The Administration for Children and Families (ACF) within the Department of Health and Human Services (HHS) will collect follow-up information from children and families in the Head Start Impact Study. In anticipation of conducting an 8th grade follow-up for the study, ACF will collect information necessary to identify respondents' current location and follow-up with respondents in the future.

The Head Start Impact Study is a longitudinal study involving approximately 5,000 first time enrolled three- and four-year-old preschool children across 84 nationally representative grantee/delegate agencies. Participants have been randomly assigned to either a Head Start group or a control group. Data collection for the study began in fall of 2002 and has been extended through late spring 2008 to include the participants' 3rd grade year.

ACF will continue to examine outcomes for the sample through the spring of the participant's 8th grade year. To maintain adequate sample size, telephone interviews will be conducted in order to update the respondent's location and contact information. This information will be collected from parents or guardians in the spring of 2009, 2010, and 2011. A small set of additional items will provide information on the parents' perception of the children's well-being.

Respondents: Treatment and control group members in the Head Start Impact Study.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average buden hours per response	Total burden hours
Tracking Interview	4,667	1	.25	1,167
Estimated Total Annual Burden Hours				1,167

In compliance with the requirements of section 3506(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 Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447. Attn: ACF Reports Clearance Officer. E-mail address: *OPREInfoCollection@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 shall 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 31, 2008.

Brendan C. Kelly,

OPRE Reports Clearance Officer.

[FR Doc. E8–7138 Filed 4–4–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Organ Procurement and Transplantation Network

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction and extension of deadline date.

SUMMARY: The Health Resources Services Administration (HRSA) published a notice in the **Federal Register** of March 3, 2008 (FR Doc. E8–3994), pages 11420–11421, requesting comments to assist in determining whether it should engage in rulemaking with respect to vascularized composite allografts, and also to announce a meeting for discussion and recommendations regarding that issue.

The notice is to extend HRSA's deadline for receiving written comments

to July 2, 2008, and to change the zip code of the address where the meeting will be held.

Correction: In the **Federal Register** of March 3, 2008, in FR Doc. E8–3994, on page 11421, 1st column under the heading **DATES**:

1st line, change to read: Written comments must be received at HRSA by July 2, 2008.

10th line, change to read: The meeting will be held on Friday, April 4, 2008, from 10 a.m. to 4 p.m., at the Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Dated: April 1, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–7174 Filed 4–4–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Research Project in Lung Assessment.

Date: April 28, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Holly Patton, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–435–0280, *pattonh@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 31, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–7131 Filed 4–4–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Integrative Pathways to Health and Illness.

Date: May 1, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jon E. Rolf, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Bethesda, MD 20814, (301) 402–7703, *rolfj@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Cognitive Aging.

Date: May 7, 2008.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Allcja L. Markowska, PhD, DSC, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Social Relations, Health, and Aging.

Date: May 16, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 31, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–7129 Filed 4–4–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Nursing Research Special Emphasis Panel, NINR Loan Repayment Program Review (L30/L40).

Date: April 18, 2008.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 6701 Democracy Blvd., Suite 710, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Yujing Liu, PhD, MD, Chief, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 451–5152, *yujing_liu@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding

the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: March 31, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–7130 Filed 4–4–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research, Special Emphasis Panel Review Loan Repayment Applications.

Date: April 30, 2008.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NIDCR/NIH, 6701 Democracy Blvd., Rm. 675, Bethesda, MD 20892–4878, (301) 594–4827, *kims@email.nidr.nih.gov*.

Name of Committee: National Institute of Dental and Craniofacial Research, Special Emphasis Panel Review RFA DE–08–009 R21s.

Date: May 2, 2008.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jonathan Horsford, PhD, Scientific Review Officer, NIDCR, 45 Center Drive, 4AN–24E, Bethesda, MD 20892, 301–594–4859, *horsforj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: March 31, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–7132 Filed 4–4–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Allergy and Infectious Diseases Special Emphasis Panel; New Drug Discovery for Tuberculosis.

Date: May 9, 2008.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Darren D. Sledjeski, PhD, Scientific Review Officer, NIH/NIAID/DHHS, Scientific Review Program, 6700B Rockledge Drive, MSC–7616, Room 3131, Bethesda, MD 20892–7616, 301–451–2638, *sledjeskid@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 31, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–7133 Filed 4–4–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2008 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a Single Source Grant to the Education Development Resource Center, Inc., Newton, Massachusetts.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award approximately $996,000 (total costs) per year for up to two years to the Education Development Resource Center, Inc. Newton, Massachusetts. This is not a formal request for applications. Assistance will be provided only to the Education Development Resource Center, Inc. based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Title: SM–08–014

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243

Authority: Section 520C of the Public Health Service Act, as amended.

Justification: Through the Suicide Prevention Resource Center (SPRC), the Education Development Center supports the technical assistance and information needs of SAMHSA State/Tribal Youth Suicide Prevention and Campus Suicide Prevention grantees and State, Territorial, and Tribal suicide prevention coordinators and coalition members with customized assistance and technical resources. They accomplish this through planning conferences and training events, creating publications and Web content on suicide and suicide prevention for professionals, advocates, and consumers; identifying and disseminating best practices; facilitating informational exchanges and peer-to-peer mentoring using listservs and other technologies; and promoting suicide prevention as a component of mental health transformation.

Funding for the SPRC and for this program supplement are components of the Garrett Lee Smith Memorial Act, most recently included in the 2008 Omnibus Appropriations Act. Congress authorized funding for only one Suicide Prevention Resource Center; therefore the program supplement must be awarded to the grantee that manages the SPRC, specifically to Education

Development Center, Inc., Newton, Massachusetts. There are no other sources with the available resources and expertise to successfully complete the tasks of this proposal. Further, it would be both inefficient and wasteful to fund a second technical assistance provider for the same group of grantees.

FOR FURTHER INFORMATION CONTACT: Shelly Hara, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 8–1081, Rockville, MD 20857; telephone: (240) 276–2321; E-mail: *shelly.hara@samhsa.hhs.gov*.

Toian Vaughn,

SAMHSA Committee Management Officer.

[FR Doc. E8–6997 Filed 4–4–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

National Communications System

[Docket No. NCS–2008–0001]

National Security Telecommunications Advisory Committee

AGENCY: National Communications System, DHS.

ACTION: Notice of Partially Closed Advisory Committee Meeting.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will meet in a partially closed session.

DATES: Thursday, May 1, 2008, from 1:15 p.m. until 5 p.m.

ADDRESSES: The meeting will take place at the U.S. Chamber of Commerce, 1615 H St., NW., Washington DC. If you desire meeting materials, contact Ms. Sue Daage at (703) 235–5526 or by e-mail at *sue.daage@dhs.gov.* Please submit your comments by May 8, 2008. Comments must be identified by NCS–2008–0001 and may be submitted by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *NSTAC1@dhs.gov.* Include docket number in the subject line of the message.
- Mail: Office of the Manager, National Communications System (N5), Department of Homeland Security, Washington, DC 20529.
- Fax: 1–866–466–5370.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and NCS–2008–0001, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the NSTAC, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Kiesha Gebreyes, Acting Chief, Customer Service Division at (703) 235–5525, email: *Kiesha.Gebreyes@dhs.gov* or write the Deputy Manager, National Communications System, Department of Homeland Security, CS&C/NCS/N5.

SUPPLEMENTARY INFORMATION: The NSTAC advises the President on issues and problems related to implementing national security and emergency preparedness telecommunications policy. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*).

At the upcoming meeting, between 1:15 p.m. and 2:30 p.m., the NSTAC will receive comments from government stakeholders, and discuss NSTAC work on legislation and regulation, research and development, and outreach. This portion of the meeting will be open to the public.

Between 2:30 p.m. and 5 p.m., the NSTAC will receive briefings from the Department of Defense, the Acting Assistant to the President for Homeland Security and Counterterrorism, and the Department of Treasury. The NSTAC will discuss impacts of the global economy on communications, cyber security and network security. This portion of the meeting will be closed to the public.

Basis For Closure: Briefings from the Department of Defense, the Acting Assistant to the President for Homeland Security and Counterterrorism, and the Department of Treasury, as well as discussions on cyber security and network security will likely involve sensitive infrastructure information concerning system threats and explicit physical/cyber vulnerabilities related to current communications capabilities. Public disclosure of such information would heighten awareness of potential vulnerabilities. Pursuant to Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*), the Department has determined that this discussion will concern matters which, if disclosed, would be likely to significantly frustrate the implementation of a proposed agency action. Accordingly, the relevant portion of this meeting will be closed to the public pursuant to the authority set forth in 5 U.S.C. 552b(c)(4).

Lawrence Hale,

Acting Director, National Communications System.

[FR Doc. E8–7074 Filed 4–4–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2008–N0048; 80221–1113–0000–F5]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before May 7, 2008.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist, see **ADDRESSES**, (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests. 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 in your comment

to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit No. TE–0540111

Applicant: John Green, Riverside, California.

The applicant requests an amendment to take (harass by survey) the Yuma clapper rail (*Rallus longirostris yumanensis*) in conjunction with surveys in California, Nevada, and Arizona for the purpose of enhancing its survival.

Permit No. TE–804203

Applicant: Stephen Myers, Victorville, California.

The applicant requests an amendment to take (harass by survey) the Yuma clapper rail (*Rallus longirostris yumanensis*) in conjunction with surveys in California and Arizona, and take (harass by survey) the Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys in Nevada, Arizona, New Mexico, Utah, and Colorado for the purpose of enhancing its survival.

Permit No. TE–039640

Applicant: Kristopher Alberts, San Clemente, California.

The applicant requests an amendment to take (harass by survey) the Southwestern willow flycatcher (*Empidonax traillii extimus*), and (nest monitor) the lease Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and monitoring throughout the range of the species in California, Arizona, New Mexico, Nevada, Utah, Texas, and Colorado for the purpose of enhancing their survival.

Permit No. TE–176209

Applicant: San Francisco International Airport, San Francisco, California.

The applicant requests an amendment to take (survey, capture, mark, and recapture) the San Francisco garter snake (*Thamnophis sirtalis*) in conjunction with habitat enhancement and population monitoring in San Mateo County, California, for the purpose of enhancing its survival.

Permit No. TE–135968

Applicant: Theresa C. Miller, San Diego, California.

The applicant requests an amendment to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California, for the purpose of enhancing their survival.

We solicit public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Dated: April 1, 2008.

Michael Fris,

Acting Regional Director, Region 8, Sacramento, California.

[FR Doc. E8–7172 Filed 4–4–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2008–N0057, 96300–1671–0000–P5]

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
172317	Henry Vilas Zoo	73 FR 2937; Jan. 16, 2008	Feb. 29, 2008.
160107	Detroit Zoological Society	72 FR 68176; Dec. 4, 2007	Feb. 29, 2008.
041309	USFWS Marine Mammals Management	72 FR 48292; August 23, 2007	March 7, 2008.
067925	USGS Alaska Science Center	72 FR 58320; October 15, 2007	March 7, 2008.

Dated: March 7, 2008.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E8–7188 Filed 4–4–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2008–N0056; 96300–1671–0000–P5]

Denial of Permits for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of denial of permits for marine mammals.

SUMMARY: The following permits were denied.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to:

U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service denied the requested permits.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Denial date
134178	Hubbs-Sea World Research	72 FR 33242; June 15, 2007	Feb. 28, 2008.
142439	Beyond Bears, Inc	72 FR 70339; Dec. 11, 2007	Feb. 19, 2008.

Dated: March 7, 2008.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E8–7214 Filed 4–4–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Wind Turbine Guidelines Advisory Committee; Announcement of Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), will host the second meeting of the Wind Turbine Guidelines Advisory Committee (Committee), on April 23–24, 2008. The meeting is open to the public. The agenda will include the review and approval of Committee groundrules; reports from the Subcommittees on: Existing Guidelines, Guiding Principles, Legal, Landscape Habitat (Mapping), and Other Models/Uncertainty; and briefings from Service regional offices on wind/wildlife issues.

DATES: The meeting will take place on April 23–24, 2008. On April 23, the meeting will be held from 8 a.m. to 5:30 p.m. On April 24, the meeting will be held from 8 a.m. to 3:15 p.m. Following the adjourning of the Committee on April 24th, an administrative training will be held for Committee members only.

ADDRESSES: Holiday Inn Arlington, 4610 N. Fairfax Drive, Arlington, VA 22203. For more information, see ''Meeting Location Information'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Rachel London, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–2161.

SUPPLEMENTARY INFORMATION:

Background

On March 13, 2007, the Department of the Interior (Interior) published a notice of establishment of the Committee and call for nominations in the **Federal Register** (72 FR 11373). The Committee's purpose is to provide advice and recommendations to the Secretary of the Interior (Secretary) on developing effective measures to avoid or minimize impacts to wildlife and their habitats related to land-based wind energy facilities. The Committee is expected to exist for 2 years. Its continuation is subject to biennial renewal. The Committee will meet approximately four times per year. All Committee members serve without compensation. In accordance with the Federal Advisory Committee Act (5 U.S.C. App.), a copy of the Committee's charter has been filed with the Committee Management Secretariat, General Services Administration; Committee on Environment and Public Works, U.S. Senate; Committee on Natural Resources, U.S. House of Representatives; and the Library of Congress.

The Secretary appointed 22 individuals to the Committee on October 24, 2007, representing the varied interests associated with wind energy development and its potential impacts to wildlife species and their habitats. The USFWS hosted a technical workshop on February 26–27, 2008, and held the first Committee meeting on February 28, 2008. The workshop and first meeting were open to the public. The public will have an opportunity to comment at all Committee meetings.

Meeting Location Information

Please note that the Holiday Inn is accessible to wheelchair users. If you require additional accommodations, please notify us by April 16, 2008.

If you plan on attending the meeting, please register at *http://www.fws.gov/habitatconservation/windpower/wind_turbine_advisory_committee.html* by April 16, 2008. While this meeting is open to the public, seating is limited due to room capacity. We will give preference to registrants based on date and time of registration. There will be standing room available if seats are filled.

Dated: April 2, 2008.

Dave Stout,

Wind Turbine Guidelines Advisory Committee Designated Federal Officer.

[FR Doc. E8–7170 Filed 4–4–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2008–N0062, 50130–1265–0000–S3]

Nantucket National Wildlife Refuge, Nantucket County, MA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and an associated National Environmental Policy Act (NEPA) document for Nantucket National Wildlife Refuge (NWR). We provide this notice in compliance with our planning policy to advise other agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider. We are also requesting public comments.

DATES: To ensure consideration, we must receive your written comments by 30 days after the date of publication in the **Federal Register**. We will hold public meetings to begin the CCP planning process; see *Public Meetings* under **SUPPLEMENTARY INFORMATION**. We will announce opportunities for public input in local news media throughout the CCP planning process, and will announce upcoming public meetings in

local news media and the refuge Web site.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

Electronic mail: northeastplanning@fws.gov. Include ''Nantucket NWR CCP/EA'' in the subject line of the message.

U.S. Postal Service: Eastern Massachusetts NWR Complex, 73 Weir Hill Road, Sudbury, Massachusetts 01776.

In-Person Drop-off, Viewing, or Pickup: Call 978–443–4661 to make an appointment during regular business hours at 73 Weir Hill Road, Sudbury, Massachusetts.

Fax: 978–443–2898

FOR FURTHER INFORMATION CONTACT: Libby Herland, Project Leader, at 978–443–4661, or Carl Melberg, Planning Team Leader, at 978–443–4661.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Nantucket NWR in Nantucket County, Massachusetts. We provide this notice in compliance with our planning policy to (1) advise other Federal and State agencies and the public of our intention to conduct detailed planning on this refuge, and (2) obtain suggestions and information on the scope of topics to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Improvement Act of 1997 (Improvement Act) (16 U.S.C. 668dd–668ee), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act and NEPA.

We establish each unit of the NWRS for specific purposes. We use these purposes as the bases to develop and prioritize management goals and objectives for the refuge within the NWRS mission, and to determine how the public can use the refuge. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation approach to this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the refuge's establishing purposes and the mission of the NWRS. Our CCP process provides opportunities for Tribal, State, and local governments; agencies; organizations; and the public to participate. At this time, we encourage the public to provide input in the form of issues, concerns, ideas, and suggestions for the future management of Nantucket NWR.

We will conduct the environmental review of this environmental assessment in accordance with the requirements of NEPA, as amended (42 U.S.C. 4321 *et seq*.); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Nantucket National Wildlife Refuge

Nantucket NWR was established in 1973 under the Act Authorizing the Transfer of Certain Real Property for Wildlife or other purposes from the U.S. Coast Guard. The refuge, which consists of 24 acres, is located at Great Point on Nantucket Island, Massachusetts. The refuge is composed of beach and dune habitat. These areas serve the habitat needs of seabirds, wading birds, shorebirds, and raptors.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities that we may address in the CCP. We have briefly summarized these issues below. During public scoping, we may identify additional issues.

We recognized a need to clarify and formalize our relationship with the Trustees of Reservations at Coskata-Coatue Wildlife Refuge, particularly on the issues of on-site management and fee collection and retention.

Additionally, public use throughout the refuge will be reevaluated in relation to wildlife-dependent recreation and other mission compatible uses. Issues of concern are over-the-sand vehicle use and non-wildlife dependent beach use.

We need to address the disposition of the U.S. Coast Guard lighthouse, which is an inholding on the refuge.

We need to ensure protection of wildlife resources, including terns, plovers, and seals.

Public Meetings

We will involve the public through open houses, informational and technical meetings, and written comments. We will release mailings, news releases, and announcements to provide information about opportunities for public involvement in the planning process. You can obtain the schedule from the planning team leader or project leader (see **ADDRESSES**). You may also submit comments anytime during the planning process by mail, electronic mail, or fax (see **ADDRESSES**). There will be additional opportunities to provide public input once we have prepared a draft CCP.

We anticipate that public meetings will be held on Nantucket Island. For specific information including dates, times, and locations, contact the project leader (see **ADDRESSES**) or visit our Web site at *http://www.fws.gov/northeast/nantucket*.

Public Availability of Comments

Our practice is to make comments, including names, home addresses, home phone numbers, and electronic mail addresses of respondents available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. 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.

Dated: April 1, 2008.

Wendi Weber,

Acting Regional Director, Northeast Region, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. E8–7165 Filed 4–4–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2008–N0058; 96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by May 7, 2008.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Iowa Primate Learning Sanctuary, Des Moines, IA, PRT–170354

The applicant requests a permit to re-export the skeletal remains and organs of one male pygmy chimpanzee (*Pan paniscus*) to Great Ape Research Institute in Japan c/o Hayashibara Biochemical Laboratories Inc, Okayama, Japan for the purpose of enhancement of the survival of the species through scientific research.

Applicant: Jason K. Bruce, Wallace, CA, PRT–177261

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: William R. Muns, Chico, TX, PRT–177280

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Joanne E. Witte, Stanwood, MI, PRT–176593

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Thad D. Young, Klamath Falls, OR, PRT–169056

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Jacob W. Avara, Houston, TX, PRT–165796

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Matthew Frantz, Houston, TX, PRT–165798

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Anne B. Avara, Houston, TX, PRT–165797

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Scott D. Duncan, Houston, TX, PRT–165795

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR Part 17) and/or marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: U.S. Geological Survey—Western Ecological Research Center, Santa Cruz Field Station, Santa Cruz, CA, PRT–672624

The applicant requests renewal and amendment of the permit to take up to 850 southern sea otter (*Enhydra lutris nereis*) from the wild for the purpose of scientific research on the ecology of the species. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: James R. Jones, Prince George, VA, PRT–177877

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Steven P. Neuberger, Kingman, AZ, PRT–177878

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Dwane D. Drury, Midland, TX, PRT–177879

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: March 7, 2008.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E8–7219 Filed 4–4–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2008–N0066; 96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by May 7, 2008.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Museum of Zoology—University of Michigan, Ann Arbor, MI, PRT–178005

The applicant requests a permit to import biological samples from mantled howler monkey (*Alouatta palliata*) from Veracruz, Mexico for the purpose of enhancement of the species through scientific research. This notification covers activities conducted by the applicant over a five-year period.

Applicant: Herbert Mueller, West Chester, OH, PRT–177995

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete application or requests for a public hearing on this application should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Randy S. Ulmer, Cave Creek, AZ, PRT–178988

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Dated: March 14, 2008.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E8–7209 Filed 4–4–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Public Law 93–599 Transfer of Excess Property—Cherokee Nation, OK

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Land Transfer from the General Services Administration.

SUMMARY: This notice informs the public that the General Services Administration (GSA), Greater Southwest Region, Fort Worth, Texas, has transferred approximately 790.70 acres, of excess property, more or less, in Sequoyah County, Oklahoma, to the Secretary of the Interior, to be held in trust for the benefit and use of the Cherokee Nation.

FOR FURTHER INFORMATION CONTACT: Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, Mail Stop–4639–MIB, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

On March 4, 1998, pursuant to authority contained in the Federal Property and Administrative Services Act of 1949, as amended by Public Law 93–599, dated January 2, 1975 (88 Stat. 1954), the below described property was transferred by the Local GSA Regional (7) Administrator of the General Services Administration, without compensation or reimbursement, to the Secretary of the Interior, to be held in trust for the benefit and use of the Cherokee Nation of Oklahoma.

The description of the real property, known as the Robert S. Kerr Lock and Dam and Reservoir, (GSA Control No. 7–D–OK–561), is more particularly described as follows:

Indian Meridian, Sequoyah County, Oklahoma

A parcel of land located in Sections 21, 27, 28 and 33, Township 11 North, Range 23 East, of the Indian Meridian, in Sequoyah County, Oklahoma, more particularly described as:

Beginning at the Section Corner common to Sections 20, 21, 28, and 29, Township 11 North, Range 23 East;

Thence N 89°45′41″ E along the South line of said Section 21, a distance of 1654.37 feet, to Corps of Engineers Monument (C. of E. Mon.) 7–8;

Thence N 13°45′51″ E a distance of 1367.13 feet, to C. of E. Mon. 6–7;

Thence S 89°59′44″ E a distance of 662.09 feet to C. of E. Mon. 5–6;

Thence S 00°14′29″ E a distance of 1323.70 feet, to C. of E. Mon. 8–5;
Said monument being on the South line of Section 21;
Thence N 89°45′41″ E along said line, a distance of 2151.71 feet, to C. of E. Mon. 3–4;
Thence S 24°08′40″ W a distance of 1914.38 feet;
Thence N 88°27′25″ W a distance of 771.75 feet;
Thence N 27°36′48″ W a distance of 1800.00 feet;
Thence S 89°53′12″ W a distance of 830.00 feet;
Thence S 00°06′48″ E a distance of 1520.00 feet;
Thence S 20°38′51″ E a distance of 1535.02 feet;
Thence N 84°26′32″ E a distance of 1710.92 feet;
Thence N 59°37′02″ E a distance of 1327.14 feet;
Thence N 07°56′57″ E a distance of 228.68 feet;
Thence N 62°39′01″ E a distance of 190.50 feet;
Thence S 43°00′46″ E a distance of 173.50 feet, to a point on the East line of said Section 28, said line also being the West line of said Section 27;
Thence N 52°15′59″ E a distance of 334.62 feet;
Thence S 52°39′33″ E a distance of 294.34 feet;
Thence S 22°16′40″ W a distance of 471.06 feet;
Thence S 26°13′22″ W a distance of 404.66 feet;
Thence S 36°11′52″ W a distance of 242.52 feet, to the West line of said Section 27, said line also being the East line of said Section 28;
Thence S 33°37′32″ W a distance of 379.37 feet;
Thence S 47°58′46″ W a distance of 1234.39 feet;
Thence S 54°48′57″ W a distance of 1174.84 feet;
Thence S 05°41′58″ W a distance of 663.65 feet;
Thence S 42°22′50″ W a distance of 2046.21 feet;
Thence S 78°00′52″ E a distance of 2109.25 feet;
Thence S 15°06′48″ E a distance of 2770.00 feet;
Thence S 89°44′13″ W a distance of 1660.00 feet;
Thence S 00°10′38″ E a distance of 422.41 feet, to the south line of said Section 33;
Thence S 89°51′01″ W along said line, a distance of 1676.13 feet;
Thence N 12°43′20″ W a distance of 5409.62 feet, to the Section Corner common to Sections 28, 29, 32 and 33, Township 11 North, Range 23 East;
Thence N 00°10′38″ W along the West line of said Section 28, a distance of 5274.35 feet, more or less to the Point of Beginning.

The above described lands contain a total of 790.70 acres, more or less, which is transferred subject to compliance with the provisions of the National Environmental Policy Act of 1969, as amended, Section 106 of the National Historic Preservation Act of 1966, as amended, Executive Order 11593, Protection and Enhancement of the Cultural Environment, Executive Orders 11988 and 11990, Subject: Floodplain Management and Protection of Wetlands, and other appropriate guidelines, valid rights, reservations, rights-of-way, easements of record, regulations, laws, and Executive Orders pertaining to the future use of this property.

This Notice does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, public utilities, railroads and pipelines, and any other rights-of-way or reservations of record.

Dated: March 28, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E8–7198 Filed 4–4–08; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–930–08–5410–FR; OR 65263; HAG–08–0084)]

Application for Conveyance of Federal Mineral Interests, Harney County, Oregon

AGENCY: Bureau of Land Management (BLM).

ACTION: Notice of Realty Action.

SUMMARY: The surface owner of the land described in this notice, containing approximately 200 acres, has filed an application for the purchase of the federally-owned mineral interest. Publication of this notice temporarily segregates the mineral interest from appropriation under the public land laws, including the mining laws.

DATES: Interested persons may submit written comments only to the Bureau of Land Management (BLM) at the address stated below. Comments must be received no later than May 22, 2008.

ADDRESSES: Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208. Detailed information concerning this action is available for review at the above address.

FOR FURTHER INFORMATION CONTACT: Jenny Liang, Land Law Examiner, at the above address, or at (503) 808–6299.

SUPPLEMENTARY INFORMATION: The surface owner of the following described land has filed an application pursuant to Section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719(b), for the purchase and conveyance of the Federally-owned mineral interest in the following described land:

Willamette Meridian

T. 19 S., R. 25 E.,
Sec. 28, NE¼SE¼ and S½S½.

The area described contains 200 acres, more or less, in Harney County, Oregon.

Effective immediately, BLM will process the pending application in accordance with the regulations stated in 43 CFR part 2720. Written comments concerning the application must be received no later than the date specified above in this notice for that purpose.

The purpose for a purchase and conveyance is to allow consolidation of surface and subsurface minerals ownership where (1) there are no known mineral values, or (2) in those instances where the Federal mineral interest reservation interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than the mineral development.

Upon publication of this notice in the **Federal Register**, the mineral interest described above will be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate upon issuance of a patent or deed to such mineral interests; or upon final rejection of the application, or two years from the date of filing of the application whichever comes first.

Comments: Comments, including names, street address, and other contact information of respondents will be available for public review. 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 in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All persons who wish to present comments, suggestions, or objections in connection with the pending application may do so by writing to Fred O'Ferrall, Chief, Branch of Lands and Mineral Resources, at the above mentioned address. No verbal, electronic or facsimile comments will be accepted.

Authority: 43 CFR 2720.1–1 (b).

Dated: March 27, 2008.

Fred O'Ferrall,

Chief, Branch of Lands and Mineral Resources.

[FR Doc. E8–7161 Filed 4–4–08; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Vehicle Infrastructure Integration Consortium

Notice is hereby given that, on March 11, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. (''the Act''), the Vehicle Infrastructure Integration Consortium (''VIIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Mercedes-Benz Research & Technology North America, Inc., Palo Alto, CA has become a member and Chrysler, LLC, Auburn Hills, MI has succeeded DaimlerChrysler Corporation as a member.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VIIC intends to file additional written notification disclosing all changes in membership.

On May 1, 2006, VIIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 2, 2006 (71 FR 32128).

The last notification was filed with the Department on August 22, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 27, 2006 (71 FR 56558).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–7009 Filed 4–4–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—System of Systems Security (SOSSEC) Consortium

Notice is hereby given that, on February 25, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), System of Systems Security (SOSSEC) Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties are: DDN, Incorporated, Danville, NH; MATRX, Morgantown, WV; CACI, Eatontown, NJ; MountainTop Technologies Inc., Johnstown, PA; Abacus Technology Corp., Chevy Chase, MD; Rutgers University, The Center for Information Management, Newark, NJ; (Individual) L. Robert Kimball, Ebensburg, PA; FirTH, Alexandria, VA; and Concurrent Technology Corp., Largo, FL.

The general area of SOSSEC Consortium's planned activity is improving by an order of magnitude the nation's ability to detect, intervene, respond and recover to and from any and all threats on the homeland by integrating multiple existing and emerging Homeland Defense, Homeland Security and Force Protection projects and systems to markedly improve regional security, rapidly and efficiently; implementing practical strategies for core research, technology transition, system engineering and expansion and replication of regional capabilities to accelerate achievement of large scale interoperable security capabilities; also, growing SOSSEC to represent a community of interest, both public and private to foster best of breed concepts, technologies, techniques and procedures for long term national Homeland Defense, Homeland Security and Force Protection development.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–7013 Filed 4–4–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Air-Conditioning, Heating and Refrigeration Institute, Inc.

Notice is hereby given that, on March 10, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Air-Conditioning, Heating and Refrigeration Institute, Inc. (''AHRI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Air-Conditioning, Heating and Refrigeration Institute, Inc., Arlington, VA. The nature and scope of AHRI's standards development activities are to develop, promulgate and publish voluntary consensus standards for air-conditioning and refrigeration products. AHRI standards establish rating criteria and procedures for measuring and certifying product performance. AHRI's standards ensure the rating of air-conditioning and refrigeration products on a uniform basis, so that buyers and users can properly compare products for specific applications. AHRI'S voluntary consensus standards are developed by AHRI members and other interested parties who wish to participate in AHRI's standards development process.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–6999 Filed 4–4–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International—Standards

Notice is hereby given that, on December 11, 2007, pursuant to Section 6(a) of the National Cooperative

Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International—Standards (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between September 2007 and December 2007 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org*.

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on September 7, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 7, 2007 (72 FR 62864).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–7004 Filed 4–4–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Mechanical Engineers

Notice is hereby given that, on March 6, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. (''the Act''), American Society of Mechanical Engineers (''ASME'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since October 31, 2007, ASME has established one new standards-writing committee, published two new standards, and initiated five new standards activities within the general nature and scope of ASME's standards development activities, as specified in its original notification. More detail regarding these changes can be found at *http://www.asme.org*.

On September 15, 2004, ASME filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on October 31, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 10, 2007 (72 FR 69709).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–7012 Filed 4–4–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International—Standards

Notice is hereby given that, on February 29, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 5 4301 *et seq.* (''the Act''), ASTM International-Standards (''ASTN'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Acts provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between December 2007 and February 2008, designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org*.

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on September 7, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 7, 2007 (72 FR 62864).

Patricia Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–6996 Filed 4–4–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Clean Diesel V

Notice is hereby given that, on February 27, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Clean Diesel V (''Clean Diesel V'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Borgwarner, Auburn Hills, MI; Corning, Inc., Corning, NY; Delphi, Troy, MI; Federal Mogul, Inc., Plymouth, MI; Ford Motor Company, Dearborn, MI; Guangxi Yuchai Machinery Co., Ltd., Guangxi, People's Republic of China; Honda R&D Co., Ltd., Tochigi Prefecture, Japan; Honeywell International Inc., Torrance, CA; Iveco Motorenforschung AG, Arbon, Switzerland; John Deere, Waterloo, IA; Umicore, Catoosa, OK; Volvo Powertrain Corp., Gotenborg, Sweden; Cummins Engine Co., Columbus, IN and Deutz, AG Cologne, Germany have been added as parties to this venture. No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Clean Diesel V intends to file additional written notifications disclosing all changes in membership.

On January 10, 2008, Clean Diesel V filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section

6(b) of the Act on February 25, 2008, (73 FR 10064).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–7001 Filed 4–4–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Development and Evaluation of a Gas Chromatograph Testing Protocol

Notice is hereby given that, on March 6, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. (''the Act''), Southwest Research Institute—Cooperative Research Group on Development and Evaluation of a Gas Chromatograph Testing Protocol (''GCTP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: ABE Inc., Totalflow Products, Bartlesville, OK; Chevron Pipeline, Houston, TX; Operations Technology Development, Des Plains, IL; Questar Gas Company, Salt Lake City, UT; KeySpan Energy, Hicksville, NY; APGA Research Foundation, Mesa, AZ; Southern California Gas Company, Los Angeles, CA; NiCor Gas, Naperville, IL; Consolidated Edison Company of New York Inc., New York, NY; Pacific Gas & Electric Co., Walnut Creek, CA; and TransCanada Pipelines Ltd, Calgary, Alberta, Canada.

The general area of GCTP's planned activity is to develop a performance test protocol for gas chromatographs (''GCs'') used by the natural gas industry. A test procedure will be created and evaluated through tests of multiple brands of GCs in controlled experiments. Findings will be provided to the American Petroleum Institute for use in developing a test protocol for general use. The general protocol will help users in the natural gas industry to define test conditions for their own performance evaluations. With this protocol, industry users can select reliable and appropriate GCs for their own applications. The protocol may also be used to support acceptance of units by custody transfer parties and regulatory agencies, such as BLM, MMS, PHMSA, or state regulatory bodies. Membership in this research group remains open, and the participants intend to file additional written notification disclosing all changes in membership or planned activities.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–7007 Filed 4–4–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Venture Agreement Between Air Products and Chemicals, Inc. and Konarka Technologies, Inc., in Furtherance of NIST Cooperative Agreement (Proposal Number 00–00–7749)

Notice is hereby given that, on March 5, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Joint Venture Agreement Between Air Products and Chemicals, Inc. and Konarka Technologies, Inc., in Furtherance of NIST Cooperative Agreement (Proposal Number 00–00–7749) (''Joint Venture'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Konarka Technologies, Inc., Lowell, MA and Air Products and Chemicals, Inc., Allentown, PA. The general area of the Joint Venture's planned activity is to produce and commercialize organic photovoltaic modules that are transparent to any pre-selected region of the visible spectrum. This unique feature enables the application of these colored, transparent, power producing modules in windows for commercial and residential buildings and greenhouses.

The activities of this Joint Venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, U.S. Department of Commerce.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–7006 Filed 4–4–08; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 28, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). 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: *king.darrin@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Administration (EBSA), 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* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

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 submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of currently approved collection.

Title: Suspension of Pension Benefits Regulation Pursuant to 29 CFR 2530.203–3.

OMB Number: 1210–0048.

Affected Public: Private Sector: Business or other for-profits.

Total Estimated Number of Respondents: 47,614.

Total Estimated Annual Burden Hours: 162,274.

Total Estimated Annual Costs Burden: $107,263.

Description: Section 203(a)(3)(B) of the Employee Retirement Security Act and regulations thereunder (see 29 CFR 2530.203–3) govern the circumstances under which pension plans may suspend pension benefit payments to retirees that return to work, or of participants who continue to work beyond normal retirement age. More specifically, in order for a plan to suspend benefits pursuant to the regulation, it must notify the affected retiree or participant during the first calendar month or payroll period in which the plan withholds payment that benefits are suspended. The notice must include the specific reasons for such suspension, a general description of the plan provisions authorizing the suspension, a copy of the relevant plan provisions, and a statement indicating where the applicable regulations may be found, i.e., 29 CFR 2530.203–3. In addition, the suspension notification must inform the retiree or participant of the plan's procedure for affording a review of the suspension of benefits.

The requirement that retirees or participants be notified in the event of a suspension of benefits is intended to protect their non-forfeitable right to their normal retirement benefits. By informing retirees or participants of the reasons for the suspension, the authority for the suspension, and the plan's procedure for review of a suspension of benefits, participants are made aware of the status of their pension benefits and are able to raise with the plan facts or issues that may be relevant to determining whether a suspension of benefits is proper under the circumstances. For additional information, see related notice published at 72 FR 72767 on December 21, 2007.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E8–7169 Filed 4–4–08; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of Job Corps; Advisory Committee on Job Corps; Meeting

AGENCY: Office of Job Corps, Department of Labor.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: On August 22, 2006, the Advisory Committee on Job Corps (ACJC) was established in accordance with the provisions of the Workforce Investment Act and the Federal Advisory Committee Act. The Committee was established to advance Job Corps' new vision for student achievement aimed at 21st century high-growth employment. The Committee was established to advance Job Corps' new vision for student achievement aimed at 21st century high-growth employment. This Committee will also evaluate Job Corps program characteristics, including its purpose, goals, and effectiveness, efficiency, and performance measures in order to address the critical issues facing the provision of job training and education to the youth population that it serves. The Committee may provide other advice and recommendations with regard to identifying and overcoming problems, planning program or center development or strengthening relations between Job Corps and agencies, institutions, or groups engaged in related activities.

DATES: The meeting will be held on April 21–22, 2008 from 1 p.m. to 4 p.m. on April 21 and from 8 a.m. to 2 p.m. on April 22.

ADDRESSES: The Advisory Committee meeting will be held at the Sheraton St. Louis City Center Hotel & Suites, 400 South 14th Street, St. Louis, MO 63103; Telephone: (314) 231–5007.

FOR FURTHER INFORMATION CONTACT: Crystal Woodard, Office of Job Corps, 202–693–3000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 22, 2006 the Advisory Committee on Job Corps (71 FR 48949) was established in accordance with the provisions of the Workforce Investment Act, and the Federal Advisory Committee Act. The Committee was established to advance Job Corps' new vision for student achievement aimed at 21st century high-growth employment. This Committee will also evaluate Job Corps program characteristics, including its purpose, goals, and effectiveness, efficiency, and performance measures in order to address the critical issues facing the provision of job training and education to the youth population that it serves. The Committee may provide other advice and recommendations with regard to identifying and overcoming problems, planning program or center development or strengthening relations between Job Corps and agencies, institutions, or groups engaged in related activities.

Agenda: The agenda for the meeting will be a status of the Committee's first report to the Secretary which is due April 2008, and a presentation of new issues.

Public Participation: The meeting will be open to the public. Seating will be available to the public on a first-come first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact the Job Corps official listed above, if special accommodations are needed.

Signed at Washington, DC, this 1st day of April 2008.

Esther R. Johnson,

National Director, Office of Job Corps.

[FR Doc. E8–7118 Filed 4–4–08; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

Employment and Training Administration Program Year (PY) 2008 Workforce Investment Act (WIA) Allotments and Additional Funds From WIA Section 173(e) for Adult/Dislocated Worker Activities for Eligible States; PY 2008 Wagner-Peyser Act Final Allotments; PY 2008 Workforce Information Grants and FY 2008 Work Opportunity Tax Credit Allotments

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; correction.

SUMMARY: The Department of Labor published a notice in the **Federal Register** on March 28, 2008, concerning the announcement of the WIA Allotments to States. The notice did not contain attachments. This correction notice contains the attachments.

FOR FURTHER INFORMATION CONTACT: Mike Qualter at 202–693–3014 or Sherril Hurd at 202–693–3700.

Correction

In the **Federal Register** of March 28, 2008, in FR Doc. E8–6331, on page 16,723, the attachments (i.e., allotment tables), are missing.

Attachment I

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION—WIA YOUTH ACTIVITIES STATE ALLOTMENTS

[Comparison of PY 2008 vs PY 2007]

State	PY 2007	PY 2008	Difference	Percent difference
Total	$940,500,000	$924,069,465	($16,430,535)	−1.75
Alabama	11,383,779	10,066,414	(1,317,365)	−11.57
Alaska	3,397,074	3,401,753	4,679	0.14
Arizona	16,928,408	15,410,351	(1,518,057)	−8.97
Arkansas	8,704,080	10,427,807	1,723,727	19.80
California	123,174,266	131,478,160	8,303,894	6.74
Colorado	11,606,195	10,263,091	(1,343,104)	−11.57
Connecticut	7,654,637	7,422,406	(232,231)	−3.03
Delaware	2,310,103	2,269,746	(40,357)	−1.75
District of Columbia	3,587,417	3,430,967	(156,450)	−4.36
Florida	29,009,688	25,652,600	(3,357,088)	−11.57
Georgia	22,755,109	20,223,508	(2,531,601)	−11.13
Hawaii	2,718,713	2,404,095	(314,618)	−11.57
Idaho	2,590,227	2,290,478	(299,749)	−11.57
Illinois	46,092,387	41,245,377	(4,847,010)	−10.52
Indiana	21,588,482	20,463,638	(1,124,844)	−5.21
Iowa	4,627,175	4,091,704	(535,471)	−11.57
Kansas	6,909,843	6,155,030	(754,813)	−10.92
Kentucky	15,149,541	14,567,756	(581,785)	−3.84
Louisiana	19,559,318	17,295,855	(2,263,463)	−11.57
Maine	3,195,344	3,280,785	85,441	2.67
Maryland	9,122,752	10,013,008	890,256	9.76
Massachusetts	17,850,460	21,466,585	3,616,125	20.26
Michigan	46,701,312	57,931,951	11,230,639	24.05
Minnesota	8,599,824	10,984,461	2,384,637	27.73
Mississippi	17,570,027	15,536,771	(2,033,256)	−11.57
Missouri	18,585,896	19,654,610	1,068,714	5.75
Montana	2,310,103	2,269,746	(40,357)	−1.75
Nebraska	2,877,968	2,544,921	(333,047)	−11.57
Nevada	3,546,204	4,529,527	983,323	27.73
New Hampshire	2,310,103	2,269,746	(40,357)	−1.75
New Jersey	17,825,428	16,249,272	(1,576,156)	−8.84
New Mexico	6,094,542	5,389,263	(705,279)	−11.57
New York	61,807,331	54,654,801	(7,152,530)	−11.57
North Carolina	21,556,371	19,061,803	(2,494,568)	−11.57
North Dakota	2,310,103	2,269,746	(40,357)	−1.75
Ohio	43,472,973	48,535,694	5,062,721	11.65
Oklahoma	8,104,805	7,526,029	(578,776)	−7.14
Oregon	14,503,894	13,022,777	(1,481,117)	−10.21
Pennsylvania	35,296,474	32,746,691	(2,549,783)	−7.22
Puerto Rico	35,817,722	36,693,982	876,260	2.45
Rhode Island	3,531,877	3,357,319	(174,558)	−4.94
South Carolina	20,827,321	21,357,908	530,587	2.55
South Dakota	2,310,103	2,269,746	(40,357)	−1.75
Tennessee	21,188,759	19,653,705	(1,535,054)	−7.24
Texas	80,144,725	70,870,137	(9,274,588)	−11.57
Utah	4,952,465	4,379,351	(573,114)	−11.57
Vermont	2,310,103	2,269,746	(40,357)	−1.75
Virginia	10,603,936	9,462,211	(1,141,725)	−10.77
Washington	20,588,711	20,263,008	(325,703)	−1.58
West Virginia	5,222,378	4,618,029	(604,349)	−11.57
Wisconsin	10,844,691	11,934,438	1,089,747	10.05
Wyoming	2,310,103	2,269,746	(40,357)	−1.75
State Total	924,041,250	907,898,249	(16,143,001)	−1.75
American Samoa	134,122	131,813	(2,309)	−1.72
Guam	1,091,714	1,072,924	(18,790)	−1.72
Northern Marianas	403,989	397,036	(6,953)	−1.72
Palau	76,932	75,000	(1,932)	−2.51
Virgin Islands	644,493	633,401	(11,092)	−1.72
Outlying Areas Total	2,351,250	2,310,174	(41,076)	−1.75

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION—WIA YOUTH ACTIVITIES STATE ALLOTMENTS—Continued

[Comparison of PY 2008 vs PY 2007]

State	PY 2007	PY 2008	Difference	Percent difference
Native Americans	14,107,500	13,861,042	(246,458)	−1.75

Attachment II

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION—WIA ADULT ACTIVITIES STATE ALLOTMENTS

[Comparison of PY 2008 vs PY 2007]

State	PY 2007*	PY 2008	Difference	Percent difference
Total	$851,760,360	$861,540,083	$9,779,723	1.15
Alabama	10,840,649	9,868,607	(972,042)	−8.97
Alaska	3,146,739	3,247,854	101,115	3.21
Arizona	15,680,890	14,729,041	(951,849)	−6.07
Arkansas	7,936,516	9,810,398	1,873,882	23.61
California	115,577,245	126,947,190	11,369,945	9.84
Colorado	10,180,681	9,267,816	(912,865)	−8.97
Connecticut	6,562,932	6,553,866	(9,066)	−0.14
Delaware	2,124,077	2,148,466	24,389	1.15
District of Columbia	2,998,821	2,983,848	(14,973)	−0.50
Florida	28,602,326	26,037,659	(2,564,667)	−8.97
Georgia	20,696,197	18,958,899	(1,737,298)	−8.39
Hawaii	2,594,397	2,361,767	(232,630)	−8.97
Idaho	2,173,134	2,148,466	(24,668)	−1.14
Illinois	41,551,416	38,269,186	(3,282,230)	−7.90
Indiana	18,633,310	18,165,758	(467,552)	−2.51
Iowa	3,303,022	3,006,852	(296,170)	−8.97
Kansas	5,740,344	5,225,628	(514,716)	−8.97
Kentucky	15,671,741	15,059,258	(612,483)	−3.91
Louisiana	18,488,883	16,831,051	(1,657,832)	−8.97
Maine	2,929,076	3,100,278	171,202	5.84
Maryland	8,395,178	9,494,842	1,099,664	13.10
Massachusetts	15,571,808	19,481,186	3,909,378	25.11
Michigan	42,323,775	54,246,181	11,922,406	28.17
Minnesota	7,156,879	9,410,768	2,253,889	31.49
Mississippi	15,912,960	14,486,102	(1,426,858)	−8.97
Missouri	16,728,626	18,196,254	1,467,628	8.77
Montana	2,126,574	2,148,466	21,892	1.03
Nebraska	2,124,077	2,148,466	24,389	1.15
Nevada	3,453,857	4,541,567	1,087,710	31.49
New Hampshire	2,124,077	2,148,466	24,389	1.15
New Jersey	17,381,878	16,435,003	(946,875)	−5.45
New Mexico	5,650,332	5,143,687	(506,645)	−8.97
New York	59,076,349	53,779,185	(5,297,164)	−8.97
North Carolina	19,569,847	17,815,089	(1,754,758)	−8.97
North Dakota	2,124,077	2,148,466	24,389	1.15
Ohio	39,222,543	45,226,257	6,003,714	15.31
Oklahoma	7,461,542	7,058,963	(402,579)	−5.40
Oregon	13,250,724	12,236,847	(1,013,877)	−7.65
Pennsylvania	31,360,952	29,938,257	(1,422,695)	−4.54
Puerto Rico	36,464,382	38,358,961	1,894,579	5.20
Rhode Island	2,860,276	2,820,312	(39,964)	−1.40
South Carolina	19,055,065	20,145,575	1,090,510	5.72
South Dakota	2,124,077	2,148,466	24,389	1.15
Tennessee	19,884,566	19,041,647	(842,919)	−4.24
Texas	72,960,506	66,418,400	(6,542,106)	−8.97
Utah	3,819,921	3,477,402	(342,519)	−8.97
Vermont	2,124,077	2,148,466	24,389	1.15
Virginia	9,304,228	8,520,288	(783,940)	−8.43
Washington	18,477,618	18,747,476	269,858	1.46
West Virginia	5,031,038	4,579,923	(451,115)	−8.97
Wisconsin	8,952,677	10,024,911	1,072,234	11.98
Wyoming	2,124,077	2,148,466	24,389	1.15
State Total	849,630,959	859,386,233	9,755,274	1.15

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION—WIA ADULT ACTIVITIES STATE ALLOTMENTS—Continued

[Comparison of PY 2008 vs PY 2007]

State	PY 2007*	PY 2008	Difference	Percent difference
American Samoa	118,412	122,595	4,183	3.53
Guam	963,837	997,885	34,048	3.53
Northern Marianas	356,667	369,268	12,601	3.53
Palau	79,537	75,000	(4,537)	−5.70
Virgin Islands	610,948	589,102	(21,846)	−3.58
Outlying Areas Total	2,129,401	2,153,850	24,449	1.15

*Incl 1.747% rescission in FY08 Approp.

Attachment III

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION—WIA DISLOCATED WORKER ACTIVITIES STATE ALLOTMENTS

Comparison of PY 2008 vs PY 2007

State	Approp PY 2007*	PY 2008	Difference	Percent difference
Total	$1,453,384,800	$1,464,707,055	$11,322,255	0.78
Alabama	9,546,799	9,164,775	(382,024)	−4.00
Alaska	6,068,367	6,262,335	193,968	3.20
Arizona	13,050,015	11,442,222	(1,607,793)	−12.32
Arkansas	9,388,350	13,518,488	4,130,138	43.99
California	135,886,106	168,253,920	32,367,814	23.82
Colorado	12,459,990	11,038,608	(1,421,382)	−11.41
Connecticut	9,438,539	8,981,716	(456,823)	−4.84
Delaware	1,821,204	1,857,536	36,332	1.99
District of Columbia	3,718,908	4,969,649	1,250,741	33.63
Florida	29,747,065	31,390,061	1,642,996	5.52
Georgia	32,397,883	23,975,835	(8,422,048)	−26.00
Hawaii	1,839,672	1,543,697	(295,975)	−16.09
Idaho	2,267,214	2,015,620	(251,594)	−11.10
Illinois	54,922,885	46,802,246	(8,120,639)	−14.79
Indiana	28,443,127	23,517,230	(4,925,897)	−17.32
Iowa	7,229,451	5,897,698	(1,331,753)	−18.42
Kansas	8,488,316	6,724,398	(1,763,918)	−20.78
Kentucky	27,501,508	27,195,336	(306,172)	−1.11
Louisiana	22,744,009	9,714,609	(13,029,400)	−57.29
Maine	3,784,926	3,640,936	(143,990)	−3.80
Maryland	12,964,681	12,572,045	(392,636)	−3.03
Massachusetts	24,280,081	28,504,646	4,224,565	17.40
Michigan	91,027,451	130,811,617	39,784,166	43.71
Minnesota	11,410,292	12,968,820	1,558,528	13.66
Mississippi	33,769,326	27,431,802	(6,337,524)	−18.77
Missouri	21,433,310	25,404,238	3,970,928	18.53
Montana	1,876,125	1,584,735	(291,390)	−15.53
Nebraska	3,698,759	3,186,136	(512,623)	−13.86
Nevada	4,460,932	5,820,504	1,359,572	30.48
New Hampshire	2,393,582	2,745,638	352,056	14.71
New Jersey	30,200,520	23,874,619	(6,325,901)	−20.95
New Mexico	4,806,924	3,650,372	(1,156,552)	−24.06
New York	68,170,151	50,790,224	(17,379,927)	−25.49
North Carolina	27,031,028	33,828,640	6,797,612	25.15
North Dakota	1,089,819	1,171,809	81,990	7.52
Ohio	63,093,747	79,971,002	16,877,255	26.75
Oklahoma	7,325,070	7,326,043	973	0.01
Oregon	20,963,644	20,499,936	(463,708)	−2.21
Pennsylvania	37,439,922	32,959,310	(4,480,612)	−11.97
Puerto Rico	55,846,372	69,218,517	13,372,145	23.94
Rhode Island	5,063,273	4,600,258	(463,015)	−9.14
South Carolina	37,257,851	37,862,826	604,975	1.62
South Dakota	1,511,389	1,459,759	(51,630)	−3.42
Tennessee	28,695,379	18,786,071	(9,909,308)	−34.53
Texas	92,723,152	57,630,386	(35,092,766)	−37.85
Utah	3,947,291	3,106,955	(840,336)	−21.29
Vermont	1,117,388	1,469,673	352,285	31.53

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION—WIA DISLOCATED WORKER ACTIVITIES STATE ALLOTMENTS—Continued

Comparison of PY 2008 vs PY 2007

State	Approp PY 2007*	PY 2008	Difference	Percent difference
Virginia	11,505,728	12,727,010	1,221,282	10.61
Washington	26,339,385	22,166,920	(4,172,465)	−15.84
West Virginia	5,052,811	5,214,464	161,653	3.20
Wisconsin	16,944,868	25,748,373	8,803,505	51.95
Wyoming	811,855	839,299	27,444	3.38
State Total	1,174,996,440	1,183,839,562	8,843,122	0.75
American Samoa	201,936	208,423	6,487	3.21
Guam	1,643,711	1,696,508	52,797	3.21
Northern Marianas	608,255	627,794	19,539	3.21
Palau	135,642	127,508	(8,134)	−6.00
Virgin Islands	1,041,901	1,001,535	(40,366)	−3.87
Outlying Areas Total	3,631,445	3,661,768	30,323	0.84
National Reserve	274,756,915	277,205,725	2,448,810	0.89

* Incl 1.747% rescission in FY08.

Attachment IV

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION—ADDITIONAL PY 2008 FUNDING FROM DISLOCATED WORKER NATIONAL EMERGENCY RESERVE FOR ADULT/DISLOCATED WORKER ACTIVITIES FOR ELIGIBLE STATES

State	WIA calculation	JTPA calculation	JTPA less		Eligible* States	Additional $*
			WIA	Quotient (percent)		
Total	$859,386,233	$859,256,225	($130,008)	.....	2	$1,777,266
Alabama	9,868,607	9,867,114	(1,493)	99.9849	.....	.....
Alaska	3,247,854	3,237,531	(10,323)	99.6822	.....	.....
Arizona	14,729,041	14,682,225	(46,816)	99.6822	.....	.....
Arkansas	9,810,398	9,779,216	(31,182)	99.6822	.....	.....
California	126,947,190	126,543,692	(403,498)	99.6822	.....	.....
Colorado	9,267,816	9,266,414	(1,402)	99.9849	.....	.....
Connecticut	6,553,866	6,533,035	(20,831)	99.6822	.....	.....
Delaware	2,148,466	2,148,141	(325)	99.9849	.....	.....
DC	2,983,848	2,974,364	(9,484)	99.6822	.....	.....
Florida	26,037,659	26,033,720	(3,939)	99.9849	.....	.....
Georgia	18,958,899	18,898,639	(60,260)	99.6822	.....	.....
Hawaii	2,361,767	2,361,409	(358)	99.9848	.....	.....
Idaho	2,148,466	2,148,141	(325)	99.9849	.....	.....
Illinois	38,269,186	38,147,548	(121,638)	99.6822	.....	.....
Indiana	18,165,758	18,108,019	(57,739)	99.6822	.....	.....
Iowa	3,006,852	3,006,397	(455)	99.9849	.....	.....
Kansas	5,225,628	5,224,838	(790)	99.9849	.....	.....
Kentucky	15,059,258	15,011,392	(47,866)	99.6821	.....	.....
Louisiana	16,831,051	16,828,505	(2,546)	99.9849	.....	.....
Maine	3,100,278	3,090,424	(9,854)	99.6822	.....	.....
Maryland	9,494,842	9,464,663	(30,179)	99.6822	.....	.....
Massachusetts	19,481,186	19,419,266	(61,920)	99.6822	.....	.....
Michigan	54,246,181	54,073,761	(172,420)	99.6822	.....	.....
Minnesota	9,410,768	11,073,270	1,662,502	117.6660	1	1,662,502
Mississippi	14,486,102	14,483,911	(2,191)	99.9849	.....	.....
Missouri	18,196,254	18,138,418	(57,836)	99.6822	.....	.....
Montana	2,148,466	2,148,141	(325)	99.9849	.....	.....
Nebraska	2,148,466	2,148,141	(325)	99.9849	.....	.....
Nevada	4,541,567	4,656,331	114,764	102.5270	1	114,764
New Hampshire	2,148,466	2,148,141	(325)	99.9849	.....	.....
New Jersey	16,435,003	16,382,765	(52,238)	99.6822	.....	.....
New Mexico	5,143,687	5,142,909	(778)	99.9849	.....	.....
New York	53,779,185	53,771,049	(8,136)	99.9849	.....	.....
North Carolina	17,815,089	17,812,394	(2,695)	99.9849	.....	.....
North Dakota	2,148,466	2,148,141	(325)	99.9849	.....	.....
Ohio	45,226,257	45,082,507	(143,750)	99.6822	.....	.....

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION—ADDITIONAL PY 2008 FUNDING FROM DISLOCATED WORKER NATIONAL EMERGENCY RESERVE FOR ADULT/DISLOCATED WORKER ACTIVITIES FOR ELIGIBLE STATES—Continued

State	WIA calculation	JTPA calculation	JTPA less		Eligible* States	Additional $*
			WIA	Quotient (percent)		
Oklahoma	7,058,963	7,036,526	(22,437)	99.6821		
Oregon	12,236,847	12,197,952	(38,895)	99.6821		
Pennsylvania	29,938,257	29,843,099	(95,158)	99.6822		
Puerto Rico	38,358,961	38,237,038	(121,923)	99.6822		
Rhode Island	2,820,312	2,811,348	(8,964)	99.6822		
South Carolina	20,145,575	20,081,543	(64,032)	99.6822		
South Dakota	2,148,466	2,148,141	(325)	99.9849		
Tennessee	19,041,647	18,981,124	(60,523)	99.6822		
Texas	66,418,400	66,408,352	(10,048)	99.9849		
Utah	3,477,402	3,476,876	(526)	99.9849		
Vermont	2,148,466	2,148,141	(325)	99.9849		
Virginia	8,520,288	8,493,206	(27,082)	99.6821		
Washington	18,747,476	18,687,888	(59,588)	99.6822		
West Virginia	4,579,923	4,579,231	(692)	99.9849		
Wisconsin	10,024,911	9,993,047	(31,864)	99.6822		
Wyoming	2,148,466	2,148,141	(325)	99.9849		

* Per WIA Sec. 173(e): Up to $15 million from Dislocated Workers Emergency reserve is to be made available to not more than 8 States with the largest ratio of JTPA formula amount to WIA formula amount.

Attachment V

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION—EMPLOYMENT SERVICE (WAGNER-PEYSER)

[PY 2008 final vs PY 2007 final allotments]

State	Final FY 2007*	Final FY 2008	$ Difference	Percent difference
Total	$715,883,000	$703,376,524	($12,506,476)	−1.75
Alabama	9,347,342	9,274,795	(72,547)	−0.78
Alaska	7,586,322	7,646,039	59,717	0.79
Arizona	12,092,949	12,160,434	67,485	0.56
Arkansas	6,053,152	6,097,500	44,348	0.73
California	79,764,170	80,393,798	629,628	0.79
Colorado	10,939,634	10,962,418	22,784	0.21
Connecticut	7,682,875	7,829,751	146,876	1.91
Delaware	1,949,309	1,964,653	15,344	0.79
District of Columbia	2,705,590	2,666,470	(39,120)	−1.45
Florida	34,464,846	36,484,397	2,019,551	5.86
Georgia	19,969,831	20,131,714	161,883	0.81
Hawaii	2,596,357	2,567,092	(29,265)	−1.13
Idaho	6,320,756	6,370,511	49,755	0.79
Illinois	29,073,531	29,255,214	181,683	0.62
Indiana	14,184,742	14,185,321	579	0.00
Iowa	6,831,619	6,822,494	(9,125)	−0.13
Kansas	6,314,960	6,313,418	(1,542)	−0.02
Kentucky	9,278,193	9,330,822	52,629	0.57
Louisiana	9,840,106	9,697,828	(142,278)	−1.45
Maine	3,758,893	3,788,482	29,589	0.79
Maryland	12,082,222	12,124,203	41,981	0.35
Massachusetts	14,647,014	14,704,420	57,406	0.39
Michigan	24,900,399	25,087,225	186,826	0.75
Minnesota	12,035,648	12,340,429	304,781	2.53
Mississippi	6,795,067	6,745,907	(49,160)	−0.72
Missouri	13,234,925	13,316,098	81,173	0.61
Montana	5,165,354	5,206,014	40,660	0.79
Nebraska	6,207,741	6,256,606	48,865	0.79
Nevada	5,202,012	5,753,058	551,046	10.59
New Hampshire	2,875,081	2,925,586	50,505	1.76
New Jersey	19,147,730	19,156,383	8,653	0.05
New Mexico	5,796,435	5,842,063	45,628	0.79
New York	41,502,859	41,433,656	(69,203)	−0.17
North Carolina	19,033,933	19,216,352	182,419	0.96
North Dakota	5,259,876	5,301,280	41,404	0.79
Ohio	26,623,377	26,981,411	358,034	1.34

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION—EMPLOYMENT SERVICE (WAGNER-PEYSER)—Continued

[PY 2008 final vs PY 2007 final allotments]

State	Final FY 2007*	Final FY 2008	$ Difference	Percent difference
Oklahoma	7,206,821	7,243,494	36,673	0.51
Oregon	8,872,270	8,868,797	(3,473)	−0.04
Pennsylvania	27,240,395	27,184,396	(55,999)	−0.21
Puerto Rico	8,635,065	8,668,212	33,147	0.38
Rhode Island	2,546,416	2,550,164	3,748	0.15
South Carolina	10,158,224	10,173,257	15,033	0.15
South Dakota	4,861,334	4,899,601	38,267	0.79
Tennessee	13,096,271	13,124,545	28,274	0.22
Texas	49,560,678	49,518,743	(41,935)	−0.08
Utah	8,148,564	8,030,744	(117,820)	−1.45
Vermont	2,277,326	2,295,252	17,926	0.79
Virginia	15,084,682	15,191,777	107,095	0.71
Washington	14,784,734	14,814,472	29,738	0.20
West Virginia	5,564,277	5,608,077	43,800	0.79
Wisconsin	13,108,238	13,355,215	246,977	1.88
Wyoming	3,771,659	3,801,348	29,689	0.79
State Total	696,181,804	701,661,936	5,480,132	0.79
Guam	326,555	329,126	2,571	0.79
Virgin Islands	1,374,641	1,385,462	10,821	0.79
Outlying Areas Total	1,701,196	1,714,588	13,392	0.79
Postage Reserve	18,000,000	0	(18,000,000)	−100.00

*Does not reflect postage conversion funds distribution to States.

Attachment VI

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION—WORKFORCE INFORMATION GRANTS TO STATES

[PY 2008 vs PY 2007 allotments]

State	PY 2007*	PY 2008	Difference	Percent difference
Total	$31,680,000	$31,863,448	$183,448	0.58
Alabama	497,844	517,479	19,635	3.94
Alaska	276,788	286,532	9,744	3.52
Arizona	588,028	616,560	28,532	4.85
Arkansas	402,754	413,079	10,325	2.56
California	2,377,436	2,478,254	100,818	4.24
Colorado	549,657	573,969	24,312	4.42
Connecticut	456,335	473,938	17,603	3.86
Delaware	288,928	298,422	9,494	3.29
District of Columbia	270,584	283,018	,12,434	4.60
Florida	1,305,486	1,374,721	69,235	5.30
Georgia	798,817	838,696	39,879	4.99
Hawaii	313,441	323,871	10,430	3.33
Idaho	326,403	337,015	10,612	3.25
Illinois	1,022,617	1,069,456	46,839	4.58
Indiana	627,413	644,569	17,156	2.73
Iowa	437,464	448,792	11,328	2.59
Kansas	413,513	425,973	12,460	3.01
Kentucky	479,042	497,690	18,648	3.89
Louisiana	464,464	490,060	25,596	5.51
Maine	321,718	331,693	9,975	3.10
Maryland	595,123	615,226	20,103	3.38
Massachusetts	641,320	664,696	23,376	3.64
Michigan	851,816	867,507	15,691	1.84
Minnesota	590,980	607,538	16,558	2.80
Mississippi	394,758	406,084	11,326	2.87
Missouri	602,038	620,388	18,350	3.05
Montana	295,622	305,158	9,536	3.23
Nebraska	354,185	364,663	10,478	2.96

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION—WORKFORCE INFORMATION GRANTS TO STATES—Continued

[PY 2008 vs PY 2007 allotments]

State	PY 2007*	PY 2008	Difference	Percent difference
Nevada	387,101	408,405	21,304	5.50
New Hampshire	324,226	335,465	11,239	3.47
New Jersey	775,725	798,971	23,246	3.00
New Mexico	350,006	359,736	9,730	2.78
New York	1,381,028	1,410,985	29,957	2.17
North Carolina	765,938	801,477	35,539	4.64
North Dakota	279,041	288,534	9,493	3.40
Ohio	949,774	980,145	30,371	3.20
Oklahoma	447,271	457,593	10,322	2.31
Oregon	462,032	480,629	18,597	4.03
Pennsylvania	995,426	1,019,875	24,449	2.46
PuertoRico	405,531	416,785	11,254	2.78
Rhode Island	304,861	314,993	10,132	3.32
South Carolina	490,073	508,915	18,842	3.84
South Dakota	287,507	297,541	10,034	3.49
Tennessee	591,810	617,264	25,454	4.30
Texas	1,611,388	1,667,706	56,318	3.49
Utah	392,287	408,862	16,575	4.23
Vermont	278,919	288,250	9,331	3.35
Virginia	716,429	742,865	26,436	3.69
Washington	637,419	659,818	22,399	3.51
West Virginia	333,335	344,123	10,788	3.24
Wisconsin	605,539	623,722	18,183	3.00
Wyoming	270,213	279,270	9,057	3.35
State Total	30,587,453	31,686,976	1,099,523	3.59
Guam	91,238	92,716	1,478	1.62
Virgin Islands	82,589	83,756	1,167	1.41
Outlying Areas Total	173,827	176,472	2,645	1.52
Postage Reserve	918,720	0	(918,720)	−100.00

*Does not reflect postage conversion funds distribution to States.

Attachment VII

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION—WORK OPPORTUNITY TAX CREDITS

[FY 2008 vs FY 2007 State allotments]

State	FY 2007*	FY 2008	Difference	Percent difference
Total	$17,677,000	$17,368,183	($308,817)	−1.7
Alabama	262,894	252,718	(10,176)	−3.9
Alaska	64,000	66,000	2,000	3.1
Arizona	268,926	258,517	(10,409)	−3.9
Arkansas	241,801	242,829	1,028	0.4
California	1,857,628	1,897,525	39,897	2.1
Colorado	205,336	218,526	13,190	6.4
Connecticut	200,861	193,086	(7,775)	−3.9
Delaware	64,000	66,000	2,000	3.1
District of Columbia	64,000	66,000	2,000	3.1
Florida	699,871	672,782	(27,089)	−3.9
Georgia	402,205	386,637	(15,568)	−3.9
Hawaii	64,000	66,000	2,000	3.1
Idaho	64,000	66,000	2,000	3.1
Illinois	828,265	796,206	(32,059)	−3.9
Indiana	543,327	522,297	(21,030)	−3.9
Iowa	199,861	232,924	33,063	16.5
Kansas	155,335	152,605	(2,730)	−1.8
Kentucky	282,557	271,620	(10,937)	−3.9
Louisiana	353,685	395,674	41,989	11.9
Maine	64,000	77,713	13,713	21.4
Maryland	328,353	315,644	(12,709)	−3.9

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION—WORK OPPORTUNITY TAX CREDITS—Continued

[FY 2008 vs FY 2007 State allotments]

State	FY 2007*	FY 2008	Difference	Percent difference
Massachusetts	295,577	318,416	22,839	7.7
Michigan	694,320	667,446	(26,874)	−3.9
Minnesota	275,972	265,290	(10,682)	−3.9
Mississippi	179,281	172,342	(6,939)	−3.9
Missouri	441,940	503,453	61,513	13.9
Montana	64,000	66,000	2,000	3.1
Nebraska	128,798	140,605	11,807	9.2
Nevada	100,318	96,435	(3,883)	−3.9
New Hampshire	64,000	66,000	2,000	3.1
New Jersey	494,734	475,585	(19,149)	−3.9
New Mexico	137,307	155,598	18,291	13.3
New York	925,004	972,546	47,542	5.1
North Carolina	476,067	519,855	43,788	9.2
North Dakota	64,000	66,000	2,000	3.1
Ohio	869,949	836,277	(33,672)	−3.9
Oklahoma	161,473	163,048	1,575	1.0
Oregon	178,184	171,287	(6,897)	−3.9
Pennsylvania	691,697	664,924	(26,773)	−3.9
Puerto Rico	101,935	97,989	(3,946)	−3.9
Rhode Island	70,135	67,420	(2,715)	−3.9
South Carolina	180,748	173,752	(6,996)	−3.9
South Dakota	64,000	66,000	2,000	3.1
Tennessee	767,120	737,428	(29,692)	−3.9
Texas	1,177,538	1,276,601	99,063	8.4
Utah	104,280	126,624	22,344	21.4
Vermont	64,000	66,000	2,000	3.1
Virginia	368,347	354,090	(14,257)	−3.9
Washington	320,913	389,674	68,761	21.4
West Virginia	137,684	132,355	(5,329)	−3.9
Wisconsin	266,141	255,840	(10,301)	−3.9
Wyoming	64,000	66,000	2,000	3.1
State Total	17,144,367	17,348,183	203,816	1.2
Virgin Islands	20,000	20,000	0	0.0
Postage Reserve	512,633	0	(512,633)	−100.0

*Does not reflect postage conversion funds distribution to States.

Dated: April 1, 2008.

Brent R. Orrell,

Acting Assistant Secretary.

[FR Doc. E8–7125 Filed 4–4–08; 8:45 am]

BILLING CODE 4510–FN–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request (DRAFT)

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 is preparing a submittal to OMB for review of continued approval of information collections 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:* Grant and Cooperative Agreement Provisions.

2. *Current OMB approval number:* 3150–0107.

3. *How often the collection is required:* Most reports are submitted on occasion. Recipients must also submit technical performance reports twice yearly.

4. *Who is required or asked to report:* Grantees and Cooperators.

5. *The number of annual respondents:* 140.

6. *The number of hours needed annually to complete the requirement or request:* 4,613 hours.

7. *Abstract:* The Division of Contracts (DC) is responsible for the awarding of grants and cooperative agreements for the NRC. The DC collects information from grantees and cooperators in order to administer these programs. The DC uses provisions (required to obtain or retain a benefit in its awards and cooperative agreements) to ensure: Adherence to Public Laws, that the Government's rights are protected, that work proceeds on schedule, and that disputes between the Government and the recipient are settled.

Submit, by June 6, 2008, 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, MD 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 and questions about the information collection requirements may be directed to the NRC Clearance Officer, Margaret A. Janney (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7245, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 1st day of April, 2008.

For the Nuclear Regulatory Commission.

Gregory Trussell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–7192 Filed 4–4–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 36—Licenses and Radiation Safety Requirements for Irradiators.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion. It is estimated that there are approximately two NRC and eight Agreement State reports submitted annually.

5. *Who will be required or asked to report:* Irradiator licensees licensed by NRC or an Agreement State.

6. *An estimate of the number of responses:* 85 (10 for reporting (2 NRC licensees and 8 Agreement States) 75 for recordkeeping (15 NRC licensees and 60 Agreement States)).

7. *The estimated number of annual respondents:* 75 (15 NRC licensees and 60 Agreement State licensees).

8. *An estimate of the number of hours needed annually to complete the requirement or request:* 35,008 (6,988 hours for NRC licensees [6,878 recordkeeping + 110 reporting] and 28,020 hours for Agreement State licensees [27,510 recordkeeping + 510 reporting]), or 467 hours per licensee.

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 36 contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials for a variety of purposes in research, industry, and other fields. The subparts cover specific requirements for obtaining a license or license exemption, design and performance criteria for irradiators; and radiation safety requirements for operating irradiators, including requirements for operator training, written operating and emergency procedures, personnel monitoring, radiation surveys, inspection, and maintenance. Part 36 also contains the recordkeeping and reporting requirements that are necessary to ensure that the irradiator is being safely operated so that it poses no danger to the health and safety of the general public and the irradiator employees.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, 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 and questions should be directed to the OMB reviewer listed below by May 7, 2008. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Nathan J. Frey, Office of Information and Regulatory Affairs (3150–0158), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan_J._Frey@omb.eop.gov* or submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Margaret A. Janney, 301–415–7245.

Dated at Rockville, Maryland, this 31st day of March, 2008.

For the Nuclear Regulatory Commission.

Tremaine U. Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–7195 Filed 4–4–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 40–8943]

Notice of License Amendment Request of Crow Butte Resources, Inc., Crawford, NE, and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license amendment, and opportunity to request a hearing.

DATES: A request for a hearing must be filed by June 6, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen J. Cohen, Project Manager, Uranium Recovery Licensing Branch, Division of Waste Management and Environmental Protection, Office of Federal and State and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC, 20555. Telephone: (301) 415–7182; fax number: (301) 415–5369; e-mail: *sjc7@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated November 27, 2007, a license amendment application from Crow Butte Resources, Inc. (CBR), requesting renewal of its source material license for its in situ leach (ISL) uranium recovery facility located in Crawford, Nebraska. License No. SUA–1534 authorizes the licensee to operate an ISL uranium recovery facility to produce yellowcake. Specifically, the amendment requests that NRC renew CBR's current license for a standard 10-year period.

An NRC administrative review, documented in a letter to CBR dated March 28, 2008, found the application acceptable to begin a technical review. If the NRC approves the amendment, the

approval will be documented in an amendment to NRC License No.: SUA–1534. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

II. Opportunity to Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment regarding renewal of Source Materials License No.: SUA–1534 issued to Crow Butte Resources for its ISL uranium recovery facility in Crawford, NE. Any person whose interest may be affected by this proceeding, and who desires to participate as a party, must file a request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing, in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 FR 49139 (August 28, 2007). The E-Filing rule requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic 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 of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/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 Identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/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 is available on NRC's public website at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing 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 documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can 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 website 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 help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a 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.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

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 social security 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 submission.

The formal requirements for documents contained in 10 CFR 2.304(c)–(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3)), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by June 6, 2008.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for

leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.

3. Miscellaneous—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requester/petitioner asserts the contention belongs with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: Request for License Renewal Transmittal Letter (ML073470645), License Renewal Application (combined technical and environmental reports), Part 1 (ML073480266), License Renewal Application (combined technical and environmental reports), Part 2 (ML073480267), and the acceptance review letter dated March 28, 2008 (ML080720341). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, MD, this 31st day of March, 2008.

For the Nuclear Regulatory Commission.

William vonTill,

Branch Chief, Uranium Recovery Licensing Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E8–7175 Filed 4–4–08; 8:45 am]

BILLING CODE 7590–01–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: C. Penn, 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, 2008, and February 29, 2008. 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 June 30 is published each year.

Schedule A

No Schedule A appointments were approved for February 2008.

Schedule B

No Schedule B appointments were approved for February 2008.

Schedule C

The following Schedule C appointments were approved during February 2008.

Section 213.3303 Executive Office of the President

Office of National Drug Control Policy

QQGS80005 Confidential Assistant to the Director. Effective February 27, 2008.
QQGS80007 Confidential Assistant to the Deputy Chief of Staff. Effective February 28, 2008.

Office of Management and Budget

BOGS70018 Legislative Analyst to the Associate Director for Legislative Affairs. Effective February 13, 2008.
BOGS80006 Press Secretary to the Associate Director for Communications. Effective February 29, 2008.

Section 213.3304 Department of State

DSGS60980 Staff Assistant to the Under Secretary for Arms Control and Security Affairs. Effective February 05, 2008.
DSGS61225 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective February 05, 2008.
DSGS61269 Protocol Officer (Ceremonials) to the Chief of Protocol. Effective February 12, 2008.
DSGS61290 Deputy Assistant Secretary to the Assistant Secretary for Economic and Business Affairs. Effective February 12, 2008.
DSGS61291 Staff Assistant to the Chief Financial Officer. Effective February 12, 2008.
DSGS61060 Protocol Assistant to the Deputy Chief of Protocol. Effective February 26, 2008.

Section 213.3305 Department of the Treasury

DYGS00440 Public Affairs Specialist to the Assistant Secretary (Public Affairs) and Director of Policy Planning. Effective February 08, 2008.
DYGS00503 Senior Advisor to the Director of the Mint. Effective February 08, 2008.
DYGS00464 Special Assistant to the Assistant Secretary (Deputy Under Secretary) for Legislative Affairs. Effective February 29, 2008.

Section 213.3306 Department of Defense

DDGS17122 Public Affairs Specialist to the Office of Assistant Secretary of Defense (Public Affairs). Effective February 06, 2008.
DDGS17134 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective February 13, 2008.
DDGS17131 Special Assistant to the Assistant Secretary of Defense (Special Operations/Low Intensity Conflict and Interdependent Capabilities). Effective February 26, 2008.
DDGS17126 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective February 29, 2008.

Section 213.3307 Department of the Army

DWGS60087 Personal and Confidential Assistant to the Deputy Under Secretary of the Army. Effective February 19, 2008.
DWGS00091 Program Analyst (Business Transformation Initiatives) to the Special Assistant to the Secretary of Army for Business Transformation Initiatives. Effective February 26, 2008.
DWGS00093 Special Assistant to the Assistant Secretary of the Army (Installations and Environment). Effective February 26, 2008.

Section 213.3308 Department of the Navy

DNGS08060 Confidential Assistant to the Secretary of the Navy. Effective February 06, 2008.

Section 213.3309 Department of the Air Force

DFGS00010 Secretary to the Assistant Secretary (Financial Management and Comptroller). Effective February 26, 2008.

Section 213.3310 Department of Justice

DJGS00160 Confidential Assistant to the Assistant Attorney General (Legislative Affairs). Effective February 04, 2008.
DJGS00159 Senior Counsel to the Assistant Attorney General (Legal Policy). Effective February 26, 2008.

Section 213.3311 Department of Homeland Security

DMGS00746 Staff Assistant to the White House Liaison. Effective February 20, 2008.
DMGS00606 Component Liaison Officer to the Executive Director for Operations and Administration. Effective February 26, 2008.
DMGS00689 Advance Representative to the Director of Scheduling and Advance. Effective February 26, 2008.
DMGS00516 Confidential Assistant to the Executive Director for Operations and Administration. Effective February 29, 2008.
DMGS00745 Confidential Assistant to the Deputy Assistant Secretary to the Deputy Assistant Secretary for Public Affairs. Effective February 29, 2008.

Section 213.3312 Department of the Interior

DIGS01115 Associate Director—External and Intergovernmental Affairs to the Director, External and Intergovernmental Affairs. Effective February 21, 2008.
DIGS01114 Chief of Staff to the Assistant Secretary for Fish and Wildlife and Parks. Effective February 29, 2008.

Section 213.3313 Department of Agriculture

DAGS00931 Confidential Assistant to the Deputy Under Secretary, Research, Education and Economics. Effective February 08, 2008.
DAGS00932 Special Assistant to the Administrator, Rural Housing Service. Effective February 28, 2008.
DAGS00933 Confidential Assistant to the Chief of Staff. Effective February 29, 2008.

Section 213.3314 Department of Commerce

DCGS00541 Special Assistant to the Deputy Assistant Secretary for Domestic Operations. Effective February 04, 2008.
DCGS00290 Special Assistant to the Senior Advisor. Effective February 19, 2008.
DCGS00162 Senior Advisor to the Assistant Secretary for Market Access and Compliance. Effective February 29, 2008.

Section 213.3315 Department of Labor

DLGS00171 Special Assistant to the Director of Scheduling. Effective February 05, 2008.
DLGS60117 Special Assistant to the Wage and Hour Administrator. Effective February 05, 2008.
DLGS60198 Special Assistant to the Assistant Secretary for Administration and Management. Effective February 15, 2008.
DLGS60122 Senior Advisor to the Wage and Hour Administrator. Effective February 20, 2008.
DLGS60161 Attorney Advisor to the Solicitor of Labor. Effective February 20, 2008.
DLGS60138 Chief of Staff to the Assistant Secretary for Mine Safety and Health. Effective February 27, 2008.
DLGS60219 Staff Assistant to the Director, 21st Century Office and Deputy Assistant Secretary for Intergovernmental Affairs. Effective February 27, 2008.

DLGS60217 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective February 29, 2008.
DLGS60272 Special Assistant to the Deputy Chief of Staff. Effective February 29, 2008.

Section 213.3316 Department of Health and Human Services

DHGS60065 Confidential Assistant to the Chief of Staff. Effective February 05, 2008.
DHGS60539 Special Assistant to the General Counsel. Effective February 13, 2008.
DHGS60066 Confidential Assistant to the Chief of Staff. Effective February 19, 2008.

Section 213.3317 Department of Education

DBGS00663 Special Assistant to the Deputy Assistant Secretary for Media Relations and Strategic Communications. Effective February 13, 2008.
DBGS00421 Confidential Assistant to the Special Assistant. Effective February 14, 2008.
DBGS00436 Special Assistant to the Deputy Assistant Secretary for Media Relations and Strategic Communications. Effective February 14, 2008.
DBGS00586 Special Assistant to the Deputy Assistant Secretary for Media Relations and Strategic Communications. Effective February 14, 2008.
DBGS00664 Chief of Staff to the Assistant Secretary for Vocational and Adult Education. Effective February 15, 2008.
DBGS00249 Special Assistant to the Assistant Secretary for Postsecondary Education. Effective February 19, 2008.
DBGS00614 Confidential Assistant to the Assistant Secretary, Office of Communications and Outreach. Effective February 20, 2008.
DBGS00368 Confidential Assistant to the Special Assistant. Effective February 22, 2008.
DBGS00184 Confidential Assistant to the Chief of Staff. Effective February 28, 2008.
DBGS00604 Deputy Director, Office of International Affairs to the Director, International Affairs Office. Effective February 28, 2008.
DBGS00662 Deputy Assistant Secretary to the Assistant Secretary, Office of Communications and Outreach. Effective February 28, 2008.
DBGS00222 Confidential Assistant to the Director, Scheduling and Advance Staff. Effective February 29, 2008.

Section 213.3325 United States Tax Court

JCGS60070 Trial Clerk to the Chief Judge. Effective February 11, 2008.
JCGS60055 Secretary (Confidential Assistant) to the Chief Judge. Effective February 29, 2008.

Section 213.3331 Department of Energy

DEGS00637 Assistant Press Secretary to the Director, Public Affairs. Effective February 01, 2008.
DEGS00638 Public Affairs Specialist to the Director of Congressional Intergovernmental and Public Affairs. Effective February 05, 2008.
DEGS00639 Case Analyst to the Director, Investment Security. Effective February 27, 2008.
DEGS00640 Trip Coordinator to the Director, Office of Scheduling and Advance. Effective February 28, 2008.

Section 213.3332 Small Business Administration

SBGS00649 Senior Advisor to the Associate Administrator for Capital Access. Effective February 05, 2008.
SBGS00652 Congressional Liaison to the Assistant Administrator for Congressional and Legislative Affairs. Effective February 05, 2008.
SBGS00190 Deputy Chief of Staff to the Chief of Staff. Effective February 12, 2008.
SBGS00650 Senior Advisor to the Deputy Administrator. Effective February 12, 2008.
SBGS00653 Deputy General Counsel to the General Counsel. Effective February 22, 2008.

Section 213.3360 Consumer Product Safety Commission

PSGS60064 Special Assistant (Legal) to a Commissioner. Effective February 15, 2008.
PSGS72150 Staff Assistant to a Commissioner. Effective February 15, 2008.

Section 213.3384 Department of Housing and Urban Development

DUGS60179 Advance Coordinator to the Director of Executive Scheduling. Effective February 07, 2008.
DUGS60249 Congressional Relations Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective February 07, 2008.
DUGS60522 Deputy Assistant Secretary for Grant Programs to the Assistant Secretary for Community Planning and Development. Effective February 08, 2008.

Section 213.3393 Pension Benefit Guaranty Corporation

BGSL00096 Chief of Staff to the Interim Director. Effective February 05, 2008.

Section 213.3394 Department of Transportation

DTGS60258 Associate Director for Governmental Affairs to the Assistant Secretary for Governmental Affairs. Effective February 05, 2008.
DTGS60192 Special Assistant to the Assistant to the Secretary and Director of Public Affairs. Effective February 12, 2008.
DTGS60197 Confidential Assistant to the Chief of Staff. Effective February 12, 2008.
DTOT00240 Deputy Assistant Administrator for Communications to the Assistant Administrator for Communications. Effective February 13, 2008.
DTGS60129 Counselor to the General Counsel. Effective February 29, 2008.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Howard C. Weizmann,

Deputy Director.

[FR Doc. E8–7157 Filed 4–4–08; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57589; File No. SR–Amex–2008–09]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Options Linkage Fees

April 1, 2008.

I. Introduction

On February 8, 2008, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to fees for trades executed through the intermarket options linkage (the ''Options Linkage''). On February 19, 2008, Amex submitted Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

February 28, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to clarify the application of options transaction fees for trades executed through the Options Linkage on the Exchange. Currently, the Amex Options Fee Schedule (the ''Options Fee Schedule'') provides that, under the Linkage Fee Pilot Program that is effective through July 31, 2008, the fees applicable to specialists, registered options traders, and market maker apply to members of other options exchanges (''Non-Member Market Makers'') executing Linkage transactions except for Satisfaction Orders. As a result, the fees for Principal Orders (''P Orders'') and Principal Acting As Agent Orders (''P/A Orders'') (collectively, ''Linkage Orders'') submitted through the Options Linkage are: (i) $0.10 per contract side options transaction fee for equity options, exchange traded fund share (''ETF'') options, QQQQ options and trust issued receipt options; (ii) $0.21 per contract side options transaction fee for index options (including MNX and NDX options); (iii) $0.05 per contract side options comparison fee; (iv) $0.05 per contract side options floor brokerage fee; and (v) an options licensing fee for certain ETF and index option products ranging from $0.15 per contract side to $0.05 per contract side depending on the particular ETF or index option.[4]

The Options Fee Schedule also provides that broker-dealer orders that are automatically executed on the Exchange are subject to Broker-Dealer Auto-Ex Fees (''BD Auto-Ex Fee'') that include: (i) $0.50 per contract side options transaction fee for equity options, ETF options, QQQQ options and trust issued receipt options; (ii) $0.05 per contract side options comparison fee; and (iii) $0.05 per contract side options floor brokerage fee.[5] Broker-dealer orders that are subject to the BD Auto-Ex Fee include specialist orders, registered options trader orders, Non-Member Market Maker orders, and orders for the account of registered broker-dealers. The Exchange charges this fee to member firms through customary monthly billing. The BD Auto-Ex Fee was implemented prior to the introduction and roll-out of the Options Linkage which commenced on January 31, 2003 in two phases. The entire roll-out of the Options Linkage was completed by July 2003.

The Exchange in this proposal seeks to clarify the Options Fee Schedule to make clear that automatically executed Linkage Orders will be charged the BD Auto Ex Fee that includes: (i) $0.50 per contract side options transaction fee; (ii) $0.05 per contract side options comparison fee; and (iii) $0.05 per contract side options floor brokerage fee. Accordingly, the total transaction fee for such orders would be $0.60 per contract side. In contrast to the initial period of time when the Options Linkage was introduced, most Linkage Orders on the Exchange are automatically executed via the ANTE platform. In the Notice, the Exchange acknowledged that the current Options Fee Schedule does not clearly reflect the fact that for automatically executed Linkage Orders, the BD Auto-Ex Fee would apply.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,[7] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

Under the current Options Fee Schedule, only non-Linkage Orders on the behalf of broker-dealers automatically executed orders in ANTE are subject to the BD Auto-Ex Fee; Linkage Orders that are automatically executed orders in ANTE are not subject to the BD Auto-Ex Fee. The Exchange proposed to clarify that all automatically executed orders in ANTE, whether Linkage Orders or non-Linkage Orders on the behalf of broker-dealers, are subject to the BD Auto-Ex Fee set forth in the Options Fee Schedule. Accordingly, the Commission believes that the Exchange's proposed Options Fee Schedule clearly sets forth the fees imposed on Linkage Orders.

The Commission notes that the Exchange acknowledges that prior versions of its Options Fee Schedule did not represent that the $.60 per side BD Auto-Ex Fee was applied to electronically executed Linkage Orders. Because the Exchange may have assessed the BD Auto-Ex Fee on Linkage Orders prior to this approval and, therefore, without authority, any parties assessed the BD Auto-Ex Fee for Linkage Orders prior to the approval of this proposed rule change may seek reimbursement. In addition, the Commission notes that the Options Linkage fees are assessed pursuant to a pilot scheduled to end on July 31, 2008 and that the Commission is continuing to evaluate whether such fees are appropriate.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Amex–2008–09) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–7121 Filed 4–4–08; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 57373 (February 22, 2008), 73 FR 10835 (''Notice'').

[4] *See* Options Fee Schedule section of the Amex Price List available at *http://www.amex.com. See also* Securities Exchange Act Release No. 56102 (July 19, 2007), 72 FR 40908 (July 25, 2007) (SR–Amex–2007–64).

[5] *See* Securities Exchange Act Release No. 47216 (January 17, 2003), 68 FR 5059 (January 31, 2003) (SR–Amex–2002–114).

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57594; File No. SR–BSE–2008–17]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Quarterly Options Series Pilot Program To Permit the Listing of Additional Series

April 1, 2008.

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 28, 2008, the Boston Stock Exchange, Inc. (''Exchange'' or ''BSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act[3] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Supplementary Material .04 to Section 6 of Chapter IV of the Rules of the Boston Options Exchange (''BOX'') to permit the Exchange to list strike prices for Quarterly Options Series (''QOS'') in exchange traded fund (''Fund Share'') options that fall within a percentage range (30%) above and below the price of the underlying Fund Share. Additionally, upon demonstrated customer interest, the Exchange also will be permitted to open additional strike prices of QOS in Fund Share options that are more than 30% above or below the current price of the Fund Share. Market makers trading for their own account will not be considered when determining customer interest under this provision. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each QOS in Fund Share options. Further, the proposal includes a delisting program to be undertaken by the Exchange in connection with QOS in Fund Share options.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.bostonstock.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Supplemental Material .04 to Section 6 of Chapter IV of the BOX Rules to permit the Exchange to open additional series for QOS in Fund Share options that fall within thirty percent (30%) above and below the price of the underlying Fund Share. Additionally, upon demonstrated customer interest, the Exchange also will be permitted to open additional strike prices of QOS in Fund Share options that are more than 30% above or below the current price of the underlying Fund Share. Market makers trading for their own account will not be considered when determining customer interest under this provision. The Exchange will be permitted to list up to sixty (60) additional series per expiration month for each QOS in Fund Share options.

On July 17, 2007, the Exchange filed with the Commission a pilot program proposal to permit the listing and trading of QOS in options on indexes or options on Fund Shares that satisfy the applicable listing criteria under BOX rules.[5] QOS trade based on calendar quarters that end in March, June, September, and December. The Exchange lists QOS that expire at the end of the next consecutive four calendar quarters, as well as the fourth quarter of the next calendar year. For example, if BOX were trading QOS in the iShares Russell 2000 Index Fund (''IWM'') in the month of April 2008, the Exchange would list series that expire at the end of the second quarter of 2008 (June), third quarter of 2008 (September), fourth quarter of 2008 (December), first quarter of 2009 (March), and fourth quarter of 2009 (December).

Currently, the Exchange list QOS in five Fund Share options: (1) Nasdaq-100 Index Tracking Stock (''QQQQ''); (2) IWM; (3) DIAMONDS Trust, Series 1 (''DIA''); (4) Standard and Poor's Depositary Receipts/SPDRs (''SPY''); and (5) Energy Select SPDR (''XLE''). The average daily trading volume and total volume for QOS in IWM options significantly exceeds the volumes for QOS of some other Fund Share options that are listed and traded on the Exchange. The chart below provides trading volume figures for the fourth quarter in 2007, demonstrating that QOS in IWM options are one of the most popular and heavily traded QOS on the Exchange.

QOS	October 2007		November 2007		December 2007	
	ADV	Total vol	ADV	Total vol	ADV	Total vol
IWM	1,690	38,891	1,597	33,540	3,230	64,612
QQQQ	1,883	43,329	2,353	49,414	3,432	68,642
SPY	699	16,086	1,349	28,335	2,087	41,756
DIA	180	4,150	325	6,830	502	10,049
XLE	188	4,329	927	19,483	261	5,237

Recently, certain options exchanges (''Options Exchanges'') have received requests from their members and participants to add additional strike prices for QOS in IWM options that would be outside of the price range for setting strikes as provided for under Supplemental Material .04 to Section 6 of Chapter IV of the BOX Rules (hereinafter ''+/−$5 range'').[6] These members and participants have advised the Options Exchanges that they are buying and selling QOS in IWM options to trade volatility. In order to adequately replicate the desired volatility exposure, these members and participants need to trade several IWM option series, many having strike prices that fall outside of the +/−$5 range currently allowed under the QOS rules.

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 56086 (July 17, 2007), 72 FR 40182 (July 23, 2007) (SR–BSE–2007–36) (''Pilot Program Release''). Under the pilot program, the Exchange may list QOS in up to five currently listed option classes that are either options on Fund Shares or indexes. The Exchange also is permitted to list QOS in any options class that is selected by other securities exchanges that employ a similar pilot program under their respective rules.

[6] *See* Securities Exchange Act Release No. 57410 (March 3, 2008), 73 FR 12483 (March 7, 2008) (SR-CBOE–2007–96). *See also* Securities Exchange Act Release No. 57425 (March 4, 2008) 73 FR 12783 (March 10, 2008) (SR–ISE–2008–19). Supplemental Material .04 to Section 6 of Chapter IV provides that the Exchange shall list strike prices for a QOS that are within $5 from the closing price of the underlying on the preceding day.

In addition, other members and participants have advised the Options Exchanges that their investment strategies involve trading options tied to a particular option ''delta,'' [7] rather than a particular level of the underlying security or index. At issue is the fact that delta depends on both the relative difference between the level of the underlying security or index and the option strike price, and time to expiration. For example, with IWM trading at $85 per share, the strike price corresponding to a ''25-delta'' IWM call (*i.e.*, a call option with a delta of 25) with one month to expiration would be 89. However, the strike price corresponding to a ''25-delta'' IWM call with 3 months to expiration would be 93, and the strike price of a ''25-delta'' call with 1 year to expiration would be 106. In short, the Exchange has been advised that the +/−$5 range for QOS in IWM options is insufficient to satisfy customer demand.

In order to meet customer demand, the Exchange proposes to amend Supplemental Material .04 to Section 6 of Chapter IV of the BOX Rules, which governs the Quarterly Option Series Pilot Program. Specifically, the Exchange proposes to allow the Exchange to open additional strike prices of QOS in Fund Share options that are within thirty percent (30%) above or below the closing price of the underlying Fund Share on the preceding business day. The Exchange also will be permitted to open additional strike prices of QOS in Fund Share options that are more than 30% above or below the current price of the underlying Fund Share, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market makers trading for their own account will not be considered when determining customer interest under this proposed provision. The Exchange will be permitted to list up to sixty (60) additional series per expiration month for each QOS in Fund Share options.

The Exchange is also proposing to add new paragraph (g) to Supplemental Material .04 to Section 6 of Chapter IV of the BOX Rules, which sets forth a delisting policy. Specifically, with respect to QOS in Fund Share options, the Exchange will, on a monthly basis, review series that are outside a range of five strikes above and five strikes below the current price of the underlying Fund Share, and delist series with no open interest in both the put and the call series having a strike price: (i) Higher than the highest strike price with open interest in the put and/or call series for a given expiration month; or (ii) lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

To illustrate how the proposed delisting program would work, assume IWM closed at $70 on the day the Exchange conducts the monthly review of QOS in Fund Share options. Series having strike prices above $75 and below $65 would be reviewed by the Exchange for possible delisting. Assume that the Exchange lists the following QOS in IWM options that expire in June 2008:

Calls—June 08 Exp		Puts—June 08 Exp	
Strike	Open Interest?	Strike	Open Interest?
62	No	62	No
63	No	63	Yes
64	Yes	64	Yes
*	*	*	*
76	Yes	76	Yes
77	Yes	77	Yes
78	Yes	78	Yes
79	Yes	79	Yes
80	Yes	80	Yes
81	Yes	81	Yes
82	Yes	82	Yes
83	No	83	No
84	No	84	No
85	No	85	Yes
86	Yes	86	No
87	Yes	87	Yes
88	Yes	88	Yes
89	Yes	89	No
90	Yes	90	No
91	No	91	No
92	No	92	No
93	No	93	No

The Exchange would de-list the first series listed above, as well as the last three: $62, $91, $92, and $93. The Exchange would not delist the $83 and $84 series because there are series having open interest with strike prices higher than these two series. In addition, the Exchange would not delist the $63 call series because there is open interest in the $63 put series.

Notwithstanding the proposed delisting policy, customer requests to add strikes and/or maintain strikes in QOS in Fund Share options in series eligible for delisting shall be granted. Further, in connection with the proposed delisting policy, if the Exchange identifies series for delisting, the Exchange shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiple listed QOS in Fund Share options. It is expected that the proposed delisting policy for QOS in Fund Share options would be adopted by other options exchanges that have adopted the QOS Pilot Program.

BOX represents that it has the necessary systems capacity to support new options series that will result from this proposal. Further, as proposed, the Exchange notes that this rule change would become part of the pilot program and, going forward, would be considered by the Commission when the Exchange seeks to renew or make permanent the pilot program in the future.

2. Statutory Basis

The Exchange believes the rule proposal is consistent with the Act and the rules and regulations there under applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes that the proposed rule change is consistent with the requirements under Section 6(b)(5) of the Act [9] that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In order to meet customer demand, the Exchange proposes to amend Supplemental Material .04 to Section 6 of Chapter IV of the BOX Rules, which governs the Quarterly Option Series Pilot Program. The additional new series can be added without presenting capacity problems, and the Exchange has proposed a delisting policy with respect to QOS in Fund Share options.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

[7] ''Delta'' is a measure of how an option price will change in response to a $1 price change in the underlying security or index. For example, an ABC option with a delta of ''50'' can be expected to change by $0.50 in response to a $1 change in the price of ABC.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] The Exchange has asked the Commission to waive the 30-day operative delay to permit the Exchange to immediately compete with the other options exchanges that have similarly amended their quarterly options series pilot programs.

The Commission notes that this proposal is substantially similar to a proposed rule change submitted by the Chicago Board Options Exchange, which was approved by the Commission following publication for notice and comment, and does not raise any new regulatory issues.[12] Waiving the 30-day operative delay will promote, without undue delay, further competition in the options market.[13] For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

The Commission notes that this rule change will become part of the pilot program and, going forward, its effects will be considered by the Commission in the event that the Exchange seeks to renew or make permanent the pilot program.[14] Thus, in the Exchange's future reports on the Pilot Program, the Exchange should include analysis of (1) the impact of the additional series on the Exchange's market and quote capacity, and (2) the implementation and effects of the delisting policy, including the number of series eligible for delisting during the period covered by the report, the number of series actually delisted during that period (pursuant to the delisting policy or otherwise), and documentation of any customer requests to maintain QOS strikes that were otherwise eligible for delisting.

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 No. SR–BSE–2008–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2008–17. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2008–17 and should be submitted on or before April 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–7116 Filed 4–4–08; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 fulfilled this requirement.

[12] *See* Securities Exchange Act Release No. 57410, *supra* note 6. *See also* Securities Exchange Act Release No. 57425, *supra* note 6.

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] As set forth in the Pilot Program Release, if the Exchange were to propose an extension, expansion, or permanent approval of the Pilot Program, the Exchange must submit, along with any filing proposing such amendments to the program, a report that provides an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. *See* Pilot Program Release, *supra* note 5. The Pilot Program Release requires the Exchange to include in its report, at a minimum: (1) data and written analysis on the open interest and trading volume in the classes for which QOS were opened; (2) an assessment of the appropriateness of the option classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of the Exchange, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Exchange addressed such problems; (5) any complaints that the Exchange received during the operation of the Pilot Program and how the Exchange addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57598; File No. SR–BSE–2008–19]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Position and Exercise Limits on the Boston Options Exchange Facility

April 1, 2008.

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 18, 2008, the Boston Stock Exchange, Inc. (''Exchange'' or ''BSE'') filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under section 19(b)(3)(A)(iii) 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the rules of the Boston Options Exchange (''BOX'') to increase the position and exercise limits applicable to options on the DIAMONDS Trust, Series 1 (''DIA''). The text of the rule proposal is available on the Exchange's Web site (*http://www.bostonstock.com*), at the offices of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the BOX rules pertaining to position and exercise limits for options on DIA. The Exchange proposes to increase position and exercise limits for options on DIA to 300,000 contracts on the same side of the market. The Commission previously approved a similar proposal of the Chicago Board Options Exchange (''CBOE'').[5]

The Exchange also recently made permanent its increased position and exercise limits for certain equity options on BOX, which were in effect on a pilot basis.[6] The Exchange stipulated, as part of its proposal for such permanent approval, that ''its surveillance procedures and reporting procedures, in conjunction with the financial requirements and risk management review procedures already in place at the clearing firms and the Options Clearing Corporation, [would] serve to adequately address any concerns the Commission may have with respect to account(s) engaging in any manipulative schemes or assuming too high a level of risk exposure.'' [7] These representations also apply to the current proposal to increase the position and exercise limits for options on DIA. The Exchange now seeks to increase the position and exercise limits for options on DIA on BOX to the level that such limits are in effect on CBOE (300,000 contracts on the same side of the market).

The Exchange asserts that the justifications behind the Commission's approval of CBOE's proposal should support the same increased position and exercise limits on options on DIA on BOX. Specifically, the Exchange believes that the ''structure of the DIA options and the considerable liquidity of both the underlying cash and options market for DIA options lessen the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against.'' [8] The Exchange believes that the reporting requirements imposed under the BOX rules will help protect against potential manipulation.[9] Additionally, the Exchange believes that such an increase in position and exercise limits on options on DIA on BOX is also required for competitive purposes as well as for purposes of consistency and uniformity among the competing options exchanges. This, taken in conjunction with the permanent establishment of other increased position and exercise limits for certain equity options on BOX,[10] supports the Exchange's proposal related to such increased position and exercise limits applicable to DIA.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act [11] in general, and section 6(b)(5) of the Act [12] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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. Specifically, the Exchange believes that the structure of the DIA options and the considerable liquidity of the market for DIA options diminishes the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [13] and

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 47346 (February 11, 2003) 68 FR 8316 (February 20, 2003) (SR–CBOE–2002–26) (approving an increase in the position limits and exercise limits to 300,000 for DIA options). The Commission stated that ''given the surveillance capabilities of the [CBOE] and the depth and liquidity in both the DIA options and the underlying cash market in DIAs, the Commission believes it is permissible to significantly raise position and exercise limits for DIA options without risk of disruption to the options or underlying cash markets.'' The Commission also stated that ''financial and reporting requirements * * * should allow [CBOE] to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow [CBOE] to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary.''

[6] *See* Securities Exchange Act Release No. 57414 (March 3, 2008) 73 FR 12481 (March 7, 2008) (SR–BSE–2008–12).

[7] *Id.*

[8] *See* Securities Exchange Act Release No. 47346, *supra* note 5.

[9] *See* BOX Rules, Ch. III, Sec. 10.

[10] *See, e.g.,* Securities Exchange Act Release No. 57414, *supra* note 6.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

subparagraph (f)(6) of Rule 19b–4 thereunder.[14] The Exchange notes that the proposed rule change is based on a similar proposal previously approved by the Commission,[15] and does not raise any novel issues. Additionally, the Exchange asserts that the proposed rule change is necessary to eliminate any confusion among members of multiple exchanges regarding position and exercise limits applicable to options on DIA and for purposes of maintaining a fair and orderly market.

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Exchange states that waiving the operative delay will allow the proposed increase in the position and exercise limits applicable to options on DIA on BOX to be put into effect immediately, which will align BOX's DIA limits with the DIA limits applicable to members of other options exchange(s), thereby promoting conformity and uniformity in the rules of the several options exchanges.

The Commission believes that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest.[16] Therefore, the Commission designates the proposal to be operative upon filing.

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 No. SR–BSE–2008–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2008–19. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2008–19 and should be submitted on or before April 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–7189 Filed 4–4–08; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 fulfilled this requirement.

[15] *See* Securities Exchange Act Release No. 47346, *supra* note 5.

[16] For 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).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57593; File No. SR–CBOE–2008–38]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees for the CBOE Stock Exchange

April 1, 2008.

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 31, 2008, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') 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 substantially prepared by the Exchange. The Exchange has designated this proposal as one establishing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders it 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

The Exchange proposes to modify its fees applicable to the CBOE Stock Exchange (''CBSX''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[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)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBSX fee schedule lists the fees applicable to trading on CBSX. The CBOE Complex Order Auction system (''COA'') and Complex Order Book (''COB''), governed by CBOE Rule 6.53C, facilitate the handling and execution of complex orders by allowing for complex orders to rest in the system and allowing for inbound complex orders to trigger an auction where auction participants may submit complex order responses to trade with the order that is being auctioned. Until recently, Rule 6.53C applied only to complex orders containing only options components. In recent months, CBOE implemented an enhancement to the Rule 6.53C COA/COB system to facilitate the execution of complex orders containing a stock component (*e.g.,* a buy-write order).[5] As detailed in that filing, the stock component of a stock-option complex order handled by the system is executed on CBSX. The present filing seeks to adopt special charges for the stock executions that result from stock-option orders trading pursuant to Rule 6.53C.

The CBSX transaction fees for these orders will be based on whether the stock-option order that initiated an execution pursuant to Rule 6.53C ultimately trades against another stock-option order or against unrelated orders in the respective markets (CBOE and CBSX). By way of example, a buy-write order auctioned by the system may trigger responses to trade against the entire buy-write order as a package—this is a stock-option order trading against another stock-option order. On the other hand, a buy-write order processed by the system could also ultimately be filled by: (i) The option component (an order to sell a call) trading against a straight order to buy that call resting in the CBOE Hybrid book, and (ii) the stock component (an order to buy stock) trading against a straight sell order in the CBSX book.

A stock trade on CBSX consisting of the stock component of two stock-option orders trading against each other pursuant to Rule 6.53C shall be charged as follows: the order that triggered a COA or that triggered a trade with a resting COB order shall be charged $0.0005 per share subject to a $1.00 minimum charge and a $25.00 maximum charge. The order that responded to the auction or that was resting in the COB prior to the trade shall not be charged and shall not receive a rebate.

A stock trade on CBSX consisting of the stock component of a stock-option order handled pursuant to Rule 6.53C trading against a resting stock order on the CBSX book shall be charged as follows: the resting order is considered a Maker of liquidity and receives the applicable Maker rebate pursuant to the CBSX fee schedule, and the non-resting stock order is charged the standard Taker rate pursuant to the CBSX fee schedule.

The changes take effect on Tuesday, April 1, 2008.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using its facilities.

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 foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(2) thereunder.[9] 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–CBOE–2008–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–38. 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 Commissions 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–38 and should be submitted on or before April 28, 2008.

[5] See Securities Exchange Act Release No. 56903 (December 5, 2007), 72 FR 70356 (December 11, 2007) (SR–CBOE–2007–68).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–7115 Filed 4–4–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57596; File No. SR–FICC–2007–11]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule To Modify the Fee Structure of the Government Securities Division Rules Regarding GCF Repo Transactions and the Fee Structure of the Mortgage-Backed Securities Division Rule Regarding Trade-for-Trade and Settlement Balance Order Processing Fees

April 1, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 31, 2007, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. FICC filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act[2] and Rule 19b–4(f)(2)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the rule change is to modify the fee structure of the Government Securities Division (''GSD'') rules regarding GCF Repo Transactions and the fee structure of the Mortgage-Backed Securities Division (''MBSD'') rules regarding Trade-for-Trade and Settlement Balance Order (''SBO'') processing fees.

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 these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, the GSD fee schedule indicates the charge for all requests to modify or cancel a side of a trade or repo transaction, including CGF Repo Transactions, is 25 cents per request. To reflect current practice, FICC is proposing to change the charge for requests to modify or cancel a side of a GCF Repo Transaction to 5 cents per request.

FICC is also proposing to reduce the MBSD trade processing fee charged to dealers engaging in both Trade-for-Trade and SBO processing to align the fees with the actual costs to deliver the services. FICC is proposing to reduce the fee for Trade-for-Trade Trade Creates from $2.25 to $0.50. The fees for SBO Trade Creates are categorized by volume of Trade Creates and are based on the par value per million per month (''MM''). FICC is proposing to reduce the fee for SBO Trade Creates as follows: (i) Between 1–2,500 Trade Creates, from $1,68/MM to $1.58/MM; (ii) between 2,501–5,000 Trade Creates, from $1.56/MM to $1.46/MM; (iii) between 5,001–7,500 Trade Creates, from $1.43/MM to $1.33/MM; (iv) between 7,501–10,000 Trade Creates, from $1.35/MM to $1.25/MM; (v) between 10,001–12,500 Trade Creates, from $1.22/MM to $1.12/MM; and (vi) 12,501 and over Trade Creates, from $1.09/MM to $0.99/MM.

The proposed rule change is consistent with Section 17A of the Act,[5] as amended, because it reduces a FICC fee and thereby provides for the equitable allocation of fees among its participants.

(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

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2)[7] thereunder because the proposed rule change changes a fee imposed by FICC applicable only to members or participants. At any time within sixty 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 Number SR–FICC–2007–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2007–11. 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

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(ii).

[3] 17 CFR 240.19b–4(f)(2).

[4] The Commission has modified the text of the summaries prepared by FICC.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2007/ficc/2007–11.pdf.* 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–FICC–2007–11 and should be submitted on or before April 28, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–7119 Filed 4–4–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57592; File No. SR–NYSE–2008–23]

Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Rule 104.10 To Extend the Duration of the Pilot Program Applicable to Conditional Transactions in All Securities to June 30, 2008

April 1, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2008, 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 substantially prepared by the NYSE. The NYSE has designated the proposed rule change as a ''non-controversial'' 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing to amend NYSE Rule 104.10 to extend the duration of the pilot program applicable to Conditional Transactions as defined in Rule 104.10(6)(i) in all securities to June 30, 2008. The text of the proposed rule change is available at NYSE, at *http://www.nyse.com,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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 NYSE is proposing to amend NYSE Rule 104.10 to extend the duration of the pilot program applicable to Conditional Transactions as defined in Rule 104.10(6)(i) in all securities for an additional three months until June 30, 2008.

On October 26, 2007, the Commission approved the ability of NYSE specialists to effect Conditional Transactions pursuant to NYSE Rule 104.10(6) in all securities traded on the NYSE to operate as a pilot through March 31, 2008 (the ''Conditional Transaction Pilot'').[5]

(a) *Current Conditional Transaction Pilot*

Conditional Transactions are specialists' transactions that establish or increase a position and reach across the market to trade as the contra-side to the Exchange published bid or offer. Under the current Conditional Transaction Pilot, NYSE specialists are allowed to effect Conditional Transactions in all securities traded on the NYSE until March 31, 2008.

When a specialist effects a Conditional Transaction he or she has obligations to re-enter the market on the opposite side from which the specialist effected his or her Conditional Transaction pursuant to the rule. Specifically, pursuant to NYSE Rule 104.10(6)(ii) ''appropriate'' re-entry means ''re-entry on the opposite side of the market at or before the price participation point or the 'PPP.' ''[6] Depending on the type of Conditional Transaction, a specialist's obligation to re-enter may be immediate or subject to the same re-entry conditions of Non-Conditional Transactions.[7] Conditional

[8] 17 CFR 200.30–3(a)(12).

[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).

[5] *See* Securities Exchange Act Release No. 56711 (October 26, 2007), 72 FR 62504 (November 5, 2007) (SR–NYSE–2007–83).

[6] NYSE Rule 104.10(6)(iii)(a) provides that the PPP identifies the price at or before which a specialist is expected to re-enter the market after effecting a Conditional Transaction. PPPs are only minimum guidelines and compliance with them does not guarantee that a specialist is meeting its obligations. The Exchange issued guidance regarding PPPs in January 2007. See NYSE Member Education Bulletin 2007–1 (January 18, 2007).

[7] NYSE Rule 104.10(6)(iii)(c) provides that immediate re-entry is required after the following Conditional Transactions:

As a condition of operating the Conditional Transaction Pilot, the Exchange committed to providing the Commission with data related to specialist executions of Conditional Transactions. The data includes the daily Consolidated Tape volume in shares, daily number of trades; daily high-low volatility in basis points and daily close price in dollars.

(I) A purchase that (1) reaches across the market to trade with an Exchange published offer that is above the last differently priced trade on the Exchange and above the last differently priced published offer on the Exchange, (2) is 10,000 shares or more or has a market value of $200,000 or more, and (3) exceeds 50% of the published offer size.

(II) A sale that (1) reaches across the market to trade with an Exchange published bid that is below the last differently priced trade on the Exchange and below the last differently priced published bid on the Exchange, (2) is 10,000 shares or more or has a market value of $200,000 or more, and (3) exceeds 50% of the published bid size. (Emphasis added.)

Moreover, pursuant to current NYSE Rule 104.10(6)(iv) Conditional Transactions that involve (a) a specialist's purchase from the Exchange published offer that is priced above the last differently-priced trade on the Exchange or above the last differently-priced published offer on the Exchange and (b) a specialist's sale to the Exchange published bid that is priced below the last differently-priced trade on the Exchange or below the last differently-priced published bid on the Exchange are subject to the re-entry requirements for Non-Conditional Transactions pursuant to Rule 104.10(5)(i)(a)(II)(c), which provides:

Re-entry Obligation Following Non-Conditional Transactions—The specialist's obligation to maintain a fair and orderly market may require re-entry on the opposite side of the market trend after effecting one or more Non-Conditional Transactions. Such re-entry transactions should be commensurate with the size of the Non-Conditional

Transactions are subject to a specialist's overall negative obligation.[8]

The Exchange continues to calculate the specialist's profit on round-trip Hit Bid and Take Offer (''HB/TO'') executions. This is accomplished by measuring the specialist's profit on HB/TO activity by taking the round-trip trading profits for all HB/TO trades where the specialist executes an offsetting trade within 30 seconds. In cases where the volume of the offsetting execution is less than the size of the HB/TO execution, the calculation will only include profits realized within the 30-second window.

The Exchange continues to calculate the quote-based specialist re-entry ratio. Each re-entry price level is categorized and reported separately. In addition, the Exchange continues to provide the Commission with data related to the average realized spread on specialist HB/TO executions. These calculations are done using the same formula as SEC Rule 605. Specifically, the average realized spread is a share-weighted average of realized spreads. For specialist buys, it is double the amount of difference between the execution price and the midpoint of the consolidated best bid and offer five minutes after the time of HB/TO execution. For specialist sells, it is double the amount of difference between the midpoint of the consolidated best bid and offer five minutes after the time of HB/TO execution and the execution price.

The Exchange has provided the Commission's Division of Trading and Markets and the Office of Economic Analysis with statistics related to market quality, specialist trading activity, and sample statistics for the months of November and December 2007. The Exchange represents it will provide the relevant statistics for January and February 2008 no later than March 28, 2008. Commencing with the relevant statistics for the month of March 2008, the Exchange represents that it will provide all the aforementioned information to the Commission on or before the 15th of the calendar month directly following the data month. The Exchange represents it will maintain average measures for each stock-day during a particular month in order to provide such information to the Commission upon request.

Furthermore, NYSE Regulation, Inc. (''NYSER'') believes that it has appropriate surveillance procedures in place to surveil for compliance with the negative obligations of specialists. NYSER monitors, using a pattern and practice and/or outlier approach, specialist activity that appears to cause or exacerbate excessive price movement in the market (since such transactions would appear to be in violation of a specialist's negative obligation). In this connection, NYSER continues to surveil for specialist compliance with the PPP re-entry requirements, and based on its reviews of surveillance data to date, has not identified significant compliance issues. The Division of Market Surveillance of NYSER also monitors specialist trading to cushion such price movements.

(b) *Conclusion*

The Exchange believes that an extension of the current Conditional Transaction Pilot program will continue to provide NYSE specialists with the flexibility to compete and to efficiently and systematically trade and quote in their securities as well as equip them to fluidly manage their risk.

In view of the above, the NYSE believes it is appropriate to extend the operation of the Conditional Transaction Pilot program for an additional three months until June 30, 2008.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5)[9] of the Act that an Exchange have rules that are designed 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)[10] in that it seeks to assure economically efficient execution of securities transactions. The Exchange believes that extending the operation of the Conditional Transaction Pilot will provide specialists with the required flexibility to compete, thus adding value to the Exchange market by encouraging specialists to continue to commit capital. Ultimately, the Exchange believes that the Conditional Transaction Pilot benefits the marketplace by allowing specialists to manage their risk and, therefore, gives them the ability to increase the liquidity they provide at prices outside the best bid and offer, as well as to meet their obligation to bridge temporary gaps in supply and demand, thereby dampening volatility.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this 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)[11] of the Act and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE requests that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[13] which would make the rule change effective and operative upon filing. The Commission believes that waiving the 5-day pre-filing notice and

Transactions and the immediate and anticipated needs of the market.

[8] The negative obligation, which is part of NYSE Rule 104, requires that specialists restrict their dealings so far as practicable to those reasonably necessary to permit the specialists to maintain a fair and orderly market. Specifically, NYSE Rule 104(a) provides:

No specialist shall effect on the Exchange purchases or sales of any security in which such specialist is registered, for any account in which he, his member organization or any other member, allied member, or approved person, (unless an exemption with respect to such approved person is in effect pursuant to Rule 98) in such organization or officer or employee thereof is directly or indirectly interested, unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market, or to act as an odd-lot dealer in such security.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Conditional Transaction Pilot to continue without interruption through June 30, 2008 and provide the Exchange and the Commission additional time to evaluate the pilot.[14] Accordingly, the Commission designates that the proposed rule change effective and operative upon filing with the Commission.

At any time within 60 days of the filing of such 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 Number SR–NYSE–2008–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–23. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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–2008–23 and should be submitted on or before April 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–7114 Filed 4–4–08; 8:45 am]

BILLING CODE 8011–01–P

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57591; File No. SR–NYSE–2008–21]

Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Rule 103A (Specialist Stock Reallocation and Member Education and Performance) and Exchange Rule 103B (Specialist Stock Allocation)

April 1, 2008.

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 26, 2008, 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 substantially prepared by the Exchange. The Exchange has designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A)(iii)[3] of the Act and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal 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)(iii).

[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 to June 30, 2008, the moratorium on the administration of the Specialist Performance Evaluation Questionnaire (''SPEQ'') pursuant to Exchange Rule 103A and the use of the SPEQ pursuant to Exchange Rule 103B (''Moratorium''), which was implemented on June 8, 2007. In addition, the Exchange proposes to continue to suspend the use of SuperDot turnaround for orders received and the use of responses to administrative messages as objective measures in the assessment of specialist performance during the Moratorium. The Exchange further proposes that the SPEQ and Order Reports/Administrative Responses continue to be removed from the criteria used to commence a specialist performance improvement action during the Moratorium.

The text of the proposed rule changes is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE 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 proposes to extend to June 30, 2008, the Moratorium on the administration of the SPEQ pursuant to Exchange Rule 103A and the use of the SPEQ pursuant to Exchange Rule 103B. The Moratorium was implemented on June 8, 2007 and extended through March 31, 2008.[5]

[5] *See* Securities Exchange Act Release Nos. 55852 (June 4, 2007), 72 FR 31868 (June 8, 2007) (NYSE–2007–47) (''Original Request'') and 57184 (January

In addition, the Exchange proposes that the use of SuperDot turnaround for orders received and responses to administrative messages continue to be removed from the objective measures used in the assessment of specialist performance pursuant to Exchange Rule 103B or as criteria used to commence specialist performance improvement action pursuant to Exchange Rule 103A during the Moratorium.

SPEQ

Prior to June 2007, pursuant to Exchange Rule 103A, on a quarterly basis, the Exchange distributed a twenty question survey known as the SPEQ to eligible Floor brokers [6] to evaluate specialist performance during the quarter immediately prior to the distribution of the SPEQ. Initially, this subjective feedback provided critical information to assist the Exchange in maintaining the quality of the NYSE market.

However, the Exchange believed that the SPEQ no longer adequately allowed a Floor broker to assess the electronic interaction between the specialist and the Floor broker. The Hybrid Market provided Floor brokers and specialists with electronic trading tools that have resulted in less personal and verbal contact between Floor brokers and specialists. Currently, the majority of transactions executed on the Exchange are done through electronic executions.

In addition, the dramatic increase in transparency with respect to the Display Book through, among other things, Exchange initiatives like NYSE OPENBOOK™ [7] (''OPENBOOK'') has decreased the need for the Floor broker to obtain market information verbally from the specialist. This increased transparency gives all market participants, both on and off the Floor, a greater ability to see and react to market changes.

The questions on the SPEQ did not take into account the operation of the electronic tools available in the Hybrid Market. The SPEQ did not provide Floor brokers with a means to evaluate specialist performance under the current market model. As a result of the more electronic interaction between Floor brokers and specialists, Floor brokers were unable to assess specialist performance using the current SPEQ.

The questions posed to the Floor brokers on the SPEQ required Floor brokers to opine on the specialists' ability to offer single price executions and specialists' ability to provide notification to Floor brokers of market changes in particular stocks. In the current more electronic market, specialists are unable to offer single price executions and the relative speed of executions makes it virtually impossible for specialist to notify brokers of changes in a particular security.

Given the above, the SPEQ no longer served as a meaningful measure of specialist performance.

Objective Measures

The Exchange further requests that during the extension of the Moratorium, allocations of newly listed securities on the Exchange continue to be based on the objective measures identified in Exchange Rule 103B,[8] with the exception of SuperDot turnaround for orders received and response to administrative messages.

As explained in the Original Request and in the previously requested extension, SuperDot turnaround for orders received and response to administrative messages no longer provide meaningful objective standards to evaluate specialist performance in the Hybrid Market. Specifically, in the more electronic Hybrid Market, orders received by Exchange systems that are marketable upon entry are eligible to be immediately and automatically executed by Exchange systems. As such, SuperDot turnaround no longer provided a meaningful objective measure of a specialist's performance.

Furthermore, in the current more electronic market, the Exchange systems automatically respond to the majority of the administrative messages. Today, there are two administrative messages that require a manual response from specialists. These are messages that require the specialist to provide status information on market orders and stop orders. With regard to requests for the status of stop orders, the specialists are no longer capable of providing this information. In December 2006, following Commission approval,[9] the Exchange changed its stop order handling process. Stop orders are no longer visible to the part of the NYSE Display Book® that the specialist ''sees.'' When a transaction on the Exchange results in the election of a stop order that had been received prior to such transaction, the elected stop order is sent as a market order [10] to the Display Book and the specialist's system employing algorithms, where it is handled in the same way as any other market order. The specialist, therefore, is unable to provide any information regarding the status of stop orders.

Market orders are eligible to receive immediate and automatic execution on the Exchange. The immediate and automatic execution of market orders eliminates the need for the specialists to respond to the administrative request for the status of market orders. In practice, a customer that submits a market order will likely receive a report of execution before the administrative message requesting the status of the market order has been printed and read by the specialist.

This change has had a minimal impact on Exchange customers. In the past few years, the average number of administrative messages received on a daily basis has steadily declined. The Exchange believes that immediate and automatic execution of orders will virtually eliminate administrative messages that require a manual response from a specialist. As a result, a specialist's ability to respond to administrative messages no longer provides a meaningful measure of specialists' performance during the Moratorium.

Given the above, the Exchange seeks to continue suspension of the use of both measures as criteria used to assess

22, 2008), 73 FR 5254 (January 29, 2008) (NYSE–2008–02).

[6] The Exchange believed that conscientious participation in the SPEQ process was a critical element in the Exchange's program for evaluating the overall performance of its specialists. All eligible Floor brokers are required to participate in the process and evaluate from one to three specialist units each quarter. Floor brokers were selected to participate in the SPEQ process based on broker badge data submitted in accordance with audit trail requirements. Brokers who intentionally failed or refused to participate in the SPEQ process were potentially subject to disciplinary action, including the imposition of a summary fine pursuant to Exchange Rule 476A.

[7] OPENBOOK Online Database is an Exchange online service that allows subscribers to view the contents of the specialist book for any stock at any given point in the day, or over a period of time. Results are returned in an Excel spreadsheet. OPENBOOK Online Database is a historical database with data stored online for a 12-month period.

[8] Pursuant to Exchange Rule 103B, specialist dealer performance is measured in terms of participation (TTV); stabilization; capital utilization, which is the degree to which the specialist unit uses its own capital in relation to the total dollar value of trading in the unit's stocks; and near neighbor analysis, which is a measure of specialist performance and market quality comparing performance in a stock to performance of stocks that have similar market characteristics. Additional objective measures pursuant to Exchange Rule 103B are those measures included in Exchange Rule 103A which are: (a) *Timeliness* of regular openings; (b) promptness in seeking Floor official approval of a non-regulatory delayed opening; (c) timeliness of DOT turnaround; and (d) response to administrative messages.

[9] *See* Securities Exchange Act Release No. 54820 (November 27, 2006), 71 FR 70824 (December 6, 2006) (SR–NYSE–2006–65).

[10] As used herein, the term ''market order'' refers to market orders that are not designated as ''auction market orders.''

specialists' performance during the extension of the Moratorium.

Performance Improvement Actions

Similarly, during the extension of the Moratorium, the Exchange seeks to continue suspending the use of the SPEQ and Order Reports/Administrative Reports as criteria for the implementation of a performance improvement action pursuant to Exchange Rule 103A. Exchange Rule 103A(b) provides that:

> The Market Performance Committee shall initiate a Performance Improvement Action (except in highly unusual or extenuating circumstances, involving factors beyond the control of a particular specialist unit, as determined by formal vote of the Committee) in any case where a specialist unit's performance falls below such standards as are specified in the Supplementary Material to this rule. The objective of a Performance Improvement Action shall be to improve a specialist unit's performance where the unit has exhibited one or more significant weaknesses, or has exhibited an overall pattern of weak performance that indicates the need for general improvement.

Prior to June 2007, the SPEQ and Order Reports/Administrative Reports were two criteria included in the standards specified in Exchange Rule 103A Supplementary Material. Given that SPEQ and Order Reports/Administrative Reports no longer provided significant objective measures of specialists' performance in the Hybrid Market, the Exchange sought to suspend the use of both measures as criteria for the implementation of a performance improvement action during the Moratorium. Through this filing, the Exchange seeks to continue this suspension for the duration of the Moratorium.

Creation of a New Process

The Exchange intends to establish a quantifiable measure in order to determine a specialist firm's eligibility to participate in the new Allocation Process. The Exchange intends to formally submit a proposal to the Commission to amend Exchange rules that govern the allocation of securities to specialist firms and other related rules by the end of April 2008.

The Exchange believes that the use of a single objective measure to determine specialist firm eligibility for allocation will create a more efficient process that is consistent with the Exchange's current more electronic trading environment.

Conclusion

The Exchange therefore requests to extend the Moratorium on the administration of the SPEQ pursuant to Exchange Rule 103A and the use of the SPEQ pursuant to Exchange Rule 103B until June 30, 2008. In addition, the Exchange proposes to continue to suspend the use of SuperDot turnaround for orders received and the use of responses to administrative messages as objective measures in the assessment of specialist performance during the Moratorium. The Exchange further proposes that the SPEQ and Order Reports/Administrative Responses continue to be removed from the criteria used to commence a specialist performance improvement action during the Moratorium.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [11] that an Exchange have rules that are designed 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 proposed rule change also is designed to support the principles of Section 11A(a)(1) [12] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer. Due to the Exchange's transition to a more electronic market, the current SPEQ, SuperDot turnaround for orders received and response to administrative messages no longer provide meaningful objective standards to evaluate specialist performance in the Hybrid Market. The Exchange requests this continued extension of the Moratorium to determine whether elimination of the SPEQ as well as SuperDot turnaround for orders received and response to administrative messages as objective measures would remove an impediment to a free and open electronic market which would result in the more economically efficient execution of securities transactions. Given the current trend to a more electronically-based market, the Exchange believes that the use of more objective and detailed measures will promote healthy competition between specialist firms and ultimately result in better market-making for Exchange customers.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1(a)(1).

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of 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[13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[15] However, Rule 19b–4(f)(6)(iii)[16] 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 five-day prefiling requirement and the 30-day pre-operative delay and designate the proposed rule change to become operative upon filing.

The Commission believes that waiving the five-day prefiling requirement and the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to extend the Moratorium. The Commission notes that the Exchange expects to file a proposed rule change under Section 19(b) of the Act[17] by the end of April 2008, which would amend Exchange rules that govern the allocation of securities to specialist firms and other related rules. The Commission designates the proposal to

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *Id.*

[17] 15 U.S.C. 78s(b).

become effective and operative upon filing.[18]

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 the 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–2008–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–21. 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. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. 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–2008–21 and should be submitted on or before April 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–7122 Filed 4–4–08; 8:45 am]

BILLING CODE 8011–01–P

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57585; File No. SR–NYSEArca–2008–36]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Certain Transaction Fees and To Establish a New Fee, the Market Maker Post Liquidity Incentive Credit

March 31, 2008.

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 28, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by the Exchange. NYSE Arca has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),[3] and Rule 19b–4(f)(2) 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to amend its Schedule of Fees and Charges for Exchange Services (''Schedule'') in order to revise certain Transaction Fees and establish a new fee, the Market Maker Post Liquidity Incentive Credit. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nysearca.com*), at NYSE Arca's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. NYSE Arca 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 purpose of this filing is to amend the existing Schedule in order to: (i) Make changes to Transaction Fees assessed on certain executions in issues that trade as part of the Penny Pilot,[5] and (ii) introduce a new fee to be called the Market Maker Post Liquidity Incentive Credit (''Incentive Credit''). The Exchange plans to implement these fees on April 1, 2008. A description of each proposed change is explained below.

Transaction Fees

NYSE Arca offers market participants a Post/Take pricing model for electronically executed transactions in issues that are included in the Penny Pilot. Under the present rate schedule, all electronic orders that ''take'' liquidity from the Consolidated Book (incoming electronic quotes and orders that are executed upon receipt) are charged a fee of $0.50 per contract. As part of its ongoing effort to provide competitive rates, the Exchange now proposes to offer reduced pricing for certain Post/Take transactions in issues that are included in the Penny Pilot. Specifically the Exchange will lower the Take Liquidity rate from $0.50 to $0.45 per contract for all market participants.

[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)(2).

[5] The Exchange may trade option contracts in one cent increments in certain approved issues as part of the Penny Pilot, through March 27, 2009. *See* Securities Exchange Act Release No. 56568 (September 27, 2007), 72 FR 56422 (October 3, 2007) (approval order for SR–NYSEArca–2007–88).

Market Maker Post Liquidity Incentive Credit

NYSE Arca proposes to add a new fee credit, which will be available to Market Makers and Lead Market Makers (''LMMs'') who reach a certain level of monthly contact volume in Penny Pilot Issues. Market Makers and LMMs that achieve specific posting volume thresholds for quotes and orders in Penny Pilot issues will receive additional credits as follows:

Post liquidity incentive thresholds	Credit
> 1,000,000 posting contracts/month	$.01/contract.
> 5,000,000 posting contracts/month	$.05/contract.

The incentive credit is incremental and will apply to the posting volumes executed within each tier, and this credit is earned in addition to the standard Post Liquidity fee credit. For example, if a Market Maker trades 6,000,000 contracts in one month, the Post Liquidity fee credit would be $0.30 for the first 1 million contracts, for contracts 1,000,001 to 5,000,000 the credit would be $0.30 plus a one-cent incentive credit for a marginal credit rate of $0.31, and for contracts 5,000,001 to 6,000,000, the credit would be $0.30 plus a five-cent incentive credit for a marginal credit rate of $0.35.

The Incentive Credit will be calculated on a monthly basis, and will be reflected on OTP Holders' bills on a quarterly basis.

By offering the Market Maker Post Liquidity Incentive Credit, NYSE Arca hopes to attract additional Market Makers and LMM quotes and orders to the Exchange, which in turn should lead to tighter spreads and deeper liquidity, which will benefit all market participants.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(2) of Rule 19b–4[9] thereunder. 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 Number SR–NYSEArca–2008–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–36. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2008–36 and should be submitted on or before April 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–7112 Filed 4–4–08; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57588; File No. SR–NYSEArca–2008–37]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Amending the Linkage Fees Portion of the Schedule of Fees and Charges for Exchange Services

March 31, 2008.

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 28, 2008, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On March 31, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca is proposing to amend the Linkage Fees portion of the Schedule of Fees and Charges for Exchange Services (''Schedule''). The text of the proposed rule change is available at the Exchange, 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 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 III 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 purpose of this filing is to amend the existing Schedule in order to revise the Linkage Fees portion of the Schedule, so as to conform with fee changes the Exchange has proposed for certain Broker Dealer executions. The Exchange plans to implement the revised Broker Dealer fees on April 1, 2008.

Executions on NYSE Arca resulting from orders sent via the Intermarket Option Linkage (''Linkage Orders'') are subject to the same billing treatment as other Broker Dealer orders.[3] Presently, the Exchange charges $0.50 for all electronically executed Linkage Orders. The Exchange assesses this rate for Linkage Order executions in all issues, including those that trade as part of the Penny Pilot.[4]

Options that overlay issues that trade as part of the Penny Pilot are subject to a Post/Take pricing model.[5] On March 28, 2008, NYSE Arca filed with the Commission a proposal that lowers the ''Take Liquidity'' fee for electronically executed Broker Dealer orders in issues that trade as part of the Penny Pilot from $0.50 to $0.45.[6] Linkage Orders that are executed in Penny Pilot issues are assessed the same rate as other Broker Dealer orders that take liquidity, because Linkage Orders ''take'' liquidity that is resting in the NYSE Arca Consolidated Book as opposed to ''posting'' liquidity. In conjunction with the change to the Take Liquidity fee that the Exchange has previously proposed, NYSE Arca is now proposing to create a new fee for electronically executed Linkage Orders in Penny Pilot issues. Such orders that were previously charged a $0.50 fee will now be assessed a reduced fee of $0.45. Linkage Fees for non-Penny Pilot issues remain the same. This change will keep Linkage Fees consistent with other fees charged for Broker Dealer executions.

The Exchange plans to implement this new, lower Linkage Fee in conjunction with the implementation of the revised Take Liquidity fee on April 1, 2008, pending Commission approval.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[7] in general, and Section 6(b)(4),[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities for the purpose of executing Linkage Orders that are routed to the Exchange from other market centers.

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

Written comments on the proposed rule change were neither solicited nor received.

III. 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–NYSEArca–2008–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–37. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As stated in the proposal to establish a pilot program for Linkage Fees: ''[i]n connection with the launch of the options intermarket linkage, the Exchange seeks to include in its Schedule of Fees and Charges For Exchange Services a provision that applies to linkage fees stating that executions resulting from Linkage Orders will be subject to the same billing treatment as other broker-dealer executions.''

See Securities Exchange Act Release No. 47560 (March 21, 2003), 68 FR 15257 (March 28, 2003) (SR–PCX–2003–08). *See also* Securities Exchange Act Release Nos. 47786 (May 2, 2003), 68 FR 24779 (May 8, 2003) (order approving SR–PCX–2003–08) and 56133 (July 25, 2007), 72 FR 42210 (August 1, 2007) (SR–NYSEArca–2007–66) (order approving extension of Linkage Fee pilot program through July 31, 2008).

[4] The Exchange may trade option contracts in one-cent increments in certain approved issues as part of the Penny Pilot through March 27, 2009. *See* Securities Exchange Act Release No. 56568 (September 27, 2007), 72 FR 56422 (October 3, 2007) (SR–NYSEArca–2007–88).

[5] A detailed description of the Post/Take pricing model is shown in the Trade Related Charges section of the Schedule.

[6] *See* SR–NYSEArca–2008–36. Fee changes made pursuant to SR–NYSEArca–2008–36, which was effective upon filing, are reflected in the Schedule.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–37 and should be submitted on or before April 28, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [9] and, in particular, with the requirements of Section 6(b) of the Act.[10] In particular, the Commission finds that the Exchange's proposal is consistent with Section 6(b)(4) of the Act,[11] which requires that the rules of the Exchange provide for the equitable allocation or reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission notes that proposal conforms Linkage Fees with those fees charged on other Broker Dealer executions.

The Commission finds good cause, pursuant to Section 19(b)(2)(B) of the Act,[12] for approving the proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof in the **Federal Register**. An accelerated approval will not only permit the Exchange to comply with the terms of the Linkage Fee pilot program [13] but will also allow the Exchange to immediately implement a lower fee for market participants executing Linkage Orders on NYSE Arca.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [14] that the proposed rule change (SR–NYSEArca–2008–37), as modified by Amendment No. 1, is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–7113 Filed 4–4–08; 8:45 am]

BILLING CODE 8011–01–P

[9] In approving this rule, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(2)(B).

[13] *See* note 3 *supra.*

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57584; File No. SR–OCC–2007–16]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Late Exercises

March 31, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 7, 2007, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by OCC. 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 the Substance of the Proposed Rule Change

The proposed rule change would amend OCC's rules relating to the submission of late items and the fees associated with filing exercise notices after the start of critical processing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule filing is to amend OCC's (1) Rule 801 to modify the fee applied to exercise notices that are accepted by OCC after the start of critical processing, (2) Rule 805 to make conforming changes to the filing fees applied to the submission of supplementary exercise notices tendered after critical processing, and (3) Rule 205 to clarify the unusual or unforeseen circumstances when OCC may extend the cut-off time for submitting instructions to OCC.

1. Background

Rule 801 addresses the exercise of options other than at expiration. Subject to specified exceptions and conditions, Rule 801(d) grants certain individuals [2] the discretion to permit a clearing member to file, revoke, or modify any exercise notice after the prescribed deadline for the purpose of correcting a bona fide error. However, the requesting clearing member is liable to OCC for a late filing fee in escalating increments and time segments. Currently, these fees are:

(i) A fee of $5,000 for any request accepted between the prescribed deadline and the start of critical processing (provided that the request does not materially affect such start time) [3] and

(ii) a filing fee of $20,000 per line item listed on any exercise notice accepted for filing after the start of critical processing, with 50% of the fee to be distributed to the assigned clearing member or on a pro rata basis if more than one clearing member is assigned.[4]

Clearing members with short positions that have been assigned a late exercise are to receive notification thereof by 8 a.m. CT.

2. Discussion

At the March 2007 OCC Roundtable meeting,[5] a clearing member raised the issue of processing late exercises other

[2] Those individuals are OCC's Chairman, Management Vice Chairman, President, or a designee of such officer.

[3] The current deadline for submitting exercise notices is 7:00 p.m. CT.

[4] OCC will accept exercises until as late as 6:30 a.m. However, OCC will not accept a request to revoke or modify an exercise after the start of critical processing.

[5] OCC's Roundtable is an OCC-sponsored advisory group comprised of representatives from OCC's participant exchanges, OCC, a cross-section of OCC clearing members, and industry service bureaus. The Roundtable considers operational improvements that may be made to increase efficiencies and lower costs in the options industry.

than at expiration. The firm questioned the fairness of this process to option writers, noting that unexpectedly receiving additional assignments in the morning financially impacted the firm because its practice is to promptly review assignments from nightly processing and to hedge those obligations before the U.S. markets open. Expressing the view that late exercises permit a clearing member to shift liability for its own operational errors to another, the firm proposed that late exercises be eliminated to remedy this inequity and to cause clearing members to improve back office operations. After discussion, the Roundtable participants agreed to review the matter within their respective organizations and to revisit the topic at their next meeting.

In connection with its consideration of the matter, OCC reviewed the purpose served by permitting such exercises and recent processing of late exercise requests. Late exercises have long been allowed under OCC's rules to prevent clearing members from suffering severe economic losses due to bona fide operational errors. OCC determined that only a few late exercise requests were received during the period January 2006, through March 2007.[6] Specifically, there were five requests for late exercises from five different firms relating to 14 line items with values ranging from $124,000 to $270,000. All requests were received after the start of critical processing, requiring OCC to run supplemental exercise procedures after nightly processing had been completed. Such processing was initiated following the 6:30 a.m. (CT) cut-off time for late exercise requests,[7] and all assigned firms were notified before the 8 a.m. (CT) deadline. As specified in Rule 801(d), fifty percent of the $20,000 per line item filing fee was distributed to assigned clearing members.

Although no late exercise requests were received between the deadline for submitting exercises and the start of critical processing during the above-referenced review period, OCC also determined that, upon request, its operations staff would extend the deadline by a reasonable period in the event an exchange, clearing member, or OCC experienced system or operational problems that prevented one or more clearing members from submitting exercises on a timely basis.[8] The payment of the applicable filing fee in such instances was not required nor has it typically been required for requests received before the start of critical processing.

After carefully weighing the purpose and recent uses of the late exercise rule versus the fairness issue, OCC determined that it would be appropriate to retain the late exercise rule with certain modifications. Accordingly, OCC proposes to raise the filing fee for late exercise requests submitted post-critical processing from $20,000 to $75,000 per line item.[9] This change is intended to provide an incentive for firms to improve back office processing by increasing the cost of filing late exercise requests after the start of critical processing as well as to provide greater compensation to clearing members receiving ''late assignments'' while at the same time preserving the ability of firms to correct bona fide operational errors. To reflect current operating procedures, OCC proposes to eliminate the $5,000 filing fee for late exercise requests filed prior to the start of critical processing. For consistency, OCC also proposes to modify the fees applicable to the submission of supplementary exercise notices at expiration as set forth in Rule 805.[10] Accordingly, OCC will amend Rule 805's filing fees to conform them to the changes being made in Rule 801.

OCC states that the proposed change is consistent with Section 17A of the Act[11] because it promotes the prompt and accurate clearance and settlement of securities transactions by providing an incentive for clearing members to improve back office processing with respect to determining positions for which an exercise notice is to be submitted, while preserving their ability to correct bona fide operational errors. In addition, the proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

OCC has not solicited or received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2007–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2007–16. 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/*

[6] From April 2007 to October 2007 there were no requests to submit a late exercise although in each of June and September 2007, OCC received [0]an inquiry regarding a possible submission. However, the clearing members involved elected not to formally file such a request.

[7] Systemic and operational constraints preclude OCC from processing late exercise requests at an earlier time.

[8] Subject to OCC's need to start critical processing, the deadline for submitting exercise notices may be extended if ''unforeseen conditions'' prevent their submission by a clearing member (OCC Rule 205). OCC has concluded that its authority to extend such deadlines should more explicitly reference systemic or operational problems or other unforeseen conditions experienced by additional industry participants that may impact the timely submission of exercise notices.

[9] OCC's management's proposal was presented at the June 2007 Roundtable meeting. The Roundtable determined that OCC's management should decide whether to recommend the proposal to OCC's Board of Directors.

[10] It has been at least five years since a supplementary exercise notice has been submitted for processing.

[11] 15 U.S.C. 78q–1.

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at OCC's principal office and on OCC's web site (*http://www.theocc.com/publications/rules/proposed_changes/proposed_changes.jsp*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–OCC–2007–16 and should be submitted on or before April 28, 2008.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–7120 Filed 4–4–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57597; File No. SR–Phlx–2008–24]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Position and Exercise Limits on IWM Options

April 1, 2008.

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 28, 2008, the Philadelphia Stock Exchange, Inc. (''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1001, Position Limits, to establish increased position limits of 500,000 for options (''IMW Options'') on the exchange-traded fund (''ETF'') overlying the iShares Russell 2000 Index (''IWM''). The text of the rule proposal is available on the Exchange's Web site (*http://www.phlx.com*), at the offices of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish in Phlx Rule 1001 increased position limits of 500,000 contracts for IWM Options, which should encourage a more liquid and competitive market environment to the benefit of customers interested in the product.

About a year ago, the IWM Options position limit was increased to 500,000 contracts pursuant to a CBOE and ISE pilot program (the ''IWM Pilot'').[5] The Commission recently permanently approved this position limit pilot.[6] The Exchange now seeks to similarly increase its position limit on IWM Options to 500,000 contracts.[7]

Although position limits have lately enjoyed permanent expansion, there has been a steadfast and significant increase over the last decade in the overall volume of exchange-traded options. Part of this volume is attributable to a corresponding increase in the number of overall market participants. This growth in market participation has in turn brought about additional depth and increased liquidity in exchange-traded options.

As the anniversary of listed options trading approaches its 35th year, the Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange, at other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. These procedures include daily monitoring of market movements via automated surveillance techniques to identify unusual activities in both options and underlying stocks and ETFs.

The current financial requirements imposed by the Exchange and by the Commission should address any concerns that a member or its customer

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The proposal that established the IWM Pilot was designated to be effective and operative upon filing. *See*, *e.g.*, Securities Exchange Act Release Nos. 55176 (January 25, 2007), 72 FR 4741 (February 1, 2007) (SR–CBOE–2007–08) and 55175 (January 25, 2007), 72 FR 4753 (February 1, 2007) (SR–ISE–2007–07). The IWM Pilot was extended through March 1, 2008. *See* Securities Exchange Act Release Nos. 57141 (January 14, 2008), 73 FR 3496 (January 18, 2008) (SR–CBOE–2007–147) and 57144 (January 14, 2008), 73 FR 3785 (January 22, 2008) (SR–ISE–2008–03). The Exchange did not participate in the pilot program.

[6] *See* Securities Exchange Act Release No. 57352 (February 19, 2008), 73 FR 10076 (February 25, 2008) (SR–CBOE–2008–07). Other options exchanges similarly have a 500,000 contract IWM Options position limit. *See* Securities Exchange Act Release Nos. 57415 (March 3, 2008), 73 FR 12479 (March 7, 2008) (SR–Amex–2008–16); 57414 (March 3, 2008), 73 FR 12481 (March 7, 2008) (SR–BSE–2008–12); 57416 (March 3, 2008), 73 FR 12489 (March 7, 2008) (SR–ISE–2008–20); and 57417 (March 3, 2008), 73 FR 12788 (March 10, 2008) (SR–NYSEArca–2008–26). Position limit increases for other option products have also been approved recently. *See* Securities Exchange Release No. 57418 (March 3, 2008), 73 FR 12493 (March 7, 2008) (SR–Phlx–2008–14) (QQQQs position limit).

[7] Phlx Rule 1002, which the Exchange does not propose to amend, establishes exercise limits for equity options at the same levels as the applicable position limits. Phlx Rule 1002 states in part that ''no member or member organization shall exercise, for any account in which such member or member organization has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, a long position in any option contract of a class of options dealt in on the Exchange * * * if as a result thereof such member or member organization, or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days aggregate long positions in that class (put or call) as set forth as the position limit in Rule 1001 * * * ''

may try to maintain an inordinately large unhedged position in an equity option. As an example, the Exchange requires that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in a class of options for its own account or for the account of a customer report certain information. This data would include, but not be limited to, whether such position is hedged and if so, documentation as to how the position is hedged.[8]

The Exchange believes that its surveillance procedures and reporting procedures, in conjunction with the financial requirements and risk management review procedures already in place at the clearing firms and the Options Clearing Corporation, should serve to adequately address any concerns the Commission may have respecting account(s) engaging in manipulative schemes or assuming too high a level of risk exposure. Accordingly, the Exchange believes that its surveillance and financial requirements are adequate to effectively monitor the proposed increase in position limits for IWM Options on a going forward basis.

The Exchange expects continued options volume growth as opportunities for investors to participate in options markets increase and evolve. The Exchange believes that establishing the proposed expanded position limits for IWM Options, as currently available to other options exchanges, should allow market participants to more effectively achieve their investment and hedging objectives.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act[9] in general, and Section 6(b)(5) of the Act[10] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. The proposed rule change would enable the Exchange to have the same position limits for IWM Options that are already available to other options exchanges.[11]

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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13] The Exchange notes that the proposed rule change is based on a similar proposal recently approved by the Commission,[14] and does not raise any novel issues.

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Exchange states that waiving the operative delay will allow the proposed increase in the position and exercise limits applicable to options on IWM on Phlx to be put into effect immediately, which will align Phlx's IWM limits with the IWM limits applicable to members of other options exchanges, thereby promoting conformity and uniformity in the rules of the several options exchanges.

The Commission believes that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest.[15] Therefore, the Commission designates the proposal to be operative upon filing.

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 No. SR–Phlx–2008–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2008–24. 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 Commissions 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

[8] Exchange market-makers may be exempt from this reporting requirement to the extent that market-maker information can be accessed through the Exchange's market surveillance systems. *See* Phlx Rule 1003. The rule also contains general reporting requirements for customer accounts that maintain a position in excess of 200 contracts.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 6.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 fulfilled this requirement.

[14] *See* Securities Exchange Act Release No. 57352, *supra* note 6.

[15] For 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).

Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2008–24 and should be submitted on or before April 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–7145 Filed 4–4–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57599; File No. SR–NASDAQ–2008–027]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Trading on The NASDAQ Options Market

April 1, 2008.

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 27, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') 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 substantially by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a member due, fee, or other charge imposed by Nasdaq under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal 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

Nasdaq proposes to establish pricing for trading standardized equity and index options on The NASDAQ Options Market (''NOM''), Nasdaq's facility for the trading of standardized equity and index options. Nasdaq will implement this rule change on March 31, 2008, the expected launch date for NOM. The text of the proposed rule change is available at *http://www.complinet.com/nasdaq*, the principal offices of the Exchange, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is introducing fees and credits for the execution of options contracts within NOM. The fees are based on the pricing model currently in place for the trading of equities via the Nasdaq Market Center, with variations to reflect Nasdaq's understanding of the different competitive conditions in the markets that trade options.

Specifically, Nasdaq will assess fees for the execution of options contracts based upon which member provides liquidity to the market and which member takes liquidity from the market. This model seeks to attract liquidity to NOM by providing credits to members that provide liquidity, and to assess a fee to the member whose order executes against an order that has provided liquidity. An order that provides liquidity is any order that is entered into NOM and is placed on the NOM book for potential execution. An order that takes liquidity is one that is entered into NOM and that executes against an order resting on the NOM book. In the case of the NOM Closing Cross, all orders entered during the continuous market or entered as Imbalance Only orders will be considered liquidity providers and all On Close orders will be considered liquidity takers.

For all executions except the NOM Opening Cross, the fee for liquidity takers will be $0.45 per executed contract and the rebate for liquidity providers will be $0.30 per executed contract. For orders executed in the NOM Opening Cross, the fee will be $0.05 per contract for each side of the transaction. Executions in the Opening Cross are not susceptible to the liquidity provider and taker analysis described above because NOM will not place orders on its book prior to the opening of the market. Instead, NOM will place orders on the book just prior to and in anticipation of the execution of the NOM Opening Cross. In light of this difference, Nasdaq has concluded that charging all members equally for the execution of their orders in the NOM Opening Cross is the fairest way to allocate fees.

Nasdaq will assess a routing fee for orders that are executed at another options market based upon the cost to Nasdaq of executing such orders at those markets. In order to reflect Nasdaq's cost of execution at away markets, the proposed fees are separated by type of option (penny pilot, equity/non-penny pilot, ETF or HLDS/non-penny pilot, and Index) and vary depending upon whether the order is being routed for a customer, a member firm, or a registered market maker. In addition, Nasdaq will pass-through surcharges that are assessed by other markets for the execution of specific options orders on specific underlying instruments.

These options are separated into three tiers by level of surcharge and the options included in each tier are listed in an Options Trader Alert and also posted on the NasdaqTrader.com website.[5] A copy of the posted fee schedule is attached as Exhibit 2 to Nasdaq's rule filing. Nasdaq believes that these routing fees and surcharges are competitive, fair and reasonable, and non-discriminatory in that they approximate the cost to Nasdaq of executing routed orders at an away market. As with all fees, Nasdaq may adjust these routing fees in response to competitive conditions by filing a new proposed rule change.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Options Trader Alert 2008–001 (March 12, 2008) (announcing SEC approval of The NASDAQ Options Market rule proposal), at *http://www.nasdaqtrader.com/TraderNews.aspx?id=OTA2008–001; http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#nq_optionsex.*

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls.

Upon launch, Nasdaq will be the seventh options market in the national market system. Joining Nasdaq and electing to trade options is entirely voluntary. Under these circumstances, Nasdaq's fees must be competitive and low in order for Nasdaq to attract order flow, execute orders, and grow as a market. The Commission has already determined that Nasdaq's pricing model for executions—charging the liquidity taker and crediting the liquidity provider—is consistent with the Exchange Act. As such, Nasdaq believes that its fees are fair and reasonable and consistent with the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, Nasdaq states that it designed its fees to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2)[9] thereunder, because it establishes or changes a due, fee, or other charge imposed on members by Nasdaq. Accordingly, the proposal is effective upon filing with the Commission. 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.

Nasdaq expects to launch NOM on March 31, 2008. To lighten the administrative burden on firms, Nasdaq will not send firms a monthly bill for March based on just one day of trading. Rather, Nasdaq will add the fees incurred on March 31, 2008, to the invoices that firms will receive for the full month of options trading for April.

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–NASDAQ–2008–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–027. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2008–027 and should be submitted on or before April 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–7190 Filed 4–4–08; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 6162]

HR/REE—Office of Recruitment, Examination, and Employment; 60-Day Notice of Proposed Information Collection: DS–3091, Thomas R. Pickering Foreign Affairs Fellowship Program, OMB #1405–0143

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Title of Information Collection: Thomas R. Pickering Foreign Affairs Fellowship Program.

OMB Control Number: 1405–0143.

Type of Request: Revision of a Currently Approved Collection.

Originating Office: HR/REE.

Form Number: DS–3091.

Respondents: U.S. Citizens: University Graduate and Undergraduate Students.

Estimated Number of Respondents: 500.

Estimated Number of Responses: 500.

Average Hours per Response: 5.

Total Estimated Burden: 2,500.

Frequency: Annual.

Obligation to Respond: Required to Obtain a Benefit.

DATES: The Department will accept comments for up to 60 days from June 6, 2008.

ADDRESSES: You may submit comments by the following methods:

• E-mail: *HowardSD2@state.gov.*

• Mail: Department of State, Pickering Program Office, 2401 E Street, NW., SA–1, RmH518, Washington, DC 20522.

• Fax: 202–261–8841 Attn: Pickering Program.

• Persons with access to the internet may also view this notice and provide comments by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests of the proposed information collection and supporting documents, to Stedman Howard, Department of State, 2401 E Street, NW., 5H, Washington, DC 20522, who may be reached on 202–261–8950.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department of State to:

• Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

Abstract: The Department of State collects this information to identify qualified candidates for the Thomas R. Pickering Foreign Affairs Program.

Methodology: Applications are accepted online.

Dated: March 24, 2008.

Ruben Torres,

U.S. Department of State.

[FR Doc. E8–7232 Filed 4–4–08; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

[Public Notice: 6167]

30-Day Notice of Proposed Information Collection: Certificate of Eligibility for Exchange Visitor (J–1) Status; Form DS–2019, OMB No. 1405–0119

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

• *Title of Information Collection:* Certificate of Eligibility for Exchange Visitor (J–1) Status.

• *OMB Control Number:* 1405–0119.

• *Type of Request:* Revision of a Currently Approved Collection.

• *Originating Office:* Office of Exchange Coordination & Designation, ECA/EC.

• *Form Number:* Form DS–2019.

• *Respondents:* U.S. Department of State Designated Sponsors.

• *Estimated Number of Respondents:* 1460.

• *Estimated Number of Responses:* 350,000 annually.

• *Average Hours per Response:* 45 minutes.

• *Total Estimated Burden:* 262,500 hours.

• *Frequency:* On occasion.

• *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from April 7, 2008.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

• E-mail: *kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.

• Mail (paper, disk, or CD-ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.

• Fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Stanley S. Colvin, Director, Office of Exchange Coordination and Designation, U.S. Department of State, SA–44, 301 4th Street, SW., Room 734, Washington, DC 20547; or email at *jexchanges@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary to properly perform our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond.

Abstract of Proposed Collection

The collection is the continuation of information collected and needed by the Bureau of Educational and Cultural Affairs in administering the Exchange Visitor Program (J-Visa) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended. The form has been revised to update the duration of program participation and the addition of a new category of Intern for which regulations are in place.

Methodology

Access to Form DS–2019 is made available to Department designated sponsors electronically via the Student and Exchange Visitor Information System (SEVIS).

Dated: March 25, 2008.

Stanley S. Colvin,

Director, Office of Exchange Coordination & Designation, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E8–7236 Filed 4–4–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6166]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Horse''

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 ''The Horse'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the American Museum of Natural History, New York, New York, from on or about May 17, 2008, until on or about January 4, 2009; at the Field Museum, Chicago, Illinois, from on or about February 11, 2011, until on or about July 4, 2011; at

the San Diego Natural History Museum, San Diego, California, from on or about April 1, 2012, until on or about September 30, 2012; 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 Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 31, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–7229 Filed 4–4–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6112]

Shipping Coordinating Committee; Notice of Meetings

Three subcommittees of the Shipping Coordinating Committee (SHC) will be holding public meetings in April 2008. Members of the public may attend these meetings up to the seating capacity of the rooms. Details for each meeting are provided in this notice.

I. Ship Design and Equipment

The SHC's Subcommittee on Ship Design and Equipment will conduct an open meeting at 9:30 a.m. on Friday, April 25, 2008, in Room 6103 of the United States Coast Guard (USCG) Headquarters Building, 2100 2nd Street, SW., Washington, DC, 20593. The primary purpose of the meeting is to present the outcome of the 51st Session of the International Maritime Organization (IMO) Sub-Committee on Ship Design and Equipment (DE) which was held February 18–22, 2008 in Bonn, Germany. For a list of the issues discussed at DE 51, see Shipping Coordinating Committee; Notice of Meetings, 73 FR 1394 (January 8, 2008). Preparations for the 52nd Session of DE will also be discussed. DE 52 is scheduled to be held at the IMO Headquarters in London, United Kingdom from March 16 to March 20, 2009.

Copies of documents associated with DE 51 will be available at the April 25th SHC meeting. To request further copies of documents please write to the address provided below. Interested persons may also seek information by writing to Mr. Wayne Lundy, Commandant (CG–5213), USCG Headquarters, 2100 Second Street, SW., Room 1300, Washington, DC 20593–0001 or by calling (202) 372–1379.

II. Safety of Life at Sea; IMO Maritime Safety Committee

The SHC's Subcommittee on Safety of Life at Sea will conduct an open meeting at 9:30 a.m. on Wednesday, April 30, 2008 in Room 2415, at USCG Headquarters, 2100 2nd Street, SW., Washington, DC, 20593. The purpose of this meeting will be to finalize preparations for the 84th Session of the IMO Maritime Safety Committee (MSC) which is scheduled for May 7 to May 16, 2008 in London, United Kingdom. At the April 30th SHC meeting, papers received and the draft U.S. positions for MSC 84 will be discussed. MSC 84 agenda items include:

—Adoption of amendments to mandatory instruments;
—Measures to enhance maritime security;
—Goal-based new ship construction standards;
—Long range identification and tracking (LRIT) related matters;
— General cargo ship safety;
—Role of the human element;
—Formal safety assessment;
— Piracy and armed robbery against ships; and
—Reports of six IMO Sub-committees: Dangerous Goods, Solid Cargoes and Containers (DSC); Training and Watchkeeping (STW); Fire Protection (FP); Ship Design and Equipment (DE); Bulk Liquids and Gases (BLG); and Safety of Navigation (NAV).

Interested persons may seek additional information by writing to LCDR Jason Smith, Commandant (CG–5212), USCG Headquarters, 2100 Second Street, SW., Room 1218, Washington, DC 20593–0001 or by calling (202) 372–1376.

III. Stability, Load Lines and Fishing Vessel Safety

The SHC's Subcommittee on Stability, Load Lines and Fishing Vessel Safety will conduct an open meeting at 1:30 p.m. on Wednesday, April 30, 2008, in Room 6103 of the USCG Headquarters Building, 2100 2nd Street, SW., Washington, DC, 20593. The primary purpose of the meeting is to prepare for the 51st Session of the IMO Sub-Committee on Stability and Load Lines and Fishing Vessels Safety (SLF) to be held at IMO Headquarters in London, United Kingdom from July 14 to July 18, 2008. The primary matters to be considered include:

—Development of explanatory notes for harmonized SOLAS Chapter II–1;
—Revision of the Intact Stability Code;
—Safety of small fishing vessels;
—Development of options to improve effect on ship design and safety of the International Convention on Tonnage Measurement, 1969;
—Review of guidelines for uniform operating limitations on high-speed craft;
—Time-dependent survivability of passenger ships in damaged condition;
—Guidance on the impact of open watertight doors on existing and new ship survivability;
— Stability and seakeeping characteristics of damaged passenger ships in a seaway when returning to port by own power or under tow;
—Guidelines for drainage systems on ro-ro decks; and
—Damage stability verification of tank vessels and bulk carriers.

Interested persons may seek additional information by writing to Mr. Paul Cojeen, Commandant (CG–5212), USCG Headquarters, 2100 Second Street, SW., Room 1308, Washington, DC 20593–0001 or by calling (202) 372–1372.

Dated: April 1, 2008.

Mark Skolnicki,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E8–7216 Filed 4–4–08; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 6111]

Renewal of the Charter of the United States International Telecommunication Advisory Committee

SUMMARY: The Charter of the United States International Telecommunication Advisory Committee (ITAC) has been renewed for an additional two years.

ITAC was established pursuant to the Federal Advisory Committee Act under the general authority of the Secretary of State and the Department of State as set forth in Title 22, sections 2656 and 2707, of the United States Code. The purpose of the ITAC is to advise the Department of State with respect to, and provide strategic planning recommendations on, telecommunication and information policy matters related to the United States' participation in the work of the

International Telecommunication Union, the Permanent Consultative Committees of the Organization of American States Inter-American Telecommunication Commission, the Organization for Economic Cooperation and Development, and other international bodies addressing telecommunications. ITAC provides advice on matters of U.S. policy and preparation of positions for meetings of international and regional organizations pertaining to telecommunication and information issues.

FOR ADDITIONAL INFORMATION CONTACT: Julian Minard in the Office of Multilateral Affairs, International Communications and Information Policy, Bureau of Economic, Energy and Business Affairs, at (202) 647–3234 or at *minardje@state.gov.* The ITAC Web site is located at *http://www.state.gov/e/eeb/adcom/c668.htm.*

Dated: March 27, 2008.

James G. Ennis,

Director, Advanced Network Technologies, International Communications and Information Policy, Department of State.

[FR Doc. E8–7196 Filed 4–4–08; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Cancellation of Environmental Impact Statement: Clatsop County, OR

AGENCY: Federal Highway Administration (FHWA), Oregon DOT.

ACTION: Cancellation of Astoria Bypass EIS.

SUMMARY: On September 28, 1994, the Federal Highway Administration (FHWA) issued a Notice of Intent, in the **Federal Register**, to advise agencies and the public that an Environmental Impact Statement (EIS) would be prepared for a proposed Astoria Bypass in Clatsop County, Oregon. The project proposed to realign approximately 6 miles of U.S. 30, the Lower Columbia River Highway, from the John Day River Bridge, over new alignment through the Clatsop State Forest, to connect with OR 202, the Nehalem Highway, at Williamsport Road, and then joint U.S. 101 on the west side of Astoria near the north end of the Youngs Bay Bridge. The project is now cancelled; therefore, no further project activities will occur.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Eraut, Environmental Program Manager, Federal Highway Administration, 530 Center Street, NE., Suite 100, Salem, Oregon 97301; telephone 503–587–4716.

Authority: 23 U.S.C. 315.

Issued on: March 31, 2008.

Michelle Eraut,

Environmental Program Manager, Salem, Oregon.

[FR Doc. E8–7168 Filed 4–4–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environment Impact Statements: Counties of Jefferson, St. Clair, and Mobile, AL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that two Notices of Intent are being rescinded; the first published on August 2, 2006, to prepare an Environmental Impact Statement (EIS) for a proposed highway project in Jefferson and St. Clair Counties, Alabama is being rescinded; and the second published on July 27, 1995, to prepare an EIS for a proposed highway project in Mobile County, Alabama is being rescinded.

FOR FURTHER INFORMATION CONTACT: Mr. Mark D. Bartlett, Division Administrator, Federal Highway Administration, Alabama Division Office, 500 Eastern Blvd., Suite 200, Montgomery, AL 36117–2018, Telephone: (334) 223–7370.

SUPPLEMENTARY INFORMATION: The FHWA is rescinding the notice of intent to prepare an EIS for Federal-aid Project STPAA–PE00(6). The proposed project would have involved an extension of the Birmingham Northern Beltline from Interstate 59 in Trussville, Jefferson County, to Interstate 20 in the vicinity of Leeds, St. Clair County, Alabama, for a distance of about 10 miles. The project is being rescinded since the Alabama Department of Transportation has decided not to pursue this project at this time. When this project is reinitiated, additional alignments may be considered.

The FHWA is rescinding the notice of intent to prepare an EIS on a proposal to construct a multi-lane roadway from the intersection of Schillinger Road and Lott Road to U.S. Highway 45 in Mobile, Alabama. The project is being rescinded since the Alabama Department of Transportation has decided not to pursue this project at this time.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: March 31, 2008.

Mark D. Bartlett,

Division Administrator, Montgomery.

[FR Doc. E8–7156 Filed 4–4–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Safety

Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: I—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 7, 2008.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington, DC or at *http://dms.dot.gov*.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 31, 2008.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14649–N	PHMSA–08–0037	Olin Corporation, Winchester Division, East Alton, IL.	49 CFR 173.62(b), 172.101 column (8C), 173.60(b)(8), 172.300 and 172.400.	To authorize the transportation in commerce of certain Division 1.4 ammunition in bulk packaging by motor vehicle for the purpose of relocating a military packing operation. (mode 1)
14650–N	PHMSA–08–0036	Air Transport International, L.L.C. Little Rock, AR.	49 CFR 172.101 171.11; 172.204 (c)(3); 173.27; 175.30(a)(1).	To authorize the transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities presently authorized. (mode 4).
14651–N	PHMSA–08–0039	Air Products and Chemicals, Inc. Allentown, PA.	49 CFR 173.40	To authorize the transportation in commerce of certain manifolded DOT specification 3A and 3AA cylinders containing materials toxic by inhalation in Hazard Zone B. (mode 1).
14652–N	PHMSA–08–0043	Magnum Mud Equipment Co., Inc. Houma, LA.	49 CFR 171.14(d)(4)	To authorize the transportation in commerce of certain Class 3 (flammable liquid) hazardous materials in IM101 portable tanks beyond the January 1, 2010 date currently authorized. (mode 1).
14656–N		PurePak Technology Corporation, Chandler, AZ.	49 CFR 173.158(f)(3)	To authorize the transportation in commerce of nitric acid up to 70% concentration in an alternative packaging configuration. (modes 1, 2, 3).
14657–N	PHMSA–08–0058	University of Missouri Research Reactor, Columbia, MO.	49 CFR 173.416(c)	To authorize the transportation in commerce of certain radioactive materials in DOT 6M containers beyond October 1, 2008. (mode 1)
14658–N	PHMSA–08–0057	Union Carbide Corporation, Midland, MI.	49 CFR 172.200, 172.300, 172.400, 172.500.	To authorize the transportation of combustible liquid in certain DOT 51 and UN31 A containers with a capacity of 120 gallons not subject to the requirements for shipping papers, marking, labeling and placarding. (modes 1, 2, 3).
14659–N	PHMSA–08–0056	ESM Group Inc., Amherst, NY.	49 CFR 173.242(b) and (c).	To authorize the transportation in commerce of calcium carbide (UN 1402), Division 4.1, PG I in non-DOT specification bulk containers by motor vehicle. (modes 1, 2).
14660–N	PHMSA–08–0055	Determan Brownie, Inc., Minneapolis, MN.	49 CFR 172.200; 173.242(b); 173.243(b).	To authorize the transportation in commerce of residual amounts of Class 3 hazardous materials in non-DOT specification packaging (meter provers). (mode 1).
14661–N		FIBA Technologies, Inc., Millbury, MA.	49 CFR 180.209(a); 180.209(b).	To authorize the ultrasonic testing of DOT–3A, DOT–3AA 3AX, 3AAX and 3T specification cylinders for use in transporting Division 2.1, 2.2 or 2.3 material. (modes 1, 2, 3).
14663–N	PHMSA–08–0054	Department of Energy, Washington, DC.	49 CFR 173.416(c)	To authorize the transportation in commerce of certain radioactive materials in DOT 6M containers beyond October 1, 2008. (mode 1).
14664–N	PHMSA–08–0063	Century Arms, Inc., Fairfax, VT.	49 CFR	To authorize the transportation in commerce of certain Division 1.4 explosives as Consumer commodity, ORM–D. (modes 1, 2, 4, 5).
14668–N	PHMSA–08–0064	Lincoln Composites, Lincoln, NE.	49 CFR 173.302a	To authorize the manufacture, marking, sale and use of non-DOT specification fully wrapped fiber reinforced composite gas cylinders with a non-load sharing plastic liner that meets the ISO 11119–3 standard except for the design water capacity and service pressure. (modes 1, 2, 3, 4, 5).

[FR Doc. E8–7136 Filed 4–4–08; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3115

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is

soliciting comments concerning Form 3115, Application for Change in Accounting Method.

DATES: Written comments should be received on or before June 6, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for Change in Accounting Method.

OMB Number: 1545–0152.

Form Number: 3115.

Abstract: Form 3115 is used by taxpayers who wish to change their method of computing their taxable income. The form is used by the IRS to determine if electing taxpayers have met the requirements and are able to change to the method requested.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit organizations, and farms.

Estimated Number of Respondents: 25,000.

Estimated Time per Respondent: 37 hrs., 2 min.

Estimated Total Annual Burden Hours: 925,900.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB 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.

Approved: March 26, 2008.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E8–7227 Filed 4–4–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 843

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 843, Claim for Refund and Request for Abatement.

DATES: Written comments should be received on or before June 6, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6125, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Claim for Refund and Request for Abatement.

OMB Number: 1545–0024.

Form Number: 843.

Abstract: Internal Revenue Code section 6402, 6404, and sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 843 is used by taxpayers to claim these refunds, credits, or abatements.

Current Actions: There are no changes being made to the form at this time. We did, however, recount the line items for accuracy. The result is a net decrease of 5 line items.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Responses: 545,500.

Estimated Time per Respondent: 1 hr., 34 min.

Estimated Total Annual Burden Hours: 850,980.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB 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.

Approved: March 26, 2008.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E8–7228 Filed 4–4–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0129]

Agency Information Collection (Supplemental Disability Report) 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 May 7, 2008.

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. 2900–0129'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management 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@mail.va.gov*. Please refer to ''OMB Control No. 2900–0129.''

SUPPLEMENTARY INFORMATION:

Title: Supplemental Disability Report, VA Form Letter 29–30a.

OMB Control Number: 2900–0129.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 29–30a is used by the insured to provide additional information required to process a claim for disability insurance 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 22, 2008 at page 3807.

Affected Public: Individuals or households.

Estimated Annual Burden: 548 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,570.

Dated: March 28, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–7128 Filed 4–4–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0270]

Agency Information Collection (Financial Counseling Statement) 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 May 7, 2008.

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. 2900–0270'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management 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@mail.va.gov.* Please refer to ''OMB Control No. 2900–0270.''

SUPPLEMENTARY INFORMATION:

Title: Financial Counseling Statement, VA Form 26–8844.

OMB Control Number: 2900–0270.

Type of Review: Extension of a currently approved collection.

Abstract: VA personnel and veteran-borrower complete VA Form 26–8844 during financial counseling service to record net income, total expenditure, net worth, and to suggest areas where expenses can be reduced or income increased. Financial counseling service is provided to assist veteran-borrowers in retaining their homes during periods of temporary financial difficulty. The data collected is used to help borrowers who are seriously delinquent on guaranteed or insured VA home loans to budget and establish a repayment schedule for the loan.

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 22, 2008, at pages 3806–3807.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,750 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

Dated: March 28, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–7140 Filed 4–4–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0047]

Agency Information Collection (Financial Statement) 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 May 7, 2008.

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. 2900–0047'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management 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@mail.va.gov.* Please refer to ''OMB Control No. 2900–0047.''

SUPPLEMENTARY INFORMATION: *Title:* Financial Statement, VA Form 26–6807.

OMB Control Number: 2900–0047.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Form 26–6807 is used to determine release of liability and substitution of entitlement cases. VA may release original veteran obligors from personal liability arising from the original guaranty of their home loan, or the making of a direct loan, provided the purchasers/assumers meet the creditworthiness requirements. The data is also used to determine a borrower's financial condition in connection with efforts to reinstate a seriously defaulted guaranteed, insured, or portfolio loan, and to determine homeowners eligibility for aid under the Homeowners Assistance Program, which provides assistance by reducing losses incident to the disposal of homes when military installations at which the homeowners were employed or serving are ordered closed.

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 22, 2008, at page 3806.

Affected Public: Individuals or households.

Estimated Annual Burden: 6,000 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,000.

Dated: March 28, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–7141 Filed 4–4–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
April 7, 2008

Part II

Department of Energy

Office of Energy Efficiency and Renewable 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; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EERE–2007–BT–STD–0012]

RIN 1904–AB44

Energy Conservation Program for Commercial and Industrial Equipment: Packaged Terminal Air Conditioner and Packaged Terminal Heat Pump Energy Conservation Standards

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

ACTION: Notice of proposed rulemaking and public meeting.

SUMMARY: The Energy Policy and Conservation Act (EPCA) prescribes energy conservation standards for various consumer products and commercial and industrial equipment, and requires the Department of Energy (DOE) to administer an energy conservation program for these products. In this notice, DOE is proposing amended energy conservation standards for packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs) and is announcing a public meeting.

DATES: DOE will hold a public meeting on May 1, 2008, from 9 a.m. to 4 p.m., in Washington, DC. DOE must receive requests to speak at the public meeting before 4 p.m., April 21, 2008. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., April 21, 2008.

DOE will accept comments, data, and information regarding the notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than June 6, 2008. See section VII, ''Public Participation,'' of this NOPR for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures, requiring a 30-day advance notice. If you are a foreign national and wish to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

You may submit comments identified by docket number EERE–2007–BT–STD–0012 and/or Regulation Identifier Number (RIN) 1904–AB44 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: ptac_hp@ee.doe.gov*. Include EERE–2007–BT–STD–0012 and/or RIN 1904–AB44 in the subject line of your message.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII, ''Public Participation,'' of this document.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Forrestal Building, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Wes Anderson, Project Manager, Energy Conservation Standards for Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps, U.S. Department of Energy, Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7335. E-mail: *Wes.Anderson@ee.doe.gov*. Francine Pinto, Esq., or Eric Stas, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov* or *Eric.Stas@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

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I. Summary of the Proposed Rule

The Energy Policy and Conservation Act (EPCA), as amended, provides the Department of Energy (DOE) the authority to establish energy conservation standards for certain commercial equipment covered by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) and the Illuminating Engineering Society of North America (IESNA) Standard 90.1, including packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs), the subject of this proceeding. (42 U.S.C. 6313(a)(6)(A)) Section 342(a)(6)(A) provides that DOE may prescribe a standard more stringent than the level in ASHRAE/IESNA Standard 90.1, after ASHRAE amends the energy conservation standards found in ASHRAE/IESNA Standard 90.1, if DOE can demonstrate ''by clear and convincing evidence,'' that such a more stringent standard ''would result in significant additional conservation of energy and is technologically feasible and economically justified.'' (42 U.S.C. 6313(a)(6)(A)(II) In accordance with these criteria discussed in this notice, DOE proposes to amend the energy conservation standards for PTACs and PTHPs by raising the efficiency levels for this equipment to the levels shown in Table I.1, above the efficiency levels specified by ASHRAE/IESNA Standard 90.1–1999. The proposed standards would apply to all covered PTACs and PTHPs manufactured on or after the date four years after publication of the final rule in the **Federal Register**. (42 U.S.C. 6313(a)(6)(D)) The proposed standards for PTACs and PTHPs represent an improvement in energy efficiency of 12 to 33 percent compared to the efficiency levels specified by ASHRAE/IESNA Standard 90.1–1999, depending on the equipment class.

TABLE I.1.—PROPOSED ENERGY CONSERVATION STANDARDS FOR PTACS AND PTHPS

Equipment class			Proposed energy conservation standards*
Equipment	Category	Cooling capacity	
PTAC	Standard Size**	<7,000 Btu/h	EER = 11.4
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 13.0 − (0.233 × Cap††)
		>15,000 Btu/h	EER = 9.5
	Non-Standard Size†	<7,000 Btu/h	EER = 10.2
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 11.7 − (0.213 × Cap††)
		>15,000 Btu/h	EER = 8.5
PTHP	Standard Size**	<7,000 Btu/h	EER = 11.8 COP = 3.3
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 13.4 − (0.233 × Cap††) COP = 3.7 − (0.053 × Cap††)
		>15,000 Btu/h	EER = 9.9 COP = 2.9
	Non-Standard Size†	<7,000 Btu/h	EER = 10.8 COP = 3.0
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 12.3 − (0.213 × Cap††) COP = 3.1 − (0.026 × Cap††)

TABLE I.1.—PROPOSED ENERGY CONSERVATION STANDARDS FOR PTACS AND PTHPS—Continued

Equipment class			Proposed energy conservation standards*
Equipment	Category	Cooling capacity	
		>15,000 Btu/h	EER = 9.1 COP = 2.8

* For equipment rated according to the DOE test procedure (ARI Standard 310/380–2004), all energy efficiency ratio (EER) values must be rated at 95°F outdoor dry-bulb temperature for air-cooled equipment and evaporatively-cooled equipment and at 85°F entering water temperature for water cooled equipment. All coefficient of performance (COP) values must be rated at 47°F outdoor dry-bulb temperature for air-cooled equipment, and at 70°F entering water temperature for water-source heat pumps.

** Standard size refers to PTAC or PTHP equipment with wall sleeve dimensions greater than or equal to 16 inches high, or greater than or equal to 42 inches wide.

† Non-standard size refers to PTAC or PTHP equipment with wall sleeve dimensions less than 16 inches high and less than 42 inches wide.

†† Cap means cooling capacity in thousand British thermal units per hour (Btu/h) at 95°F outdoor dry-bulb temperature.

DOE's analyses indicate that the proposed energy conservation standards, trial standard level (TSL) 4 for PTAC and PTHP equipment (See section V.A for a discussion of the TSLs), would save a significant amount of energy—an estimated 0.019 quadrillion British thermal units (Btu), or quads, of cumulative energy over 30 years (2012–2042). The economic impacts on the nation (i.e., national net present value) and the commercial customer (i.e., the average life-cycle cost (LCC) savings) are positive.

The national net present value (NPV) of TSL 4 is $17 million using a 7 percent discount rate and $61 million using a 3 percent discount rate, cumulative from 2012 to 2062 in 2006$. This is the estimated total value of future savings minus the estimated increased equipment costs, discounted to 2008. The benefits and costs of the standard can also be expressed in terms of annualized 2006$ values over the forecast period 2012 through 2062. Using a 7 percent discount rate for the annualized cost analysis, the cost of the standard is $3.4 million per year in increased equipment and installation costs while the annualized benefits are $5.0 million per year in reduced equipment operating costs. Using a 3 percent discount rate, the annualized cost of the standard is $2.9 million per year while the annualized benefits of today's standard are $5.6 million per year. See section V.B.3 for additional details.

Using a real corporate discount rate of 5 percent, DOE estimated the industry's NPV (INPV) for manufacturers of PTACs and PTHPs to be $332 million in 2006$. The impact of the proposed standards on INPV of manufacturers of standard size PTACs and PTHPs is estimated to be between an 18 percent loss and a 2 percent loss (−$56 million to −$5 million). The non-standard size PTAC and PTHP industry is estimated to lose between 44 percent and 34 percent of its NPV (−$12 million to −$9 million) as a result of the proposed standards. Additionally, based on DOE's interviews with manufacturers of PTACs and PTHPs, DOE expects minimal plant closings or loss of employment as a result of the proposed standards.

DOE's analyses indicate that the proposed standard, TSL 4, has energy savings and environmental benefits. All of the energy saved is electricity, and DOE expects the energy savings from the proposed standards to eliminate the need for approximately 81 megawatts (MW) of generating capacity by 2042. These results reflect DOE's use of energy price projections from the U.S. Energy Information Administration (EIA)'s Annual Energy Outlook 2007 (AEO2007).[1] The proposed standard has environmental benefits leading to reductions in greenhouse gas emissions (i.e., cumulative (undiscounted) emission reductions) of 2.7 million tons (Mt) of carbon dioxide (CO2) from 2012 to 2042. Additionally, the standard would likely result in 0.16 thousand tons (kt) of nitrogen oxides (NOX) emissions reductions or generate a similar amount of NOX emissions allowance credits in areas where such emissions are subject to emissions caps.

In view of its analyses, DOE believes that the proposed standard, TSL 4, represents the maximum improvement in energy efficiency of PTAC and PTHP equipment that is technologically feasible and economically justified. DOE found that the benefits to the Nation (energy savings, customer average LCC savings, national NPV increase, and emission reductions) of the proposed standards outweigh the burdens (loss of INPV and LCC increases for some customers). When DOE considered higher energy efficiency levels as TSLs, it found that the burdens (loss of manufacturer NPV and LCC increase for some customers) of the higher efficiency levels outweighed the benefits (energy savings, LCC savings for some customers, national NPV increase, and emission reductions) of those higher levels.

DOE recognizes that manufacturers of PTAC and PTHP equipment are also facing a mandated refrigerant phase-out on January 1, 2010. R–22, the only refrigerant currently used by PTACs and PTHPs, is an HCFC refrigerant and subject to the phase-out requirement. Phase-out of this refrigerant could have a significant impact on the manufacturing, performance, and cost of PTAC and PTHP equipment. DOE further discusses and estimated the impacts of the refrigerant phase-out on PTAC and PTHP equipment and on the manufacturers of this equipment in today's notice.

II. Introduction

A. Overview

The proposed standard will save a significant amount of energy and, as a result of less energy being produced, result in a cleaner environment. In the 30-year period after the amended standard becomes effective, the nation will save 0.019 quads of primary energy. These energy savings also will result in significantly reduced emissions of air pollutants and greenhouse gases associated with electricity production, by avoiding the emission of 2.7 Mt of CO_2 and 0.16 kt of NO_X. In addition, once the standard is implemented in 2012, DOE expects to eliminate the need for the construction of approximately 81 MW of new power plants by 2042. In total, DOE estimates the net present value to the Nation of this standard to be $17 million from 2012 to 2062 in 2006$.

Finally, commercial customers will see benefits from the proposed standard. Although DOE expects the price of the high efficiency PTAC and PTHP equipment to be approximately 2 percent higher than the average price of

[1] DOE intends to use EIA's Annual Energy Outlook 2008 (AEO2008) to generate the results for the final rule. In addition, DOE will use 2007$ to reflect all dollar values in the final rule.

this equipment today, the energy efficiency gains will result in lower energy costs. Based on this calculation, DOE estimates that the mean payback period for the high efficiency PTACs will be approximately 11.2 years and the mean payback period for the high efficiency PTHPs will be approximately 4.4 years. When these savings are summed over the lifetime of the high efficiency equipment, customers of PTACs will save $4, on average, and customers of PTHPs will save $35, on average, compared to their expenditures on today's baseline PTACs and PTHPs.

B. Authority

Part A–1 of Title III of EPCA addresses the energy efficiency of certain types of commercial and industrial equipment.[2] (42 U.S.C. 6311–6317) It contains specific mandatory energy conservation standards for commercial PTACs and PTHPs. (42 U.S.C. 6313(a)(3)) The Energy Policy Act of 1992 (EPACT), Public Law 102–486, also amended EPCA with respect to PTACs and PTHPs, providing definitions in section 122(a), test procedures in section 122(b), labeling provisions in section 122(c), and the authority to require information and reports from manufacturers in section 122(e).[3] DOE publishes today's notice of proposed rulemaking (NOPR) pursuant to Part A–1. The PTAC and PTHP test procedures appear at Title 10 Code of Federal Regulations (CFR) section 431.96.

EPCA established Federal energy conservation standards that generally correspond to the levels in ASHRAE/IESNA Standard 90.1, as in effect on October 24, 1992 (ASHRAE/IESNA Standard 90.1–1989), for each type of covered equipment listed in section 342(a) of EPCA, including PTACs and PTHPs. (42 U.S.C. 6313(a)) For each type of equipment, EPCA directed that if ASHRAE/IESNA Standard 90.1 is amended, DOE must adopt an amended standard at the new level in ASHRAE/IESNA Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more stringent level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II).

EPCA also provides that in deciding whether such a more stringent standard is economically justified, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of the products which are likely to result from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)–(ii)).

Furthermore, EPCA contains what is commonly known as an ''anti-backsliding'' provision. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(1)) This provision mandates that the Secretary not prescribe any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of covered equipment. It is a fundamental principle in EPCA's statutory scheme that DOE cannot amend standards downward; that is, weaken standards, from those that have been published as a final rule. *Natural Resources Defense Council* v. *Abraham*, 355 F.3d 179 (2nd Cir. 2004).

Additionally, the Secretary may not prescribe an amended standard if interested persons have established by a preponderance of the evidence that the amended standard is ''likely to result in the unavailability in the United States of any product type (or class)'' with performance characteristics, features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(4))

Federal energy efficiency requirements for commercial equipment generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b)) DOE can, however, grant waivers of preemption for particular State laws or regulations, in accordance with the procedures and other provisions of section 327(d) of EPCA. (42 U.S.C. 6297(d) and 6316(b)(2)(D))

C. Background

1. Current Standards

The current energy conservation standards in EPCA for PTACs and PTHPs apply to all equipment manufactured on or after January 1, 1994, (42 U.S.C. 6313(a)(3)) and correspond to the minimum efficiency levels in ASHRAE/IESNA Standard 90.1–1989. These levels consist of the EER for the cooling mode and the COP for the heating mode. The EER means ''the ratio of the produced cooling effect of an air conditioner or heat pump to its net work input, expressed in Btu/watt-hour.'' 10 CFR 431.92. The COP means ''the ratio of produced cooling effect of an air conditioner or heat pump (or its produced heating effect, depending on model operation) to its net work input, when both the cooling (or heating) effect and the net work input are expressed in identical units of measurement.'' 10 CFR 431.92. Table II.1 depicts the Federal energy conservation standards for PTACs and PTHPs found in 10 CFR 431.97.

TABLE II.1.—EXISTING FEDERAL ENERGY CONSERVATION STANDARDS FOR PTACS AND PTHPS

Equipment class		Existing federal energy conservation standards*
Equipment	Cooling capacity	
PTAC	< 7,000 Btu/h	EER = 8.88
	≥ 7,000 Btu/h and ≤ 15,000 Btu/h	EER = 10.0 − (0.16 × Cap**)

[2] This part was originally titled Part C., However, it was redesignated Part A–1 after Part B of Title III of EPCA was repealed by Public Law 109–58.

[3] These requirements are codified in Part C of Title III of EPCA, now Part A–1, as amended, 42 U.S.C. 6311–6316, and Title 10 of the Code of Federal Regulations, Part 431 (10 CFR Part 431) at 10 CFR 431.92, 431.96, 431.97, and subparts U and V.

TABLE II.1.—EXISTING FEDERAL ENERGY CONSERVATION STANDARDS FOR PTACS AND PTHPS—Continued

Equipment class		Existing federal energy conservation standards*
Equipment	Cooling capacity	
PTHP	> 15,000 Btu/h	EER = 7.6
	< 7,000 Btu/h	EER = 8.88 COP = 2.7
	≥ 7,000 Btu/h and ≤ 15,000 Btu/h	EER = 10.0 − (0.16 × Cap**) COP = 1.3 + (0.16 × EER)
	> 15,000 Btu/h	EER = 7.6 COP = 2.5

* For equipment rated according to the Air-Conditioning and Refrigeration Institute (ARI) standards, all EER values must be rated at 95 °F outdoor dry-bulb temperature for air-cooled products and evaporatively-cooled products and at 85 °F entering water temperature for water cooled products. All COP values must be rated at 47 °F outdoor dry-bulb temperature for air-cooled products, and at 70 °F entering water temperature for water-source heat pumps.

** Cap means cooling capacity in kBtu/h at 95 °F outdoor dry-bulb temperature.

2. History of Standards Rulemaking for Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps

On October 29, 1999, ASHRAE's Board of Directors approved ASHRAE/IESNA Standard 90.1–1999 (ASHRAE/IESNA Standard 90.1–1999), which addressed efficiency standard levels for 34 categories of commercial heating, ventilating and air-conditioning (HVAC) and water heating equipment covered by EPCA, including PTACs and PTHPs. In amending the ASHRAE/IESNA Standard 90.1–1989 levels for PTACs and PTHPs, ASHRAE acknowledged the physical size constraints between the varying sleeve sizes on the market. Specifically, the wall sleeve dimensions of the PTAC and PTHP affect the energy efficiency of the equipment. Consequently, ASHRAE/IESNA Standard 90.1–1999 used the equipment classes defined by EPCA, which are distinguished by equipment (i.e., air conditioner or heat pump) and cooling capacity, and further separated these equipment classes by wall sleeve dimensions as further discussed in section IV.C.2. Table II.2 shows the efficiency levels in ASHRAE/IESNA Standard 90.1–1999 for PTACs and PTHPs.

TABLE II.2.—ASHRAE/IESNA STANDARD 90.1–1999 ENERGY EFFICIENCY LEVELS FOR PTACS AND PTHPS

Equipment class			ASHRAE/IESNA standard 90.1–1999 efficiency levels*
Equipment	Category	Cooling capacity	
PTAC	Standard Size**	< 7,000 Btu/h	EER = 11.0
		≥ 7,000 Btu/h and ≤ 15,000 Btu/h	EER = 12.5 − (0.213 × Cap††)
		> 15,000 Btu/h	EER = 9.3
	Non-Standard Size†	< 7,000 Btu/h	EER = 9.4
		≥ 7,000 Btu/h and ≤ 15,000 Btu/h	EER = 10.9 − (0.213 × Cap††)
		> 15,000 Btu/h	EER = 7.7
PTHP	Standard Size**	< 7,000 Btu/h	EER = 10.8 COP = 3.0
		≥ 7,000 Btu/h and ≤ 15,000 Btu/h	EER = 12.3 − (0.213 × Cap††) COP = 3.2 − (0.026 × Cap††)
		> 15,000 Btu/h	EER = 9.1 COP = 2.8
	Non-Standard Size†	< 7,000 Btu/h	EER = 9.3 COP = 2.7
		≥ 7,000 Btu/h and ≤ 15,000 Btu/h	EER = 10.8 − (0.213 × Cap††) COP = 2.9 − (0.026 × Cap††)
		>15,000 Btu/h	EER = 7.6 COP = 2.5

* For equipment rated according to ARI standards, all EER values must be rated at 95°F outdoor dry-bulb temperature for air-cooled products and evaporatively-cooled products and at 85°F entering water temperature for water cooled products. All COP values must be rated at 47°F outdoor dry-bulb temperature for air-cooled products, and at 70°F entering water temperature for water-source heat pumps.

** Standard size refers to PTAC or PTHP equipment with wall sleeve dimensions greater than or equal to 16 inches high, or greater than or equal to 42 inches wide.

† Non-standard size refers to PTAC or PTHP equipment with wall sleeve dimensions less than 16 inches high and less than 42 inches wide. ASHRAE/IESNA Standard 90.1–1999 also includes a factory labeling requirement for non-standard size PTAC and PTHP equipment as follows: ''MANUFACTURED FOR REPLACEMENT APPLICATIONS ONLY; NOT TO BE INSTALLED IN NEW CONSTRUCTION PROJECTS.''

†† Cap means cooling capacity in kBtu/h at 95°F outdoor dry-bulb temperature.

Following the publication of ASHRAE/IESNA Standard 90.1–1999, DOE performed a screening analysis that covered 24 of the 34 categories of equipment addressed in ASHRAE/IESNA Standard 90.1–1999, to determine if more stringent levels would result in significant additional energy conservation of energy, be technologically feasible and economically justified. For each of these types of equipment, the screening analysis examined a range of efficiency levels that included the levels specified in EPCA and ASHRAE/IESNA Standard 90.1–1999, as well as the maximum technologically feasible efficiency levels. The report ''Screening Analysis for EPACT-Covered Commercial [Heating, Ventilating and Air-Conditioning] HVAC and Water-Heating

Equipment'' (commonly referred to as the 2000 Screening Analysis) [4] summarizes this analysis, and estimates the annual national energy consumption and the potential for energy savings that would result if the covered equipment were to meet efficiency levels higher than those specified in ASHRAE/IESNA Standard 90.1–1999. The baselines for the comparison were the corresponding levels specified in ASHRAE/IESNA Standard 90.1–1999 and EPCA.

On January 12, 2001, DOE published a final rule for commercial HVAC and water heating equipment, which concluded that the 2000 Screening Analysis indicated at least a reasonable possibility of finding ''clear and convincing evidence'' that more stringent standards ''would be technologically feasible and economically justified and would result in significant additional conservation of energy'' for PTACs and PTHPs. 66 FR 3336, 3349. Under EPCA, these are the criteria for DOE adoption of standards more stringent than those in ASHRAE/IESNA Standard 90.1. (42 U.S.C. 6313(a)(6)(A)(ii)(II))

In addition, on March 13, 2006, DOE issued a Notice of Availability (NOA) announcing the availability of a technical support document (TSD) DOE was using in re-assessing whether to adopt, as uniform national standards, energy conservation standards contained in amendments to the ASHRAE/IESNA Standard 90.1–1999 for certain types of commercial equipment. 71 FR 12634. In the NOA, DOE revised the energy savings analysis from the 2000 Screening Analysis and summarized the assumptions and results in the NOA TSD. *Id.* DOE also stated that, even though the revised analysis reduced the potential energy savings that might result from more stringent standards than the efficiency levels specified in ASHRAE/IESNA Standard 90.1–1999 for PTACs and PTHPs, DOE believed that there was a possibility that clear and convincing evidence exists that more stringent standards are warranted. Therefore, DOE stated in the NOA that it was inclined to seek more stringent standard levels than the efficiency levels in ASHRAE/IESNA Standard 90.1–1999 for PTACs and PTHPs through a separate rulemaking. 71 FR 12639. Lastly, on March 7, 2007, DOE issued a final rule reaffirming DOE's inclination in the March 2006 NOA and stating DOE's decision to explore more stringent efficiency levels than in ASHRAE/IESNA Standard 90.1–1999 for PTACs and PTHPs through a separate rulemaking. 72 FR 10038, 10044.

In January 2008, ASHRAE published ASHRAE/IESNA Standard 90.1–2007, which reaffirmed the definitions and efficiency levels for PTACs and PTHPs in ASHRAE/IESNA Standard 90.1–1999. Since the definitions and efficiency levels for PTACs and PTHPs are the same in the two versions of ASHRAE/IESNA Standard 90.1, DOE is only referencing the ASHRAE/IESNA Standard 90.1–1999 version throughout today's notice even though DOE reviewed both versions.

III. General Discussion

A. Test Procedures

Section 343(a) of EPCA authorizes the Secretary to amend the test procedures for PTACs and PTHPs to the latest version generally accepted by industry or the rating procedures developed by the Air-Conditioning and Refrigeration Institute (ARI) [5], as referenced by ASHRAE/IESNA Standard 90.1, unless the Secretary determines by clear and convincing evidence the latest version of the industry test procedure does not meet the requirements for test procedures described in paragraphs (2) and (3) of that section. (42 U.S.C. 6314(a)(4))

DOE published a final rule on October 21, 2004, that amends its test procedure for PTACs and PTHPs to incorporate by reference the most recent amendments to the industry test procedure for PTACs and PTHPs, ARI Standard 310/380–2004. 69 FR 61962 (October 21, 2004). DOE does not believe further modifications to this test procedure are necessary at this time because no further amendments have been made to the industry test procedure for PTACs and PTHPs.

B. Technological Feasibility

1. General

DOE considers design options technologically feasible if the industry is already using them or if research has progressed to development of a working prototype. DOE defines technological feasibility as: ''Technologies incorporated in commercially available products or in working prototypes will be considered technologically feasible.'' 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the equipment that is the subject of the rulemaking. In consultation with interested parties, DOE develops a list of design options for consideration in the rulemaking. All technologically feasible design options are candidates in this initial assessment. DOE eliminates from consideration, early in the process, any design option that is not practicable to manufacture, install, or service; that will have adverse impacts on equipment utility or availability; or for which there are adverse impacts on health or safety. 10 CFR 430, subpart C, appendix A, section 4(a)(4). In addition, for the types of equipment identified in section 342(a) of EPCA, 42 U.S.C. 6313(a), which includes PTACs and PTHPs, DOE eliminates from consideration any design option whose technological feasibility is not supported by clear and convincing evidence.

The design options DOE considered as part of this rulemaking all have the potential to improve EER or COP. DOE considered any design option for PTACs and PTHPs to be technologically feasible if it is used in equipment the PTAC and PTHP industry distributes in commerce or is in a working prototype.

2. Maximum Technologically Feasible Levels

In developing today's proposed standards, DOE has determined the maximum improvement in energy efficiency that is technologically feasible (''max tech'') for PTACs and PTHPs. EPCA requires that DOE adopt amended energy conservation standards for equipment covered by ASHRAE/IESNA Standard 90.1 that achieves the maximum improvement in energy efficiency that is technologically feasible and economically justified, or to identify the ''max tech'' efficiency levels. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(A)) Therefore, in reviewing the amended ASHRAE/IESNA Standard 90.1 efficiency standards for PTACs and PTHPs, DOE identified the ''max tech'' levels as part of the engineering analysis (Chapter 5 of the TSD). At the present time, those levels are the levels set forth in TSL 7. For the representative cooling capacities within a given equipment class, PTACs and PTHPs utilizing R–22 with these efficiency levels already are being offered for sale and there is no

[4] U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy. ''Energy Conservation Program for Consumer Products: Screening Analysis for EPACT-Covered Commercial HVAC and Water-Heating Equipment Screening Analysis.'' April 2000.

[5] The Air-Conditioning and Refrigeration Institute (ARI) and the Gas Appliance Manufacturers Association (GAMA) announced on December 17, 2007, that their members voted to approve the merger of the two trade associations to represent the interests of cooling, heating, and commercial refrigeration equipment manufacturers. The merged association became AHRI on Jan. 1, 2008.

equipment at higher efficiency levels that are currently available. Table III.1 lists the ''max tech'' levels that DOE identified for this rulemaking.

TABLE III.1.—''MAX TECH'' EFFICIENCY LEVELS (≥7,000 BTU/H AND ≤15,000 BTU/H EQUIPMENT CLASSES)*

Equipment type	Equipment class	Cooling capacity (Btu/h)	''Max tech'' efficiency level**
PTAC	Standard Size†	9,000	12.0 EER
		12,000	11.5 EER
	Non-standard Size††	11,000	11.2 EER
PTHP	Standard Size†	9,000	12.0 EER 3.5 COP
		12,000	11.7 EER 3.3 COP
	Non-standard Size††	11,000	11.4 EER 2.9 COP

* As discussed in section IV.C.2 of today's notice, DOE is presenting the results for two cooling capacities of standard size PTACs and PTHPs, 9,000 Btu/h and 12,000 Btu/h, which fall within the equipment classes of PTACs and PTHPs with cooling capacities ≥7,000 Btu/h and ≤15,000 Btu/h.

** For equipment rated according to the DOE test procedure, all EER values would be rated at 95°F outdoor dry-bulb temperature for air-cooled products and evaporatively-cooled products and at 85°F entering water temperature for water cooled products. All COP values must be rated at 47°F outdoor dry-bulb temperature for air-cooled products, and at 70°F entering water temperature for water-source heat pumps.

† Standard size refers to PTAC or PTHP equipment with wall sleeve dimensions greater than or equal to 16 inches high, or greater than or equal to 42 inches wide.

†† Non-standard size refers to PTAC or PTHP equipment with wall sleeve dimensions less than 16 inches high and less than 42 inches wide.

C. Energy Savings

1. Determination of Savings

DOE used the national energy savings (NES) Microsoft Excel spreadsheet to estimate energy savings that could result from amended energy conservation standards for PTACs and PTHPs. The spreadsheet forecasts energy savings over the period of analysis for TSLs relative to the base case. DOE quantified the energy savings attributable to an energy conservation standard as the difference in energy consumption between the trial standards case and the base case. The base case represents the forecast of energy consumption in the absence of amended mandatory energy conservation standards beyond the levels in ASHRAE/IESNA Standard 90.1–1999. Section IV.G of this Notice and Chapter 11 of the TSD describes the NES spreadsheet model.

The NES spreadsheet model calculates the energy savings in both site energy (in kilowatt-hours (kWh)) or source energy (in British thermal units (Btu)). Site energy is the energy directly consumed at building sites by PTACs and PTHPs. DOE expresses national energy savings in terms of source energy savings (i.e., savings in energy used to generate and transmit the energy consumed at the site). Chapter 11 of the TSD contains a table of factors used to convert site energy consumption in kWh to source energy consumption in Btu. DOE derived these conversion factors, which change over time, from EIA's AEO2007.

2. Significance of Savings

Section 342(a)(6)(A)(ii)(II) of EPCA allows DOE to adopt a more stringent standard for PTACs and PTHPs than the amended level in ASHRAE/IESNA Standard 90.1, if clear and convincing evidence supports a determination that the more stringent standard would result in ''significant'' additional energy savings. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) While EPCA does not define the term ''significant,'' a U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended ''significant'' energy savings in section 325 of EPCA to mean savings that are not ''genuinely trivial.'' For all the TSLs considered in this rulemaking, DOE's estimates of energy savings provide clear and convincing evidence that the additional energy savings to be achieved from exceeding the corresponding efficiency level[s] in ASHRAE/IESNA Standard 90.1–1999 are nontrivial, and therefore DOE considers them ''significant'' as required by section 342 of EPCA. (42 U.S.C. 6313 (a)(6)(A)(ii)(II))

D. Economic Justification

As noted earlier, EPCA provides seven factors for DOE to evaluate in determining whether an energy conservation standard for PTAC and PTHP is economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)–(ii)) The following discussion explains how DOE has addressed each factor in this rulemaking.

1. Economic Impact on Manufacturers and Commercial Customers

DOE has established procedures, interpretations, and policies to guide DOE in considering new or amended appliance energy conservation standards. DOE investigates the impacts of amended energy conservation standards of PTACs and PTHPs on manufacturers through the manufacturer impact analysis (MIA) (see Chapter 13 of the TSD). First, DOE uses an annual cash flow approach in determining the quantitative impacts of a new or amended energy conservation standard on manufacturers. This includes both a short- and long-term assessment based on the cost and capital requirements during the period between the announcement of a regulation and the time when the regulation comes into effect. Impacts analyzed include INPV, cash flows by year, changes in revenue and income, and other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, paying particular attention to impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment, manufacturing capacity, plant closures, and loss of capital investment. Finally, DOE takes into account cumulative impacts of different DOE regulations on manufacturers.

For customers, DOE measures the economic impact as the change in installed cost and life-cycle operating costs, i.e., the LCC. Chapter 8 of the TSD presents the LCC of the equipment at

each efficiency level examined. LCC, described below, is one of the seven factors EPCA requires DOE to consider in determining the economic justification for a new or amended standard. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(II))

2. Life-Cycle Costs

The LCC is the sum of the purchase price, including the installation and operating expense (including operating energy consumption, maintenance, and repair expenditures) discounted over the lifetime of the equipment. To determine the purchase price including installation, DOE estimated the markups that are added to the manufacturer selling price (MSP) by distributors and contractors, and estimated installation costs from an analysis of PTAC and PTHP installation cost estimates for each of the equipment classes. DOE determined that maintenance cost is not dependent on PTAC and PTHP efficiency and that repair cost increases with MSP.

In estimating operating energy costs, DOE used the average commercial electricity price in each State, using EIA data from 2006.[6] DOE modified the 2006 average commercial electricity prices to reflect the average electricity prices for each of four types of businesses examined in this analysis. The LCC savings analysis compares the LCCs of equipment designed to meet possible proposed energy conservation standards with the LCC of the equipment likely to be installed in the absence of amended energy conservation standards. The LCC analysis also defines a range of energy price forecasts for electricity used in the economic analyses.

For each PTAC and PTHP equipment class, DOE calculated both the LCC and LCC savings at various efficiency levels. The LCC analysis estimated the LCC for representative equipment used in four types of buildings, two of which were hotels/motels and health care facilities that are representative of the segment of U.S. commercial building stock that uses PTACs and PTHPs.

To account for uncertainty and variability in specific inputs, such as equipment lifetime and discount rate, DOE used a distribution of values with probabilities attached to each value. For each of the four types of commercial buildings, DOE sampled the value of these inputs from the probability distributions. As a result, the analysis produced a range of LCCs. A distinct advantage of this approach is that DOE can identify the percentage of customers achieving LCC savings or attaining certain payback values due to an increased energy conservation standard, in addition to identifying the average LCC savings or average payback period for that standard. DOE gives the LCC savings as a distribution, with a mean value and a range. DOE's analysis assumes that the customer purchases the PTAC and PTHP in 2012. Chapter 8 of the TSD contains the details of the LCC calculations.

3. Energy Savings

While significant additional energy conservation is a separate statutory requirement for imposing a more stringent energy conservation standard than the level in ASHRAE/IESNA Standard 90.1, EPCA requires that DOE consider the total projected energy savings expected to result directly from the standard when determining the economic justification for a standard. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(III)) DOE used the NES spreadsheet results in its consideration of total projected savings. Section V.B.3 discusses the savings figures.

4. Lessening of Utility or Performance of Equipment

In establishing equipment classes, and in evaluating design options and the impact of proposed standards, DOE has attempted to avoid proposing amended standards for PTACs and PTHPs that would lessen the utility or performance of such equipment. (See 42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(IV)) The design options considered in the engineering analysis of this rulemaking do not involve changes in equipment design or unusual installation requirements that could reduce the utility or performance of PTACs and PTHPs. In addition, DOE is also considering manufacturers' concerns that one-third of the non-standard size market subject to the more stringent standards under ASHRAE/IESNA Standard 90.1–1999 would not be able to meet the efficiency levels specified by ASHRAE/IESNA Standard 90.1–1999 for standard size equipment due to the physical size constraints of the wall sleeve as further discussed in section IV.A.2.

5. Impact of Any Lessening of Competition

EPCA directs that DOE consider any lessening of competition that is likely to result from proposed standards. The Attorney General considers the impact, if any, of any lessening of competition likely to result from imposition of a proposed standard. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(V)) DOE has transmitted a copy of this NOPR to the Attorney General soliciting written views on this issue.

6. Need of the Nation To Conserve Energy

The non-monetary benefits of the proposed standards are likely to be reflected in improvements to the security and reliability of the Nation's energy system-namely, reductions in the overall demand for energy will result in a reduction in the Nation's reliance on foreign sources of energy and increased reliability of the Nation's electricity system. DOE conducts a utility impact analysis to show the reduction in installed generation capacity. The proposed standards are also likely to result in improvements to the environment. In quantifying these improvements, DOE has defined a range of primary energy conversion factors and associated emission reductions based on the generation displaced by energy conservation standards. DOE reports the environmental effects from each TSL in the environmental assessment, Chapter 16 of the TSD. (42 U.S.C. 6313(a); 42 U.S.C. 6295(o)(2)(B)(i)(VI))

7. Other Factors

EPCA allows the Secretary of Energy, in determining whether a proposed standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(VII)) DOE considered the impacts of setting different amended energy conservation standards for PTACs and PTHPs (i.e., the amended standard level for a given PTAC cooling capacity would be different from the amended standard level for a give PTHP with the same cooling capacity). DOE also considered the effects of potential equipment switching within the PTAC and PTHP market (e.g., switching from PTHPs to PTACs, which include a less-efficient heating system). In addition, DOE also considered the uncertainty associated with the market due to the impending refrigerant phase-out in 2010, including equipment availability, compressor availability, and the available efficiencies of R–410A PTACs and PTHPs. Lastly, DOE considered the uniqueness of the non-standard size of this equipment and any differential impacts that might result on this industry from amended energy conservation standards. The non-standard size market is further discussed in section IV and the impacts on the non-standard size industry from

[6] The EIA data for 2006 is the latest data set published by EIA on commercial electricity prices by State.

amended energy conservation standards are estimated in section V.

IV. Methodology and Analyses

This section addresses the analyses DOE has performed for this rulemaking. A separate sub-section addresses each analysis. DOE used a spreadsheet to calculate the LCC and payback periods (PBPs) of potential amended energy conservation standards. Another spreadsheet was used to provide shipments forecasts and then calculates national energy savings and net present value impacts of potential amended energy conservation standards. DOE also assessed manufacturer impacts, largely through use of the Government Regulatory Impact Model (GRIM).

DOE also estimated the impacts of proposed PTAC and PTHP energy conservation standards on electric utilities and the environment using a version of EIA's National Energy Modeling System (NEMS). The NEMS model simulates the U.S. energy economy and has been developed over several years by the EIA primarily for preparing the *AEO*. The NEMS produces a widely known baseline forecast for the United States through 2030 that is available in the public domain. The version of NEMS used for the proposed energy conservation standards analysis is called NEMS–BT , and is based on the AEO2007 version with minor modifications. The NEMS–BT offers a sophisticated picture of the effect of standards, since it can measure the interactions between the various energy supply and demand sectors and the economy as a whole.

A. Market and Technology Assessment

When beginning an energy conservation standards rulemaking, DOE develops information that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, and market characteristics. This activity includes both quantitative and qualitative assessments based primarily on publicly available information. The subjects addressed in the market and technology assessment for this rulemaking (see Chapter 3 of the TSD) include equipment classes, manufacturers, quantities, and types of equipment sold and offered for sale, retail market trends, and regulatory and non-regulatory programs.

1. Definitions of a PTAC and a PTHP

Section 340 of EPCA defines a ''packaged terminal air conditioner'' as ''a wall sleeve and a separate unencased combination of heating and cooling assemblies specified by the builder and intended for mounting through the wall. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability by builder's choice of hot water, steam, or electricity.'' (42 U.S.C. 6311(10)(A)) EPCA defines a ''packaged terminal heat pump'' as ''a packaged terminal air conditioner that utilizes reverse cycle refrigeration as its prime heat source and should have supplementary heat source available to builders with the choice of hot water, steam, or electric resistant heat.'' (42 U.S.C. 6311(10)(B)) DOE codified these definitions in 10 CFR 431.92 in a final rule issued October 21, 2004. 69 FR 61970.

2. Equipment Classes

When evaluating and establishing energy conservation standards, DOE generally divides covered equipment into equipment classes by the type of energy used or by capacity or other performance-related features that affect efficiency. Different energy conservation standards may apply to different equipment classes. (42 U.S.C. 6316(a); 42 U.S.C. 6295(q))

PTACs and PTHPs can be divided into various equipment classes categorized by physical characteristics that affect equipment efficiency. Key characteristics affecting the energy efficiency of the PTAC or PTHP are whether the equipment has reverse cycle heating (i.e., air conditioner or heat pump), the cooling capacity, and the physical dimensions of the unit.

The existing Federal energy conservation standards for PTACs and PTHPs correspond to the efficiency levels in ASHRAE/IESNA Standard 90.1–1989, as shown in Tables 1 and 2 of 10 CFR Part 431.97, dividing PTACs and PTHPs into six equipment classes. These equipment classes are differentiated by whether the equipment has supplemental heating or reverse cycle heating (i.e., air conditioner or heat pump) and by cooling capacity in Btu/h.

When installed, PTACs and PTHPs are fitted into a wall sleeve. There is a wide variety of wall sleeve sizes found in different buildings. These wall sleeves are market driven (i.e., the applications or facilities where the PTACs or PTHPs are installed is what determines the ''market standard'' wall sleeve dimension) and require manufacturers to offer various PTACs and PTHPs that can fit into various wall sleeve dimensions. For new units, the industry has standardized the wall sleeve dimension for PTACs and PTHPs in buildings over the past 20 years to be 16 inches high by 42 inches wide. Therefore, units that have a wall sleeve dimension of 16 inches high by 42 inches wide are considered ''standard size'' equipment and all other units are considered ''non-standard size'' equipment. In contrast, the industry does not have a common wall sleeve dimension that is typical for all older existing facilities. These facilities, such as high-rise buildings found in large cities, typically use non-standard size equipment. In these installations, altering the existing wall sleeve opening to accommodate the more efficient, standard size equipment could include extensive structural changes to the building, could be very costly, and is therefore, rarely done.

When ASHRAE amended the efficiency levels for PTACs and PTHPs in 1999, it acknowledged the physical size constraints among various sleeve sizes on the market. Consequently, ASHRAE/IESNA Standard 90.1–1999 used the equipment classes defined by EPCA, which are distinguished by whether the product has reverse cycle heating (i.e., air conditioner or heat pump) and cooling capacity in Btu/h, and further separated these equipment classes by wall sleeve dimensions.

ASHRAE/IESNA Standard 90.1–1999 refers to wall sleeve dimensions in two categories: ''New Construction'' and ''Replacement.'' ASHRAE/IESNA Standard 90.1–1999 does not describe ''New Construction,'' but Table 6.21D, footnote b of ASHRAE/IESNA Standard 90.1–1999 states that ''replacement'' efficiencies apply only to units: (1) ''Factory labeled as follows: Manufactured for Replacement Applications Only; Not to be Installed in New Construction Projects''; and (2) ''with existing wall sleeves less than 16 inches high and less than 42 inches wide.'' DOE understands that the ''New Construction'' category under ASHRAE/IESNA Standard 90.1–1999 is residual, and covers all other PTAC and PTHPs. Hence, this category consists of equipment with wall sleeve dimensions greater than or equal to 16 inches high and greater than or equal to 42 inches wide, or lacking the requisite label. In addition, when ASHRAE approved ASHRAE/IESNA Standard 90.1–1999, not only did it include delineations by wall sleeve dimensions, but it also associated these delineations with specified efficiency levels. The efficiency levels associated with non-standard equipment, or ''Replacement'' equipment, are significantly less stringent than those associated with standard size equipment, or ''New Construction'' equipment.

ARI recently submitted a continuous maintenance proposal on PTAC and

PTHP equipment to the ASHRAE/IESNA Standard 90.1 committee, which in part suggests alterations to the delineations within ASHRAE/IESNA Standard 90.1–1999 for standard and non-standard size equipment.[7] ARI believes ASHRAE misclassified approximately one-third of the non-standard size market when it adopted ASHRAE/IESNA Standard 90.1–1999. ARI believes the one third of the non-standard size market subject to the more stringent standards under ASHRAE/IESNA Standard 90.1–1999 are not capable of meeting the efficiency levels specified by ASHRAE/IESNA Standard 90.1–1999 for standard size equipment due to the physical size constraints of the wall sleeve. For example, a PTAC or PTHP unit with wall sleeve dimensions of 16.5 inches high and 27 inches wide would be classified as standard size equipment under ASHRAE's delineations and would be required to meet the higher efficiency levels specified by ASHRAE/IESNA Standard 90.1–1999. However, since this unit does not have the industry standard wall sleeve dimension of 16 inches high by 42 inches wide, ARI believes these units are solely non-standard units that are used in very old buildings and should therefore be considered as replacement units. Due to the space limitations typically associated with non-standard size PTACs and PTHPs, manufacturers have few options to increase energy efficiency. As noted above, many of the existing buildings cannot be retrofitted to accommodate larger wall sleeves associated with more efficient standard-size units.

In response to this apparent misclassification within ASHRAE/IESNA Standard 90.1–1999, ARI proposed a continuous maintenance proposal to ASHRAE that includes a new definition for non-standard size PTACs and PTHPs in place of the ''replacement'' delineation in ASHRAE/IESNA Standard 90.1–1999. The new definition of non-standard size PTACs and PTHPs reads: *''equipment with existing sleeves having an external wall opening of less than 16 in. high or less than 42 in. wide, and having a cross-sectional area less than 670 in* ^{2}.'' Effectively, this new definition of non-standard equipment would allow approximately five percent of the total PTAC and PTHP market to qualify for the less stringent, non-standard efficiency levels.

DOE recognizes ARI's concerns regarding non-standard size equipment and the possible misclassification under the delineations established by ASHRAE/IESNA Standard 90.1–1999. When ASHRAE approved ASHRAE/IESNA Standard 90.1–1999, not only did it include delineations by wall sleeve dimensions, but it also associated these delineations with specified efficiency levels. The efficiency levels associated with non-standard equipment, or ''Replacement'' equipment, are significantly less stringent than those associated with standard size equipment, or ''New Construction'' equipment.

DOE reviewed the ARI shipment data and found approximately 15 percent of the total market (i.e., approximately 67,000 units shipped annually) are non-standard size equipment. Under ASHRAE/IESNA Standard 90.1–1999, approximately 5 percent of the total non-standard size equipment market would be required to meet the more stringent standards established for standard size equipment. If DOE were to adopt equipment classes consistent with those delineations in ASHRAE/IESNA Standard 90.1–1999, manufacturers could be forced to cease production of those equipment lines, which are potentially misclassified and could not meet the more stringent standards. Under the ARI continuous maintenance proposal to ASHRAE, all of the non-standard size equipment would be subject to the less stringent standards.

Since ARI's proposed definitions would effectively reclassify some equipment under ASHRAE/IESNA 90.1–1999's delineations as non-standard size equipment, DOE believes ASHRAE must adopt ARI's continuous maintenance proposal before DOE can officially use this definition as the basis for DOE's standard. (42 U.S.C. 6313(a)(6)(A)(ii)) DOE understands that the ARI continuous maintenance proposal on PTACs and PTHPs has been approved by ASHRAE as Addendum t to ASHRAE/IESNA Standard 90.1–2007 and will be the subject of public review. If ASHRAE is able to adopt Addendum t to ASHRAE/IESNA Standard 90.1–2007 prior to September 2008, when DOE must issue a final rule on this rulemaking, DOE proposes to incorporate that version of the ASHRAE standard, including the modified definition in its final rule.

At this time, DOE seeks stakeholder comment on Addendum t to ASHRAE/IESNA Standard 90.1–2007 (i.e., ARI's continuous maintenance proposal to ASHRAE). Specifically, Addendum t to ASHRAE/IESNA Standard 90.1–2007 incorporates the following revised definition for non-standard size equipment: ''*equipment with existing sleeves having an external wall opening of less than 16 in. high or less than 42 in. wide, and having a cross-sectional area less than 670 in* ^{2}.'' If ASHRAE were to approve Addendum t to ASHRAE/IESNA Standard 90.1–2007 prior to September 2008, DOE proposes to adopt equipment classes in the final rule for PTACs and PTHPs as shown in Table IV.1.

TABLE IV.1.—EQUIPMENT CLASSES FOR PTACS AND PTHPS IF ASHRAE ADOPTS ADDENDUM T TO ASHRE/IESNA STANDARD 90.1–2007

Equipment Class		
Equipment	Category	Cooling capacity
PTAC	Standard Size*	< 7,000 Btu/h
		≥ 7,000 Btu/h and ≤ 15,000 Btu/h
		> 15,000 Btu/h
	Non-Standard Size**	< 7,000 Btu/h
		≥ 7,000 Btu/h and ≤ 15,000 Btu/h
		> 15,000 Btu/h
PTHP	Standard Size*	< 7,000 Btu/h
		≥ 7,000 Btu/h and ≤ 15,000 Btu/h
		> 15,000 Btu/h
	Non-Standard Size**	< 7,000 Btu/h

[7] Air-Conditioning and Refrigeration Institute. Continuous Maintenance Proposal on Package Terminal Equipment. October 5, 2007.

TABLE IV.1.—EQUIPMENT CLASSES FOR PTACS AND PTHPS IF ASHRAE ADOPTS ADDENDUM T TO ASHRE/IESNA STANDARD 90.1–2007—Continued

Equipment Class		
Equipment	Category	Cooling capacity
		≥ 7,000 Btu/h and ≤ 15,000 Btu/h > 15,000 Btu/h

* Standard size refers to PTAC or PTHP equipment with wall sleeve dimensions having an external wall opening of greater than or equal to 16 inches high or greater than or equal to 42 inches wide, and having a cross-sectional area greater than or equal to 670 inches squared.
** Non-standard size refers to PTAC or PTHP equipment with existing wall sleeve dimensions having an external wall opening of less than 16 inches high or less than 42 inches wide, and having a cross-sectional area less than 670 inches squared.

DOE would add the definitions of standard size and non-standard size as defined in the footnotes of Table IV.1 under 10 CFR 431.2. This is identified as Issue 1 under ''Issues to Which DOE Seeks Comment'' in section VII.E of today's proposed rule.

In the absence of final action by ASHRAE on the addendum, DOE would subdivide EPCA's existing classes for this equipment by wall sleeve dimensions, consistent with ASHRAE/IENSNA Standard 90.1–1999. Specifically, DOE would adopt equipment classes in the final rule for PTACs and PTHPs as shown in Table IV.2.

TABLE IV.2.—EQUIPMENT CLASSES FOR PTACS AND PTHPS IF ASHRAE DOES NOT ADOPT ADDENDUM T TO ASHRE/IESNA STANDARD 90.1–2007

Equipment class		
Equipment	Category	Cooling capacity
PTAC	Standard Size*	< 7,000 Btu/h ≥ 7,000 Btu/h and ≤ 15,000 Btu/h > 15,000 Btu/h
	Non-Standard Size**	< 7,000 Btu/h ≥ 7,000 Btu/h and ≤ 15,000 Btu/h > 15,000 Btu/h
PTHP	Standard Size*	< 7,000 Btu/h ≥ 7,000 Btu/h and ≤ 15,000 Btu/h > 15,000 Btu/h
	Non-Standard Size**	< 7,000 Btu/h ≥ 7,000 Btu/h and ≤ 15,000 Btu/h > 15,000 Btu/h

* Standard size refers to PTAC or PTHP equipment with wall sleeve dimensions greater than or equal to 16 inches high, or greater than or equal to 42 inches wide.
** Non-standard size refers to PTAC or PTHP equipment with wall sleeve dimensions less than 16 inches high and less than 42 inches wide.

DOE would add the definitions of standard size and non-standard size as defined in the footnotes of Table IV.2 under section 10 CFR 431.2.

For the purposes of today's notice, DOE has based the proposed standards and the proposed definitions of non-standard and standard size PTACs and PTHPs as shown in the rule language of today's notice on the delineations in ASHRAE/IESNA Standard 90.1–1999. However as stated above, if ASHRAE adopts Addendum t to ASHRAE/IESNA Standard 90.1–2007 prior to September 2008, DOE proposes to incorporate the modified definitions from the Addendum in the final rule. (42 U.S.C. 6313(a)(6)(A)(ii)) If Addendum t is not available for DOE to include in the final rule, DOE's ability to do so at a later date will be constrained by the anti-backsliding provision. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(1))

3. Market Assessment

The subjects addressed in this market assessment for this rulemaking include trade associations, manufacturers, and the quantities and types of equipment sold and offered for sale. The information DOE gathered serves as resource material throughout the rulemaking. Chapter 3 of the TSD provides additional detail on the market assessment.

a. Trade Association

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI), formerly and throughout this notice referred to as ARI, is the trade association representing PTAC and PTHP manufacturers. ARI and the Gas Appliance Manufacturers Association (GAMA) announced on December 17, 2007, that their members voted to approve the merger of the two trade associations to represent the interests of cooling, heating, and commercial refrigeration equipment manufacturers. The merged association became AHRI on Jan. 1, 2008.

ARI develops and publishes technical standards for residential and commercial equipment using rating criteria and procedures for measuring and certifying equipment performance. The DOE test procedure is an ARI standard. ARI has developed a certification program that the majority of the manufacturers in the PTAC and PTHP industry have used to certify their equipment. Manufacturers certify their own equipment by providing ARI with test data. Through the ARI certification program, ARI evaluates the test data and determines if the equipment conforms to ARI 310/380–2004.[8] Once ARI has determined that the equipment has met all the requirements under ARI 310/380–2004 standards and certification

[8] DOE has incorporated by reference ARI Standard 310/380–2004 as the DOE test procedure at 10 CFR 431.97.

program, it is added to a directory of certified equipment. DOE used ARI's certification data, as summarized by the 2006 ARI directory of certified PTACs and PTHPs, in the engineering analysis.

b. Manufacturers

DOE identified five large manufacturers of standard size PTAC and PTHP that hold approximately 90 percent of the market in terms of shipments. These five manufacturers include: General Electric (GE) Company, Carrier Corporation, Amana,[9] Trane,[10] and McQuay International. Three major manufacturers including McQuay International, RetroAire, and Fedders Islandaire, Inc. share the non-standard size PTAC and PTHP market. All of the major manufacturers certify their equipment with ARI and are included in the ARI directory of certified products.

The standard size PTAC and PTHP market differs from the non-standard size PTAC and PTHP industry in that many of the manufacturers are domestically owned with manufacturing facilities located outside of the United States. Currently there is only one major manufacturer of standard size PTAC and PTHP equipment manufacturing equipment in the United States. In addition, there has been a recent trend in the PTAC and PTHP standard size market for foreign owned companies to enter and sell equipment in the United States.

Almost all of the manufacturers of non-standard size PTACs and PTHPs are domestically owned with manufacturing facilities located inside of the United States. The non-standard manufacturers tend to specialize in equipment solely for replacement applications. In addition, non-standard size manufacturers produce PTAC and PTHP equipment on a made-to-order basis. Unlike standard size manufacturers, there has not been an influx of foreign owned companies to sell non-standard size PTAC and PTHP equipment in the United States.

In addition, DOE takes into consideration the impact of amended energy conservation standards on small businesses. At this time, DOE has identified several small business in both the standard size and non-standard size PTAC and PTHP industry that fall under the Small Business Administration (SBA)'s definition as having 750 employees or fewer. DOE studies the potential impacts on these small businesses in detail during the MIA (section IV.I of today's notice and Chapter 13 of the TSD).

c. Shipments

DOE reviewed data collected by the U.S. Census Bureau and ARI to evaluate the annual PTAC and PTHP equipment shipment trends and the value of these shipments. The historical shipments data shown in Tables IV.3 provide a picture of the market for PTAC and PTHP equipment. The historical shipments for PTACs and PTHPs are based on data provided by ARI for the years 1997–2005.

TABLE IV.3.—2006 TOTAL PTAC AND PTHP INDUSTRY ESTIMATED SHIPMENT DATA FROM ARI (STANDARD AND NON-STANDARD)

Year	Total (thousands of units)
2005	484
2004	446
2003	399
2002	389
2001	388
2000	402
1999	453
1998	471
1997	434

Using currently available data, ARI estimated that 85 percent of the shipments for PTACs and PTHPs are standard size units, while 15 percent are non-standard size units. In addition, ARI identified the two cooling capacities for standard size PTACs and PTHPs with the highest number of shipments, which are 9,000 Btu/h and 12,000 Btu/h.

4. Technology Assessment

In the technology assessment, DOE identified technologies and design options that could improve the efficiency of PTACs and PTHPs. This assessment provides the technical background and structure on which DOE bases its screening and engineering analyses. For PTACs and PTHPs, DOE based its list of technologically feasible design options on input from manufacturers, industry experts, component suppliers, trade publications, and technical papers.

In surveying PTAC and PTHP technology options, DOE considered a wide assortment of equipment literature, information derived from the teardown analysis, information derived from the stakeholder interviews, and the previous DOE energy conservation standards rulemaking for air-conditioning rulemaking analyses. The following technology options were identified as potential means to improve PTAC and PTHP performance:

- Scroll compressors
- Variable-speed compressors
- Higher efficiency compressors
- Complex control boards
- Higher efficiency fan motors
- Microchannel heat exchangers
- Increase heat exchanger area
- Material treatment of heat exchanger
- Recircuiting heat exchanger coils
- Improved air flow and fan design
- Heat pipes
- Corrosion protection

B. Screening Analysis

The purpose of the screening analysis is to evaluate the technologies that improve equipment efficiency to determine which technologies to consider further and which to screen out. DOE consulted with a range of parties, including industry, technical experts, and others to develop a list of technologies for consideration. DOE then applied the following four screening criteria to determine which technologies are unsuitable for further consideration in the rulemaking (10 CFR Part 430, Subpart C, Appendix A at 4(a)(4) and 5(b)):

(1) Technological feasibility. Technologies incorporated in commercial equipment or in working prototypes will be considered technologically feasible.

(2) Practicability to manufacture, install, and service. If mass production of a technology in commercial equipment and reliable installation and servicing of the technology could be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will be considered practicable to manufacture, install, and service.

(3) Adverse impacts on equipment utility or equipment availability. If a technology is determined to have significant adverse impact on the utility of the equipment to significant subgroups of customers, or result in the unavailability of any covered equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time, it will not be considered further.

(4) Adverse impacts on health or safety. If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further.

DOE eliminated three technologies because they have no effect on, or do

[9] Amana is a trademark of Maytag Corporation and is used under license to Goodman Global, Inc.

[10] Trane is a trademark and business of American Standard companies.

not increase EER or COP as measured by the test procedure since the test procedure measures steady-state energy efficiency. However, these features (i.e., variable speed compressors, complex control boards, and corrosion protection) can reduce the energy consumption of the PTAC or PTHP in actual applications, since they affect the cyclic operation of the equipment. They do not affect the measure of efficiency (i.e., EER and COP) since both are steady-state measures, not cyclic measures.

DOE also eliminated six of the technologies it identified in the market and technology assessment. The specific technologies that were eliminated based on the four screening criteria outlined above are: (1) Scroll compressors, (2) higher efficiency fan motors, (3) microchannel heat exchangers, (4) material treatment of heat exchangers, (5) improved airflow and fan design, and (6) heat pipes. DOE screened out scroll compressors because they are not currently practical to manufacturer in the sizes necessary for use in PTACs and PTHPs. DOE screened out higher efficiency fan motors, improved airflow and fan design because further gains in PSC fan motor technology or changing the type of fan design would affect the size of the motor or fan. Because PTACs and PTHPs are space-constrained equipment, it is unlikely that manufacturers would be able to redesign the motor or fans that would be practical to manufacture, install, and service on a scale necessary to serve the relevant market at the time of the effective date of the standard. DOE screened out microchannel heat exchangers because they are still in the research stage for PTAC and PTHP equipment and would not be practicable to manufacture, install, or service on a scale necessary to serve the relevant market at the time of the effective date of the standard. DOE screened out material treatment of heat exchangers because it is currently patented and only used by one PTAC and PTHP manufacturer; thus, it would not be practical to manufacture on broad scale for the entire industry. Lastly, DOE screened out heat pipes because they are still in the research stage and their energy savings potential has not been fully established.

Based on equipment literature, teardown analysis, and manufacturer interviews, DOE has identified higher efficiency compressors,[11] increasing the heat exchanger area, and recircuiting the heat exchanger coils as the most common ways by which manufacturers improve the energy efficiency of their PTACs and PTHPs as measured by the test procedure and that are not excluded by the four criteria in Appendix A to Subpart B of 10 CFR Part 430 listed above. See Chapter 3 of the TSD for additional detail on the technology assessment and technologies analyzed.

There are PTACs and PTHPs utilizing R–22 in the market at various efficiency levels incorporating the three design options analyzed in today's notice. DOE believes this constitutes clear and convincing evidence that all of the efficiency levels discussed in today's notice is technologically feasible. However, DOE recognizes the uncertainty associated with the conversion to R–410A refrigerant and will take this into further consideration when weighing the benefits and burdens for each TSL. For more details on how DOE developed the technology options and the process for screening these options, refer to the market and technology assessment (see Chapter 3 of the TSD) and the screening analysis (see Chapter 4 of the TSD).

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the cost and efficiency of PTACs and PTHPs, to show the manufacturing costs of achieving increased efficiency. For each equipment class, this analysis estimates the baseline manufacturer cost, as well as the incremental cost for equipment at efficiency levels above the baseline. In determining the performance and the costs of more efficient equipment, DOE considers technologies and design option combinations not eliminated in the screening analysis. The output of the engineering analysis is a set of cost-efficiency relationships or cost-efficiency curves that are used in further analyses (e.g., the LCC and PBP analyses and the national impact analysis (NIA)).

DOE typically structures its engineering analysis around one of three methodologies: (1) The design-option approach, which calculates the incremental costs of adding specific design options to a baseline model; (2) the efficiency-level approach, which calculates the relative costs of achieving increases in energy efficiency levels, without regard to the particular design options used to achieve such increases; and (3) the reverse-engineering or cost-assessment approach, which involves ''bottom-up'' manufacturing cost assessments for achieving various levels of increased efficiency, based on detailed data derived from equipment tear-downs, as to costs for parts, material, labor, shipping/packaging, and investment for models that operate at particular efficiency levels.

1. Approach

For PTACs and PTHPs, each energy efficiency level is expressed as an EER, which is a function of cooling capacity. For each class analyzed, DOE used representative cooling capacities corresponding to the cooling capacities with the highest equipment shipments within a given equipment class. For the purposes of conducting the analyses, DOE believes that the results from the representative cooling capacities can be extrapolated to the entire range of cooling capacities for each equipment class. DOE's approach for extending the results to the omitted cooling capacities is discussed further in section V.1 of this NOPR. DOE seeks comment on this approach to extend the engineering analysis to cooling capacities for which complete analysis was not performed. This is identified as Issue 2 under ''Issues to Which DOE Seeks Comment'' in section VII.E of today's proposed rule.

For this analysis, DOE used a design option approach, which involved consultation with outside experts, review of publicly available cost and performance information, and modeling of equipment cost. The design options DOE considered in the Engineering Analysis include higher efficiency compressors, increasing the heat exchanger area, and recircuiting the heat exchanger coils. The design option analysis provides transparency of assumptions and results and the ability to perform independent analyses for verification. The methodology used to perform design-option analysis and derive the cost-efficiency relationship is described in detail in Chapter 5 of the TSD.

2. Equipment Classes Analyzed

For the engineering analysis, DOE reviewed all twelve equipment classes covered by this rulemaking. Since the wall sleeve dimensions effect the energy efficiency of the equipment, DOE examined standard size and non-standard size PTACs and PTHPs separately. In addition, since the energy efficiency equations for PTACs and PTHPs established by EPCA and ASHRAE/IESNA Standard 90.1–1999 are a function of the equipment's cooling capacity, DOE examined specific cooling capacities for standard size and non-standard size PTACs and PTHPs, which are referred to as representative cooling capacities. See

[11] Currently, all PTAC and PTHP manufacturers incorporate rotary compressors into their equipment designs. DOE is referring to rotary compressors throughout today's notice unless specifically noted.

Table 1 and Table 2 of 10 CFR Part 431.97 and ASHRAE/IESNA Standard 90.1–1999 for the energy efficiency equations. DOE reviewed the shipments data provided by ARI for the 2000 Screening Analysis and today's rulemaking,[12] and found the majority of shipments have a cooling capacity within the 7,000 Btu/h to 15,000 Btu/h range. See Chapter 3 of the TSD for more details on the shipments data. Consequently, DOE choose to examine these four equipment classes further.

For standard size PTAC and PTHP equipment classes, DOE identified two representative cooling capacities. The representative cooling capacities for standard size PTACs and PTHPs are 9,000 Btu/h and 12,000 Btu/h. DOE found these two representative cooling capacities to have the highest number of shipments based on data in the 2006 ARI Directory, the ACEEE database of equipment, as well as the shipment information provided to DOE found in the 2000 Screening Analysis. For non-standard size equipment, DOE could not identify representative cooling capacities or wall sleeve dimensions. The non-standard size PTAC and PTHP market also has a greater variety of shipments based on the customers that use them and specialized applications. DOE used 11,000 Btu/h as the representative cooling capacity for non-standard size equipment because it is the middle of the cooling capacity range. Therefore, for the engineering analysis and subsequent analyses, DOE analyzed non-standard size PTACs and PTHPs with 11,000 Btu/h cooling capacity. See Chapter 5 of the TSD for additional details.

DOE developed the cost-efficiency curves based on these representative cooling capacities and wall sleeve-size units. Table IV.4 exhibits the representative cooling capacities within each equipment class analyzed in the engineering analysis.

TABLE IV.4.—REPRESENTATIVE COOLING CAPACITIES FOR THE ENGINEERING ANALYSIS

Equipment type	Equipment class	Representative cooling capacity (Btu/h)
PTAC	Standard Size*	9,000
		12,000
	Non-Standard Size**	11,000
PTHP	Standard Size*	9,000
		12,000
	Non-Standard Size**	11,000

* Standard size refers to PTAC or PTHP equipment with wall sleeve dimensions greater than or equal to 16 inches high, or greater than or equal to 42 inches wide.

** Non-standard size refers to PTAC or PTHP equipment with wall sleeve dimensions less than 16 inches high and less than 42 inches wide.

DOE's selection of representative cooling capacities for further examination is based on shipment information provided by ARI. For the PTAC and PTHP equipment classes with a cooling capacity greater than or equal to 7,000 Btu/h and less than or equal to 15,000 Btu/h, the energy efficiency equation characterizes the relationship between the EER of the equipment and cooling capacity (i.e., EER is a function of the cooling capacity of the equipment). Therefore, for these equipment classes, DOE explicitly analyzed the two cooling capacities with the greatest number of shipments, which allows DOE to investigate the slope of the energy efficiency capacity relationship. For all cooling capacities less than 7,000 Btu/h and all cooling capacities greater than 15,000 Btu/h, the EER is calculated based on the energy efficiency equation for 7,000 Btu/h or 15,000 Btu/h, respectively.

For PTACs and PTHPs, DOE is proposing to equate the amended energy conservation standards for equipment with a cooling capacity less than 7,000 Btu/h with the amended energy conservation standards for equipment with a cooling capacity equal to 7,000 Btu/h. Similarly, for PTACs and PTHPs, DOE is proposing to equate the amended energy conservation standards for equipment with a cooling capacity greater than 15,000 Btu/h to the amended energy conservation standards for equipment with a cooling capacity equal to 15,000 Btu/h. This is the same method established in the Energy Policy Act of 1992 as shown by the existing Federal minimum energy conservation standards and maintained by ASHRAE Standard 90.1–1999 for calculating the EER and COP of equipment with cooling capacities less than 7,000 Btu/h and greater than 15,000 Btu/h. More details explaining how DOE developed the proposed energy efficiency equations based on the analysis results for the representative cooling capacities are found in section V.A of today's notice.

3. Cost Model

DOE developed a manufacturing cost model to estimate the manufacturing production cost (MPC) of PTACs and PTHPs. The manufacturing cost model is a spreadsheet model, which details the structured bill of materials to estimate the MPCs of a PTAC or PTHP based on all the manufacturing and fabrication resources required to manufacture the equipment. Developing the cost model involved disassembling various PTACs and PTHPs, analyzing the materials and manufacturing processes, and developing component costing flexible enough to be applicable to all equipment classes. In addition to disassembling various PTACs and PTHPs, manufacturers provided DOE supplemental component data for various PTAC and PTHP equipment. The manufacturing cost model used the component specifications supplied by manufacturers, the teardown data, component cost sources, and engineering interviews to estimate the MPCs. DOE reported the MPCs in aggregated form to maintain confidentiality of sensitive component data. DOE obtained input from stakeholders on the MPC estimates and assumptions to confirm accuracy. DOE used the cost model for all of the representative cooling capacities within the PTAC and PTHP equipment classes. Chapter 5 of the TSD provides details and assumptions of the cost model.

DOE applied a manufacturer markup to the MPC estimates to arrive at the MSP. This is the price at which the

[12] ARI provided DOE shipments data from 2000 for the 2000 Screening Analysis and shipments data from 2006 for today's rulemaking.

manufacturer can recover both production and non-production costs [13] and earns a profit. DOE developed a market-share-weighted average industry markup by examining the major PTAC and PTHP manufacturers' gross margin information from annual reports and Securities and Exchange Commission (SEC) 10–K reports. The manufacturers DOE examined represent approximately 75 percent of the PTAC and PTHP industry. Each of these companies is a subsidiary of a more diversified parent company that manufactures equipment other than PTACs and PTHPs. Because the SEC 10-K reports do not provide gross margin information at the subsidiary level, the estimated markups represent the average markups that the parent company applies over its entire range of offerings.

DOE evaluated manufacturer markups from 2002 to 2006, except for one manufacturer, whose markup was evaluated from 1998 to 2002 because data from the latter years was not publicly available. The manufacturer markup is calculated as 100/(100 − average gross margin), where gross margin is calculated as revenue − cost of goods sold (COGS). DOE used Internal Revenue Service industry statistics to validate the SEC 10-K and annual report information. DOE estimated the average manufacturer markup within the industry as 1.29. See Chapter 5 of the TSD for additional details.

4. Baseline Equipment

As mentioned above, the engineering analysis estimates the incremental costs for equipment with efficiency levels above the baseline in each equipment class. For the purpose of the engineering analysis, DOE used the engineering baseline EER as the starting point to build the cost efficiency curves. DOE usually uses the Federal minimum energy conservation standards to represent the baseline model's energy efficiency in the engineering analysis. However, all of the PTAC and PTHP equipment offered for sale, according to the ARI directory, exceed the efficiency levels specified by the existing Federal minimum energy conservation standards. Consequently, DOE identified the lowest efficiency equipment currently on the market and is utilizing it as the engineering baseline.

DOE established engineering baseline specifications for each of the equipment classes modeled in the engineering analysis by reviewing available manufacturer data, selecting several representative units from available manufacturer data, and then aggregating the physical characteristics of the selected units. These specifications include wall sleeve dimensions, number of components, and other equipment features that affect energy consumption, as well as a base cost (the cost of a piece of equipment not including the major efficiency-related components such as compressors, fan motors, and heat exchanger coils). By excluding the equipment designs, which can be attributable to specific manufacturers, DOE created an engineering baseline that is representative of each equipment class with average characteristics, including dimensions, components, and other equipment features that are necessary to calculate the MPC of each unit within each equipment class. The cost model was used to develop the MPC for each equipment class. Specifications of the baseline equipment are provided in Chapter 5 of the TSD.

In estimating the economic impacts of standards, DOE used the efficiency levels in ASHRAE/IESNA Standard 90.1–1999 as the baseline efficiencies in order to estimate the impacts of standards more stringent than ASHRAE/IESNA Standard 90.1–1999. ASHRAE/IESNA Standard 90.1–1999 is the least stringent energy efficiency level DOE could adopt since EPCA directs that if ASHRAE/IESNA Standard 90.1 is amended, DOE must adopt an amended standard at the new level in ASHRAE/IESNA Standard 90.1 unless clear and convincing evidence supports a determination that adoption of a more stringent level as a national standard would produce significantly more energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) Consequently, the minimum energy conservation standard levels DOE could adopt in this rulemaking proceeding would be the efficiency levels contained in ASHRAE/IESNA Standard 90.1–1999. Thus, DOE is evaluating in this rulemaking whether efficiency levels above those contained in ASHRAE/IESNA Standard 90.1–1999 are technologically feasible and economically justified.[14]

5. Alternative Refrigerant Analysis

a. R–22

In 1987, the United Nations Environment Programme (UNEP) adopted the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), which regulates the phase-out of ozone-depleting substances through a collaborative and international effort. In 1988, the United States ratified the Montreal Protocol and thus committed to the phase-out.[15]

In 1990, the Clean Air Act was amended to include Title VI, ''Stratospheric Ozone Protection,'' to implement the Montreal Protocol. (42 U.S.C. 7671, *et seq.*) Title VI mandated the phase-out by 2020 of hydrochlorofluorocarbon (HCFC) refrigerants for use in new air-conditioning systems. (42 U.S.C. 7671d) Title VI, however, also authorized the Environmental Protection Agency (EPA) to accelerate this date if certain criteria were met, (42 U.S.C. 7671e) and EPA subsequently adopted a rule on December 10, 1993 to require the phase-out of HCFC refrigerants for use in new equipment by 2010. 58 FR 65018. R–22, the only refrigerant currently used by PTACs and PTHPs, is an HCFC refrigerant and subject to the phase-out requirement. Phase-out of this refrigerant could have a significant impact on the manufacturing, performance, and cost of PTAC and PTHP equipment.

b. R–410A

As part of the engineering analysis, DOE performed an alternative refrigerant analysis to characterize the performance implications on PTACs and PTHPs. This analysis included researching technical journal reports, discussions with industry experts and manufacturers, and developing an analysis that used the methodology DOE used in performing the engineering analysis as to equipment using the R–22 refrigerant. ARI, in comment on the March 13, 2006, Notice of Document Availability (71 FR 12634) commented that R–410A is the most likely replacement refrigerant for R–22 in standard and non-standard size PTACs and PTHPs. (Docket No. EE–RM/STD–03–100, EE–RM/STD–03–200, EE–RM/STD–03–300, ARI, No. 26 at pp. 2–3) [16]

[13] Full production costs include direct labor, direct material, and direct overhead. Non-production costs include selling, general and administrative, research and development, and interest. See Chapter 5 of the TSD for more details.

[14] DOE's estimates of potential energy savings from an amended energy conservation standard are further discussed in section V.3.

[15] The 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (as agreed in 1987). United Nations Environment Programme. *http://ozone.unep.org/Ratification_status/montreal_protocol.shtml.*

[16] ''ARI, No. 26 at pp 2–3'' refers (1) to a statement that was submitted by the Air-Conditioning and Refrigeration Institute and is recorded in the Resource Room of the Building Technologies Program in the docket under ''Energy Efficiency Program for Commercial and Industrial Equipment: Efficiency Standards for Commercial Heating, Air-Conditioning and Water Heating Equipment,'' Docket Number EE–RM–STD–03–100, EE–RM–

Every manufacturer interview confirmed that the industry is planning to substitute R–410A for R–22 in PTACs and PTHPs. Industry representatives expressed a preference for R–410A due to its performance similarities to R–22 and experience with other HVAC equipment that use R–410A. Therefore, DOE performed its alternative refrigerant analysis based on the use of R–410A. See Chapter 5 of the TSD for additional details.

DOE identified the ''max-tech'' efficiency levels as described in section III.B.2 of today's proposed rule. These ''max-tech'' efficiency levels are based on currently available R–22 PTACs and PTHPs for a given representative cooling capacity within a given equipment class. In order to analyze the impact of using R–410A in PTACs and PTHPs, DOE considered the impact of using R–410A on PTAC components, the engineering analysis of past rulemakings that addressed the refrigerant phase-out, and markets in which a similar transition has occurred.

First, DOE expects that the phase-out of R–22 and the subsequent adoption of R–410A refrigerants in PTACs and PTHPs will require the redesign of the sealed systems found inside the PTAC and PTHP units. The sealed system consists of the indoor and outdoor heat exchangers, the compressor, refrigerant flow-control devices, and any piping that connects these components through which refrigerant flows during unit operation. Since R–22 refrigerants have different operating characteristics than R–410A, the sealed system in a PTAC or PTHP unit using R–410A will have to be redesigned to optimize the unit for operation with R–410A. Specifically, equipment using R–410A operates at higher system pressure requiring stronger sealed system walls and the use of different oils (i.e., R–410 equipment will use POE, while R–22 equipment uses mineral). In addition, R–410A compressors must also be designed with thicker and stronger compressor shells and components to withstand 50 percent to 60 percent more pressure than R–22 compressors.[17]

The loss in compressor efficiency can be overcome with optimized heat exchanger design to a limited extent. As discussed in the market and technology assessment (Chapter 3 of the TSD), different heat exchanger redesigns not currently associated with compressors could increase overall system performance. According to manufacturers, some redesigns, such as adding coils, re-circuiting, and increasing the frontal heat exchanger surface area, are applicable to PTACs and PTHPs regardless of the refrigerant used. However, DOE does not have sufficient information to predict with precision the performance benefits of heat exchanger redesigns. Initially, DOE expects any such redesigns to result in efficiency improvements insufficient to offset the efficiency reductions resulting from the switch from R–22 to R–410A. Thus, DOE expects the overall system efficiency of R–410A PTAC and PTHP equipment will be lower than if that equipment used R–22, as predicted by manufacturer testing, ARI's research,[18] National Institute of Standards and Technology studies,[19] and as observed in response to the transition from R–22 to R–410A in the residential air conditioning market. Optimizing the heat exchanger and HVAC circuits to compensate could be costly, depending on whether a heat exchanger manufacturer needs to change the fin tooling, expansion, and assembly systems.

Therefore, in this rulemaking, DOE is using an overall lower system performance for PTAC and PTHP equipment with R–410A. For standard size PTACs and PTHPs with 9,000 Btu/h cooling capacity, DOE calculated an overall system performance degradation consistent with ARI estimates of 6.3 percent.[20] For standard size PTACs and PTHPs with 12,000 Btu/h cooling capacity, DOE calculated overall system performance degradation consistent with ARI estimates of 7.6 percent.[21] For non-standard size PTACs and PTHPs of all cooling capacities, DOE calculated overall system performance degradation of 6.8 percent. See Chapter 5 of the TSD for additional details.

DOE has no evidence that the incremental efficiency gains from the design options used in the R–22 case would have a different effect on the system performance of R–410A equipment. Therefore, DOE assumed the design options for the R–22 analysis previously discussed are applicable to the alternative refrigerant analysis. DOE also assumed that the corresponding incremental EER improvement for each design option in the R–22 analysis would be the same in the alternative refrigerant analysis. See Chapter 5 of the TSD for additional details.

Similar issues existed within the residential, central air conditioning industry. Systems utilizing R–410A have been available in the residential air-conditioning market for several years, and DOE believes the impact of the refrigerant transition to R–410A for PTACs and PTHPs and on the manufacturers and purchasers of central air conditioners and heat pumps will be similar. The residential air-conditioning market is a much larger market than the PTAC and PTHP market, and thus offers greater incentives for compressor manufacturers to make the necessary investments to produce more efficient R–410A compressors. Initially, DOE found that the R–410A compressors available for use in residential, central air conditioning equipment were less efficient than their R–22 counterparts they were replacing. However, DOE has observed that residential, central air conditioning manufacturers were able to develop technologies and redesign their equipment, so that the R–22 phase-out has had little effect on system efficiency when the equipment eventually came onto the market.

At a minimum, DOE believes manufacturers of PTAC and PTHP equipment will be able to manufacture equipment with R–410A at the efficiency levels specified by ASHRAE/IESNA Standard 90.1–1999. Since PTAC and PTHP equipment utilizing R–22 exists at efficiency levels well above ASHRAE/IESNA Standard 90.1–1999, DOE believes the manufacturers will be able to produce equipment utilizing R–410A at least at the efficiency levels specified by ASHRAE/IESNA Standard 90.1–1999, even after the estimated performance degradations from the engineering analysis are applied. DOE has preliminarily concluded that the R–410A compressors available for use in PTAC and PTHP equipment could be less efficient than their R–22 counterparts could at the time the takes effect, based upon manufacturer feedback during interviews and by examining other air-conditioning markets where similar refrigerant transitions have taken place. However, DOE is hopeful that over time component manufacturers and PTAC and PTHP manufacturers will be able to

STD–03–200, and EE–RM–STD–03–300, as comment number 26; and (2) a passage that appears on pages 2 and 3 of that statement.

[17] Emerson Climate Technologies. R410A Questions. *http://www.emersonclimate.com/faq_copeland.htm#R410A* (Last accessed August 2, 2007.) We will need to save the portion of this web site that we rely upon for the administrative record.

[18] Air-Conditioning and Refrigeration Institute. *Response to ASHRAE 90.1 Continuous Maintenance Proposal on Package Terminal Equipment*. May 18, 2006.

[19] Payne, W., Domanski, P. *A Comparison of an R22 and an R410A Air Conditioner Operating at High Ambient Temperatures*. National Institute of Standards and Technology Building Environment Division: Thermal Machinery Group. *http://www.fire.nist.gov/bfrlpubs/build02/PDF/b02186.pdf*. (Last accessed August 2, 2007.)

[20] Air-Conditioning and Refrigeration Institute. *Response to ASHRAE 90.1 Continuous Maintenance Proposal on Package Terminal Equipment*. May 18, 2006.

[21] *Id.*

overcome the degradation in system efficiency caused by the switch to R–410A refrigerant. Therefore, DOE is continuing to analyze, the higher, R–22-based, energy efficiency levels identified in section III.B.2 as the ''max-tech'' efficiency levels. DOE will give particular attention to the PTAC and PTHP efficiency levels that cannot be met with current technologies and practices with R–410A in weighing the benefits and burdens of the various TSLs. Based on information received in public comments concerning this NOPR, DOE may consider and adopt in the final rule other potential standard levels that take into account the impact of R–410A.

c. R–410A Compressor Availability

The availability of R–410A compressors in a wide range of efficiencies is uncertain. Several compressor manufacturers make R–22, PTAC and PTHP compressors of different capacities and efficiencies for standard and non-standard equipment. When the market transitions to R–410A, these manufacturers may only offer one line of compressors for PTACs and PTHPs. In engineering interviews, compressor manufacturers said they do not know if R–410A compressors will have equivalent performance to R–22 compressors by the 2010 date. They also stated in interviews that they expect to offer R–410A compressors at only one efficiency level in the initial stages of the phase-out, which could further reduce compressor options for PTAC and PTHP manufacturers.

d. R–410A Manufacturing Production Cost

To derive the baseline MPCs for the R–410A PTACs and PTHPs, DOE made additional cost determinations (e.g., R–410 refrigerant pricing, R–410A compressor pricing, etc.) and incorporated them in the same cost model used for the R–22 engineering analysis. See Chapter 5 of the TSD for additional details about component prices using R–410A. DOE assumed a 25 percent increase in heat exchanger tubing thickness to account for the higher pressures of R–410A refrigerant based on technical journals and manufacturer interviews. DOE switched the working refrigerant in the cost model to R–410A and used the current R–410A refrigerant price based upon cost estimates from refrigerant suppliers and engineering interviews with manufacturers. During engineering interviews, several manufacturers of PTAC and PTHP equipment and several component manufacturers stated that compressor prices would increase anywhere between 10 percent and 20 percent from current R–22 compressor prices. To incorporate manufacturers' comments, DOE assumed that compressor costs would increase by 15 percent, which is consistent with the feedback DOE received during the engineering interviews. Using the above assumptions, DOE recalculated baseline equipment and design option MPCs to establish the cost-efficiency relationship for R–410A equipment.

The physical differences between PTACs and PTHPs are mainly in the reversing valve and other minor components. The results from the engineering and teardown analysis showed that the sum of the MPCs for reversing valves and other minor components are constant across the cost-efficiency relationship for the R–22 case. Therefore, DOE initially concluded that the cost-efficiency relationship (i.e., cost-efficiency curves) of PTACs is the same as the cost-efficiency relationship of PTHPs, minus the MPCs for the reversing valve and other minor components at various cooling capacities. In performing the alternative refrigerant analysis, DOE found no evidence that the cost-efficiency relationships for PTACs and PTHPs would be any different for equipment using R–410A. Therefore, DOE assumed that incremental cumulative MPCs for PTACs and PTHPs of the same equipment class would be the same as in the R–22 case (i.e., that both PTACs and PTHPs have the same incremental cost-efficiency curves in the R–410A case). To be consistent, DOE used the same cost model as in the R–22 analysis to estimate MPCs of equipment at various efficiency levels in the R–410A analysis. Chapter 5 of the TSD provides additional details on the alternative refrigerant analysis.

6. Cost-Efficiency Results

The results of the engineering analysis are reported as a set of cost-efficiency data (or ''curves'') in the form of MPC (in dollars) versus EER, which form the basis for other analyses in the NOPR. DOE created cost-efficiency curves for the six representative cooling capacities within the four equipment classes of PTACs and PTHPs, as discussed in section IV.C.2, above. DOE used the R–410A cost-efficiency curves for all subsequent analyses in the NOPR. See Chapter 5 of the TSD for additional detail on the engineering analysis and complete cost-efficiency results.

DOE also conducted a sensitivity analysis on material prices to examine the effect of spikes in metal prices that the industry has experienced over the past few years. The sensitivity analysis used the annual average 2006 prices for various metals used in the manufacturing of PTACs and PTHPs. Chapter 5 of the TSD shows the results of the sensitivity analysis.

7. Mapping Energy Efficiency Ratio to Coefficient of Performance

DOE used the analyses detailed in the sections above to determine the relationship between cost and cooling efficiency (EER) for PTACs and PTHPs. DOE also performed an analysis to determine the heating efficiency (COP) that corresponds to the cooling efficiency (EER) analyzed. DOE reviewed the 2006 ARI directory and the PTHP units listed. There were 675 units listed, which DOE separated into two groups based on wall sleeve size (standard size and non-standard size). DOE then selected all of the standard size 9,000 and 12,000 Btu/h cooling capacity units, and all of the non-standard units. Within each group, DOE next eliminated repetitive and discontinued units and then constructed a listing of the units by EER and ranked them by COP. DOE graphed each listing (EER versus COP) and calculated the minimum, maximum, and average COPs. Table IV.5 shows the average EER and COP pairings for PTHPs. DOE seeks comment on the average EER and COP pairings for PTHPs as shown in Table IV.5, which DOE has identified as Issue 3 under ''Issues to Which DOE Seeks Comment'' in section VII.E of this NOPR. Additional details detailing how DOE arrived at the average EER and COP pairings for PTHPs is shown in Chapter 5 of the TSD.

TABLE IV.5.—AVERAGE EER AND COP PAIRINGS FOR PTHPS

Equipment class	Efficiency level				
Standard Size PTHP—9,000 Btu/h Cooling Capacity	EER = 10.9 COP = 3.1	EER = 11.1 COP = 3.2	EER = 11.3 COP = 3.3	EER = 11.5 COP = 3.3	EER = 12 COP = 3.5
Standard Size PTHP—12,000 Btu/h Cooling Capacity	EER = 10.2 COP = 3.0	EER = 10.4 COP = 3.1	EER = 10.6 COP = 3.1	EER = 10.8 COP = 3.1	EER = 11.7 COP = 3.3

TABLE IV.5.—AVERAGE EER AND COP PAIRINGS FOR PTHPS—Continued

Non-Standard Size PTHP—11,000 Btu/h Cooling Capacity	EER = 9.4 COP = 2.8	EER = 9.7 COP = 2.8	EER = 10.0 COP = 2.9	EER = 10.7 COP = 2.9	EER = 11.4 COP = 2.9

D. Markups To Determine Equipment Price

DOE understands that the price of PTAC or PTHP equipment depends on the distribution channel the customer uses to purchase the equipment. Typical distribution channels include manufacturers' national accounts, wholesalers, mechanical contractors, and/or general contractors.

The customer price of this equipment is not generally known. Therefore, DOE developed supply chain markups in the form of multipliers that represent increases above MSP and include distribution costs. DOE applied these markups (or multipliers) to the MSPs it developed from the engineering analysis, and then added sales taxes and installation costs, to arrive at the final installed equipment prices for baseline and higher efficiency equipment. See Chapter 6 of the TSD for additional details on markups. As shown in Table IV.6, DOE identified four distribution channels for PTACs and PTHPs to describe how the equipment passes from the manufacturer to the customer.

TABLE IV.6.—DISTRIBUTION CHANNELS FOR PTAC AND PTHP EQUIPMENT

Channel 1	Channel 2	Channel 3	Channel 4
Manufacturer (through national accounts).	Manufacturer	Manufacturer	Manufacturer.
	Wholesaler	Wholesaler	Wholesaler.
		Mechanical Contractor	General Contractor.
Customer	Customer	Customer	Customer.

Using Ducker Worldwide data,[22] DOE estimated percentages, for both the new construction and replacement markets, of the total sales in each market through each of the four distribution channels, as shown in Table IV.7. The entire market of PTAC and PTHP equipment consists of standard size equipment (85 percent of shipment volume) and non-standard size equipment (15 percent of shipment volume). Of the standard size equipment, 80 percent are sold for the replacement market and 20 percent are for the new construction market. Non-standard size equipment is only used in the replacement market. This results in approximately 17 percent of PTAC and PTHP equipment that are purchased to be installed in new construction, while the remaining 83 percent is assumed to replace existing PTAC and PTHP equipment.

TABLE IV.7.—PERCENTAGE OF PTAC AND PTHP MARKET SHARES PASSING THROUGH EACH DISTRIBUTION CHANNEL

	Channel 1	Channel 2	Channel 3	Channel 4
Replacement Market	15	25	60	0
New Construction Market	30	0	38	32

For each of the steps in the distribution channels presented above, DOE estimated a baseline markup and an incremental markup. DOE defined a baseline markup as a multiplier that converts the MSP of equipment with baseline efficiency to the customer purchase price for the equipment at the same baseline efficiency level. An incremental markup is defined as the multiplier to convert the incremental increase in MSP of higher efficiency equipment to the customer purchase price for the same equipment. Both baseline and incremental markups are only dependent on the particular distribution channel and are independent of the efficiency levels of the PTACs and PTHPs.

DOE developed the markups for each step of the distribution channels based on available financial data. DOE based the wholesaler and mechanical contractor markups on the Heating, Airconditioning & Refrigeration Distributors International (HARDI) 2005 Profit Planning Report, Air Conditioning Contractors of America (ACCA), and the 2002 U.S. Census Bureau financial data for the plumbing, heating, and air conditioning industry.[23] DOE derived the general contractor markups from U.S. Census Bureau financial data for the commercial and institutional building construction sector. DOE estimated average markup for sales through national accounts to be one-half of those for the wholesaler to customer distribution channel. DOE determined this markup for national accounts on an assumption that the resulting national account equipment price must fall somewhere between the MSP (i.e., a markup of 1.0) and the customer price under a typical chain of distribution (i.e., a markup of wholesaler, mechanical contractor, or general contractor).

The overall markup is the product of all the markups (baseline or incremental markups) for the different steps within a distribution channel plus sales tax. Sales taxes were calculated based on State-by-State sales tax data reported by the Sales Tax Clearinghouse. Because both contractor costs and sales tax vary by State, DOE developed distributions of markups within each distribution channel as a function of State and

[22] Ducker Worldwide, 2001. 2000 U.S. Market for Residential and Specialty Air Conditioning: Packaged Terminal Air Conditioning. HVAC0002. Final Report, March 2001. Ducker Industrial Standards, 6905 Telegraph Road, Suite 300, Bloomfield Hills, Michigan 48301.

[23] The 2002 U.S. Census Bureau financial data for the plumbing, heating, and air conditioning industry is the latest version data set and was issued in December 2004.

business type (e.g., large chain hotel/motel, independent hotel, health care facility, or office). Because the State-by-State distribution of PTAC and PTHP units varies by business type (e.g., large chain hotels/motels may be more prevalent relative to independent hotels in one part of the country than in another), the National level distribution of the markups varies among business types. Additional detail on markups can be found in Chapter 6 of the TSD.

E. Energy Use Characterization

The building energy use characterization analysis was used to assess the energy savings potential of PTAC and PTHP equipment at different efficiency levels. This analysis accomplishes this by estimating the energy use of PTACs and PTHPs at specified energy efficiency levels through energy use simulations for key commercial building types, across a range of climate zones. The energy simulations yielded hourly estimates of the building energy consumption, including lighting, plug, and air-conditioning and heating equipment. The annual energy consumption of PTACs and PTHPs are used in subsequent analyses including the LCC, PBP, and NES.

In determining the reduction in energy consumption of PTAC and PTHP equipment due to increased efficiency, DOE did not take into account a rebound effect. The rebound effect occurs when a piece of equipment, when it is made more efficient, would be used more intensively, so the expected energy savings from the efficiency improvement do not fully materialize. Since the user of the equipment, e.g., the customer in a hotel/motel room, does not pay the utility bill, the customer's usage will be unaffected by increasing the efficiency. Therefore, DOE has no basis for concluding that a rebound effect would occur and has not taken the rebound effect into affect in the energy use characterization. DOE seeks comment on the rebound effect for the PTAC and PTHP customer and DOE's assumption that the rebound effect is not applicable to this industry. DOE identified this as Issue 4 under ''Issues on Which DOE Seeks Comment'' in section VII.E of this NOPR. See Chapter 7 of the TSD for additional details.

1. Building Type

PTAC and PTHP units generally are used in hotel/motel rooms, health care facilities (e.g., assisted living homes, nursing homes etc.), small offices, or any application that requires individual zone heating and cooling. According to the Ducker Worldwide analysis, PTAC and PTHP units are primarily used in hotels/motels with less than 125 rooms and less than 3 stories, each. Therefore, DOE selected this type of hotel/motel building as the representative commercial building in order to assess the energy use of PTAC and PTHP units. While DOE realizes that PTACs and PTHPs are found in other building types, DOE believes that, based on engineering judgment and consultation with industry experts, the cooling and heating loads of an individual room served by a single PTAC or PTHP unit are independent of the building type in which the room is situated.

2. Simulation Approach

DOE used a whole-building hourly simulation tool, DOE–2.1E, to estimate the energy use of PTACs and PTHPs in the representative hotel/motel building for various efficiency levels and equipment classes at various climate locations within the United States. The DOE–2.1E program has a built-in PTAC/PTHP module in its HVAC system components. DOE used the EIA 2003 Commercial Building Energy Consumption Survey (2003 CBECS) as the primary source of data, supplemented by other data sources, to develop the representative building size and other building characteristics for this analysis (i.e., aspect ratio, building construction type, envelope characteristics, internal loads and schedules, mechanical systems and equipment etc.). DOE modeled hotel/motel guest rooms facing in all orientations by rotating a symmetrical rectangular floor plan prototype building 90 degrees to capture the orientation-driven changes in annual energy use of the PTAC and PTHP. The Ducker Worldwide analysis and other available data estimated that PTHPs represent approximately 45 percent of the total market for packaged terminal equipment. Therefore, DOE estimated the annual energy use per unit using a PTHP as well as a PTAC in each climate location. DOE assumed that generally the building would use a PTAC or PTHP unit. DOE calculated the weighted-average annual energy use for each PTAC and PTHP equipment class in each State through the population weighting of the representative climate location(s) within the state. DOE further aggregated the energy use at the State level to national average energy use using the 2000 Census population data, published by the U. S. Census Bureau.

DOE estimated the annual energy use for each equipment class at the baseline efficiency level (i.e., the efficiency level specified by ASHRAE/IESNA Standard 90.1–1999) plus five higher efficiency levels. As is to be expected, annual energy use of PTAC and PTHP units decreases as the efficiency level increases from the baseline efficiency level to the highest efficiency level analyzed. Additional details on the energy use characterization analysis can be found in Chapter 7 of the TSD.

F. Life-Cycle Cost and Payback Period Analyses

DOE conducted the LCC and PBP analyses to estimate the economic impacts of potential standards on individual customers of PTACs and PTHPs. DOE analyzed these impacts for PTACs and PTHPs, first, by calculating the change in customers' LCCs likely to result from higher efficiency levels as compared with the baseline efficiency levels. The LCC calculation considers total installed cost (MSP, sales taxes, distribution chain markups, and installation cost), operating expenses (energy, repair, and maintenance costs), equipment lifetime, and discount rate. DOE calculated the LCC for all customers as if each would purchase a new PTAC or PTHP unit in the year the standard takes effect. A standard becomes effective on the date on and after which the equipment manufactured must meet or exceed the standard, which is September 30, 2012 for this rulemaking. To compute LCCs, DOE discounted future operating costs to the time of purchase and summed them over the lifetime of the equipment.

Second, DOE analyzed the effect of changes in installed costs and operating expenses by calculating the PBP of potential standards relative to baseline efficiency levels. The PBP estimates the amount of time it would take the customer to recover, through lower operating costs, the increment that represents the increase in purchase expense of more energy efficient equipment. The PBP is that change in purchase price divided by the change in annual operating cost that results from the standard. DOE expresses this period in years. Similar to the LCC, the PBP is based on the total installed cost and the operating expenses. However, unlike the LCC, only the first year's operating expenses are considered in the calculation of the PBP. Because the PBP does not account for changes in operating expense over time or the time value of money, it is also referred to as a simple PBP.

DOE conducted the LCC and PBP analyses using a spreadsheet model developed in Microsoft Excel. When combined with Crystal Ball (a commercially available software program), the LCC and PBP model

generates a Monte Carlo simulation to perform the analyses by incorporating uncertainty and variability considerations in certain of the key parameters as discussed below. The results of DOE's LCC and PBP analyses are summarized in section V.B.1.a below and described in detail in TSD Chapter 8.

1. Approach

Recognizing that each business that uses PTAC and PTHP equipment is unique, DOE analyzed variability and uncertainty by performing the LCC and PBP calculations for four types of businesses, each of which tends to have different costs of financing because of the nature of the business. The first type of business is a ''large chain'' hotel or motel, which, DOE believes, has access to a wide range of financing options and thus a relative low financing costs. The second type is an ''independent'' hotel or motel, which is not affiliated with a national chain, which has fewer financing options and thus a relative high financing costs. A third type of business is called ''health care'' and includes nursing homes, as well as assisted living and long-term care facilities, which, similar to the large chain hotel, has a relative low financing costs. The fourth type is called ''office'' and applies to small office buildings that are occupied by offices of non-hospital medical professionals such as physicians and dentists which, DOE believes, has the fewest financing options, and as a result, the highest costs. DOE derived the financing costs based on data from the Damodaran Online site.[24]

The LCC analysis used the estimated annual energy use for each PTAC or PTHP unit as described in section IV.E, energy use characterization. Energy use of PTACs and PTHPs is sensitive to climate, so it varies by State within the United States. Aside from energy use, other important factors influencing the LCC and PBP analyses include energy prices, installation costs, equipment distribution markups, and sales tax. At the National level, the LCC spreadsheets explicitly modeled both the uncertainty and the variability in the model's inputs, using probability distributions based on the shipment of PTAC and PTHP equipment to different States.

As mentioned above, DOE generated LCC and PBP results as probability distributions using a simulation based on Monte Carlo analysis methods, in which certain key inputs to the analysis consist of probability distributions rather than single-point values. Therefore, the outcomes of the Monte Carlo analysis can also be expressed as probability distributions. As a result, the Monte Carlo analysis produces a range of LCC and PBP results. A distinct advantage of this type of approach is that DOE can identify the percentage of customers achieving LCC savings or attaining certain PBP values due to an increased efficiency level, in addition to the average LCC savings or average PBP for that efficiency level.

2. Life-Cycle Cost Inputs

For each efficiency level analyzed, the LCC analysis requires input data for the total installed cost of the equipment, its operating cost, and the discount rate. Table IV.8 summarizes the inputs and key assumptions used to calculate the customer economic impacts of all energy efficiency levels analyzed in this rulemaking. A more detailed discussion of the inputs follows.

TABLE IV.8.—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES

Inputs	Description
Affecting Installed Costs	
Equipment Price	Derived by multiplying MSP (from the engineering analysis) by wholesaler markups and contractor markups plus sales tax (from markups analysis). Used the probability distribution for the different markups to describe their variability.
Installation Cost	Includes installation labor, installer overhead, and any miscellaneous materials and parts, derived from RS Means CostWorks 2007.
Affecting Operating Costs	
Annual Energy Use	Derived from whole-building hourly energy use simulation for PTACs or PTHPs in a representative hotel/motel building in various climate locations (from energy use characterization analysis). Used annual electricity use per unit. Used the probability distribution to account for which State a unit will be shipped to, which in turn affects the annual energy use.
Electricity Price	Calculated average commercial electricity price in each State, as determined from EIA data for 2006. Used the AEO2007 forecasts to estimate the future electricity prices. Used the probability distribution for the electricity price.
Maintenance Cost	Annual maintenance cost did not vary as a function of efficiency.
Repair Cost	Estimated the annualized repair cost for baseline efficiency PTAC and PTHP equipment as $15, based on costs of extended warranty contracts for PTACs and PTHPs and further discussed in Chapter 8 of the TSD. Assumed that repair costs would vary in direct proportion with the MSP at higher efficiency levels because it generally costs more to replace components that are more efficient.
Affecting Present Value of Annual Operating Cost Savings	
Equipment Lifetime	Used the probability distribution of lifetimes, with mean lifetime for each of four equipment classes assumed to be 10 years based on literature reviews and consultation with industry experts.
Discount Rate	Mean real discount rates ranging from 5.7 percent for owners of health care facilities to 8.2 percent for independent hotel/motel owners. Used the probability distribution for the discount rate.
Date Standards Become Effective	September 30, 2012 (four years after the publication of the final rule).

[24] Damodaran Online. Leonard N. Stern School of Business, New York University: *http://www.stern.nyu.edu/adamodar/New_Home_Page/data.html*. January 2006.

TABLE IV.8.—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES—Continued

Inputs	Description
Analyzed Efficiency Levels	
Analyzed Efficiency Levels	Baseline efficiency levels (ASHRAE/IESNA Standard 90.1–1999) and five higher efficiency levels for six equipment classes (DOE also considered levels that were combinations of efficiency levels for PTACs and PTHPs).

a. Equipment Prices

The price of a PTAC or PTHP reflects the application of distribution channel markups and the addition of sales tax to the MSP. As described in section IV.C above, DOE determined manufacturing costs for a set of six cooling capacities of equipment representing all equipment classes. To derive the manufacturing costs for other sizes of PTACs and PTHPs, DOE scaled the costs from these six cooling capacities. For the LCC and PBP analyses and subsequent analyses in today's rulemaking, DOE used the manufacturing costs as developed in the Engineering Analysis for PTAC and PTHP equipment utilizing R–410A.

Each baseline MSP is the price charged by manufacturers to either a wholesaler/distributor or very large customer for equipment meeting a baseline efficiency. Each standard-level MSP increase is the change in MSP associated with producing equipment at an efficiency level above the baseline. DOE developed MSP, which increases as a function of efficiency level for each of the six representative capacities. Refer to Chapter 5 of the TSD for details.

The markup is the percentage increase in price as the PTAC and PTHP equipment passes through the distribution channel. As discussed earlier, distribution chain markups are based on one of four distribution channels, as well as whether the equipment is being purchased for the new construction market or to replace existing equipment. Probability distributions were used for the different distribution channel markups to describe their variability. DOE developed markups for both the standard size and non-standard size PTAC and PTHP equipment as explained in section IV.D above.

b. Installation Costs

DOE derived installation costs for PTACs and PTHPs from data provided in *RS Means CostWorks 2007* (RS Means).[25] RS Means provides estimates on the person-hours required to install PTAC and PTHP equipment and the labor rates associated with the type of crew required to install the equipment. Specifically, RS Means provides person-hour and labor rate data for the installation of ''Unitary Air Conditioning Equipment,'' which includes PTAC and PTHP equipment. Labor rates vary significantly from region to region of the country and the RS Means data provide the necessary information to capture this regional variability. RS Means provides cost indices that reflect the labor rates for 295 cities in the United States. Several cities in all 50 States and the District of Columbia are identified in the RS Means data. DOE incorporated these cost indices into the analysis to capture variation in installation cost, depending on the location of the customer. DOE calculated the installation cost by multiplying the number of person-hours by the applicable labor rate. DOE assumed the installation costs are fixed for each equipment class and independent of the efficiency of the equipment.

c. Annual Energy Use

DOE estimated the electricity consumed by the PTAC and PTHP equipment based on the energy use characterization as described previously in section IV.E. DOE used a whole-building hourly simulation tool to estimate the energy use in a representative hotel/motel building for different efficiency levels and equipment classes at various climate locations within the United States. DOE aggregated the average annual energy use per unit at the State level by applying a population-weighting factor for each examined climate location within a State. Details of the annual energy use calculations can be found in TSD Chapter 7.

d. Electricity Prices

The applicable electricity prices are needed to convert the electric energy savings into energy cost savings. Because of the wide variation in electricity consumption patterns, wholesale costs, and retail rates across the country, it is important to consider regional differences in electricity prices. In order to simplify the NOPR analysis, DOE decided not to develop marginal electricity prices from the tariff-based electricity price model in this rulemaking. Instead, DOE used average effective commercial electricity prices at the State level from EIA data for 2006. This approach captured a wide range of commercial electricity prices across the Untied States. Furthermore, DOE recognized that different kinds of businesses typically use electricity in different amounts at different times of the day, week, and year, and therefore face different effective prices. To make this adjustment, DOE used EIA's 2003 CBECS data set to identify the average prices paid by the four kinds of businesses in this analysis and compared them with the average prices paid by all commercial customers.[26] The ratios of prices paid by the four types of businesses to the national average commercial prices seen in the 2003 CBECS were used as multipliers to adjust the average commercial 2006 price data from EIA.

DOE weighted the prices paid by each business in each State by the estimated sales of PTACs and PTHPs to each business type to obtain a weighted-average national electricity price. The State/business type weights reflect the probabilities that a given PTAC or PTHP unit shipped will be operated with a given electricity price. To account for this variability, DOE used a probability distribution for not only which State the equipment is shipped to, but also to determine which business type would purchase the equipment and therefore, what electricity price they would pay. The effective prices (2006$) range from approximately 5.5 cents per kWh to approximately 23.2 cents per kWh. The development and use of State-average electricity prices by business type are described in more detail in Chapter 8 of the TSD.

The electricity price trend provides the relative change in electricity prices for future years out to the year 2042. Estimating future electricity prices is difficult, especially considering that there are efforts in many States throughout the country to restructure

[25] R.S. Means Company, Inc. 2007. RS Means CostWorks 2007. Kingston, Massachusetts.

[26] EIA's 2003 CBECS is the most recent version of the data set.

the electricity supply industry. DOE applied the AEO2007 reference case as the default scenario and extrapolated the trend in values from the years 2020 to 2030 of the forecast to establish prices in the years 2030 to 2042. This method of extrapolation is in line with methods currently being used by the EIA to forecast fuel prices for the Federal Energy Management Program. DOE provides a sensitivity analysis of the LCC savings and PBP results to future electricity price scenarios using both the AEO2007 high-growth and low-growth forecasts in Chapter 8 of the TSD.

e. Maintenance Costs

Maintenance costs are the costs to the customer of maintaining equipment operation. Maintenance costs include services such as cleaning heat-exchanger coils and changing air filters. DOE was not able to identify publicly available data on annual maintenance costs per unit. DOE estimated annual routine maintenance costs for PTAC and PTHP equipment at $50 per year per unit. Some manufacturers interviewed for the manufacturer impact analysis indicated verbally that this assumption was reasonable. Because data were not available to indicate how maintenance costs vary with equipment efficiency, DOE thus determined to use this preventative maintenance costs that remain constant as equipment efficiency is increased.

f. Repair Costs

The repair cost is the cost to the customer for replacing or repairing components that have failed in the PTAC and PTHP equipment. DOE estimated the annualized repair cost for baseline efficiency PTAC and PTHP equipment as $15, based on costs of extended warranty contracts PTACs and PTHPs. DOE determined that repair costs would increase in direct proportion with increases in equipment prices, because the price of PTAC and PTHP equipment increases with its efficiency and DOE recognizes that complexity for repair will increase as the efficiency of equipment increases.

DOE specifically seeks comment on its estimation for the repair costs, as well as the installation and maintenance costs. In particular, DOE is interested in how the installation, maintenance, and repair costs may change with the use of R–410A refrigerant in 2010 because DOE's estimates are based on data from the field for equipment using R–22. See Chapter 8 of the TSD for additional information. DOE identified this as Issue 5 under ''Issues on Which DOE Seeks Comment'' in section VII.E of this NOPR.

g. Equipment Lifetime

DOE defines equipment lifetime as the age when a PTAC or PTHP unit is retired from service. DOE reviewed available literature and consulted with manufacturers in order to establish typical equipment lifetimes. The literature and experts consulted offered a wide range of typical equipment lifetimes. Individuals with previous experience in manufacturing or distribution of PTACs and PTHPs suggested a typical lifetime of 5 to 15 years. Some experts suggested that the lifetime could be even lower because of the daily or continuous use of the equipment and neglect of maintenance such as cleaning the heat exchangers or replacing the air filters. Previously, DOE used a 15-year lifetime for PTACs and PTHPs in the 2000 Screening Analysis based on data from ASHRAE's 1995 *Handbook of HVAC Applications.* Stakeholders commented on the 2000 Screening Analysis and suggested DOE use the 10-year lifetime assumption rather than 15-year lifetime to more accurately reflect the life and usage characteristics of this equipment.[27] 66 FR 3336, 3349[0]. Therefore, based on the information it gathered, DOE concluded that a typical lifetime of 10 years is appropriate for PTAC and PTHP equipment. Furthermore, DOE modeled the lifetime of PTAC and PTHP equipment as a Weibull statistical distribution with an average lifetime of 10 years and a maximum lifetime of 20 years. Chapter 3 of the TSD contains a discussion of equipment lifetime, and TSD Chapter 8 discusses how equipment life is modeled in the LCC analysis.

h. Discount Rate

The discount rate is the rate at which future expenditures are discounted to establish their present value. DOE estimated the discount rate by estimating the cost of capital for purchasers of PTAC and PTHP equipment. Most purchasers use both debt and equity capital to fund investments. Therefore, for most purchasers, the discount rate is the weighted average cost of debt and equity financing, or the weighted-average cost of capital (WACC), less the expected inflation.

To estimate the WACC of PTAC and PTHP equipment purchasers, DOE used a sample of companies including large hotel/motel chains and health care chains drawn from a database of 7,319 U.S. companies given on the *Damodaran Online* website. This database includes most of the publicly traded companies in the United States. Based on this database, DOE calculated the weighted average after-tax discount rate for PTAC and PTHP purchases, adjusted for inflation, as 5.71 percent for large hotel chains and 5.65 percent for health care (nursing homes and assisted living facilities). The cost of capital for independent hoteliers, and small office companies with more limited access to capital is more difficult to determine. Individual credit-worthiness varies considerably, and some franchisees have access to the financial resources of the franchising corporation. However, personal contacts with a sample of commercial bankers yielded an estimate for the small operator weighted cost of capital of about 200 to 300 basis points (2 percent to 3 percent) higher than the rates for larger hotel chains. Therefore, DOE used a central value equal to the weighted average of discount rate for large hotel chains plus 2.5 percent for independent hotel/motels and the same adder was used to the discount rate for large nursing home/assisted care companies to derive an estimate for small office buildings. As a result, DOE calculated the weighted average after-tax discount rate for PTAC and PTHP purchases, adjusted for inflation, as 8.21 percent for independent hotels and 8.15 percent for small offices (medical and dental offices). The discount rate is another key variable for which DOE used a probability distribution in the LCC and PBP analyses. TSD Chapter 8 contains the detailed calculations on the discount rate.

3. Payback Period

DOE also determined the economic impact of potential standards on customers by calculating the PBP of the TSLs relative to a baseline efficiency level. The PBP measures the amount of time it takes the commercial customer to recover the assumed higher purchase expense of more energy efficient equipment through lower operating costs. Similar to the LCC, the PBP is based on the total installed cost and the operating expenses and is calculated as a range of payback periods, depending on the probability distributions of the two key inputs (i.e., the supply chain markups and where the unit is likely to be shipped to). However, unlike for the LCC, in the calculation of the PBP, by definition, DOE considered only the first year's operating expenses. Because the PBP does not take into account changes in operating expense over time

[27] U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy. ''Energy Efficiency Program for Commercial and Industrial Equipment: Efficiency Standards for Commercial Heating, Air Conditioning and Water Heating Equipment; Final Rule''. January 2001.

or the time value of money, it is also referred to as a simple payback period. Additional details of the PBP can be found in Chapter 8 of the TSD.

G. National Impact Analysis—National Energy Savings and Net Present Value Analysis

The national impacts analysis evaluates the impact of a proposed standard from a national perspective rather than from the customer perspective represented by the LCC. This analysis assesses the NES, and the NPV (future amounts discounted to the present) of total commercial customer costs and savings, which are expected to result from amended standards at specific efficiency levels. For each TSL, DOE calculated the NPV, as well as the NES, as the difference between a base case forecast (without amended standards) and the standards case (with amended standards). The NES refers to cumulative energy savings from 2012 through 2042. The NPV refers to cumulative monetary savings. DOE calculated net monetary savings in each year relative to the base case as the difference between total operating cost savings and increases in total installed cost. Cumulative savings are the sum of the annual NPV over the specified period. DOE accounted for operating cost savings until 2062; that is, until all the equipment installed through 2042 is retired.

1. Approach

Over time, in the standards case, equipment that is more efficient gradually replaces less efficient equipment. This affects the calculation of both the NES and NPV, both of which are a function of the total number of units in use and their efficiencies, and thus are dependent on annual shipments and equipment lifetime, including changes in shipments and retirement rates in response to changes in equipment costs due to standards. Both calculations start by using the estimate of shipments, and the quantity of units in service, that are derived from the shipments model.

With regard to estimating the NES, because more efficient PTACs and PTHPs gradually replace less efficient ones, the energy per unit of capacity used by the PTACs and PTHPs in service gradually decreases in the standards case relative to the base case. DOE calculated the NES by subtracting energy use under a standards scenario from energy use in a base-case scenario.

Unit energy savings for each equipment class are the same weighted-average values as calculated in the LCC and PBP spreadsheet. To estimate the total energy savings for each TSL, DOE first calculated the national site energy consumption (i.e., the energy directly consumed by the units of equipment in operation) for PTACs or PTHPs for each year, beginning with the expected effective date of the standards (2012), for the base case forecast and the standards case forecast. Second, DOE determined the annual site energy savings, consisting of the difference in site energy consumption between the base case and the standards case. Third, DOE converted the annual site energy savings into the annual amount of energy saved at the source of electricity generation (the source energy), using a site-to-source conversion factor. Finally, DOE summed the annual source energy savings from 2012 to 2042 to calculate the total NES for that period. DOE performed these calculations for each TSL considered in this rulemaking.

DOE considers whether a rebound effect is applicable in its NES analysis. A rebound effect occurs when an increase in equipment efficiency leads to an increased demand for its service. EIA in its NEMS model assumes a certain elasticity factor to account for an increased demand for service due to the increase in cooling (or heating) efficiency. EIA refers to this as an efficiency rebound.[28] For the commercial cooling equipment market, there are two ways that a rebound effect could occur:

1. An increased use of the cooling equipment within the commercial buildings they are installed in.

2. Additional instances of cooling a commercial building where it was not being cooled before.

The first instance does not occur for the PTAC and PTHP equipment that are typically used in guest rooms of hotel/motel buildings, and patient rooms in hospitals and health care clinics since these buildings are already being operated and conditioned 24 hours a day and seven days a week. Furthermore, the guest or the patient in these rooms has no incentive to use the equipment more or less, because they do not pay the electricity bills.

Additionally, DOE feels that the PTAC and PTHP equipment would not significantly penetrate into previously un-cooled building spaces. The existing market for this equipment is specialized to lodging type applications where the equipment serves both a cooling and heating need for a small room on the perimeter of a building. Drawbacks for installing these equipment in other spaces include noise, increased installation costs, high use of electric resistance heating, and their limitation of being able to provide cooling to only perimeter spaces. These considerations make the packaged terminal equipment, in general, not the first choice for adding cooling to other non-conditioned building spaces. Therefore, DOE did not assume a rebound effect in the present NOPR analysis.

To estimate NPV, DOE calculated the net impact as the difference between total operating cost savings (including electricity, repair, and maintenance cost savings) and increases in total installed costs (which consists of MSP, sales taxes, distribution chain markups, and installation cost). DOE calculated the NPV of each TSL over the life of the equipment, using the following three steps. First, DOE determined the difference between the equipment costs under the TSL case and the base case in order to obtain the net equipment cost increase resulting from the TSL. Second, DOE determined the difference between the base case operating costs and the TSL operating costs, in order to obtain the net operating cost savings from the TSL. Third, DOE determined the difference between the net operating cost savings and the net equipment cost increase in order to obtain the net savings (or expense) for each year. DOE then discounted the annual net savings (or expenses) to the year 2008 for PTACs and PTHPs bought on or after 2012 and summed the discounted values to provide the NPV of a TSL. An NPV greater than zero shows net savings (i.e., the TSL would reduce customer expenditures relative to the base case in present value terms). An NPV that is less than zero indicates that the TSL would result in a net increase in customer expenditures in present value terms.

To make the analysis more accessible and transparent to all stakeholders, DOE used an MS Excel spreadsheet model to calculate the energy savings and the national economic costs and savings from amended standards. In addition, the TSD (chapter 10) and other documentation on the website that DOE provides during the rulemaking help explain the models and how to use them, and stakeholders can review DOE's analyses by changing various input quantities within the spreadsheet.

Unlike the LCC analysis, the NES spreadsheet does not use distributions for inputs or outputs. DOE examined sensitivities by applying different scenarios. DOE used the NES spreadsheet to perform calculations of energy savings and NPV, using the annual energy consumption and total

[28] EIA, 2007. Assumptions to the Annual Energy Outlook 2007. accessed at *http://www.eia.doe.gov/oiaf/aeo/assumption/index.html*

installed cost data from the LCC analysis. DOE forecasted the energy savings, energy cost savings, equipment costs, and NPV of benefits for each of equipment classes from 2012 through 2042. The forecasts provided annual and cumulative values for all four output parameters as described above.

2. Shipments Analysis

An important element in the estimate of the future impact of a standard is equipment shipments. DOE developed shipments projections under a base case and each of the standards cases using a shipments model. DOE used the standards case shipments projection and, in turn, the standards case equipment stock to determine the NES. The shipments portion of the spreadsheet model forecasts PTAC and PTHP shipments from 2012 to 2042. The details of the shipment projections are given in chapter 10 of the TSD.

DOE developed shipments forecasts by accounting for: (1) The growth in the building stock of hotel/motel, health care and office buildings that are the primary end users of PTACs and PTHPs; (2) market segments; (3) equipment retirements; and (4) equipment ages.

The shipments model assumes that, in each year, each existing PTAC or PTHP either ages by one year or breaks down, and that equipment that breaks down is replaced. In addition, new equipment can be shipped into new commercial building floor space, and old equipment can be removed through demolitions. Historical shipments are critical to the development of the shipments model, since DOE used the historical data to calibrate the model. DOE's primary source of historical data for shipments of PTACs and PTHPs was the shipment data provided by ARI. ARI provided DOE with shipments data for 10 years (1997–2006), which allowed DOE to allocate sales of equipment to the different equipment classes. The shipments data is summarized in Chapter 3 of the TSD.

Although there is a provision in the spreadsheet for a change in projected shipments in response to efficiency level increases, DOE has no information with which to calibrate such a relationship. Therefore, for the NOPR analysis, DOE presumed that the shipments do not change in response to the changing TSLs.

Table IV.9 shows the forecasted shipments for the different equipment classes of PTACs and PTHPs for the baseline efficiency level (ASHRAE/IESNA Standard 90.1–1999) for selected years from 2012 to 2042. As equipment purchase price increases with efficiency, generally a drop in shipments would be expected. Although there is a provision in the shipments analysis spreadsheet for a change in shipments as the efficiency increases and the equipment becomes more expensive, DOE has no basis for concluding that such a change would occur as the efficiency of PTACs and PTHPs increases. Therefore, DOE presumed that total shipments do not change with TSL and that the effect of the standards would be to shift the percentage mix of shipments from lower to higher efficiencies. Table IV.9 also shows the cumulative shipments for PTAC and PTHP equipment from 2012 to 2042.

TABLE IV.9.—SHIPMENTS FORECAST FOR BASE CASE PTAC AND PTHP EQUIPMENT

Equipment	Thousands of units shipped by year and equipment class								
	2012	2015	2020	2025	2030	2035	2040	2042	Cumulative shipments (2012–2042)
Standard Size PTACs	242	249	266	286	307	333	361	373	9,256
Standard Size PTHPs	181	186	199	214	230	249	270	279	6,918
Non-Standard Size PTACs	17	16	15	13	12	11	10	9	398
Non-Standard Size PTHPs	13	12	11	10	9	8	7	7	300
Total	453	464	490	522	558	600	648	668	16,873

DOE also uses the shipments estimates developed above as an input to the MIA, discussed in section IV.I. Chapter 10 of the TSD provides additional details on the shipments forecasts.

3. Base Case and Standards Case Forecasted Distribution of Efficiencies

The annual energy consumption of a PTAC or PTHP unit is directly related to the efficiency of the unit. Thus, DOE forecasted shipment-weighted average equipment efficiencies that, in turn, enabled a determination of the shipment-weighted annual energy consumption values for the base case and each TSL analyzed. DOE based shipment-weighted average efficiency trends for PTAC and PTHP equipment on first converting the 2005 PTAC and PTHP equipment shipments by equipment class into market shares by equipment class. DOE then adapted a cost-based method used in the NEMS to estimate market shares for each equipment class by TSL. Then, from those market shares and projections of shipments by equipment class, DOE extrapolated future equipment efficiency trends both for a base case scenario and standards case scenarios. The difference in equipment efficiency between the base case and standards cases was the basis for determining the reduction in per-unit annual energy consumption that could result from amended standards. There is, however, the refrigerant phase-out issue that also affects the equipment efficiency. DOE recognizes that the industry has been able to meet the ASHRAE/IESNA Standard 90.1–1999 efficiency levels with R–22 as the primary refrigerant, but is waiting to switch to R–410A as the primary refrigerant starting in 2010.

For the base case, DOE assumed that, absent amended standards, forecasted market shares would remain frozen at the 2012 efficiency levels until the end of the forecast period (30 years after the effective date—the year 2042). DOE realized that this prediction may have the effect of causing DOE to overestimate the savings associated with the TSLs discussed in this notice since historical data indicated PTACs and PTHP equipment efficiencies or relative equipment class preferences may change voluntarily over time. Therefore, DOE seeks comment on this assumption and the potential significance of any overestimate of savings. In particular, DOE requests data that would enable it to better characterize the likely increases in efficiency that would occur over the 30-year analysis period absent adoption of either the standards proposed, or the TSLs considered, in

this rule. DOE identified this as Issue 6 under ''Issues to Which DOE Seeks Comment'' in section VII.E of this NOPR.

For each of the TSLs analyzed, DOE used a ''roll-up'' scenario to establish the market shares by efficiency level for the year that standards become effective (i.e., 2012). Information available to DOE suggests that the efficiencies of equipment in the base case that did not meet the standard level under consideration would ''roll-up'' to meet the standard level. In addition, available information suggests that all equipment efficiencies in the base case that were above the standard level under consideration would not be affected.

DOE specifically seeks input on its basis for the NES-forecasted base case distribution of efficiencies and its prediction on how amended energy conservation standards impact the distribution of efficiencies in the standards case. DOE identified this as Issue 7 under ''Issues on Which DOE Seeks Comment'' in section VII.E of this NOPR.

In addition, DOE specifically seeks comment on whether DOE's adoption of higher amended energy conservation standard levels would be likely to cause the PTAC and PTHP customers to shift to using other, less efficient type of equipment. Acknowledging over 80 percent of PTAC and PTHP equipment are sold for the replacement market, DOE believes it is unlikely that PTAC and PTHP equipment users would switch to other type of equipment due to the additional installation cost caused by this potential switching. However, DOE recognizes that potential equipment switching from PTHPs to a combination of PTACs and electric resistance heating might occur if DOE were to adopt a standard level for PTHPs significantly higher than the proposed standard level for PTACs. DOE specifically seeks input on whether disparity in the proposed standards for PTACs and PTHPs is likely to cause the PTHP customers to shift to PTACs with electric resistance heating. DOE identified this as Issue 8 under ''Issues on Which DOE Seeks Comment'' in section VII.E of this NOPR.

4. National Energy Savings and Net Present Value

The PTAC and PTHP equipment stock at any point in time is the total number of PTACs and PTHPs purchased or shipped from previous years that have survived until that point. The NES spreadsheet, through the use of the shipments model, keeps track of the total number of PTAC and PTHP units shipped each year. For purposes of the NES and NPV analyses, DOE assumes that retirements follow a Weibull distribution with a 10-year mean lifetime. Retired units are not replaced until 2042. For units shipped in 2042, any units still remaining at the end of 2062 are retired.

The national annual energy consumption is the product of the annual unit energy consumption and the number of PTAC and PTHP units of each vintage. This approach accounts for differences in unit energy consumption from year to year. In determining national annual energy consumption, DOE initially calculated the annual energy consumption at the site (i.e., electricity in kWh consumed by the PTAC and PTHP unit). DOE then calculated primary energy consumption from site energy consumption by applying a marginal site-to-source conversion factor to account for losses associated with the generation, transmission, and distribution of electricity.

The site-to-source conversion factor is a multiplier used for converting site energy consumption, expressed in kWh, into primary or source energy consumption, expressed in quads (quadrillion Btu). The site-to-source conversion factor accounts for losses in electricity generation, transmission, and distribution. DOE obtained these conversion factors using the NEMS model. The conversion factors vary over time, due to projected changes in electricity generation sources (i.e., the power plant types projected to provide electricity to the country).

To discount future impacts, DOE follows OMB guidance in the selection of seven percent and three percent in evaluating the impacts of regulations. In selecting the discount rate corresponding to a public investment, OMB directs agencies to use ''the real Treasury borrowing rate on marketable securities of comparable maturity to the period of analysis.'' Office of Management and Budget (OMB) Circular No. A–94, ''Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs,'' dated October 29, 1992, section 8.c.1. The seven percent rate is an estimate of the average before-tax rate of return on private capital in the United States economy, and reflects the returns to real estate and small business capital as well as corporate capital. DOE used this discount rate to approximate the opportunity cost of capital in the private sector, since recent OMB analysis has found the average rate of return on capital to be near this rate. In addition, DOE used the 3 percent rate to capture the potential effects of standards on private customers' consumption (e.g., through higher prices for equipment and purchase of reduced amounts of energy). This rate represents the rate at which ''society'' discounts future consumption flows to their present value. This rate can be approximated by the real rate of return on long-term government debt (e.g., yield on Treasury notes minus annual rate of change in the Consumer Price Index), which has averaged about 3 percent on a pre-tax basis for the last 30 years. Table IV.10 summarizes the inputs to the NES spreadsheet model along with a brief description of the data sources. The results of DOE's NES and NPV analysis are summarized in section V.B.3 below and described in detail in TSD Chapter 11.

TABLE IV.10.—SUMMARY OF NES AND NPV MODEL INPUTS

Inputs	Description
Shipments	Annual shipments from shipments model (see Chapter 10 of the TSD).
Effective Date of Standard	September 2012.
Base Case Efficiencies	Distribution of base case shipments by efficiency level.
Standard Case Efficiencies	Distribution of shipments by efficiency level for each standards case. Standards case annual shipment-weighted market shares remain the same as in the base case and each standard level for all efficiencies above the TSL. All other shipments are at the TSL efficiency.
Annual Energy Use per Unit	Annual national weighted-average values are a function of efficiency level (Chapter 7 of the TSD).
Total Installed Cost per Unit	Annual weighted-average values are a function of efficiency level (Chapter 8 of the TSD).

TABLE IV.10.—SUMMARY OF NES AND NPV MODEL INPUTS—Continued

Inputs	Description
Repair Cost per Unit	Annual weighted-average values increase with manufacturer's cost level (Chapter 8 of the TSD).
Maintenance Cost per Unit	Annual weighted-average value equals $50 (Chapter 8 of the TSD).
Escalation of Electricity Prices	2007 EIA AEO forecasts (to 2030) and extrapolation for beyond 2030 (Chapter 8 of the TSD).
Electricity Site-to-Source Conversion Factor	Conversion factor varies yearly and is generated by EIA's NEMS* model. Includes the impact of electric generation, transmission, and distribution losses.
Discount Rate	3 percent and 7 percent real.
Present Year	Future costs are discounted to year 2008.

*Chapter 14 on the utility impact analysis provides more detail on NEMS model.

H. Life-Cycle Cost Sub-Group Analysis

In analyzing the potential impact of new or amended standards on customers, DOE evaluates the impact on identifiable groups (i.e., subgroups) of customers, such as different types of businesses, which may be disproportionately affected by a national standard level. For this rulemaking, DOE identified small businesses as a PTAC and PTHP customer subgroup that could be disproportionately affected, and examined the impact of proposed standards on this group.

DOE determined the impact on this PTAC and PTHP customer sub-group using the LCC spreadsheet model. DOE conducted the LCC and PBP analysis for both PTAC and PTHP customers. The standard LCC and PBP analysis (described in section IV.F) includes various types of businesses occupying commercial buildings that use PTAC and PTHP equipment. The LCC spreadsheet model allows for the identification of one or more subgroups of businesses, which can then be analyzed by sampling only each such subgroup. The results of DOE's LCC subgroup analysis are summarized in section V.B.1.c below and described in detail in TSD Chapter 12.

I. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impact of higher energy conservation standards on both manufacturers of standard size PTACs and PTHPs and manufacturers of non-standard size PTACs and PTHPs, and to calculate the impact of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA relies on the GRIM, an industry-cash-flow model customized for this rulemaking. The GRIM inputs are information regarding the industry cost structure, shipments, and revenues. This includes information from many of the analyses described above, such as manufacturing costs and prices from the engineering analysis and shipments forecasts. The key GRIM output is the industry net present value. Different sets of assumptions (scenarios) will produce different results. The qualitative part of the MIA addresses factors such as equipment characteristics, characteristics of particular firms, and market and equipment trends, and includes assessment of the impacts of standards on sub-groups of manufacturers. The complete MIA is outlined in Chapter 13 of the TSD.

DOE conducted the MIA for PTACs and PTHPs in three phases. Phase 1, Industry Profile, consisted of preparing an industry characterization, including data on market share, sales volumes and trends, pricing, employment, and financial structure. Phase 2, Industry Cash Flow, focused on the industry as a whole. In this phase, DOE used the GRIM to prepare an industry-cash-flow analysis. Using publicly available information developed in Phase 1, DOE adapted the GRIM's generic structure to perform an analysis of PTAC and PTHP energy conservation standards. In Phase 3, Subgroup Impact Analysis, DOE conducted interviews with manufacturers representing the majority of domestic PTAC and PTHP sales. This group included large and small manufacturers of both standard and non-standard size PTACs and PTHPs, providing a representative cross-section of the industry. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics specific to each company and also obtained each manufacturer's view of the industry as a whole. The interviews provided valuable information DOE used to evaluate the impacts of an amended energy conservation standard on manufacturers' cash flows, manufacturing capacities, and employment levels.

a. Phase 1, Industry Profile

In Phase 1 of the MIA, DOE prepared a profile of the PTAC and PTHP industry based on the market and technology assessment prepared for this rulemaking. Before initiating the detailed impact studies, DOE collected information on the present and past structure and market characteristics of the PTAC and PTHP industry. The information DOE collected at that time included market share, equipment shipments, markups, and cost structure for various manufacturers. The industry profile includes further detail on equipment characteristics, estimated manufacturer market shares, the financial situation of manufacturers, trends in the number of firms, the market, and equipment characteristics of the PTAC and PTHP industry.

The industry profile included a top down cost analysis of PTAC and PTHP manufacturers that DOE used to derive cost and preliminary financial inputs for the GRIM (e.g., revenues; material, labor, overhead, and depreciation expenses; selling, general, and administrative expenses (SG&A); and research and development (R&D) expenses). DOE also used public sources of information to further calibrate its initial characterization of the industry, including SEC 10–K reports, Standard & Poor's (S&P) stock reports, and corporate annual reports.

b. Phase 2, Industry Cash Flow Analysis

Phase 2 of the MIA focused on the financial impacts of amended energy conservation standards on the industry as a whole. Higher energy conservation standards can affect a manufacturer's cash flow in three distinct ways, resulting in: (1) A need for increased investment; (2) higher production costs per unit; and (3) altered revenue by virtue of higher per-unit prices and changes in sales values. To quantify these impacts in Phase 2 of the MIA, DOE performed separate cash flow analyses, using the GRIM, on the part of the industry that manufactures standard size PTACs and PTHPs and on the part of the industry that manufactures non-standard size equipment. In performing

these analyses, DOE used the financial values derived during Phase 1 and the shipment scenarios used in the NES analyses.

c. Phase 3, Sub-Group Impact Analysis

Using average cost assumptions to develop an industry-cash-flow estimate is not adequate for assessing differential impacts among subgroups of manufacturers. For example, small manufacturers, niche players, or manufacturers exhibiting a cost structure that largely differs from the industry average could be more negatively affected. DOE used the results of the industry characterization analysis (in Phase 1) to group manufacturers that exhibit similar characteristics.

DOE established two sub-groups for the MIA corresponding to the two types of PTAC and PTHP equipment and manufacturers, i.e., manufacturers of standard size equipment and manufacturers of non-standard size equipment. The standard size PTAC and PTHP market is mostly domestically owned with manufacturing facilities located outside of the United States, where as the non-standard size PTAC and PTHP market is mostly domestically owned with manufacturing facilities located inside of the United States. There has been a recent trend of foreign owned, foreign operated companies to enter the standard size PTAC and PTHP market and sell equipment within the United States.

Based on the identification of these two sub-groups, DOE prepared two different interview guides—one for standard size PTAC and PTHP manufacturers and one for non-standard size PTAC and PTHP manufacturers. These interview guides were used to tailor the GRIM to address unique financial characteristics of manufacturers of each equipment size. DOE interviewed companies from each subgroup, including small and large companies, subsidiaries and independent firms, and public and private corporations. The purpose of the meetings was to develop an understanding of how manufacturer impacts vary with the TSLs. During the course of the MIA, DOE interviewed manufacturers representing the majority of domestic PTAC and PTHP sales. Many of these same companies also participated in interviews for the engineering analysis. However, the MIA interviews broadened the discussion from primarily technology-related issues to include business related topics. One objective was to obtain feedback from industry on the assumptions used in the GRIM and to isolate key issues and concerns.

DOE also evaluated the impact of the energy conservation standards on the manufacturing impacts of small businesses. Small businesses, as defined by the SBA for the PTAC and PTHP manufacturing industry, are manufacturing enterprises with 750 or fewer employees. DOE shared the interview guides with small manufacturers and tailored specific questions for small PTAC and PTHP manufacturers. See Chapter 13 of the TSD for details.

2. Government Regulatory Impact Model Analysis

As mentioned above, DOE uses the GRIM to quantify changes in cash flow that result in a higher or lower industry value. The GRIM analysis uses a standard, annual-cash-flow analysis that incorporates manufacturer prices, manufacturing costs, shipments, and industry financial information as inputs and models changes in costs, distribution of shipments, investments, and associated margins that would result from new or amended regulatory conditions (in this case, standard levels). The GRIM spreadsheet uses a number of inputs to arrive at a series of annual cash flows, beginning with the base year of the analysis, 2007, and continuing to 2042. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period.

DOE used the GRIM to calculate cash flows using standard accounting principles and to compare changes in INPV between a base case and different TSLs (the standards cases). Essentially, the difference in INPV between the base case and a standards case represents the financial impact of the amended energy conservation standards on manufacturers. DOE collected this information from a number of sources, including publicly available data and interviews with several manufacturers. See Chapter 13 of the TSD for details.

3. Manufacturer Interviews

As part of the MIA, DOE discussed potential impacts of amended energy conservation standards with manufacturers responsible for a majority of PTAC and PTHP sales. The manufacturers interviewed manufacture 90 percent of the standard size PTACs and PTHPs and over 50 percent of the non-standard size PTACs and PTHPs.[29] These interviews were in addition to those DOE conducted as part of the engineering analysis. The interviews provided valuable information that DOE used to evaluate the impacts of amended energy conservation standards on manufacturers' cash flows, manufacturing capacities, and employment levels.

a. Issues

According to all manufacturers interviewed, the biggest concern relating to this rulemaking is the EPA mandated phase-out of the HCFC refrigerants that are used in current PTAC and PTHP equipment. Every manufacturer interviewed stated that it intends to switch from the current R–22 refrigerant to R–410A refrigerant in PTAC and PTHP equipment, regardless of equipment class. All manufacturers interviewed expect to be affected by the refrigerant phase-out for the following reasons:

- Availability of R–410A refrigerant compressors—All of the manufacturers interviewed stated their concern that only a small number of compressors utilizing R–410A refrigerant are or will be available before the R–22 refrigerant must be replaced in 2010. Furthermore, not all current cooling capacities available in R–22 refrigerant compressors are or will be available in R–410A refrigerant versions. In addition, not all voltages currently offered by some manufacturers of PTAC and PTHP equipment are or will be available in an R–410A refrigerant version. All manufacturers noted that the small size of their industry gives them little to no leverage to encourage compressor manufacturers to develop R–410A refrigerant compressors for them.
- Compressor performance degradation—According to all manufacturers of PTAC and PTHP equipment, R–410A refrigerant compressors currently on the market have at least a 0.8 to 1.0 EER compressor performance degradation relative to the R–22 refrigerant compressors that they are intended to replace. The degradation in compressor performance can be attributed to several factors including a reduction in displacement, increase in complexity, necessity of increase in strength of the compressor shell, and use of non-mineral oils. As a result, some manufacturers anticipate difficulty initially meeting even the ASHRAE/IESNA Standard 90.1–1999 efficiency levels with R–410A-based units.
- Increase in manufacturing costs—All manufacturers expect their PTAC and PTHP equipment manufacturing costs to increase as the sealed-system portions of the equipment are upgraded

[29] DOE contacted other non-standard size manufacturers as part of the MIA, but they did not wish to participate in the MIA process.

to handle the higher system pressures associated with R–410A refrigerant. In addition to an increase in manufacturing cost to accommodate higher working pressures associated with R–410A refrigerant and increased refrigerant and compressor costs, manufacturers are concerned about the anticipated drop in compressor efficiency, which would cause them to incorporate some level of redesign into their R–410A refrigerant equipment to help offset this degradation and would further increase manufacturing costs. All manufacturers noted that cost-recovery is very difficult in this industry due to intense price competition. Multiple United States-based manufacturers noted the entry of foreign-based competitors as a source for the intense price competition.

• Combination of regulations—All manufacturers anticipate that the combination of the R–22 refrigerant phase-out and possible amendment of Federal energy conservation standards will lead the industry to reduce the scope of equipment offered. In addition, several manufacturers anticipate as a result of the three factors just discussed, shifts in market share, consolidation within the industry, and/or the departure of marginal manufacturers from the business.

Other manufacturing issues include the delineation of non-standard size equipment classes and the timing of the regulations. First, manufacturers of non-standard size PTACs and PTHPs anticipate that, if the ASHRAE/IESNA Standard 90.1–1999 equipment class definition (*i.e.*, equipment with wall sleeve dimensions less than 16 inches high and less than 42 inches wide) is adopted by DOE, a significant portion of the equipment they currently offer for replacement purposes will be misclassified as new construction. For example, a PTAC or PTHP unit with one of its wall sleeve dimensions less than the 16 inches high and 42 inches wide would be classified as standard size equipment. Manufacturers stated that these types of units are often sold on demand as custom order to replace existing equipment with the same wall sleeve dimensions. The comments assert that if DOE adopts the ASHRAE definitions of standard and non-standard units, it will force a small volume of non-standard sleeve size equipment to meet higher efficiency levels, intended for standard size equipment, which these units are physically unable to meet because of physical constraints due to the equipment size. Further, some manufacturers estimated that up to half of their equipment lines could be eliminated if DOE chooses to adopt ASHRAE's delineations of equipment classes.[30]

Second, the EPA mandated R–22 refrigerant phase-out date (January 1, 2010) and the anticipated effective date of the DOE amended energy conservation standards rulemaking (September 2012) are a concern for all manufacturers. All manufacturers stated that, because of the gap between these dates, as well as the fact that DOE does not expect to promulgate its rule until September 30, 2008, each manufacturer will have to make a separate development effort to comply with each of these regulations. Most manufacturers stated that there could be some gains if each is able to combine its efforts to comply with the conversion to R–410A refrigerant and amended minimum energy conservation standards. Most manufacturers were uncertain, however, of the magnitude of the anticipated benefit from any such combined effort.

b. Government Regulatory Impact Model Scenarios and Key Inputs

i. Base Case Shipments Forecast

The GRIM estimates manufacturer revenues based on total-unit-shipment forecasts and the distribution of these values by EER. Changes in the efficiency mix at each standard level are a key driver of manufacturer finances. For this analysis, the GRIM used both the NES shipments forecasts and a modified version referred to as the R–410A shipments forecasts for both standard size and non-standard size PTACs and PTHPs from 2007 to 2042. Total shipments forecasted by the NES for the base case in 2012 are shown in Table IV.11 and are further discussed in this section of today's notice. DOE allocated to the closest representative cooling capacity, in the appropriate equipment class, any shipments forecasted by the NES of equipment that was not within one of the representative cooling capacities. For example, the total PTAC or PTHP shipments with a cooling capacity less than 10,000 Btu/h for standard size equipment are included with the 9,000 Btu/h representative cooling capacity.

TABLE IV.11.—TOTAL NES-FORECASTED SHIPMENTS IN 2012

Equipment class (cooling capacities)	Total industry shipments*
Standard Size PTACs (9,000 Btu/h)	97,900
Standard Size PTHPs (9,000 Btu/h)	76,500
Standard Size PTACs (12,000 Btu/h)	144,100
Standard Size PTHPs (12,000 Btu/h)	104,400
Non-Standard Size PTACs	17,100
Non-Standard Size PTHPs	12,900

* Estimates rounded to the nearest hundred.

DOE also estimated, in the shipments analysis, the distribution of efficiencies in the base case for PTACs and PTHPs. (See Chapter 10 of the TSD.) Table IV.12 shows one example of the distribution of efficiencies in the base case for standard size PTACs with a cooling capacity of 9,000 Btu/h plus those with cooling capacities allocated to this category. The distribution of efficiencies in the base case for other equipment classes shown in Chapter 10 of the TSD.

TABLE IV.12.—NES DISTRIBUTION OF SHIPMENTS IN THE BASE CASE FOR STANDARD SIZE PTACS WITH COOLING CAPACITIES LESS THAN 10,000 BTU/H

TSL (EER)	Baseline 10.6	TSL 1, 2, 4 10.9	TSL 3 11.1	TSL 5 11.3	TSL 6 11.5	TSL 7 12.0
Distribution of Shipments (%)	19.2	18.0	17.2	16.4	15.6	13.5

During the course of the MIA interviews, DOE asked manufacturers to comment on the NES shipment forecasts. For all equipment classes, manufacturers were in general agreement with the NES total shipment

[30] DOE understands that ARI has submitted a continuous maintenance proposal to modify the definitions of non-standard size PTACs and PTHPs, which was subsequently approved by ASHRAE as Addendum t to ASHRAE/IESNA Standard 90.1–2007. As further discussed in section IV.A.2 above, if ASHRAE is able to adopt Addendum t to ASHRAE/IESNA Standard 90.1–2007 prior to September 2008, when DOE must issue a final rule on this rulemaking, DOE proposes to incorporate the modified definition into its final rule.

results. However, their views differed on the impacts of the refrigerant phase-out on the distribution of efficiencies in the base case.

Many manufacturers commented that the NES shipments forecast did not adequately account for the reduction in efficiency resulting from the refrigerant phase-out. Manufacturers believe there will be a system performance degradation as characterized in the engineering analysis. In particular, manufacturers commented that they were planning to implement R–410A refrigerant as a ''drop-in'' redesign to meet the initial 2010 deadline. In a drop-in redesign, manufacturers would continue to use the current basic R–22 design for the PTAC or PTHP equipment, and only replace compressors, refrigerant and make other minor adjustments.

DOE considered manufacturers' concerns with the NES shipments forecast and derived an alternative shipments forecast (referred to as the ''R–410A-shipments forecast''). Several manufacturers interviewed stated that total shipments for both standard and non-standard size equipment would not be affected by the R–22 refrigerant phase-out. Therefore, DOE assumed that the total industry shipments forecasted in the shipment analysis would not change due to the refrigerant phase-out (i.e., DOE assumed the total shipments of equipment with R–410A refrigerant would be equal to the total shipments of equipment with R–22 refrigerant as forecasted by the NES). Furthermore, DOE assumed that, for both standard and non-standard size PTACs and PTHPs, the distributions by efficiencies would shift in accordance with the degradation in system performance that the engineering analysis estimates will occur in 2010 (i.e., effective date for the R–22 refrigerant phase-out).

DOE assumed that manufacturers with equipment that would fall below ASHRAE/IESNA Standard 90.1–1999 levels with a drop-in redesign would nevertheless modify such equipment so that it would achieve at least these baseline efficiency levels. As an example of the impact of the refrigerant phase-out on the distribution of efficiencies in the base case, Table IV.13 illustrates the change in the distribution of efficiencies for standard size PTACs with a cooling capacity of 9,000 Btu/h from 2009 to 2010. DOE is seeking comment about the distribution of efficiencies in the R–410A base case for each of the representative cooling capacities.

TABLE IV.13.—R–410A DISTRIBUTION OF EFFICIENCIES AS FORECASTED BY THE NES AND AS FORECASTED BY THE R–410A-SHIPMENT FORECAST

TSL (EER)	Baseline 10.6	TSL 1, 2, 4 10.9	TSL 3 11.1	TSL 5 11.3	TSL 6 11.5	TSL 7 12.0
NES Distribution of Shipments (%)	19.2	18.0	17.2	16.4	15.6	13.5
R–410A-Shipments Forecast Distribution of Shipments (%)	70.9	15.6	0	13.5	0	0

ii. Standards Case Shipments Forecast

For each standards case, DOE assumed that shipments at efficiencies below the projected minimum standard levels were most likely to roll up to those efficiency levels in response to an increase in energy conservation standards. This scenario assumes that demand for high efficiency equipment is a function of its price without regard to the standard level. In addition, DOE assumed that manufacturers would not be able to manufacture equipment higher than TSL 5 or TSL 6 depending on equipment class for R–410A equipment using today's technology. For TSLs above TSL 5 or TSL 6 depending on equipment class, DOE assumed one hundred percent of the products would be manufactured at the efficiency levels specified by the TSL. See Chapter 13 for additional details.

iii. R–410A Base Case and Amended Energy Conservation Standards Markup Scenarios

The PTAC and PTHP manufacturer impact analysis is explicitly structured to account for the cumulative burden of sequential refrigerant and amended energy conservation standards. This section describes the markup scenarios DOE used to calculate the base case INPV after implementation of the R–22 refrigerant phase-out, and the standards case INPV at each TSL.

DOE learned from interviews with manufacturers that the majority of manufacturers offer only one equipment line. A single equipment line means that there is no markup strategy used to differentiate a lower efficiency piece of equipment from a premium piece of equipment. Through its analysis of the PTAC and PTHP industry, DOE also learned that prices of a PTAC and a PTHP made by the same manufacturer at the same cooling capacity do not demand different pricing strategies. Therefore, for the R–22 base case industry cash flow analysis, DOE assumed a flat markup for all equipment regardless of whether it is a PTAC or PTHP and regardless of cooling capacity.

During interviews, many manufacturers stated that they have not been able to recover fully the increased costs from increased metals prices. Instead, manufacturers were only able to recover a percentage of the full increase in manufacturing production cost. Many manufacturers believe a similar situation would happen as a result of both the R–22 refrigerant phase-out and amended energy conservation standards. Therefore, DOE made different assumptions about how manufacturers could recoup both R–410A refrigerant conversion costs and the costs associated with amended energy conservation standards, so that it could examine the effects of different cost recovery scenarios.

After discussions with manufacturers, DOE analyzed two distinct R–410A base case and amended energy conservation standards markup scenarios: (1) The flat markup scenario, and (2) the partial cost recovery markup scenario. The flat markup scenario can also be characterized as the ''preservation of gross margin percentage'' scenario. Under this scenario, DOE applied, across all TSLs, a single uniform ''gross margin percentage'' markup that DOE believes represents the current markup for manufacturers in the PTAC and PTHP industry. This flat markup scenario implies that, as production costs increase with efficiency, the absolute dollar markup will also increase. DOE calculated that the non-production cost markup, which consists of SG&A expenses, R&D expenses, interest, and profit, is 1.29. This markup is consistent with the one DOE used in the engineering analysis and GRIM analysis for the base case. The implicit assumption behind the ''partial cost recovery'' scenario is that the industry can pass-through only part of its regulatory-driven increases in production costs to consumers in the

form of higher prices. DOE implemented this markup scenario in the GRIM by setting the non-production cost markups at each TSL to yield an increase in MSP equal to half the increase in production cost. These markup scenarios characterize the markup conditions described by manufacturers, and reflect the range of market responses manufacturers expect as a result of the R–22 phase-out and the amended energy conservation standards. See Chapter 13 of the TSD for additional details of the markup scenarios.

iv. Equipment and Capital Conversion Costs

Energy conservation standards typically cause manufacturers to incur one-time conversion costs to bring their production facilities and equipment designs into compliance with the amended standards. For the purpose of the MIA, DOE classified these one-time conversion costs into two major groups; equipment conversion and capital conversion costs. Equipment conversion expenses are one-time investments in research, development, testing, and marketing, focused on making equipment designs comply with the new energy conservation standard. Capital conversion expenditures are one-time investments in property, plant, and equipment to adapt or change existing production facilities so that new equipment designs can be fabricated and assembled.

DOE assessed the R&D expenditures manufacturers would be required to make at each TSL. It obtained financial information through manufacturer interviews and compiled the results in an aggregated form to mask any proprietary or confidential information from any one manufacturer. For both standard size and non-standard size PTACs and PTHPs at each TSL, DOE considered a number of manufacturer responses. DOE estimated the total equipment conversion expenditures by gathering the responses received during the manufacturer interviews, then weighted these data by market share for each industry and, finally, extrapolated each manufacturer's R&D expenditures for each product.

DOE also evaluated the level of capital conversion costs manufacturers would incur to comply with amended energy conservation standards. It prepared preliminary estimates of the capital investments required using the manufacturing cost model. DOE then used the manufacturer interviews to gather additional data on the level of capital investment required at each TSL. Manufacturers explained how different TSLs impacted their ability to use existing plants, warehouses, tooling, and equipment. From the interviews, DOE was able to estimate what portion of existing manufacturing assets needed to be replaced and/or reconfigured, and what additional manufacturing assets were required to manufacture the higher efficiency equipment. In most cases, DOE projects that, as standard levels for PTACs and PTHPs increase, the proportion of existing assets that manufacturers would have to replace would also increase. Additional information on the estimated equipment conversion and capital conversion costs is set forth in Chapter 13 of the TSD.

J. Employment Impact Analysis

Employment impact is one of the factors that DOE considers in selecting a standard. Employment impacts include direct and indirect impacts. Direct employment impacts are any changes in the number of employees for PTAC and PTHP manufacturers, their suppliers, and related service firms. Indirect impacts are those changes of employment in the larger economy that occur due to the shift in expenditures and capital investment that is caused by the purchase and operation of more efficient PTAC and PTHP equipment. The MIA in this rulemaking addresses only the employment impacts on manufacturers of PTACs and PTHPs, *i.e.*, the direct employment impacts (See Chapter 13 of the TSD); this section describes other, primarily indirect, employment impacts.

Indirect employment impacts from PTAC and PTHP standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, as a consequence of (1) reduced spending by end users on energy (electricity, gas—including liquefied petroleum gas—and oil); (2) reduced spending on new energy supply by the utility industry; (3) increased spending on the purchase price of new PTACs and PTHPs; and (4) the effects of those three factors throughout the economy. DOE expects the net monetary savings from standards to be redirected to other forms of economic activity. DOE also expects these shifts in spending and economic activity to affect the demand for labor.

In developing this proposed rule, DOE estimated indirect national employment impacts using an input/output model of the United States economy, called ImSET (Impact of Sector Energy Technologies) developed by DOE's Building Technologies Program. ImSET is a personal-computer-based, economic-analysis model that characterizes the interconnections among 188 sectors of the economy as national input/output structural matrices, using data from the United States Department of Commerce's 1997 Benchmark United States table.[31] The ImSET model estimates changes in employment, industry output, and wage income in the overall United States economy resulting from changes in expenditures in the various sectors of the economy. DOE estimated changes in expenditures using the NES spreadsheet. ImSET then estimated the net national indirect employment impacts of potential PTAC and PTHP equipment efficiency standards on employment by sector.

The ImSET input/output model suggests the proposed PTAC and PTHP efficiency standards could increase the net demand for labor in the economy; the gains would most likely be very small relative to total national employment. DOE therefore concludes only that the proposed PTAC and PTHP standards are likely to produce employment benefits that are sufficient to offset fully any adverse impacts on employment in the PTAC and PTHP industry. For more details on the employment impact analysis, see Chapter 15 of the TSD.

K. Utility Impact Analysis

The utility impact analysis estimates the effects of reduced energy consumption due to improved equipment efficiency on the utility industry. This utility analysis consists of a comparison between forecast results for a case comparable to the AEO2007 Reference Case and forecasts for policy cases incorporating each of the PTAC and PTHP TSLs.

DOE analyzed the effects of proposed standards on electric utility industry generation capacity and fuel consumption using a variant of the EIA's NEMS. NEMS, which is available in the public domain, is a large, multi-sectoral, partial-equilibrium model of the United States energy sector. EIA uses NEMS to produce its AEO, a widely recognized baseline energy forecast for the United States. DOE used a variant known as NEMS–BT.

DOE conducted the utility analysis as policy deviations from the AEO2007, applying the same basic set of assumptions. The utility analysis reported the changes in installed capacity and generation—by fuel type—that result for each TSL, as well as changes in end-use electricity sales. Chapter 14 of the TSD provides details

[31] Lawson, Ann M., Kurt S. Bersani, Mahnaz Fahim-Nader, and Jiemin Guo. 2002. ''Benchmark Input-Output Accounts of the U.S. Economy, 1997,'' Survey of Current Business, December, pp. 19–117.

of the utility analysis methods and results.

L. Environmental Analysis

DOE has prepared a draft Environmental Assessment (EA) pursuant to the National Environmental Policy Act and the requirements under 42 U.S.C. 6295(o)(2) to determine the environmental impacts of the proposed standards. (42 U.S.C. 6316(a)) As part of the environmental analysis, DOE calculated the reduction in power plant emissions of CO_2, NO_X and mercury (Hg), using the NEMS–BT computer model. The EA has been integrated into Chapter 16 of the TSD. The analyses do not include the estimated reduction in power plant emissions of SO_2 because, as discussed below, any such reduction resulting from an energy conservation standard would not affect the overall level of SO_2 emissions in the United States.

The NEMS–BT is run similarly to the AEO2007 NEMS, except that PTAC and PTHP energy usage is reduced by the amount of energy (by fuel type) saved due to the TSLs. DOE obtained the inputs of national energy savings from the NES spreadsheet model. For the environmental analysis, the output is the forecasted physical emissions. The net benefit of the standard is the difference between emissions estimated by NEMS–BT and the AEO2007 Reference Case. The NEMS–BT tracks CO_2 emissions using a detailed module that provides results with a broad coverage of all sectors and inclusion of interactive effects.

In the case of SO_2, the Clean Air Act Amendments of 1990 set an emissions cap on all power generation. The attainment of this target, however, is flexible among generators and is enforced by applying market forces, using emissions allowances and tradable permits. As a result, accurate simulation of SO_2 trading tends to imply that the effect of energy conservation standards on physical emissions will be near zero because emissions will always be at, or near, the ceiling. Thus, there is virtually no real possible SO_2 environmental benefit from electricity savings as long as there is enforcement of the emissions ceilings. However, although there may not be an actual reduction in SO_2 emissions from electricity savings, there still may be an economic benefit from reduced demand for SO_2 emission allowances. Electricity savings decrease the generation of SO_2 emissions from power production, and consequently can decrease the need to purchase or generate SO_2 emissions allowance credits. This decreases the costs of complying with regulatory caps on emissions.

M. Discussion of Other Issues

1. Effective Date of the Proposed Amended Energy Conservation Standards

Generally, covered equipment to which a new or amended energy conservation standard applies must comply with the standard if they are manufactured or imported on or after a specified date. Section 342(a)(6)(A)(ii)(II) of EPCA directs DOE to ''establish an amended uniform national standard for [PTACs and PTHPs] at the minimum level for each effective date specified in the amended ASHRAE Standard 90.1 [–1999 for PTACs and PTHPs], unless the Secretary determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than such amended ASHRAE/IESNA Standard 90.1 [–1999 for PTACs and PTHPs] would result in significant additional conservation of energy and is technologically feasible and economically justified.'' (42 U.S.C. 6313(a)(6)(A)(ii)(II)) In today's NOPR, DOE is proposing to adopt a rule prescribing energy conservation standards higher than the efficiency levels contained in ASHRAE/IESNA Standard 90.1–1999. EPCA states that any such standards ''shall become effective for products manufactured on or after a date which is four years after the date such rule is published in the **Federal Register**.'' (42 U.S.C. 6313(a)(6)(D)) DOE has applied this four-year implementation period to determine the effective date of any energy conservation standard prescribed by this rulemaking. Thus, since DOE expects to issue a final rule in this proceeding in September 2008 [32], the rule would apply to products manufactured on or after September 2012, four years from the date of publication of the final rule. Thus, DOE calculated the LCCs and PBPs for all customers as if each one purchased a new PTAC or PTHP in 2012.

[32] This rulemaking is subject to a Consent Decree filed with the U.S. District Court for the Southern District of New York to settle the consolidated cases of *State of New York, et al.* v. *Bodman*, and *Natural Resources Defense Council, Inc., et al.,* (Civ. 7807 (JES) and Civ. 7808 (JES) (S.D.N.Y consolidated December 6, 2005)), under which DOE is required to publish a final rule for amended energy conservation standards for PTACs and PTHPs by September 30, 2008.

2. ASHRAE/IESNA Standard 90.1–1999 Labeling Requirement

ASHRAE/IESNA Standard 90.1–1999 established separate categories for PTACs and PTHPs based on standard and non-standard size wall sleeve dimensions. Further, it described standard size units as being for new construction and non-standard size units as being for replacement purposes. In addition, ASHRAE Standard 90.1–1999 includes a labeling requirement in order to differentiate between new construction and replacement equipment. Specifically, under ASHRAE/IESNA Standard 90.1–1999, to be considered a non-standard size unit (*i.e.*, replacement), PTACs and PTHPs must have a sleeve size less than 16 inches high and less than 42 inches wide, and be labeled as being for replacement applications only. DOE believes ASHRAE included a labeling requirement for PTACs and PTHPs to help deter less efficient, non-standard size equipment from being used for new construction.

Section 344 of EPCA provides the Secretary with the authority to establish labeling rules for certain commercial equipment, including PTACs and PTHPs. (42 U.S.C. 6315(e)) Section 344 of EPCA directs the Secretary to consider labeling rules which: (1) Indicate the energy efficiency of the equipment on the permanent nameplate attached to such equipment or on other nearby permanent marking; (2) prominently display the energy efficiency of the equipment in new equipment catalogs used by the manufacturer to advertise the equipment; and (3) include such other markings as the Secretary determines necessary solely to facilitate enforcement of the standards established for such equipment. (42 U.S.C. 6315(e)) In addition, section 344 of EPCA states that the Secretary shall not promulgate labeling rules for any class of industrial equipment, including PTACs and PTHPs, unless DOE has determined that:

- Labeling in accordance with this section is technologically and economically feasible with respect to such class;
- Significant energy savings will likely result from such labeling; and
- Labeling in accordance with this section is likely to assist consumers in making purchasing decisions. (42 U.S.C. 6315(h)).

At this time, DOE is uncertain of the types of energy use or efficiency information commercial customers and owners of PTACs and PTHPs would find useful for making purchasing

decisions. Before DOE can establish labeling rules, it must first ascertain whether the above-referenced criteria are met. DOE will work with the Federal Trade Commission and other stakeholders to determine the types of information and the forms (*e.g.*, labels, fact sheets, or directories) that would be most useful for commercial customers and owners of PTACs and PTHPs. DOE preliminarily believes that a label on PTAC and PTHP equipment indicating the equipment class would be useful for enforcement of both the energy conservation standards as well as the building codes and would assist States and other stakeholders in determining which application correlates to a given PTAC or PTHP (based upon size). DOE anticipates proposing labeling requirements for PTAC and PTHP equipment in a separate rulemaking. DOE invites public comment on the type of information and other requirements or factors it should consider in developing a proposed labeling rule for PTACs and PTHPs.

V. Analytical Results

A. Trial Standard Levels

Table V.1 presents the baseline efficiency level and the efficiency level of each TSL analyzed for standard size and non-standard size PTACs and PTHPs subject to today's proposed rule. The baseline efficiency levels correspond to the efficiency levels specified by the energy efficiency equations in ASHRAE/IESNA Standard 90.1–1999. TSLs 1, 3, 5, 6 represent matched pairs of efficiency levels for the three representative cooling capacities of PTACs and PTHPs. The efficiency levels for PTACs and PTHPs with the same cooling capacity and wall sleeve dimensions are equal. DOE maintained the 0.7 EER decrement established by ASHRAE/IESNA Standard 90.1–1999 between the standard size equipment with cooling capacities of 9,000 Btu/h and 12,000 Btu/h. TSL 7 is the maximum technologically feasible (''max tech'') level for each class of equipment as discussed in section III.B.2, above. TSLs 2 and 4 combine different efficiency pairings between PTACs and PTHPs. In other words, DOE examined the impacts of amended energy conservation standards when PTACs and PTHPs are required to meet different efficiency levels. For TSL 2, DOE combined TSL 1 for PTACs and TSL 3 for PTHPs. For TSL 4, DOE combined TSL 1 for PTACs and TSL 5 for PTHPs. These two combination levels serve to maximize LCC savings, while recognizing the differences in LCC results for PTACs and PTHPs.

TABLE V.1.—STANDARD SIZE AND NON-STANDARD SIZE PTACS AND PTHPS BASELINE EFFICIENCY LEVELS AND TSLS

Equipment class (cooling capacity)	Efficiency metric	Baseline (ASHRAE/IESNA Standard 90.1–1999)	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7 Max-Tech
Standard Size PTAC 9,000 Btu/h.	EER	10.6	10.9	10.9	11.1	10.9	11.3	11.5	12.0
Standard Size PTAC 12,000 Btu/h.	EER	9.9	10.2	10.2	10.4	10.2	10.6	10.8	11.5
Non-Standard Size PTAC 11,000 Btu/h.	EER	8.6	9.4	9.4	9.7	9.4	10.0	10.7	11.2
Standard Size PTHP 9,000 Btu/h.	EER	10.4	10.9	11.1	11.1	11.3	11.3	11.5	12.0
	COP	3.0	3.1	3.2	3.2	3.3	3.3	3.3	3.5
Standard Size PTHP 12,000 Btu/h.	EER	9.7	10.2	10.4	10.4	10.6	10.6	10.8	11.7
	COP	2.9	3.0	3.1	3.1	3.1	3.1	3.1	3.3
Non-Standard PTHP 11,000 Btu/h.	EER	8.5	9.4	9.7	9.7	10.0	10.0	10.7	11.4
	COP	2.6	2.8	2.8	2.8	2.9	2.9	2.9	2.9

As stated in the engineering analysis (see Chapter 5 of this TSD), current Federal energy conservation standards and the efficiency levels specified by ASHRAE/IESNA Standard 90.1–1999 for PTACs and PTHPs are a function of the equipment's cooling capacity. Both the Federal energy conservation standards and the efficiency standards in ASHRAE/IESNA Standard 90.1–1999 are based on equations to calculate the efficiency levels for PTACs and PTHPs with a cooling capacity greater than or equal to 7,000 Btu/h and less than or equal to 15,000 Btu/h for each equipment class. To derive the standards (i.e., efficiency level as a function of cooling capacity), DOE plotted the representative cooling capacities and the corresponding efficiency levels for each TSL. DOE then calculated the equation of the line passing through the EER values for 9,000 Btu/h and 12,000 Btu/h for standard size PTACs and PTHPs. More details describing how DOE determined the energy efficiency equations for each TSL are found in Chapter 9 of the TSD. Table V.2 and Table V.3 identify the energy efficiency equations for each TSL for standard size PTACs and PTHPs.

TABLE V.2.—ENERGY-EFFICIENCY EQUATIONS (EER AS A FUNCTION OF COOLING CAPACITY) BY TSL FOR STANDARD SIZE PTACS

Standard size** PTACs	Energy efficiency equation*
Baseline ASHRAE/IESNA Standard 90.1–1999	EER = 12.5 − (0.213 × Cap†/1000)
TSL 1	EER = 13.0 − (0.233 × Cap†/1000)
TSL 2	EER = 13.0 − (0.233 × Cap†/1000)
TSL 3	EER = 13.2 − (0.233 × Cap†/1000)
TSL 4	EER = 13.0 − (0.233 × Cap†/1000)

TABLE V.2.—ENERGY-EFFICIENCY EQUATIONS (EER AS A FUNCTION OF COOLING CAPACITY) BY TSL FOR STANDARD SIZE PTACS—Continued

Standard size** PTACs	Energy efficiency equation*
TSL 5	EER = 13.4 − (0.233 × Cap†/1000)
TSL 6	EER = 13.6 − (0.233 × Cap†/1000)
TSL 7	EER = 13.5 − (0.167 × Cap†/1000)

* For equipment rated according to the DOE test procedure, all EER values must be rated at 95 °F outdoor dry-bulb temperature for air-cooled products and evaporatively-cooled products and at 85 °F entering water temperature for water cooled products.
** Standard size refers to PTAC or PTHP equipment with wall sleeve dimensions greater than or equal to 16 inches high, or greater than or equal to 42 inches wide.
† Cap means cooling capacity in Btu/h at 95 °F outdoor dry-bulb temperature.

TABLE V.3.—ENERGY-EFFICIENCY EQUATIONS (EER AS A FUNCTION OF COOLING CAPACITY) BY TSL FOR STANDARD SIZE PTHPS

Standard size** PTHPs	Energy efficiency equation*
Baseline ASHRAE/IESNA Standard 90.1–1999	EER = 12.3 − (0.213 × Cap†/1000) COP = 3.2 − (0.026 × Cap†/1000)
TSL 1	EER = 13.0 − (0.233 × Cap†/1000) COP = 3.6 − (0.046 × Cap†/1000)
TSL 2	EER = 13.2 − (0.233 × Cap†/1000) COP = 3.6 − (0.044 × Cap†/1000)
TSL 3	EER = 13.2 − (0.233 × Cap†/1000) COP = 3.6 − (0.044 × Cap†/1000)
TSL 4	EER = 13.4 − (0.233 × Cap†/1000) COP = 3.7 − (0.053 × Cap†/1000)
TSL 5	EER = 13.4 − (0.233 × Cap†/1000) COP = 3.7 − (0.053 × Cap†/1000)
TSL 6	EER = 13.6 − (0.233 × Cap†/1000) COP = 3.8 − (0.053 × Cap†/1000)
TSL 7	EER = 12.9 − (0.100 × Cap†/1000) COP = 4.1 − (0.074 × Cap†/1000)

* For equipment rated according to the DOE test procedure, all EER values must be rated at 95 °F outdoor dry-bulb temperature for air-cooled products and evaporatively-cooled products and at 85 °F entering water temperature for water cooled products. All COP values must be rated at 47 °F outdoor dry-bulb temperature for air-cooled products, and at 70 °F entering water temperature for water-source heat pumps.
** Standard size refers to PTAC or PTHP equipment with wall sleeve dimensions greater than or equal to 16 inches high, or greater than or equal to 42 inches wide.
† Cap means cooling capacity in Btu/h at 95 °F outdoor dry-bulb temperature.

For non-standard size PTACs and PTHPs, DOE used the ASHRAE/IESNA Standard 90.1–1999 equation slope and the representative cooling capacity (i.e., 11,000 Btu/h cooling capacity) to determine the energy efficiency equations corresponding to each TSL. More details describing how DOE determined the energy efficiency equations for each TSL are found in Chapter 9 of the TSD. Table V.4 and Table V.5 identify the energy efficiency equations for each TSL for non-standard size PTAC and PTHP.

TABLE V.4—ENERGY-EFFICIENCY EQUATIONS (EER AS A FUNCTION OF COOLING CAPACITY) BY TSL FOR NON-STANDARD SIZE PTACS

Non-standard size** PTACs	Energy efficiency equation*
Baseline ASHRAE/IESNA Standard 90.1–1999	EER = 10.9 − (0.213 × Cap†/1000)
TSL 1	EER = 11.7 − (0.213 × Cap†/1000)
TSL 2	EER = 11.7 − (0.213 × Cap†/1000)
TSL 3	EER = 12.0 − (0.213 × Cap†/1000)
TSL 4	EER = 11.7 − (0.213 × Cap†/1000)
TSL 5	EER = 12.3 − (0.213 × Cap†/1000)
TSL 6	EER = 13.0 − (0.213 × Cap†/1000)
TSL 7	EER = 13.5 − (0.213 × Cap†/1000)

* For equipment rated according to the DOE test procedure, all EER values must be rated at 95 °F outdoor dry-bulb temperature for air-cooled products and evaporatively-cooled products and at 85 °F entering water temperature for water cooled products.
** Non-standard size refers to PTAC or PTHP equipment with wall sleeve dimensions less than 16 inches high and less than 42 inches wide.
† Cap means cooling capacity in Btu/h at 95 °F outdoor dry-bulb temperature.

TABLE V.5—ENERGY-EFFICIENCY EQUATIONS (EER AS A FUNCTION OF COOLING CAPACITY) BY TSL FOR NON-STANDARD SIZE PTHPS

Non-standard size** PTHPs	Energy efficiency equation*
Baseline ASHRAE/IESNA Standard 90.1–1999	EER = 10.8 − (0.213 × Cap†/1000) COP = 2.9 − (0.026 × Cap†/1000)
TSL 1	EER = 11.7 − (0.213 × Cap†/1000) COP = 3.1 − (0.026 × Cap†/1000)
TSL 2	EER = 12.0 − (0.213 × Cap†/1000) COP = 3.1 − (0.026 × Cap†/1000)
TSL 3	EER = 12.0 − (0.213 × Cap†/1000) COP = 3.1 − (0.026 × Cap†/1000)
TSL 4	EER = 12.3 − (0.213 × Cap†/1000) COP = 3.1 − (0.026 × Cap†/1000)
TSL 5	EER = 12.3 − (0.213 × Cap†/1000) COP = 3.1 − (0.026 × Cap†/1000)
TSL 6	EER = 13.0 − (0.213 × Cap†/1000) COP = 3.2 − (0.026 × Cap†/1000)
TSL 7	EER = 13.7 − (0.213 × Cap†/1000) COP = 3.2 − (0.026 × Cap†/1000)

* For equipment rated according to the DOE test procedure, all EER values must be rated at 95 °F outdoor dry-bulb temperature for air-cooled products and evaporatively-cooled products and at 85 °F entering water temperature for water cooled products. All COP values must be rated at 47 °F outdoor dry-bulb temperature for air-cooled products, and at 70 °F entering water temperature for water-source heat pumps.
** Non-standard size refers to PTAC or PTHP equipment with wall sleeve dimensions less than 16 inches high and less than 42 inches wide.
† Cap means cooling capacity in Btu/h at 95 °F outdoor dry-bulb temperature.

For PTACs and PTHPs with cooling capacity less than 7,000 Btu/h, DOE determined the EERs using a cooling capacity of 7,000 Btu/h in the efficiency-capacity equations. For PTACs and PTHPs with a cooling capacity greater than 15,000 Btu/h cooling capacity, DOE determined the EERs using a cooling capacity of 15,000 Btu/h in the efficiency-capacity equations. This is the same method established in the Energy Policy Act of 1992 and provided in ASHRAE 90.1–1999 for calculating the EER and COP of equipment with cooling capacities smaller than 7,000 Btu/h and larger than 15,000 Btu/h.

B. Economic Justification and Energy Savings

1. Economic Impacts on Commercial Customers

a. Life-Cycle Cost and Payback Period

DOE's LCC and PBP analyses provided five outputs for each TSL that are reported in Tables V.6 through V.11 below. The first three outputs are the proportion of PTAC and PTHP purchases where the purchase of a standard-compliant piece of equipment would create a net LCC increase, no impact, or a net LCC savings for the customer. The fourth output is the average net LCC savings from standard-compliant equipment. Finally, the fifth output is the average PBP for the customer investment in standard-compliant equipment.

TABLE V.6.—SUMMARY LCC AND PBP RESULTS FOR STANDARD SIZE PTAC WITH A COOLING CAPACITY OF 9,000 BTU/H

	Trial standard level						
	1	2	3	4	5	6	7
EER	10.9	10.9	11.1	10.9	11.3	11.5	12
PTAC with Net LCC Increase (%)	11	11	23	11	35	47	65
PTAC with No Change in LCC (%)	81	81	63	81	46	29	14
PTAC with Net LCC Savings (%)	8	8	14	8	19	23	22
Mean LCC Savings* ($)	0	0	0	0	(2)	(4)	(13)
Mean PBP (years)	11.6	11.6	12.5	11.6	13.2	14.0	16.0

*Numbers in parentheses indicate negative LCC savings, i.e., an increase in LCC.

TABLE V.7.—SUMMARY LCC AND PBP RESULTS FOR STANDARD SIZE PTHP WITH A COOLING CAPACITY OF 9,000 BTU/H

	Trial standard level						
	1	2	3	4	5	6	7
EER	10.9	11.1	11.1	11.3	11.3	11.5	12
PTHP with Net LCC Increase (%)	4	6	6	8	8	15	20
PTHP with No Change in LCC (%)	81	64	64	47	47	30	14
PTHP with Net LCC Savings (%)	15	30	30	45	45	55	66
Mean LCC Savings ($)	13	23	23	32	32	30	40
Mean Payback Period (years)	4.5	4.0	4.0	3.9	3.9	4.5	4.8

TABLE V.8.—SUMMARY LCC AND PBP RESULTS FOR STANDARD SIZE PTAC WITH A COOLING CAPACITY OF 12,000 BTU/H

	Trial standard level						
	1	2	3	4	5	6	7
EER	10.2	10.2	10.4	10.2	10.6	10.8	11.5
PTAC with Net LCC Increase (%)	13	13	25	13	41	54	75
PTAC with No Change in LCC (%)	80	80	62	80	44	28	12
PTAC with Net LCC Savings (%)	7	7	13	7	15	18	13
Mean LCC Savings* ($)	(1)	(1)	(3)	(1)	(7)	(11)	(36)
Mean PBP (years)	13.0	13.0	13.9	13.0	14.8	15.9	19.8

*Numbers in parentheses indicate negative savings, i.e., an increase in LCC.

TABLE V.9.—SUMMARY LCC AND PBP RESULTS FOR STANDARD SIZE PTHP WITH A COOLING CAPACITY OF 12,000 BTU/H

	Trial standard level						
	1	2	3	4	5	6	7
EER	10.2	10.4	10.4	10.6	10.6	10.8	11.7
PTHP with Net LCC Increase (%)	5	7	7	15	15	27	45
PTHP with No Change in LCC (%)	80	62	62	45	45	28	12
PTHP with Net LCC Savings (%)	15	31	31	40	40	45	43
Mean LCC Savings ($)	15	26	26	22	22	18	8
Mean PBP (years)	4.9	4.4	4.4	5.3	5.3	6.1	7.5

TABLE V.10.—SUMMARY LCC AND PBP RESULTS FOR NON-STANDARD SIZE PTACS WITH A COOLING CAPACITY OF 11,000 BTU/H

	Trial standard level						
	1	2	3	4	5	6	7
EER	9.4	9.4	9.7	9.4	10	10.7	11.2
PTAC with Net LCC Increase (%)	3	3	9	3	16	33	48
PTAC with No Change in LCC (%)	80	80	62	80	44	27	12
PTAC with Net LCC Savings (%)	17	17	30	16	40	40	40
Mean LCC Savings ($)	27	27	31	27	33	26	12
Mean PBP (years)	4.2	4.2	4.9	4.2	5.7	7.8	9.6

TABLE V.11.—SUMMARY LCC AND PBP RESULTS FOR NON-STANDARD SIZE PTHPS WITH A COOLING CAPACITY OF 11,000 BTU/H

	Trial Standard level						
	1	2	3	4	5	6	7
EER	9.4	9.7	9.7	10	10	10.7	11.4
PTHP with Net LCC Increase (%)	0	2	2	3	3	14	29
PTHP with No Change in LCC (%)	81	62	62	45	45	27	12
PTAC with Net LCC Savings (%)	19	36	36	53	53	59	59
Mean LCC Savings ($)	61	66	66	81	80	74	53
Mean PBP (years)	2.0	2.6	2.6	2.8	2.8	4.2	5.8

For PTACs and PTHPs with a cooling capacity less than 7,000 Btu/h, DOE established the proposed energy conservation standards using a cooling capacity of 7,000 Btu/h in the proposed efficiency-capacity equation. DOE believes the LCC and PBP impacts for equipment in this category will be similar to the impacts of the 9,000 Btu/h units because the MSP and usage characteristics are in a similar range. Similarly, for PTACs and PTHPs with a cooling capacity greater than 15,000 Btu/h, DOE established the proposed energy conservation standards using a cooling capacity of 15,000 Btu/h in the proposed efficiency-capacity equation. Further, for PTACs and PTHPs with a cooling capacity greater than 15,000 Btu/h, DOE believes the impacts will be similar to units with a cooling capacity of 12,000 Btu/h. More details explaining how DOE developed the proposed energy efficiency equations based on the analysis results for the representative cooling capacities are provided in Section V.A of today's notice.

b. Life-Cycle Cost Sub-Group Analysis

Using the LCC spreadsheet model, DOE determined the impact of the TSLs on the following customer subgroup: small businesses. Table V.12 shows the mean LCC savings from proposed energy conservation standards, and Table V.13 shows the mean payback

period (in years) for this subgroup. More detailed discussion on the LCC subgroup analysis and results can be found in Chapter 12 of the TSD.

TABLE V.12.—MEAN LIFE-CYCLE COST SAVINGS FOR PTAC OR PTHP EQUIPMENT PURCHASED BY LCC SUB-GROUPS (2006$)

Equipment class (cooling capacity)	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
Standard Size PTAC (9,000 Btu/h)	($1)	($1)	($2)	($1)	($4)	($7)	($17)
Standard Size PTHP (9,000 Btu/h)	10	19	19	26	26	23	30
Standard Size PTAC (12,000 Btu/h)	(2)	(2)	(5)	(2)	(9)	(15)	(42)
Standard Size PTHP (12,000 Btu/h)	11	20	20	16	16	11	(4)
Non-Standard Size PTAC	22	22	25	22	26	16	1
Non-Standard Size PTHP	53	56	56	69	69	60	37

*Numbers in parentheses indicate negative savings.

TABLE V.13.—MEAN PAYBACK PERIOD FOR PTAC OR PTHP EQUIPMENT PURCHASED BY LCC SUB-GROUPS (YEARS)

Equipment class (cooling capacity)	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
Standard Size PTAC (9,000 Btu/h)	11.5	11.5	12.4	11.5	13.2	13.9	15.9
Standard Size PTHP (9,000 Btu/h)	4.5	4.0	4.0	3.9	3.9	4.5	4.8
Standard Size PTAC (12,000 Btu/h)	12.9	12.9	13.8	12.9	14.7	15.7	19.7
Standard Size PTHP (12,000 Btu/h)	4.9	4.4	4.4	5.2	5.2	6.1	7.5
Non-Standard Size PTAC	4.2	4.2	4.9	4.2	5.7	7.8	9.5
Non-Standard Size PTHP	2.0	2.6	2.6	2.8	2.8	4.2	5.8

For PTACs and PTHPs with a cooling capacity less than 7,000 Btu/h, DOE believes that the LCC and PBP impacts for equipment in this category will be similar to the impacts of the 9,000 Btu/h units because the MSP and usage characteristics are in a similar range. Similarly, for PTACs and PTHPs with a cooling capacity greater than 15,000 Btu/h, DOE believes the impacts will be similar to units with a cooling capacity of 12,000 Btu/h. See chapter 5 of the TSD for how we selected representative capacities that were analyzed.

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on PTAC and PTHP manufacturers. (See TSD, Chapter 13.)

a. Industry Cash Flow Analysis Results

i. Standard Size PTACs and PTHPs

Table V.14 and Table V.15 show the MIA results for each TSL using both markup scenarios described above for standard size PTACs and PTHPs.[33]

TABLE V.14.—MANUFACTURER IMPACT ANALYSIS FOR STANDARD SIZE PTACS AND PTHPS UNDER THE FLAT MARKUP SCENARIO

R–410A full cost recovery with amended energy standards full recovery of increased cost

	Units	Base case	Trial standard level						
			1	2	3	4	5	6	7
INPV	(2006$ millions)	305	305	303	306	300	308	304	314
Change in INPV	(2006$ millions)	.....	(0)	(2)	1	(5)	3	(1)	9
	(%)	.....	−0.1	−0.8	0.2	−1.5	0.9	−0.2	3.1
R–410A Equipment Conversion Expenses*.	(2006$ millions)	14.0	.....	.....	.....	.....	.....	.....	.....
R–410A Capital Conversion Expenses*.	(2006$ millions)	7.0	.....	.....	.....	.....	.....	.....	.....
Amended Energy Conservation Standards Equipment Conversion Expenses.	(2006$ millions)	.....	4.4	7.2	6.1	10.3	7.0	13.1	17.5
Amended Energy Conservation Standards Capital Conversion Expenses.	(2006$ millions)	.....	3.4	5.6	4.7	7.9	5.4	10.1	13.5
Total Investment Required**	(2006$ millions)	.....	28.8	33.8	31.9	39.2	33.4	44.3	52.2

*Equipment conversion expenses and capital conversion expenses for converting PTACs and PTHPs to R–410A are made in 2009 and accounted for in the base case.

**Total investment calculates both the equipment conversion expenses and the capital investments necessary for both converting PTACs and PTHPs to R–410A and complying with amended energy conservation standards.

[33] The MIA estimates the impacts on standard size manufacturers of equipment in the entire range of cooling capacities (i.e., the MIA results in Tables V.15 and V.16 take into consideration the impacts on manufacturers of equipment from all 6 standard size equipment classes).

TABLE V.15.—MANUFACTURER IMPACT ANALYSIS FOR STANDARD SIZE PTACS AND PTHPS UNDER THE PARTIAL COST RECOVERY MARKUP SCENARIO

R–410A base case full cost recovery with amended energy standards partial cost recovery									
	Units	Base case	Trial standard level						
			1	2	3	4	5	6	7
INPV	(2006$ millions)	305	268	257	250	249	236	210	139
Change in INPV	(2006$ millions)	.....	(37)	(48)	(55)	(56)	(69)	(95)	(166)
	(%)	.....	−12.1	−15.7	−18.1	−18.3	−22.7	−31.2	−54.5
R–410A Equipment Conversion Expenses*.	(2006$ millions)	14.0	.....	.....	.....	.....	.....	.....	.....
R–410A Capital Conversion Expenses*.	(2006$ millions)	7.0	.....	.....	.....	.....	.....	.....	.....
Amended Energy Conservation Standards Equipment Conversion Expenses.	(2006$ millions)	.....	4.4	7.2	6.1	10.3	7.0	13.1	17.5
Amended Energy Conservation Standards Capital Conversion Expenses.	(2006$ millions)	.....	3.4	5.6	4.7	7.9	5.4	10.1	13.5
Total Investment Required**	(2006$ millions)	.....	28.8	33.8	31.9	39.2	33.4	44.3	52.2

*Equipment conversion expenses and capital conversion expenses for converting PTACs and PTHPs to R–410A are made in 2009 and accounted for in the base case.

**Total investment calculates both the equipment conversion expenses and the capital investments necessary for both converting PTACs and PTHPs to R–410A and complying with amended energy conservation standards.

For the results shown above, DOE examined only the impacts of amended energy conservation standards on the INPV. The results shown assume that manufacturers are able to recover all of costs associated with the conversion to R–410A refrigerant, which allows DOE to examine the impacts of the refrigerant phase-out separately in the cumulative regulatory burden analysis. DOE also estimated the impacts of amended energy conservation standards when manufacturers were only able to recover part of the costs associated with the conversion to R–410A and presented the results in the TSD. See Chapter 13 of the TSD for a complete summary of results including the cumulative regulatory burden analysis.

At TSL 1, the impact on INPV and cash flow varies greatly depending on the manufacturers and their ability to pass on increases in MPCs to the customer. DOE estimated the impacts in INPV at TSL 1 to range from less than −$1 million up to −$37 million, or a change in INPV of negative 0.1 percent up to negative 12.1 percent. At this level, the industry cash flow decreases by approximately 25 percent, to $9 million, compared to the base case value of $12 million in the year leading up to the standards. Since more than 75 percent of PTAC and PTHP market is at or above the efficiency levels specified by TSL 1 using the R–22 refrigerant, those manufacturers that do not fall below the efficiency levels specified by TSL 1 after the refrigerant phase-out will not have to make additional modifications to their product lines to conform to the amended energy conservation standards. DOE expects the lower end of the impacts to be reached, which indicates that industry revenues and costs are not significantly negatively impacted as long as manufacturers are able to recover fully the increase in manufacturer production cost from the customer.

At TSL 2, the impact on INPV and cash flow would be similar to TSL 1 and dependent on whether manufacturers are able to recover fully the increases in MPCs from the customer. DOE estimated the impacts in INPV at TSL 2 to range from −$2 million up to −$48 million, or a change in INPV of −0.8 percent up to −15.7 percent. At this level, the industry cash flow decreases by approximately 33 percent, to $8 million, compared to the base case value of $12 million in the year leading up to the standards. Up to 75 percent of PTACs and up to 50 percent of PTHPs being sold are already at or above this level using R–22 refrigerant. Similar to TSL 1 for PTACs, manufacturers whose equipment does not fall below the efficiency levels specified by TSL 1 after the refrigerant phase-out will not have to make additional modifications to their product lines to conform to TSL 2. For PTHPs, the required higher level of efficiency will cause some manufactures to make additional modifications to their product lines to conform to the amended energy conservation standards. These additional plant and product modifications are estimated in the capital and product conversion costs shown in Tables V.14 and V. 15. Even though TSL 2 requires efficiency levels that are different for PTACs and PTHPs, there are small differences between the EER values for a given capacity in sleeve size, which will minimize the amount of redesign manufacturers will have to undertake to modify their product lines. DOE expects the impacts of TSL 2 on manufacturers of standard size PTACs will be greater than TSL 1, but the magnitude of impacts largely depends on the ability of manufacturers to recover fully the increase in MPC from the customer and minimize the level of redesign between the two efficiency levels.

At TSL 3, the impact on INPV and cash flow continues to vary depending on the manufacturers and their ability to pass on increases in MPCs to the customer. DOE estimated the impacts in INPV at TSL 3 to range from approximately positive $1 million to −$55 million, or a change in INPV of 0.2 percent to −18.1 percent. At this level, the industry cash flow decreases by approximately 33 percent, to $8 million, compared to the base case value of $12 million in the year leading up to the standards. Currently the bulk of the equipment being sold is already at or above this level using R–22 refrigerant. DOE does not expect industry revenues and costs to be impacted significantly as long as standard size PTAC and PTHP manufacturers are able the increase in manufacturer production cost from the customer. The positive INPV value is explained by increases in MSP due to higher costs of R–410A equipment, which DOE assumed under this scenario

that manufacturers would be able to recover fully the investments needed for conversion to R–410A. See Chapter 13 of the TSD for additional details of each markup scenario.

At TSL 4, DOE estimated the impacts in INPV to range from approximately −$5 million to −$56 million, or a change in INPV of −1.5 percent up to −18.3 percent. At this level, the industry cash flow decreases by approximately 50 percent, to $6 million, compared to the base case value of $12 million in the year leading up to the standards. At higher TSLs, manufacturers have a harder time fully passing on larger increases in MPCs to the customer. At to TSL 4, manufacturers are concerned about whether they will be able to produce PTHPs, by the effective date of the standard, that use R–410A refrigerant. Using the performance degradations from the engineering analysis, TSL 4 for PTHPs using R–410A would correspond to the ''max-tech'' efficiency levels for PTHPs unless higher efficiency compressors enter the market prior to the effective date of an amended energy conservation standard. Based on information submitted by industry, manufacturers would be required to redesign completely their PTHP equipment lines. Since most manufacturers only manufacture one product line, and combine their R&D efforts for PTACs and PTHPs into one design, manufacturers would likely choose to redesign their entire equipment offering. Similar to TSL 1, for PTACs, manufacturers that do not fall below TSL 1 after the refrigerant phase-out will not have to make additional modifications to their PTAC equipment lines to conform to TSL 4. Due to the disparity between efficiency levels of standard size PTACs and PTHPs specified by TSL 4, DOE initially believes that it is more likely that the higher end of the range of impacts could be reached (i.e., a drop of 18.3 percent in INPV).

At TSL 5, DOE estimated the impacts in INPV to range from approximately $3 million up to −$69 million, or a change in INPV of approximately 1 percent up to −22.7 percent. At this level, the industry cash flow decreases by approximately 33 percent, to $8 million, compared to the base case value of $12 million in the year leading up to the standards. As with TSL 4, standard size PTAC and PTHP manufacturers continue to have a hard time fully passing on larger increases in MPCs to the customer. At TSL 5, manufacturers stated their concerns over the ability to be able to produce both PTACs and PTHPs by the effective date of the standard utilizing R–410A refrigerant. Using the performance degradations from the engineering analysis, TSL 5 would correspond to the ''max-tech'' efficiency levels for both PTACs and PTHPs using R–410A unless higher efficiency compressors enter the market prior to the effective date of an amended energy conservation standard. Based on information submitted by industry, the majority of manufacturers would require a complete redesign of their equipment. Thus, DOE believes it is likely that the higher range of the impacts could be reached.

At TSL 6, DOE estimated the impacts in INPV to range from −$1 million up to −$95 million, or a change in INPV of approximately −0.2 percent up to −31.2 percent. At this level, the industry cash flow decreases by approximately 66 percent, to $4 million, compared to the base case value of $12 million in the year leading up to the standards. At higher TSLs, manufacturers have a harder time fully passing on larger increases in MPCs to the customer, and therefore manufacturers expect the higher end of the range of impacts to be reached (i.e., a drop of 31.2 percent in INPV). TSL 6 requires the production of standard size PTACs and PTHPs using R–410A that are not currently available on the market today assuming the system performance degradations estimated in the engineering analysis. If manufacturers do not have the ability to integrate a high efficiency R–410A compressor into the PTACs and PTHPs, the impacts could be greater than characterized by DOE's MIA analysis.

At TSL 7 (max tech), DOE estimated the impacts in INPV to range from $9 million up to −$166 million, or a change in INPV of approximately 3 percent up to −54.5 percent. At this level, the industry cash flow decreases by approximately 92 percent, to $1 million, compared to the base case value of $12 million in the year leading up to the standards. At higher TSLs, manufacturers have a harder time fully passing on larger increases in MPCs to the customer, and therefore manufacturers expect the higher end of the range of impacts to be reached (i.e., a drop of 31.2 percent in INPV). Currently, there is only one model being manufactured at these efficiency levels, which uses R–22 refrigerant. Most manufacturers did not provide DOE with projected equipment conversion costs or capital conversion costs at this level, since they could not conceive of what designs using R–410A might achieve this efficiency level. The industry would experience an increase in net present value if it were able to fully pass through to customers the increase in production costs associated with meeting new amended energy conservation standards. However, there is a risk of very large negative impacts if manufacturers' expectations are realized about reducing profit margins. During the interviews, manufacturers expressed disbelief at the possibility of manufacturing an entire equipment line at the max-tech levels using R–410A refrigerant.

ii. Non-Standard Size PTACs and PTHPs

Table V.16 and Table V.17 shows the MIA results for each TSL using both markup scenarios described above for non-standard size PTACs and PTHPs.[34]

TABLE V.16.—MANUFACTURER IMPACT ANALYSIS FOR NON-STANDARD SIZE PTACS AND PTHPS UNDER FULL COST RECOVERY MARKUP SCENARIO

R–410A full cost recovery with amended energy standards full recovery of increased cost									
	Units	Base case	Trial standard level						
			1	2	3	4	5	6	7
INPV	(2006$ millions)	28	25	22	23	18	21	18	16
Change in INPV	(2006$ millions)		(2)	(5)	(4)	(9)	(7)	(9)	(11)
	(%)		−7.7	−18.5	−15.7	−34.2	−24.6	−32.9	−40.6

[34] The MIA estimates the impacts on non-standard size manufacturers of equipment in the entire range of cooling capacities (i.e., the MIA results in Tables V.15 and V.16 take into consideration the impacts on manufacturers of equipment from all 6 non-standard size equipment classes).

TABLE V.16.—MANUFACTURER IMPACT ANALYSIS FOR NON-STANDARD SIZE PTACS AND PTHPS UNDER FULL COST RECOVERY MARKUP SCENARIO—Continued

R–410A full cost recovery with amended energy standards full recovery of increased cost									
	Units	Base case	Trial standard level						
			1	2	3	4	5	6	7
R–410A Equipment Conversion Expenses*.	(2006$ millions)	0.6	.....	.....	.....	.....	.....	.....	.....
R–410A Capital Conversion Expenses*.	(2006$ millions)	7.0	.....	.....	.....	.....	.....	.....	.....
Amended Energy Conservation Standards Equipment Conversion Expenses.	(2006$ millions)	.....	2.5	6.3	5.6	10.6	8.8	11.9	15.0
Amended Energy Conservation Standards Capital Conversion Expenses.	(2006$ millions)	.....	1.3	2.2	1.9	3.5	2.6	3.2	3.9
Total Investment Required**.	(2006$ millions)	.....	11.4	16.1	15.1	21.7	18.9	22.7	26.5

*Equipment conversion expenses and capital conversion expenses for converting PTACs and PTHPs to R–410A are made in 2009 and accounted for in the base case.

**Total investment calculates both the equipment conversion expenses and the capital investments necessary for both converting PTACs and PTHPs to R–410A and complying with amended energy conservation standards.

TABLE V.17.—MANUFACTURER IMPACT ANALYSIS FOR NON-STANDARD SIZE PTACS AND PTHPS UNDER THE PARTIAL COST RECOVERY MARKUP SCENARIO

R–410A Base case full cost recovery with amended energy standards partial cost recovery									
	Units	Base case	Trial standard level						
			1	2	3	4	5	6	7
INPV	(2006$ millions)	28	23	20	20	15	17	13	7
Change in INPV	(2006$ millions)	.....	(4)	(7)	(7)	(12)	(10)	(15)	(21)
	(%)	.....	−14.8	−26.9	−25.7	−43.9	−37.5	−53.4	−74.7
R–410A Equipment Conversion Expenses*.	(2006$ millions)	0.6	.....	.....	.....	.....	.....	.....	.....
R–410A Capital Conversion Expenses*.	(2006$ millions)	7.0	.....	.....	.....	.....	.....	.....	.....
Amended Energy Conservation Standards Equipment Conversion Expenses.	(2006$ millions)	.....	2.5	6.3	5.6	10.6	8.8	11.9	15.0
Amended Energy Conservation Standards Capital Conversion Expenses.	(2006$ millions)	.....	1.3	2.2	1.9	3.5	2.6	3.2	3.9
Total Investment Required**.	(2006$ millions)	.....	11.4	16.1	15.1	21.7	18.9	22.7	26.5

*Equipment conversion expenses and capital conversion expenses for converting PTACs and PTHPs to R–410A are made in 2009 and accounted for in the base case.

**Total investment calculates both the equipment conversion expenses and the capital investments necessary for both converting PTACs and PTHPs to R–410A and complying with amended energy conservation standards.

For the results shown above, DOE examined only the impacts of amended energy conservation standards on the INPV. The results shown assume that manufacturers are able to recover all of costs associated with the conversion to R–410A refrigerant, which allows DOE to examine the impacts of the refrigerant phase-out separately in the cumulative regulatory burden analysis. See Chapter 13 of the TSD for a complete summary of results including the cumulative regulatory burden analysis.

At TSL 1, DOE estimated the impacts in INPV to range from less than −$2 million up to −$4 million, or a change in INPV of −7.7 percent up to −14.8 percent. At this level, the industry cash flow decreases by approximately 50 percent, $1 million, compared to the base case value of $2 million in the year leading up to the standards. Since more than half of the equipment being sold is already at or above this level using R–22 refrigerant, those manufacturers that do not fall below TSL 1 using R–410A refrigerant will not have to make additional modifications to their product lines to conform to the amended energy conservation standards. At TSL 1, the results of the analysis show the least impact on manufacturers.

At TSL 2, DOE estimated the impacts in INPV to range from −$5 million up to −$7 million, or a change in INPV of −18.5 percent up to −26.9 percent. At this level, the industry cash flow decreases by approximately 150 percent, −$1 million, compared to the base case value of $2 million in the year leading up to the standards. At this level, the majority of the industry is impacted. At higher TSLs, manufacturers have a harder time fully passing on larger increases in MPCs to the customer, thus manufacturers expect the higher end of the range of impacts to be reached (i.e., a drop of 26.9 percent in INPV).

At TSL 3, DOE estimated the impacts in INPV to range from −$4 million up to −$7 million, or a change in INPV of −15.7 percent up to −25.7 percent. At this level, the industry cash flow decreases by approximately 150 percent, −$1 million, compared to the base case value of $2 million in the year leading up to the standards. At higher TSLs, manufacturers continue to have a hard time fully passing on larger increases in MPCs to the customer, thus manufacturers expect the higher end of the range of impacts to be reached (i.e., a drop of 25.7 percent in INPV). Manufacturers stated that the level of re-design required to manufacture all the equipment lines and cooling capacity ranges would be so extensive that they would consider not investing the time, research, or development efforts necessary to make equipment utilizing R–410A at TSL 3.

At TSL 4, DOE estimated the impacts in INPV to range from −$9 million up to −$12 million, or a change in INPV of −34.2 percent up to −43.9 percent. At this level, the industry cash flow decreases by approximately 250 percent, −$3 million, compared to the base case value of $2 million in the year leading up to the standards. At TSL 4, manufacturers stated their concerns over the ability to be able to produce PTHPs by the effective date of the standard utilizing R–410A refrigerant. Using the performance degradations from the engineering analysis, TSL 4 for PTHPs would correspond to the ''max-tech'' efficiency levels for PTHPs unless higher efficiency compressors enter the market prior to the effective date of an amended energy conservation standard. Based on information submitted by industry, manufacturers would be required to redesign completely their PTHP equipment lines.

At TSL 5, DOE estimated the impacts in INPV to range from −$7 million up to −$10 million, or a change in INPV of −24.6 percent up to −37.5 percent. At this level, the industry cash flow decreases by approximately 200 percent, −$2 million, compared to the base case value of $2 million in the year leading up to the standards. Using the performance degradations from the engineering analysis, TSL 5 for PTACs and PTHPs would correspond to the ''max-tech'' efficiency levels for PTHPs unless higher efficiency compressors enter the market prior to the effective date of an amended energy conservation standard.

At TSL 6, DOE estimated the impacts in INPV to range from −$9 million up to −$15 million, or a change in INPV of −32.9 percent up to −53.4 percent. At this level, the industry cash flow decreases by approximately 300 percent, −$4 million, compared to the base case value of $2 million in the year leading up to the standards.

At TSL 5 and 6, manufacturers stated their concerns over the ability to be able to produce this equipment by the effective date of the standard utilizing R–410A. Based on information submitted by industry, manufacturers would require a complete redesign of their non-standard PTAC and PTHP platforms. Many manufacturers stated they would be unwilling to redesign completely non-standard size equipment because of the small size of the market and the declining sales. Manufacturers also commented non-standard size PTACs and PTHPs are manufactured to order based on unique building designs for replacement applications. Therefore, manufacturers did not see the advantage to completely redesigning non-standard size PTACs and PTHPs in small and declining market.

At TSL 7, DOE estimated the impacts in INPV to range from −$11 million up to −$21 million, or a change in INPV of −40.6 percent up to −74.7 percent. At this level, the industry cash flow decreases by approximately 350 percent, −$5 million, compared to the base case value of $2 million in the year leading up to the standards. During their MIA interviews, all manufacturers stated that this level is simply not achievable with current technologies after the refrigerant phase-out. In addition, some manufacturers would not provide equipment conversion cost or capital conversion costs at this level, since they could not conceive what designs might reach this efficiency level.

Lastly, non-standard size manufacturers stated great concern over the amplification of impacts if ASHRAE/IESNA Standard 90.1–1999 definitions are adopted by DOE and their equipment lines are reduced. Several manufacturers believe the ASHRAE/IESNA Standard 90.1–1999 definitions would cause up to 50 percent of their equipment lines to be misclassified. Consequently, this equipment would be required to meet the higher energy conservation standards for standard size equipment, which manufacturers do not believe is attainable with non-standard size equipment. If manufacturers' expectations were reached with a declining equipment offering, the INPV and cash flow impacts of the declining industry as estimated by the MIA would be further negatively affected.

b. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of several impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden.

As previously mentioned, all PTAC and PTHP manufacturers believe that the refrigerant phase-out will be the biggest external burden on manufacturers. DOE took all comments and concerns into consideration and examined different impacts the refrigerant phase-out would have on standard and non-standard size PTAC and PTHP industries. DOE first examined the possible impacts on INPV from converting current production of R–22 equipment into R–410A equipment. DOE then examined the possible impacts of amended energy conservation standards on the R–410A base case. In other words, DOE examined the cumulative impacts of both R–410A conversion and compliance with the proposed energy conservation standards (see Chapter 13 of the TSD). Table V.18 and Table V.19 show the changes in INPV because of conversion to R–410A in 2012 on the base case (i.e., the shipments forecast in the absence of amended mandatory energy conservation standards beyond the levels in ASHRAE/IESNA Standard 90.1–1999). For the results presented in the two tables below, DOE assumed manufacturers would be able to cover fully any increase in manufacturing costs associated with the conversion to R–410A in 2010. DOE also estimated the impacts on the base case from the R–410A conversion if manufacturers were not able to recover fully the increases in MPCs and displayed the results in Chapter 13 of the TSD. In general, if manufacturers were not able to recover fully the increases in MPC because of the R–410A conversion, the impacts on the base case would be amplified.

TABLE V.18.—CHANGES IN INDUSTRY NET PRESENT VALUE FOR STANDARD SIZE PTACS AND PTHPS FROM R–410A CONVERSION

TSL	Energy conservation standards flat markup		
	INPV $MM	Change in INPV from base case	
		$MM	% Change
Base Case (R–22 only)	298	.....	.....
Base Case (R–22 with R–410A Conversion)	305	7	2.3%

TABLE V.19.—CHANGES IN INDUSTRY NET PRESENT VALUE FOR NON-STANDARD SIZE PTACS AND PTHPS FROM R–410A CONVERSION

TSL	Energy conservation standards flat markup		
	INPV $MM	Change in INPV from base case	
		$MM	% Change
Base Case (R–22 only)	32	.....	.....
Base Case (R–22 with R–410A Conversion)	28	(4)	−12.5%

c. Impacts on Employment

DOE estimated industry-wide labor expenditures based on the engineering analysis. Coil fabrication; tube cutting and soldering; electronic connection assembly; package assembly; testing and packing of the completed PTAC or PTHP represent the bulk of the labor. DOE estimated the amount of labor needed to perform these functions, and incorporated these estimates into the GRIM, which projects labor expenditures annually. Under the GRIM, total labor expenditures are a function of the labor intensity in manufacturing equipment, the sales volume, and the unit cost of labor (i.e., the wage rate), which remains fixed in real terms over time. Table V.20 and Table V.21 provide DOE's estimate of the changes in labor measured as the change in labor expenditures for standard and non-standard size PTACs and PTHPs in 2012, the date DOE expects the amended energy conservation standard to become effective, compared to the base case.

TABLE V.20.—PROJECTED CHANGE IN LABOR EXPENDITURES, STANDARD SIZE PTACS AND PTHPS (2012)

Trial standard levels						
TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
+1.9%	+2.4%	+3.0%	+2.9%	+4.3%	+5.7%	+11.5%

TABLE V.21.—PROJECTED CHANGE IN LABOR EXPENDITURES, NON-STANDARD SIZE PTACS AND PTHPS (2012)

Trial standard levels						
TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
+1.8%	+2.2%	+2.7%	+2.6%	+3.7%	+7.3%	+11.6%

Based on these results, DOE expects no significant discernable direct employment impacts among standard and non-standard size PTAC and PTHP manufacturers for TSL1 through TSL 7. This conclusion is independent of any conclusions regarding employment impacts in the broader United States economy, which are documented in Chapter 15 of the TSD. This conclusion also ignores the possible relocation of domestic employment to lower-labor-cost countries. Manufacturers stated their concerns, throughout the interviews, about increasing offshore competition entering the market over the past five years.

d. Impacts on Manufacturing Capacity

According to the majority of standard and non-standard size PTAC and PTHP manufacturers, amended energy conservation standards will not significantly affect the manufacturer's production capacity. Any necessary redesign of PTACs and PTHPs will not change the fundamental assembly of the equipment. However, manufacturers anticipate some minimal changes to the assembly line due to the conversion to R–410A refrigerant. Because of the properties of R–410A refrigerant, the assembly line will need to give special attention to creating vacuums within each unit's chambers, and additional assembly will be needed if the number of fan motors increases. DOE believes manufacturers will be able to maintain production capacity levels and continue

to meet market demand under amended energy conservation standards.

e. Impacts on Subgroups of Manufacturers

As discussed above, using average cost assumptions to develop an industry cash flow estimate is not adequate for assessing differential impacts among subgroups of manufacturers. Small manufacturers, niche players, or manufacturers exhibiting a cost structure that differs largely from the industry average could be affected differently. DOE used the results of the industry characterization to group manufacturers exhibiting similar characteristics.

DOE evaluated the impact of amended energy conservation standards on small businesses, as defined by the SBA for the PTAC and PTHP manufacturing industry as manufacturing enterprises with 750 or fewer employees. DOE shared the interview guides with small PTAC and PTHP manufacturers and tailored specific questions for these manufacturers. During DOE's interviews with small manufacturers, they provided information, which suggested that the impacts of standards on them would not differ from impacts on larger companies within the industry. (See TSD, Chapter 13.)

3. National Impact Analysis

a. Amount and Significance of Energy Savings

Table V.22 shows the forecasted national energy savings for all the equipment classes of PTACs and PTHPs at each of the TSLs. DOE estimated the national energy savings using the AEO2007 energy price forecast. The table also shows the magnitude of the energy savings if the savings are discounted at rates of 7 percent and 3 percent. Each TSL considered in this rulemaking would result in significant energy savings, and the amount of savings increases with higher energy conservation standards. (See TSD, Chapter 11.)

TABLE V.22.—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR PTACS AND PTHPS (ENERGY SAVINGS FOR UNITS SOLD FROM 2012 TO 2042)

Trial standard level	Primary national energy savings (quads) (sum of all equipment classes)		
	Undiscounted	3% Discounted	7% Discounted
1	0.008	0.005	0.002
2	0.014	0.008	0.004
3	0.017	0.009	0.004
4	0.019	0.010	0.005
5	0.027	0.014	0.007
6	0.038	0.021	0.010
7	0.086	0.046	0.023

DOE reports both undiscounted and discounted values of energy savings. There is evidence that each TSL that is more stringent than the corresponding level in ASHRAE/IESNA Standard 90.1–1999 results in additional energy savings, ranging from 0.008 quads to 0.086 quads for TSLs 1 through 7. For example, the estimated energy savings for TSL 4 is equivalent to the electricity used annually by approximately 4,000 motels.[35]

b. Net Present Value

The NPV analysis is a measure of the cumulative benefit or cost of standards to the Nation. Tables V.23 and V.24 provide an overview of the NPV results.

TABLE V.23.—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR PTACS

Trial standard level	NPV* (billion 2006$)	
	7% discount rate	3% discount rate
1	$0.000	$0.005
2	0.000	0.005
3	(0.001)	0.007
4	0.000	0.005
5	(0.006)	0.005
6	(0.014)	(0.000)
7	(0.066)	(0.071)

*Numbers in parentheses indicate negative NPV, i.e., a net cost.

TABLE V.24.—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR PTHPS

Trial standard level	NPV* (billion 2006$)	
	7% discount rate	3% discount rate
1	$0.006	$0.021
2	0.014	0.043
3	0.014	0.043
4	0.016	0.056
5	0.016	0.056
6	0.010	0.052

TABLE V.24.—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR PTHPS—Continued

Trial standard level	NPV* (billion 2006$)	
	7% discount rate	3% discount rate
7	(0.001)	0.074

*Numbers in parentheses indicate negative NPV, i.e., a net cost.

Use of a 3 percent discount rate increases the present value of future equipment-purchase costs and operating cost savings. Because annual operating cost savings in later years grow at a faster rate than annual equipment purchase costs, use of a 3 percent discount rate increases the NPV at most TSLs. (See TSD, Chapter 11.)

c. Impacts on Employment

DOE develops estimates of the indirect employment impacts of proposed standards in the economy in general. As discussed above, DOE expects energy conservation standards for PTACs and PTHPs to reduce energy bills for commercial customers, and the resulting net savings to be redirected to other forms of economic activity. DOE

[35] Energy Information Agency. *http://www.eia.doe.gov/emeu/cbecs/cbecs2003/detailed_tables_2003/2003set1/2003pdf/b1.pdf.* June 2006.

also realizes that these shifts in spending and economic activity could affect the demand for labor. To estimate these effects, DOE used an input/output model of the U.S. economy using BLS data (as described in section IV.J). (See TSD, Chapter 15.)

This input/output model suggests the proposed PTAC and PTHP energy conservation standards are likely to increase the net demand for labor in the economy. Neither the BLS data nor the input/output model used by DOE includes the quality or wage level of the jobs. As shown in Table V.25, DOE estimates that net indirect employment impacts from a proposed PTAC and PTHP standards are likely to be very small. The net increase in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment.

TABLE V.25.—NET NATIONAL CHANGE IN INDIRECT EMPLOYMENT, JOBS IN 2042

Trial standard level	Net national change in jobs (number of jobs)	
	PTACs	PTHPs
1	11	20
2	11	40
3	24	40
4	11	62
5	44	62
6	69	82
7	147	195

4. Impact on Utility or Performance of Equipment

In performing the engineering analysis, DOE considered design options that would not lessen the utility or performance of the individual classes of equipment. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(IV)) As presented in section III.D.4, of this notice, DOE concluded that none of the efficiency levels proposed for standard size and non-standard size equipment in this notice will reduce the utility or performance of PTACs and PTHPs except the small fraction of the market that is potentially misclassified under ASHRAE/IESNA Standard 90.1–1999. PTAC and PTHP manufacturers currently offer equipment that meet or exceed the proposed standard levels. As detailed in section IV.A.2 above, DOE recognizes ARI's concerns regarding non-standard size equipment and the possible misclassification under the definitions established by ASHRAE/IESNA Standard 90.1–1999. If ASHRAE is able to adopt Addendum t to ASHRAE/IESNA Standard 90.1–2007 prior to September 2008, DOE proposes to incorporate the modified definition in the final rule to help alleviate manufacturers concerns about reduced product availability.

5. Impact of Any Lessening of Competition

EPCA directs DOE to consider any lessening of competition that is likely to result from standards. It directs the Attorney General to determine in writing the impact, if any, of any lessening of competition likely to result from a proposed standard. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(V)) To assist the Attorney General in making such a determination, DOE has provided the Department of Justice (DOJ) with copies of this notice and the TSD for review. DOE found that numerous foreign manufacturers have entered the standard size PTAC and PTHP market over the past several years. DOE believes this will continue to happen in this market regardless of the proposed standard level chosen.

6. Need of the Nation To Conserve Energy

Increasing the energy efficiency of PTACs and PTHPs promotes the Nation's energy security by reducing overall demand for energy, and thus reducing the Nation's reliance on foreign sources of energy. Reduced demand also may improve the reliability of the Nation's electricity system, particularly during peak-load periods. As a measure of this reduced demand, DOE expects the proposed standards to eliminate the need for the construction of new power plants with approximately 81 megawatts (MW) electricity generation capacity in 2042.

Enhanced energy efficiency also produces environmental benefits. The expected energy savings from higher [PTAC and PTHP] standards will reduce the emissions of air pollutants and greenhouse gases associated with fossil fuel use as well as other energy-related environmental impacts. Table V.26 shows cumulative CO_2, NO_X, and Hg emissions reductions for all the [PTAC and PTHP] equipment classes over the forecast period. The cumulative CO_2, NO_X and Hg emission reductions range up to 6.13 Mt, 0.53 kt, and −0.04 t, respectively, for PTACs and 6.94 Mt, 0.40 kt, and −0.03 t, respectively, for PTHPs. In Chapter 16 of the TSD, DOE reports annual changes in CO_2, NO_X and Hg emissions attributable to each TSL. As discussed in section IV.L, DOE does not report SO_2 emissions reduction from power plants because such reduction from an energy conservation standard would not affect the overall level of SO_2 emissions in the United States due to the caps on power plant emissions of SO_2.

The impact of these NO_X emissions will be affected by the Clean Air Interstate Rule (CAIR) issued by the U.S. Environmental Protection Agency on March 10, 2005.[36] 70 FR 25162 (May 12, 2005). CAIR will permanently cap emissions of NO_X in 28 eastern States and the District of Columbia. As with SO_2 emissions, a cap on NO_X emissions means that equipment energy conservation standards are not likely to have a physical effect on NO_X emissions in States covered by the CAIR caps. Therefore, while the emissions cap may mean that physical emissions reductions in those States will not result from standards, standards could produce an environmental-related economic benefit in the form of lower prices for emissions allowance credits. However, as with SO_2 allowance prices, DOE does not plan to monetize this benefit for those States because the impact on the NO_X allowance price from any single energy conservation standard is likely to be small and highly uncertain. DOE seeks comment on how it might value NO_X emissions for the 22 States not covered under CAIR.

With regard to mercury emissions, DOE is able to report an estimate of the physical quantity changes in mercury emissions associated with an energy conservation standard. Based on the NEMS–BT modeling, Hg emissions generally decline out to 2020 or 2025. However, there is a slight Hg increase by 2030, depending on the TSL level and the equipment type. These changes in Hg emissions, as shown in Table V.26, are extremely small, i.e., none of the changes come close to approaching a 1 percent change in annual emissions. The NEMS–BT model accounts for a wide variety of factors. One possible reason for the Hg emissions increase could be due to emissions banking. The NEMS–BT model assumed that power plant operators would be permitted to bank emission allowances from years in which they release fewer emissions than the maximum permitted. Power plant operators may then release more emissions than permitted by their allowances in a later year.

The NEMS–BT model assumed that these emissions would be subject to EPA's Clean Air Mercury Rule[37] (CAMR), which would permanently cap emissions of mercury for new and existing coal-fired plants in all States by 2010. Similar to SO_2 and NO_X, DOE assumed that under such system, energy

[36] See *http://www.epa.gov/cleanairinterstaterule/*.
[37] 70 FR 28606 (May 18, 2005).

conservation standards would result in no physical effect on these emissions, but would be expected to result in an environmental-related economic benefit in the form of a lower price for emissions allowance credits. DOE's plan for addressing analysis does not include monetizing the benefits of reduced mercury emissions, because DOE considered that valuation of such impact from any single energy conservation standard would likely be small and highly uncertain.

On February 8, 2008, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued its decision in *State of New Jersey, et al.* v. *Environmental Protection Agency,*[38] in which the Court, among other actions, vacated the CAMR referenced above. Accordingly, DOE is considering whether changes are needed to its plan for addressing the issue of mercury emissions in light of the D.C. Circuit's decision. DOE invites public comment on addressing mercury emissions in this rulemaking.

TABLE V.26.—SUMMARY OF EMISSIONS REDUCTIONS FOR [PTAC AND PTHP] (CUMULATIVE REDUCTIONS FOR EQUIPMENT SOLD FROM 2012 TO 2042)

	Trial standard levels						
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
Emissions reductions for PTACs*							
CO_2 (Mt)	0.50	0.50	1.06	0.50	1.83	2.95	6.13
NO_X (kt)	0.04	0.04	0.09	0.04	0.16	0.26	0.53
Hg (t)	0.00	0.00	-0.01	0.00	-0.01	-0.02	-0.04
Emissions reductions for PTHPs*							
CO_2 (Mt)	0.73	1.49	1.49	2.19	2.19	3.00	6.94
NO_X (kt)	0.04	0.08	0.08	0.12	0.12	0.13	0.40
Hg (t)	0.00	-0.01	-0.01	-0.01	-0.01	-0.02	-0.03

* Negative values indicate emission increases.

DOE is considering taking into account a monetary benefit of CO_2 emission reductions associated with this rulemaking. During the preparation of its most recent review of the state of climate science, the Intergovernmental Panel on Climate Change (IPCC) identified various estimates of the present value of reducing carbon-dioxide emissions by one ton over the life that these emissions would remain in the atmosphere. The estimates reviewed by the IPCC spanned a range of values. In the absence of a consensus on any single estimate of the monetary value of CO_2 emissions, DOE used the estimates identified by the study cited in Summary for Policymakers prepared by Working Group II of the IPCC's Fourth Assessment Report to estimate the potential monetary value of the CO_2 reductions likely to result from the standards under consideration in this rulemaking.

To put the potential monetary benefits from reduced CO_2 emissions into a form that is likely to be most useful to decision makers and stakeholders, DOE used the same methods used to calculate the net present value of consumer costs savings: The estimated year-by-year reductions in CO_2 emissions were converted into monetary values ranging from the $0 and $14 per ton. These estimates were based on an assumption of no benefit to an average benefit value reported by the IPCC.[39] The resulting annual values were then discounted over the life of the affected appliances to the present using both 3 percent and 7 percent discount rates. The resulting estimates of the potential range of net present value benefits associated with the reduction of CO_2 emissions are reflected in Table V.27.

TABLE V.27.—PRELIMINARY ESTIMATES OF SAVINGS FROM CO_2 EMISSIONS REDUCTIONS UNDER CONSIDERED PTACS AND PTHP TRIAL STANDARD LEVELS

PTAC TSL	Estimated CO_2 (Mt) emission reductions	Value of estimated CO_2 emission reductions based on IPCC range (million $)
1	0.50	0 to 7.00
2	0.50	0 to 7.00
3	1.06	0 to 14.84
4	0.50	0 to 7.00
5	1.83	0 to 25.62
6	2.95	0 to 41.3
7	6.13	0 to 85.82

[38] No. 05–1097, 2008 WL 341338, at *1 (D.C. Cir. Feb. 8, 2008).

[39] According to the IPCC, the mean social cost of carbon (SCC) reported in studies published in peer-reviewed journals was U.S. $43 per ton of carbon. This translates into about $12 per ton of carbon dioxide. The literature review (Tol 2005) from which this mean was derived did not report the year in which these dollars are denominated. However, since the underlying studies spanned several years on either side of 2000, the estimate is often treated as year 2000 dollars. Updating that estimate to 2007 dollars yields a SCC of $14 per ton of carbon dioxide.

TABLE V.27.—PRELIMINARY ESTIMATES OF SAVINGS FROM CO_2 EMISSIONS REDUCTIONS UNDER CONSIDERED PTACS AND PTHP TRIAL STANDARD LEVELS—CONTINUED

PTHP TSL	Estimated CO_2 (Mt) emission reductions	Value of estimated CO_2 emission reductions based on IPCC range (million $)
1	0.73	0 to 10.22
2	1.49	0 to 26.64
3	1.49	0 to 26.64
4	2.19	0 to 30.66
5	2.19	0 to 30.66
6	3.00	0 to 42.00
7	6.94	0 to 97.16

DOE relied on the average of the IPCC reported estimate as an upper bound on the benefits resulting from reducing each metric ton of U.S. CO_2 emissions. It is important to note that the estimate of the upper bound value represents the value of worldwide impacts from potential climate impacts caused by CO_2 emissions, and are not confined to impacts likely to occur within the U.S. In contrast, most of the other estimates of costs and benefits of increasing the efficiency of PTACs and PTHPs in this proposal include only the economic values of impacts that would be experienced in the U.S. For example, in determining impacts on manufacturers, DOE generally does not consider impacts that occur solely outside of the U.S. Consequently, as DOE considers a monetary value for CO_2 emission reductions, the value might be restricted to a representation of those cost/benefits likely to be experienced in the United States. Currently, there are no estimated values for the U.S. benefits likely to result from CO_2 emission reductions. However, DOE expects that, if such values were developed, DOE would use those U.S. benefit values, and not world benefit values, in its analysis. DOE further expects that, if such values were developed, they would be lower than comparable global values. DOE invites public comment on the above discussion of CO_2.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that he/she deems to be relevant. (42 U.S.C. 6316 (a); 42 U.S.C. 6295(o)(2)(B)(i)(VI)) The Secretary has decided to consider the impacts of setting different amended energy conservation standards for PTACs and PTHPs (i.e., setting an amended standard level for a given PTAC cooling capacity, which would be significantly different from the amended standard level for a PTHP with the same cooling capacity). In addition, DOE also considered the uncertainties associated with the impending refrigerant phase-out in 2010, including equipment availability, compressor availability, and the available efficiencies of R–410A PTACs and PTHPs.

C. Proposed Standard

1. Overview

EPCA, at 42 U.S.C. 6313(a)(6)(A)(ii)(II), specifies that, for any commercial and industrial equipment addressed in section 342(a)(6)(A)(i) of EPCA, 42 U.S.C. 6313(a), DOE may prescribe an energy conservation standard more stringent than the level for such equipment in ASHRAE/IESNA Standard 90.1, as amended, only if ''clear and convincing evidence'' shows that a more stringent standard ''would result in significant additional conservation of energy and is technologically feasible and economically justified.'' (42 U.S.C. 6313(a)(6)(A)(ii)(II)).

In selecting the proposed energy conservation standards for PTACs and PTHPs for consideration in today's notice of proposed rulemaking, DOE started by examining the maximum technologically feasible levels, and determined whether those levels were economically justified. Upon finding the maximum technologically feasible levels not to be justified, DOE analyzed the next lower TSL to determine whether that level was economically justified. DOE repeated this procedure until it identified a TSL that was economically justified.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, Table V.28 presents a summary of quantitative analysis results for each TSL based on the assumptions and methodology discussed above. This table presents the results or, in some cases, a range of results, for each TSL, and will aid the reader in the discussion of costs and benefits of each TSL. The range of values reported in this table for industry impacts represents the results for the different markup scenarios that DOE used to estimate manufacturer impacts.

TABLE V.28.—SUMMARY OF RESULTS BASED UPON THE AEO2007 ENERGY PRICE FORECAST *

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
Primary energy saved (quads)	0.008	0.014	0.017	0.019	0.027	0.038	0.086
7% Discount rate	0.002	0.004	0.004	0.005	0.007	0.010	0.023
3% Discount rate	0.005	0.008	0.009	0.010	0.014	0.021	0.046
Generation capacity reduction (GW) **	0.042	0.062	0.081	0.081	0.141	0.209	0.461
NPV (2006$ billion):							
7% Discount rate	$0.007	$0.014	$0.013	$0.017	$0.010	($0.004)	($0.067)
3% Discount rate	$0.026	$0.049	$0.050	$0.061	$0.061	$0.052	$0.003
Industry impacts:							
Industry NPV (2006$ million)	(2)–(41)	(8)–(55)	(4)–(62)	(14)–(68)	(4)–(80)	(10)–(110)	(2)–(187)
Industry NPV (% Change)	(1)–(12)	(2)–(17)	(1)–(19)	(4)–(20)	(1)–(24)	(3)–(33)	(1)–(56)
Cumulative emissions impacts†:							
CO_2 (Mt)	1.24	1.99	2.55	2.69	4.02	5.95	13.07
NO_X (kt)	0.08	0.12	0.17	0.16	0.28	0.39	0.93

TABLE V.28.—SUMMARY OF RESULTS BASED UPON THE AEO2007 ENERGY PRICE FORECAST*—Continued

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
Hg (t)	0.00	−0.01	−0.02	−0.01	−0.02	−0.04	−0.07
Mean LCC savings* (2006$):							
Standard Size PTAC, 9,000 Btu/h	0	0	(0)	0	(2)	(4)	(13)
Standard Size PTHP, 9,000 Btu/h	13	23	23	32	32	30	40
Standard Size PTAC, 12,000 Btu/h	(1)	(1)	(3)	(1)	(6)	(11)	(36)
Standard Size PTHP, 12,000 Btu/h	14	26	26	22	22	18	8
Non-Standard Size PTAC	27	27	31	27	33	26	12
Non-Standard Size PTHP	61	66	66	81	81	74	53
Mean PBP (years):							
Standard Size PTAC, 9,000 Btu/h	11.6	11.6	12.5	11.6	13.2	14.0	16.0
Standard Size PTHP, 9,000 Btu/h	4.5	4.0	4.0	3.9	3.9	4.5	4.8
Standard Size PTAC, 12,000 Btu/h	13.0	13.0	13.9	13.0	14.8	15.9	19.8
Standard Size PTHP, 12,000 Btu/h	4.9	4.4	4.4	5.3	5.3	6.1	7.5
Non-Standard Size PTAC	4.2	4.2	4.9	4.2	5.7	7.8	9.6
Non-Standard Size PTHP	2.0	2.6	2.6	2.8	2.8	4.2	5.8
LCC Results:							
Standard Size PTAC, 9,000 Btu/h							
Net Cost (%)	11.7	11.7	23.5	11.7	35.4	47.5	64.8
No Impact (%)	80.8	80.8	62.8	80.8	45.5	29.1	13.5
Net Benefit (%)	7.5	7.5	13.8	7.5	19.1	23.4	21.6
Standard Size PTHP, 9,000 Btu/h							
Net Cost (%)	4.0	6.2	6.2	8.0	8.0	14.7	19.7
No Impact (%)	81.2	63.7	63.7	46.7	46.7	30.2	14.4
Net Benefit (%)	14.9	30.1	30.1	45.3	45.3	55.2	65.9
Standard Size PTAC, 12,000 Btu/h							
Net Cost (%)	12.9	12.9	25.7	12.9	40.8	54.3	74.7
No Impact (%)	80.1	80.1	61.6	80.1	44.1	27.6	12.1
Net Benefit (%)	7.0	7.0	12.7	7.0	15.1	18.1	13.2
Standard Size PTHP, 12,000 Btu/h							
Net Cost (%)	4.9	7.2	7.2	15.0	15.0	26.7	44.8
No Impact (%)	80.2	62.1	62.1	44.6	44.6	27.9	12.1
Net Benefit (%)	14.8	30.7	30.7	40.5	40.5	45.4	43.0
Non-Standard Size PTAC							
Net Cost (%)	3.4	3.4	8.8	3.4	16.3	32.9	48.1
No Impact (%)	80.2	80.2	61.6	80.2	43.8	26.9	12.5
Net Benefit (%)	16.4	16.4	29.6	16.4	39.9	40.2	39.4
Non-Standard Size PTHP							
Net Cost (%)	0.2	1.9	1.9	2.8	2.8	13.8	28.9
No Impact (%)	80.9	62.4	62.4	44.6	44.6	27.4	12.4
Net Benefit (%)	18.9	35.7	35.7	52.7	52.7	58.8	58.7

* Parentheses indicate negative (−) values. For LCCs, a negative value means an increase in LCC by the amount indicated.
** Change in installed generation capacity by the year 2042 based on AEO2007 Reference Case.
† CO_2 emissions impacts include physical reductions at power plants. NO_X emissions impacts include physical reductions at power plants as well as production of emissions allowance credits where NO_X emissions are subject to emissions caps. SO_2 emissions impacts include physical reductions at households only.

In addition to the quantitative results, DOE also considered other factors that might affect economic justification. DOE took into consideration the EPA mandated refrigerant phase-out and its effect on PTAC and PTHP equipment efficiency, which concern both standard size and non-standard size PTACs and PTHPs. In addition, DOE considered the uniqueness of the PTAC and PTHP industry, that is, manufacturers of non-standard size equipment. In particular, DOE considered the declining shipments of this equipment, the small size segment of the industry (both relative to the rest of the PTAC and PTHP industry and in absolute terms), and the differential impacts of potential amended energy conservation standards on non-standard size manufacturers when compared to standard size manufacturers.

2. Conclusion

First, DOE considered TSL 7, the max-tech level. TSL 7 would likely save 0.086 quads of energy through 2042, an amount DOE considers significant. Discounted at seven percent, the projected energy savings through 2042 would be 0.023 quads. For the Nation as a whole, DOE projects that TSL 7 would result in a net decrease of $67 million in NPV, using a discount rate of seven percent. The emissions reductions at TSL 7 are 13.07 Mt of CO2 and 0.93 kt of NO_X. Total generating capacity in 2042 is estimated to decrease compared to the reference case by 0.461 gigawatts (GW) under TSL 7.

At TSL 7, DOE projects that the average PTAC customer will experience an increase in LCC for all standard size equipment classes. Purchasers of PTACs are projected to lose on average $21 (2006$) over the life of the product and purchasers of PTHPs would save on average $26 (2006$). DOE estimates LCC increases for 70 percent of customers in the Nation that purchase a standard size PTAC, and for 34 percent of customers in the Nation that purchase a standard size PTHP. DOE also estimates LCC increases for 48 percent of customers in the Nation that purchase a non-standard size PTAC, and for 29 percent of customers in the Nation that purchase a non-standard size PTHP. The mean payback period of each standard size PTAC equipment classes at TSL 7 is projected to be substantially longer than the mean lifetime of the equipment.

The projected change in industry value (INPV) ranges from a decrease of $2 million to a decrease of $187 million. For PTACs and PTHPs, the impacts are

driven primarily by the assumptions regarding the ability to pass on larger increases in MPCs to the customer. Currently, there is only one product line being manufactured at TSL 7 efficiency levels, and it uses R–22 refrigerant, as discussed in section III.B.2 above. DOE believes that PTAC and PTHP manufacturers will eventually be able to design and produce R–410A equipment at TSL 7, based on manufacturers' response to the residential central air conditioners refrigerant phase-out and amended energy conservation standards. However, DOE has not initially been able to identify technologies and design approaches for R–410A units to meet these higher levels in the absence of a high efficiency compressor. At TSL 7, DOE recognizes the risk of very large negative impacts if manufacturers' expectations about reduced profit margins are realized. In particular, if the high end of the range of impacts is reached as DOE expects, TSL 7 could result in a net loss of 56 percent in INPV to the PTAC and PTHP industry.

After carefully considering the analysis and weighing the benefits and burdens of TSL 7, the Secretary has reached the following initial conclusion: At TSL 7, even if manufacturers overcome the barriers to produce R–410 equipment by the effective date of an amended energy conservation standard, the benefits of energy savings and emissions reductions would be outweighed by the potential multi-million dollar negative net economic cost to the Nation, the economic burden on consumers, and the large capital conversion costs that could result in a reduction in INPV for manufacturers.

Next, DOE considered TSL 6. Primary energy savings is estimated at 0.038 quads of energy through 2042, which DOE considers significant. Discounted at seven percent, the energy savings through 2042 would be 0.010 quads. For the Nation as a whole, DOE projects that TSL 6 would result in a net decrease of $4 million in NPV, using a discount rate of seven percent. The emissions reductions are projected to be 5.95 Mt of CO2 and 0.39 kt of NO_X. Total generating capacity in 2042 under TSL 6 is estimated to decrease by 0.209 GW.

At TSL 6, DOE found the impacts of amended energy conservation standards on customers of PTACs would likely differ significantly from their impacts on PTHP customers. While only 22 percent of customers of standard size PTHPs would likely have an LCC increase at TSL 6, a majority of customers of standard size PTACs (52 percent) would have LCC increase at this TSL. A customer for a standard size PTAC, on average, would experience an increase in LCC of $8, while the customer for a standard size PTHP, on average, would experience a decrease in LCC of $23. In addition, the customer for a non-standard size PTAC, on average, would experience a decrease in LCC of $26, while the customer for a non-standard size PTHP, on average, would experience a decrease in LCC of $74. At TSL 6, DOE projects that the average PTAC customer for a standard size PTAC will experience an increase in LCC in each equipment class. In addition, the mean payback period of each standard size PTAC equipment class at TSL 6 is projected to be substantially longer than the mean lifetime.

At TSL 6, the projected change in INPV ranges between a loss of $10 million and a loss of $110 million. For manufacturers of non-standard size equipment alone, DOE estimated a decrease in the collective value of the industry to range from 33 percent to 53 percent. The magnitude of projected impacts is still largely determined, however, by the manufacturers' ability to pass on larger increases in MPC to the customer. Thus, the potential INPV decrease of $110 million assumes DOE's projections of partial cost recovery as described in Chapter 13 of the TSD. In addition, at TSL 6 the impending refrigerant phase-out could have a significant impact on manufacturers. Currently, both standard size and non-standard size PTACs and PTHPs using R–22 refrigerant are available on the market at TSL 6 efficiency levels. But, if the performance degradations that DOE estimated in the engineering analysis for R–410A equipment prove to be valid, manufacturers might be unable to produce R–410A equipment at these levels unless high efficiency R–410A compressors become available. The absence of such compressors would likely mean that the negative financial impacts of TSL 6 would be greater than characterized by DOE's MIA analysis. Even though the ability of manufacturers to produce equipment utilizing R–410A is greater at TSL 6 than at TSL 7, DOE anticipates that it would still be difficult for manufacturers to produce standard size and non-standard size PTACs and PTHPs at TSL 6 in the full range of capacities available today due to the physical size constraints imposed by the wall sleeve dimensions.

While DOE recognizes the increased economic benefits to the nation that could result from TSL 6, DOE concludes that the benefits of a Federal standard at TSL 6 would still be outweighed by the economic burden that would be placed upon PTAC customers. In addition, DOE believes at TSL 6, the benefits of energy savings and emissions impacts would be outweighed by the large impacts on manufacturers' INPV. Finally, DOE is concerned that manufacturers may be unable to offer the full capacity range of equipment utilizing R–410A by the effective date of the amended energy conservation standards.

Next, DOE considered TSL 5. DOE projects that TSL 5 would save 0.027 quads of energy through 2042, an amount DOE considers significant. Discounted at seven percent, the projected energy savings through 2042 would be 0.007 quads. For the Nation as a whole, DOE projects TSL 5 to result in net savings in NPV of $10 million, using a discount rate of seven percent, and $61 million, using a discount rate of three percent. The estimated emissions reductions are 4.02 Mt of CO_2 and 0.28 kt of NO_X. Total generating capacity in 2042 under TSL 5 would likely decrease by 0.141 GW.

At TSL 5, DOE projects that the average customer for standard size PTAC will experience an increase in LCC in each equipment classes. Purchasers of PTACs are projected to lose on average $5 (2006$) over the life of the product and purchasers of PTHPs would save on average $26 (2006$). DOE estimates LCC savings for 39 percent of customers of standard size PTACs, and for 12 percent of customers of standard size PTHPs. LCC increases are estimated for 16 percent of customers of non-standard size PTACs, and for 3 percent of customers of non-standard size PTHPs. The mean payback period for each standard size PTAC equipment class at TSL 6 is projected to be substantially longer than the mean lifetime of the equipment.

The projected change in INPV ranges between a loss of $4 million and a loss of $80 million. For manufacturers of non-standard size equipment alone, DOE projects their collective industry value would decrease by 25 percent to 38 percent. Just as with TSL 6 and 7, the projected impacts continue to be driven primarily by the manufacturers' ability to pass on increases in MPCs to the customer. The loss of $80 million assumes DOE's projections of partial cost recovery as described in Chapter 13 of the TSD. TSL 5 requires the production of standard size and non-standard size PTACs and PTHPs using R–410A that would have efficiencies equivalent to the ''max tech'' efficiency levels with R–410A applying the degradations estimated in the engineering analysis in the absence of a high efficiency compressor.

After carefully considering the analysis and weighing the benefits and burdens, the Secretary has concluded that, at TSL 5, the benefits of energy savings and emissions reductions would be outweighed by the potential multi-million dollar net economic cost to the Nation, the economic burden on PTAC consumers as compared with PTHP customers, and the large capital conversion costs that could result in a reduction in INPV for manufacturers.

Next, DOE considered TSL 4. For TSL 4, DOE combined TSL 1 for PTACs and TSL 5 for PTHPs. This combination of efficiency levels serves to maximize LCC savings, while recognizing the differences in LCC results for PTACs and PTHPs. DOE projects that TSL 4 would save 0.019 quads of energy through 2042, an amount DOE considers significant. Discounted at seven percent, the projected energy savings through 2042 would be 0.005 quads. For the Nation as a whole, DOE projects that TSL 4 would result in net savings in NPV of $17 million, using a discount rate of seven percent, and $61 million, using a discount rate of three percent. The estimated emissions reductions are 2.69 Mt of CO_2 and 0.16 kt of NO_X. Total generating capacity in 2042 under TSL 4 would likely increase by 0.081 GW.

At TSL 4, DOE projects that the average PTAC or PTHP customer would experience LCC savings. Purchasers of standard size PTACs, on average, have LCC increase of $1 (2006$) over the life of the product and purchasers of PTHPs would save on average $26 (2006$). DOE estimates LCC savings for 12 percent of customers in the Nation that purchase a standard size PTAC, and for 12 percent of customers in the Nation that purchase a standard size PTHP. DOE estimates LCC increases for 3 percent of customers in the Nation that purchase a non-standard size PTAC, and for 3 percent of customers in the Nation that purchase a non-standard size PTHP. For both standard size and non-standard size PTACs and PTHPs, the remainder of customers would experience either a decrease or no change in LCC. DOE also projects that the mean payback period of each standard size PTAC equipment class at TSL 4 would be substantially longer than the mean lifetime of the equipment.

The projected change in INPV ranges between a loss of $14 million and a loss of $68 million. For manufacturers of non-standard size equipment alone, DOE projects their collective industry value would decrease by 34 percent to 44 percent. Just as with TSL 5, 6, and 7, the projected impacts continue to be driven primarily by the manufacturers' ability to pass on increases in MPCs to the customer. The loss of $68 million assumes DOE's projections of partial cost recovery as described in Chapter 13 of the TSD. TSL 4 requires the production of standard size and non-standard size PTACs at TSL 1 efficiency levels and PTHPs at TSL 5 efficiency levels. Thus, TSL 4 requires the production of standard size and non-standard size PTHPs using R–410A that would have efficiencies equivalent to the ''max tech'' efficiency levels with R–410A applying the degradations estimated in the engineering analysis in the absence of a high efficiency compressor.

After considering the analysis and weighing the benefits and the burdens, DOE tentatively concludes that the benefits of a TSL 4 standard outweigh the burdens. In particular, the Secretary concludes that TSL 4 saves a significant amount of energy and is technologically feasible and economically justified. Therefore, DOE today proposes to adopt the energy conservation standards for PTACs and PTHPs at TSL 4. Table V.29 demonstrates the proposed energy conservation standards for all equipment classes of PTACs and PTHPs, including all cooling capacities.

TABLE V.29.—PROPOSED ENERGY CONSERVATION STANDARDS FOR PTACS AND PTHPS

Equipment class			Proposed energy conservation standards*
Equipment	Category	Cooling capacity	
PTAC	Standard Size**	< 7,000 Btu/h	EER = 11.4
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 13.0 − (0.233 × Cap††)
		>15,000 Btu/h	EER = 9.5
	Non-Standard Size†	<7,000 Btu/h	EER = 10.2
		≥ 7,000 Btu/h and ≤ 15,000 Btu/h	EER = 11.7 − (0.213 × Cap††)
		> 15,000 Btu/h	EER = 8.5
PTHP	Standard Size**	< 7,000 Btu/h	EER = 11.8, COP = 3.3
		≥ 7,000 Btu/h and ≤ 15,000 Btu/h	EER = 13.4 − (0.233 × Cap††) COP = 3.7 − (0.053 × Cap††)
		> 15,000 Btu/h	EER = 9.9, COP = 2.9
	Non-Standard Size†	< 7,000 Btu/h	EER = 10.8, COP = 3.0
		≥ 7,000 Btu/h and ≤ 15,000 Btu/h	EER = 12.3 − (0.213 × Cap††) COP = 3.1 − (0.026 × Cap††)
		> 15,000 Btu/h	EER = 9.1, COP = 2.8

* For equipment rated according to the DOE test procedure (ARI Standard 310/380–2004), all energy efficiency ratio (EER) values must be rated at 95° F outdoor dry-bulb temperature for air-cooled equipment and evaporatively-cooled equipment and at 85° F entering water temperature for water cooled equipment. All coefficient of performance (COP) values must be rated at 47° F outdoor dry-bulb temperature for air-cooled equipment, and at 70° F entering water temperature for water-source heat pumps.

** Standard size refers to PTAC or PTHP equipment with wall sleeve dimensions greater than or equal to 16 inches high, or greater than or equal to 42 inches wide.

† Non-standard size refers to PTAC or PTHP equipment with wall sleeve dimensions less than 16 inches high and less than 42 inches wide.

†† Cap means cooling capacity in thousand British thermal units per hour (Btu/h) at 95° F outdoor dry-bulb temperature.

As noted, TSL 4 would require PTHPs to meet the same efficiency levels as specified in TSL 5. DOE believes that these efficiency levels are equivalent to the expected ''max tech'' efficiency levels for equipment utilizing R–410A applying the degradations estimated in the engineering analysis. Therefore, DOE strongly encourages stakeholders to scrutinize closely the analyses and other information presented with this notice, and to comment on the viability of this standard level. In addition, since TSL 4 requires different efficiency levels for PTACs and PTHPs, DOE solicits comment on potential equipment switching as discussed in section IV.G.3 of today's notice. In particular, DOE is interested in receiving comment on whether: (1) Evidence shows that equipment switching is likely and

would likely negate the energy savings from setting a standard at different efficiency levels for PTHPs and PTACs; and (2) such evidence warrants DOE adoption of some other TSL level or the ASHRAE/IESNA Standard 90.1–1999 efficiency levels rather than TSL 4 for the final rule.

Aside from the considerations discussed above, DOE is also concerned about the unique nature of the non-standard size segment of the PTAC and PTHP industry. At TSL 4, non-standard size manufacturers are expected to lose from $9 million to $12 million in INPV, which is a reduction in 34 percent to 44 percent. Many manufacturers stated they would be unwilling to redesign completely non-standard size equipment because of the small size of the market and the declining sales. In supporting this assertion, manufacturers also pointed out that non-standard size PTACs and PTHPs are manufactured to order based on unique building designs for replacement applications. In addition, manufacturers expressed great concern that negative impacts would be amplified if DOE were to adopt the ASHRAE/IESNA Standard 90.1–1999 equipment class delineations, and their equipment lines were reduced. Several manufacturers believe the ASHRAE/IESNA Standard 90.1–1999 delineations would cause up to 50 percent of their equipment lines to be misclassified, and be subject to standard levels they could not meet with resulting decline in equipment offerings. If these concerns were realized, the negative INPV and cash flow impacts on the declining industry would be even greater than estimated by the MIA. DOE is particularly interested in receiving comments on the differential impacts on non-standard size manufacturers and on whether DOE should adopt lower minimum efficiency levels (e.g., TSL 1, TSL 2, or TSL 3) for non-standard size PTAC and PTHP equipment in the final rule.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Today's regulatory action has been determined to be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB).

The Executive Order requires that each agency identify in writing the specific market failure or other specific problem that it intends to address that warrant new agency action, as well as assess the significance of that problem, to enable assessment of whether any new regulation is warranted. Executive Order 12866, § 1(b)(1).

DOE's preliminary analysis suggests that much of the hospitality industry segment using PTAC and PTHP equipment tends to be small hotels or motels. DOE believes that these small hotels and motels tend to be individually owned and operated, and lack corporate direction in terms of energy policy. The transaction costs for these smaller owners or operators to research, purchase, and install optimum efficiency equipment are too high to make such action commonplace. DOE believes that there is a lack of information and/or information processing capability about energy efficiency opportunities in the PTAC and PTHP market available to hotel or motel owners. Unlike residential heating and air conditioning products, PTACs and PTHPs are not included in energy labeling programs such as the Federal Trade Commission's energy labeling program. Furthermore, the energy use of PTACs and PTHPs is dependent on climate and the equipment usage and, as such, is not readily available for the owners or operators to make a decision on whether improving the energy efficiency of PTAC and PTHP equipment is cost-effective. DOE seeks data on the efficiency levels of existing PTAC and PTHP equipment in use by building type (e.g., hotel, motel, small office building, nursing home facility, etc.), electricity price (and/or geographic region of the country) and installation type (i.e., new construction or replacement).

DOE recognizes that PTACs and PTHPs are not purchased in the same manner as regulated appliances that are sold in retail stores, e.g., room air conditioners. When purchased by the end user, PTACs and PTHPs are more likely purchased through contractors and builders that perform the installation. The Air-Conditioning and Refrigeration Institute (ARI) Directory of Certified Product Performance includes PTACs and PTHPs and provides the energy efficiency and capacity information on PTACs and PTHPs produced by participating manufacturers. DOE seeks comment on the experience with this directory and the extent to which the information it provides leads to more informed choices, specifically given how such equipment are purchased.

To the extent, there is potentially a substantial information problem, one could expect the energy efficiency for PTACs and PTHPs to be more or less randomly distributed across key variables such as energy prices and usage levels. However, since data are not available on how such equipment is purchased, DOE seeks detailed data on the distribution of energy efficiency levels for both new construction and replacement markets. DOE plans to use these data to test the extent to which purchasers of this equipment behave as if they are unaware of the costs associated with their energy consumption. In the case of the PTHP equipment with multiple heating systems (reverse cycle and electric resistance), estimating the energy consumption from component level changes is even more complex. DOE found energy efficiency and energy cost savings are not the primary drivers of the hotel and motel business. Instead, hotel and motel operators work on a fixed budget and are primarily concerned with providing clean and comfortable rooms to the customers to ensure customer satisfaction. If consumer satisfaction decreases, hotel or motel owners may incur increased transaction costs, thus preventing access to capital to finance energy efficiency investment.

A related issue is the problem of asymmetric information (one party to a transaction has more and better information than the other) and/or high transactions costs (costs of gathering information and effecting exchanges of goods and services) among the PTAC and PTHP equipment customers. In the case of PTACs and PTHPs, in many cases, the party responsible for the equipment purchase may not be the one who pays the cost to operate it. For example, PTAC and PTHP equipment are also used in nursing homes and medical office buildings where the builder or complex owner often makes decisions about PTACs and PTHPs without input from tenants nor do they offer options to tenants to upgrade them. Furthermore, DOE believes the tenant typically pays the utility bills. If there were no transactions costs, it would be in the builder or complex owners' interest to install equipment the tenants would choose on their own. For example, a tenant who knowingly faces higher utility bills from low-efficiency equipment would expect to pay less in rent, thereby shifting the higher utility cost back to the complex owner. However, this information is not costless, and it may not be in the interest of the tenant to take the time to develop it, or, in the case of the complex owner who installs less efficient

equipment, to convey that information to the tenant.

To the extent that asymmetric information and/or high transaction costs are problems, one would expect to find certain outcomes with respect to PTAC and PTHP efficiency. For example, other things being equal, one would not expect to see higher rents for office complexes with high efficiency equipment. Alternatively, one would expect higher energy efficiency in rental units where the rent includes utilities compared to those where the tenant pays the utility bills separately. DOE seeks data that might enable it to conduct tests of market failure.

In addition, this rulemaking is likely to yield certain ''external'' benefits resulting from improved energy efficiency of PTACs and PTHPs that are not captured by the users of such equipment. These include both environmental and energy security related externalities that are not reflected in energy prices, such as reduced emissions of greenhouse gases. With regard to environmental externalities, the emissions reductions in today's proposed rule are projected to be 2.7 Mt of CO_2 and 0.16 kt of NO_X.

DOE invites comments on the weight that should be placed on these factors in DOE's determination of the maximum energy efficiency level at which the total benefits are likely to exceed the total burdens resulting from an amended DOE standard.

DOE conducted a regulatory impact analysis (RIA) and, under the Executive Order, was subject to review by the Office of Information and Regulatory Affairs (OIRA) in the OMB. DOE presented to OIRA for review the draft proposed rule and other documents prepared for this rulemaking, including the RIA, and has included these documents in the rulemaking record. They are available for public review in the Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The RIA is contained in the TSD prepared as a separate report for the rulemaking. The RIA consists of: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the national economic impacts of the proposed standard.

The RIA calculates the effects of feasible policy alternatives to PTAC and PTHP amended energy conservation standards, and provides a quantitative comparison of the impacts of the alternatives. DOE evaluated each alternative in terms of its ability to achieve significant energy savings at reasonable costs, and compared it to the effectiveness of the proposed rule. DOE analyzed these alternatives using a series of regulatory scenarios as input to the NES Shipments Model for PTACs and PTHPs, which it modified to allow inputs for these measures.

DOE identified the following major policy alternatives for achieving increased PTAC and PTHP energy efficiency:

- No new regulatory action;
- Commercial customer rebates;
- Commercial customer tax credits;
- Voluntary energy-efficiency targets—ENERGY STAR;

TABLE VI.1.—NON-REGULATORY ALTERNATIVES TO STANDARDS

Policy alternatives	Energy savings* (quads)	Net present value** (billion 2006$)	
		7% Discount rate	3% Discount rate
No New Regulatory Action	0.000	0.000	0.000
Commercial Customer Rebates	0.006	0.003	0.017
Commercial Customer Tax Credits	0.010	0.007	0.032
Voluntary Energy-Efficiency Targets—ENERGY STAR	0.017	0.013	0.057
Today's Standards at TSL 4	0.019	0.016	0.061

* Energy savings are in source quads.
** Net present value is the value in the present of a time series of costs and savings. DOE determined the net present value from 2012 to 2062 in billions of 2006$.

The net present value amounts shown in Table VI.1 refer to the NPV for commercial customers. The costs to the government of each policy (such as rebates or tax credits) are not included in the costs for the NPV since, on balance, customers are both paying for (through taxes) and receiving the benefits of the payments. The following paragraphs discuss each of the policy alternatives listed in Table VI.1. (See TSD, Regulatory Impact Analysis.)

No new regulatory action. The case in which no regulatory action is taken with regard to PTACs and PTHPs constitutes the ''base case'' (or ''No Action'') scenario. In this case, between the years 2012 and 2042, PTACs and PTHPs are expected to use 2.63 quads of primary energy. By definition, no new regulatory action yields zero (0) energy savings and a net present value of zero dollars.

Financial Incentives Policies. DOE considered several scenarios in which the Federal government would provide some form of financial incentive. It studied two types of incentives: tax credits and rebates. Tax credits could be granted to customers who purchase high efficiency PTAC and PTHP equipment. Alternatively, the government could issue tax credits to manufacturers or customers to offset costs associated with producing or purchasing high-efficiency equipment. For this analysis, only a customer tax credit, patterned after provision in the EPACT of 2005, was considered. The second incentive program involved a rebate program that was nominally patterned after existing rebate programs currently offered by several utilities.

Commercial Customer Rebates. DOE modeled the impact of the customer rebate policy by determining the increased customer participation rate due to the rebates (i.e., the percent increase in customers purchasing high-efficiency equipment). It then applied the resulting increase in market share of efficient units to the NES spreadsheet model to estimate the resulting NES and NPV with respect to the base case.

After reviewing several utility rebate programs currently in place (see Chapter 3 of the TSD), DOE decided to pattern a potential national rebate program after

a program now undertaken by Xcel Energy. Xcel Energy is a large utility that provides service to eight Western and Midwestern states. A small public utility in Minnesota, Shakopee Public Utilities, offers a similar rebate program.

Under these programs, commercial and industrial businesses buying PTACs can receive a base payment of $7.50 per ton for units rated at 9.20 EER and $1.25 per ton for every incremental increase of 0.1 EER above base requirements. When compared against the incremental retail costs of higher efficiency PTACs shown in Chapter 8 of the TSD, the rebates generally range between 17 and 23 percent of the incremental cost beyond TSL 1. Because the baseline (ASHRAE/IESNA Standard 90.1–1999) efficiency standards are above 9.2 EER for all equipment, it is more difficult to assess an appropriate level of the rebate for equipment just above the baseline (specifically, at TSL 1) used in this NOPR. For purposes of this analysis, it was assumed that the same incremental fraction of the cost between the baseline unit and TSL 1 would be rebated as for higher incremental efficiency levels. A base payment for any unit exceeding a minimum efficiency was also assumed to be paid to commercial or industrial customers applying for the rebate. The specific provisions of the rebate assumed for PTAC equipment were:

(a) $10.00 per ton for units rated above the ASHRAE/IESNA Standard 90.1–1999 efficiency levels.

(b) A rebate paying 25 percent of the incremental price difference between the baseline efficiency level and the particular TSL.

For PTHP equipment, the rebate programs offered by Xcel Energy and Shakopee Public Utilities double the payment for incremental efficiency above the baseline (from $1.25 to $2.50 per ton per 0.1 increments in the EER). Following that pattern, the provisions assumed for the PTHP equipment were:

(a) $10.00 per ton for units rated above the ASHRAE/IESNA Standard 90.1–1999 efficiency levels.

(b) A rebate paying 50 percent of the incremental price difference between the baseline efficiency level and the particular TSL.

As an example comparison, the rebate application form for Xcel Energy shows the calculation for 9,000 Btu/h PTAC with an EER of 11.0. This unit would receive a rebate of $39.37 under Xcel Energy's program. Under the provisions of the National rebate program constructed for this analysis, a 9,000 Btu/h PTHP unit at TSL 2 (EER = 11.1) would receive a rebate of $38.97.

Using the method described in Chapter 10 of the TSD to estimate market shares, a new distribution of sales by efficiency level (corresponding to the various TSLs) was computed. The rebates elicit greater purchases of higher efficiency equipment that lower the overall average annual energy consumption per unit. The changes in shipment-weighted annual energy consumption are shown in Table VI.2.

TABLE VI.2.—SHIPMENT-WEIGHTED AVERAGE ANNUAL ENERGY CONSUMPTION PER UNIT FOR CUSTOMER REBATE PROGRAM

Equipment classes	Representative cooling capacity (Btu/h)	ASHRAE/IESNA standard 90.1–1999 (base case) kWh/yr	Customer rebate	Percent change
Standard Size PTAC	9,000	1,012	1,007	−0.46
	12,000	1,277	1,271	−0.49
Standard Size PTHP	9,000	1,984	1,974	−0.49
	12,000	2,379	2,366	−0.54
Non-Standard Size PTAC	11,000	1,556	1,549	−0.42
Non-Standard Size PTHP	11,000	2,505	2,499	−0.23

The rebate program lowers the retail cost to the customer, but must be financed by tax revenues. From a societal point of view, the installed cost at any efficiency level does not change with the rebate policy; it simply transfers part of the cost from the customer to tax payers as a whole. Thus, for calculation of total cost of equipment, the revised estimates of sales by efficiency level are multiplied by the pre-rebate costs (i.e., identical to those in the base case).

Commercial Customer Tax Credits. DOE assumed a (commercial or industrial) customer tax credit that is patterned after the tax credits that were created in EPACT 2005. EPACT 2005 provided tax credits to customers who purchase and install specific products such as energy efficient windows, insulation, doors, roofs, and heating and cooling equipment. For many of these products, the tax credit is equal to the 10 percent of the retail cost, limited to specific dollar levels. For example, to receive the tax credit for energy efficient windows, the windows need to meet the requirements of the 2000 IECC and updated versions of the IECC published since 2000.

The 10 percent customer tax credits were assumed to apply to all PTAC equipment above the baseline efficiency (ASHRAE/IESNA Standard 90.1–1999). The credits were assumed to apply only to the retail cost of the equipment and not to any additional costs related to installation.

The 10 percent cost tax credit leads to increased shares of sales of equipment with efficiencies above the baseline. In Chapter 11, a market allocation algorithm is used to estimate market shares of current sales of PTAC and PTHP equipment. This same algorithm was used to estimate the impact of the tax credit upon the shares of equipment by efficiency (as before, the discrete efficiency levels correspond to the TSLs).

As for the rebate policy, the method described in Chapter 11 of the TSD was used to estimate the change in market shares that may result from a 10 percent tax credit. A new distribution of sales by efficiency level (corresponding to the various TSLs) was computed. The tax credits elicit greater purchases of higher efficiency equipment that lower the overall average annual energy consumption per unit. The changes in shipment-weighted annual energy consumption are shown in Table VI.3.

TABLE VI.3.—SHIPMENT-WEIGHTED AVERAGE ANNUAL ENERGY CONSUMPTION PER UNIT FOR CUSTOMER TAX CREDIT PROGRAM

Equipment classes	Representative cooling capacity (Btu/h)	ASHRAE/IESNA standard 90.1–1999 (base case) kWh/yr	Customer tax credit (10%)	Percent change
Standard Size PTAC	9,000	1,012	1,005	−0.68
	12,000	1,277	1,269	−0.65
Standard Size PTHP	9,000	1,984	1,971	−0.64
	12,000	2,379	2,364	−0.63
Non-Standard Size PTAC	11,000	1,556	1,544	−0.78
Non-Standard Size PTHP	11,000	2,505	2,487	−0.73

DOE assumed that a policy for national voluntary energy efficiency targets would be administered through the Federal government's ENERGY STAR voluntary program conducted by the Environmental Protection Agency (EPA) and DOE. EPA and DOE qualify energy efficient products as those that exceed Federal minimum standards by a specified amount, or if no Federal standard exists, exhibit selected energy saving features. Generally, the ENERGY STAR program works to recognize the top quartile of the products on the market, meaning that approximately 25 percent of products on the market meet or exceed the ENERGY STAR levels.

Although an ENERGY STAR program for PTACs and PTHPs does not exist, DOE is in the process of developing such a program. The program is designed to encourage manufacturers to manufacture and promote compliant (labeled) equipment and for customers to purchase labeled equipment. As yet, no specific criteria have been established as to the specific efficiency levels that would qualify PTAC or PTHP equipment to receive an ENERGY STAR label. Most types of appliances and equipment in the ENERGY STAR program must be 10 percent or more efficient than the prevailing National efficiency standard. For the purpose of modeling PTACs and PTHPs, DOE has assumed that TSL 3 is a reasonable estimate of where an ENERGY STAR qualifying efficiency level may be established.

The promotional activities of the ENERGY STAR program are directed toward increasing the sales of qualifying equipment over time. For purposes of this analysis, DOE assumed that the market shares of ENERGY STAR equipment would increase by a minimum of 20 percent as compared to the base case. The revised market shares of sales by efficiency translate into percentage increases (above the base case) in the average EER for future shipments.

Because this is a voluntary program, without specific financial incentives, some method must be developed to generate the market distribution of equipment with various efficiencies that would result from an ENERGY STAR program. As for the financial incentive programs, the market shares algorithm described in Chapter 11 of the TSD was employed. For each equipment class, the overall increase in the sales-weighted efficiency achieved in this manner is shown in Table VI.4.

TABLE VI.4.—SHIPMENT-WEIGHTED AVERAGE ANNUAL ENERGY CONSUMPTION PER UNIT FOR A FUTURE ENERGY STAR PROGRAM

Equipment	Representative cooling capacity	ASHRAE/IESNA standard 90.1–1999 (base case) kWh/yr	ENERGY STAR level	Percent change
Standard Size PTAC	9,000 Btu/h	1,012	1,006	−0.64%
	12,000 Btu/h	1,277	1,271	−0.50%
Standard Size PTHP	9,000 Btu/h	1,984	1,958	−1.32%
	12,000 Btu/h	2,379	2,353	−1.09%
Non-Standard Size PTAC	11,000 Btu/h	1,556	1,532	−1.52%
Non-Standard Size PTHP	11,000 Btu/h	2,505	2,463	−1.68%

Early Replacement Incentives. Early replacement refers to the replacement of PTAC/PTHP equipment before the end of their useful lives. The purpose of this policy is to retrofit or replace old, inefficient equipment with high efficiency units. DOE studied the feasibility of a Federal program to promote early replacement of appliances and equipment under EPACT 1992. In this study, DOE identified Federal policy options for early replacement that include a direct national program, replacement of Federally-owned equipment, promotion through equipment manufacturers, customer incentives, incentives to utilities, market behavior research, and building regulations.

While cost effective opportunities to install units that are more efficient exist on a limited basis, DOE determined that a Federal early replacement program is not economically justified because the market for PTAC and PTHP equipment is relatively small and narrow. Moreover, the savings are not likely to be significantly higher than those achieved by a voluntary program such as ENERGY STAR program. A temporary surge in PTAC and PTHP sales in the early 2000s further reduces the potential for an effective early replacement program.

Bulk Government Purchases. In this policy alternative, bulk government purchases refers to Federal, State, and local governments being encouraged to purchase equipment meeting the energy conservation standards. The motivations for this policy are that (1) aggregating public sector demand could provide a market signal to manufacturers and vendors that some of their largest customers seek suppliers with

equipment that meet an efficiency target at good prices, and (2) this could induce ''market pull'' impacts through the effects of manufacturers and vendors achieving economies of scale for high efficiency equipment. As with the early retirement policy, bulk government purchases may provide cost effective opportunities to install more efficient equipment on a limited basis, however it was concluded that a widespread bulk purchase program was not economically justified. This is because the segment/share of the market that would be affected by a bulk government purchase program is a small portion of an already relatively small market, as most of the shipments/sales are to non-governmental customers.

Energy Conservation Standards (TSL 4). DOE proposes to adopt the energy conservation levels listed in section V.C. As indicated in the paragraphs above, none of the alternatives DOE examined would save as much energy as the proposed standards. In addition, several of the alternatives would require new enabling legislation, such as customer tax credits, since authority to carry out those alternatives does not presently exist.

B. Review Under the Regulatory Flexibility Act/Initial Regulatory Flexibility Analysis

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

Small businesses, as defined by the Small Business Administration (SBA) for the PTAC and PTHP manufacturing industry, are manufacturing enterprises with 750 employees or fewer. DOE used the small business size standards published on January 31, 1996, as amended, by the SBA to determine whether any small entities would be required to comply with the rule. 61 FR 3286 and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description. PTAC and PTHP manufacturing is classified under NAICS 333415.

The PTAC and PTHP industry is characterized by both domestic and international manufacturers. Standard size PTACs and PTHPs are primarily manufactured abroad with the exception of one domestic PTAC and PTHP manufacturer. Non-standard size PTACs and PTHPs are primarily manufactured domestically by a handful of manufacturers. Consolidation within the PTAC and PTHP industry has reduced the number of parent companies that manufacture similar equipment under different affiliates and labels. Prior to issuing this notice of proposed rulemaking, DOE interviewed two small businesses affected by the rulemaking. DOE also obtained information about small business impacts while interviewing manufacturers that exceed the small business size threshold of 750 employees.

DOE reviewed ARI's Applied Directory of Certified Product Performance (2006) and created a list of every manufacturer that had certified equipment ratings in the directory. DOE also asked stakeholders and ARI representatives within the PTAC and PTHP industry if they were aware of any other small manufacturers. DOE then looked at publicly available data and contacted manufacturers, where needed, to determine if they meet the SBA's definition of a small manufacturing facility and have their manufacturing facilities located within the United States. Based on this analysis, DOE estimates that there are two small manufacturers of PTACs and PTHPs. Of these two manufacturers, one of them operates manufacturing facilities within the United States. The one domestic manufacturer solely produces non-standard equipment. DOE, then, contacted both small manufacturers. It subsequently conducted two on-site interviews with small manufacturers, one standard size manufacturer and one non-standard size manufacturer, to determine if there are differential impacts on these companies that may result from amended energy conservation standards.

DOE found that, in general, small manufacturers have the same concerns as large manufacturers regarding amended energy conservation standards. DOE summarized the key issues for standard size and non-standard size manufacturers in section IV.I.3 of today's notice. Both manufacturers echoed the same concerns regarding amended energy conservation standards as the larger manufacturers. In addition, the small manufacturer of non-standard size equipment particularly stated its concern for the equipment class misclassification within ASHRAE/IESNA Standard 90.1–1999, which is detailed in sections IV.A.2 and V.C of today's notice. DOE found no significant differences in the R&D emphasis or marketing strategies between small business manufacturers and large manufacturers. Therefore, for the classes comprised primarily of small businesses, DOE believes the GRIM analysis, which models each equipment class separately, is representative of the small businesses affected by standards. The qualitative and quantitative GRIM results are summarized in section V.B.2 of today's notice.

DOE reviewed the standard levels considered in today's notice of proposed rulemaking under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. Based on the foregoing, DOE determined that it cannot certify that these proposed energy conservation standard levels, if promulgated, would have no significant economic impact on a substantial number of small entities. DOE made this determination because of the potential impacts that the proposed energy conservation standard levels under consideration for standard size and non-standard size PTACs and PTHPs would have on the manufacturers, including the small businesses, which manufacture them. Consequently, DOE has prepared an initial regulatory flexibility analysis (IRFA) for this rulemaking. The IRFA describes potential impacts on small businesses associated with standard size and non-standard size PTAC and PTHP design and manufacturing.

The potential impacts on standard size and non-standard size PTAC and PTHP manufacturers are discussed in the following sections. DOE has transmitted a copy of this IRFA to the Chief Counsel for Advocacy of the Small Business Administration for review.

1. Reasons for the Proposed Rule

Part A–1 of Title III of EPCA addresses the energy efficiency of certain types of commercial and industrial equipment. (42 U.S.C. 6311–6317) It contains specific mandatory energy conservation standards for commercial PTACs and PTHPs. (42 U.S.C. 6313(a)(3)) EPACT 1992, Public Law 102–486, also amended EPCA with respect to PTACs and PTHPs, providing definitions in section 122(a), test procedures in section 122(b), labeling

provisions in section 122(c), and the authority to require information and reports from manufacturers in section 122(e).[40] DOE publishes today's NOPR pursuant to Part A–1. The PTAC and PTHP test procedures appear at Title 10 CFR section 431.96.

EPCA established Federal energy conservation standards that generally correspond to the levels in ASHRAE/IESNA Standard 90.1, as in effect on October 24, 1992 (ASHRAE/IESNA Standard 90.1–1989), for each type of covered equipment listed in section 342(a) of EPCA, including PTACs and PTHPs. (42 U.S.C. 6313(a)) For each type of equipment, EPCA directed that if ASHRAE/IESNA Standard 90.1 is amended, DOE must adopt an amended standard at the new level in ASHRAE/IESNA Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more stringent level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) In accordance with these statutory criteria, DOE is proposing in today's notice to amend the energy conservation standards for PTACs and PTHPs by raising the efficiency levels for this equipment above the efficiency levels specified by ASHRAE/IESNA Standard 90.1–1999.

2. Objectives of, and Legal Basis For, the Proposed Rule

For each type of equipment, EPCA directed that if ASHRAE/IESNA Standard 90.1 is amended, DOE must adopt an amended standard at the new level in ASHRAE/IESNA Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more stringent level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) To determine whether economic justification exists, DOE reviews comments received and conducts analysis to determine whether the economic benefits of the proposed standard exceed the burdens to the greatest extent practicable, taking into consideration seven factors set forth in 42 U.S.C. 6295(o)(2)(B) (see Section II.B of this preamble). (42 U.S.C. 6316(a)) Further information concerning the background of this rulemaking is provided in Chapter 1 of the TSD.

[40] These requirements are codified in Part A–1 of Title III of EPCA, as amended, 42 U.S.C. 6311–6316, and Title 10 of the Code of Federal Regulations, Part 431 (10 CFR Part 431) at 10 CFR 431.92, 431.96, 431.97, and subparts U and V.

3. Description and Estimated Number of Small Entities Regulated

By researching the standard size and non-standard size PTAC and PTHP market, developing a database of manufacturers, and conducting interviews with manufacturers (both large and small), DOE was able to estimate the number of small entities that would be regulated under a proposed energy conservation standard. DOE estimates that, of the 4 domestic manufacturers it has identified as making residential PTACs and PTHPs, one is known to be a small business. See Chapter 12 of the TSD for further discussion about the methodology used in DOE's manufacturer impact analysis and its analysis of small-business impacts.

4. Description and Estimate of Compliance Requirements

Potential impacts on manufacturers, including small businesses, come from impacts associated with standard size and non-standard size design and manufacturing. The margins and/or market share of manufacturers, including small businesses, in the standard size and non-standard size PTAC and PTHP industry could be negatively impacted in the long term by the standard levels under consideration in this notice of proposed rulemaking, specifically TSL 4. At TSL 4, as opposed to lower TSLs, small manufacturers would have less flexibility in choosing a design path. However, as discussed under subsection 6 (Significant alternatives to the rule) below, DOE expects that the differential impact on small, standard and non-standard size PTAC and PTHP manufacturers (versus large businesses) would be smaller in moving from TSL 1 to TSL 2 than it would be in moving from TSL 3 to TSL 4. The rationale for DOE's expectation is best discussed in a comparative context and is therefore elaborated upon in subsection 6 (Significant alternatives to the rule). As discussed in the introduction to this IRFA, DOE expects that the differential impact associated with PTAC and PTHP design and manufacturing on small, non-standard size and standard size businesses would be negligible.

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered today.

6. Significant Alternatives to the Rule

The primary alternatives to the proposed rule considered by DOE are the other TSLs besides the one being considered today, TSL 4. These alternative TSLs and their associated impacts on small business are discussed in the subsequent paragraphs. In addition to the other TSLs considered, the TSD associated with this proposed rule includes a report referred to in section VI.A in the preamble as the regulatory impact analysis (RIA—discussed earlier in this report and in detail in the TSD). This report discusses the following policy alternatives: (1) No new regulatory action, (2) financial incentives policies, (3) voluntary energy efficiency targets—ENERGY STAR, (4) early replacement incentives, and (5) bulk government purchases. The energy savings and beneficial economic impacts of these regulatory alternatives are one to two orders of magnitude smaller than those expected from the standard levels under consideration.

The entire non-standard size PTAC and PTHP industry has such low shipments that no designs are produced at high volume. There is little repeatability of designs, so small businesses can competitively produce many non-standard size PTAC and PTHP designs. The PTAC and PTHP industry as a whole primarily has experience producing equipment with efficiencies that would comply with the ASHRAE/IESNA Standard 90.1–1999 baseline. In addition, the standard-size PTAC and PTHP industry produces a significant number of units that would comply with efficiency levels above the baseline using R–22 refrigerant. All manufacturers, including small businesses, would have to develop designs to enable compliance to higher TSLs, with the expected Environmental Protection Agency mandated alternative refrigerant requirement to take affect in 2010. Development costs would be more burdensome to small businesses. Product redesign costs tend to be fixed and do not scale with sales volume. Thus, small businesses would be at a relative disadvantage at higher TSLs because research and development efforts would be on the same scale as those for larger companies, but these expenses would be recouped over smaller sales volumes.

At TSL 4, manufacturers stated their concerns over the ability to be able to produce PTHPs by the future effective date of the standard using R–410A refrigerant. Using the performance degradations from the engineering analysis, TSL 4 for PTHPs would correspond to the ''max-tech'' efficiency levels for PTHPs unless higher efficiency compressors enter the market prior to the effective date of an amended energy conservation standard. At TSL 4

and above, DOE estimates that the majority of manufacturers would be negatively impacted, especially non-standard size manufacturers. Based on information submitted by industry, manufacturers would require a complete redesign of their non-standard PTAC and PTHP platforms' higher TSLs. They did not see the advantage to completely redesigning non-standard size PTACs and PTHPs in small and declining market and would not be willing to redesign completely non-standard size equipment because of the small size of the market and the declining sales. Manufacturers also commented non-standard size PTACs and PTHPs are manufactured to order based on unique building designs for replacement applications. This concern was echoed by all manufacturers, not just small business manufacturers.

The primary difference between TSL 3 and TSL 4 from the manufacturers' viewpoint is that at TSL 3 both PTACs and PTHPs have to conform to the same, higher efficiency levels at a given capacity. TSL 4 would require manufacturers to design PTHPs at higher efficiency levels than that of PTACs at the same cooling capacity. The differences in efficiencies between PTACs and PTHPs could negatively affect the margins or decrease the market share of small businesses because manufacturers would potentially need to design separate platforms of PTACs and PTHPs. Each platform would require significant capital for research and development that small business may not readily have as their large competitors.

Chapter 12 of the TSD contains more information about the impact of this rulemaking on manufacturers. DOE interviewed two small businesses affected by this rulemaking (see also section IV.F.1 above). DOE also obtained information about small business impacts while interviewing manufacturers that exceed the small business size threshold of 750 employees.

C. Review Under the Paperwork Reduction Act

This rulemaking will impose no new information or record keeping requirements. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act

DOE has prepared a draft environmental assessment (EA) of the impacts of the proposed rule, pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with the National Environmental Policy Act (10 CFR part 1021). The EA has been incorporated into the TSD; the environmental impact analyses are contained primarily in Chapter 16 for that document. Before issuing the final rule for PTACs and PTHPs, DOE will consider public comments and, as appropriate, issue the final EA. Based on the EA, DOE will determine whether to issue a finding of no significant impact or prepare an environmental impact statement for this rulemaking.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to assess carefully the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined today's proposed rule and has determined that it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d) and 6316(b)(2)(D)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a),(b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at

http://www.gc.doe.gov). The proposed rule published today contains neither an intergovernmental mandate nor a mandate that may result in expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any taking that would require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

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

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA) at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology (OSTP), issued its ''Final Information Quality Bulletin for Peer Review'' (Bulletin). 70 FR 2664 (January 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemakings analyses are ''influential scientific information.'' The Bulletin defines ''influential scientific information'' as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2667 (January 14, 2005).

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *http://www.eere.energy.gov/buildings/appliance_standards/peer_review.html.* DOE on June 28–29, 2005.

VII. Public Participation

A. Attendance at Public Meeting

The time and date of the public meeting are listed in the **DATES** section at the beginning of this notice of proposed rulemaking. The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC, 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. Foreign nationals visiting DOE Headquarters are subject to advance security screening procedures, requiring a 30-day advance notice. Any foreign national wishing to participate in the meeting should advise DOE of this fact as soon as possible by contacting Ms. Brenda Edwards to initiate the necessary procedures.

B. Procedure for Submitting Requests To Speak

Any person who has an interest in today's notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation. Such persons may hand-deliver requests to speak, along with a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format to the address shown in the **ADDRESSES** section at the beginning of this notice of proposed rulemaking between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or e-mail to: *Brenda.Edwards@ee.doe.gov*.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to be heard to submit an advance copy of their statements by 4 p.m., April 21, 2008. At its discretion, DOE may permit any person who cannot supply an advance copy of their statement to participate, if that person has made advance alternative arrangements with the Building Technologies Program. The request to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with 5 U.S.C. 553 and section 336 of EPCA, 42 U.S.C. 6306. A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing

the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, Forrestal Building, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding the proposed rule before or after the public meeting, but no later than the date provided at the beginning of this notice of proposed rulemaking. Please submit comments, data, and information electronically. Send them to the following e-mail address: *ptac_hp@ee.doe.gov*. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the docket number EE–RM/STD–2007–BT–STD–0012 and/or RIN 1904–AB44, and wherever possible carry the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. No telefacsimiles (faxes) will be accepted.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

E. Issues on Which DOE Seeks Comment

DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. Addendum t to ASHRAE/IESNA Standard 90.1–2007 (i.e., ARI's continuous maintenance proposal on PTACs and PTHPs), which proposes changes to the non-standard delineations in ASHRAE/IESNA Standard 90.1–1999. As explained in section IV.C.2, of this preamble, DOE proposes to incorporate the modified definitions in Addendum t in the final rule if ASHRAE adopts Addendum t prior to September 2008.

2. The approach to extrapolate the engineering analysis to cooling capacities for which complete analysis was not performed.

3. The EER and COP pairings for PTHPs based on current ARI product directory information.

4. The rebound effect for the PTAC and PTHP industry.

5. Estimation for the installation, maintenance, and repair costs. In particular, DOE is interested in how the installation, maintenance, and repair costs may change with the implementation of R–410A refrigerant in 2010 because DOE's estimates are based on R–22 data from the field.

6. The prediction and the potential significance of the overestimate in energy savings due to the assumption that forecasted market shares of PTACs and PTHPs at each efficiency level considered in the NOPR would remain frozen beginning in 2012 until the end of the forecast period (30 years after the effective date—the year 2042). In particular, DOE requests data that would enable it to better characterize the likely increases in efficiency that would occur over the 30-year analysis period in the absence of this rule (i.e., the distribution of efficiency levels in absence of standards is assumed to be constant).

7. The NES-forecasted base case distribution of efficiencies after the refrigerant phaseout and its prediction on how amended energy conservation standards impact the distribution of efficiencies in the standards case.

8. Whether amended energy conservation standards will result in PTAC and PTHP customers shifting to other, less efficient equipment types.

9. The NES shipments forecasts of total shipments for standard size and non-standard size equipment. In addition, the distribution of standard size equipment being placed into new construction buildings versus replacing existing units.

10. The proposed standard level, TSL 4, for standard size PTACs and PTHPs and non-standard size PTACs and PTHPs.

11. Whether DOE should consider either a higher or a lower TSL, including the ASHRAE/IESNA Standard 90.1–1999 baseline efficiency levels, in the final rule due to the magnitude of the impacts and the cumulative regulatory burdens of the R–22 phaseout.

12. The proposal to adopt TSL 4 which requires different efficiency levels for PTACs and PTHPs, DOE is interested in receiving comment on potential equipment switching as discussed in section IV.G.3 of today's notice (i.e., will TSL 4 cause PTHP customers to shift to less efficient PTACs).

13. The unique impacts on the non-standard size equipment and manufacturers. In particular, the consideration of a lower TSL for non-standard size PTACs and PTHPs due to the unique market and potentially

substantial impacts. For example, at TSL 4, non-standard size manufacturers are expected to lose from $9 million to $12 million in INPV, which is a reduction in 34 percent to 44 percent. In addition, whether the ASHRAE/IESNA Standard 90.1–1999 delineations for standard and non-standard size units would result in equipment lines being misclassified and unavailable.

14. The above-discussed approach for labeling of PTACs and PTHPs. Specifically, DOE invites comments on the types of energy use information and format consumers would find useful on a PTAC or PTHP label.

VIII. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on March 28, 2008.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, chapter II of title 10, Code of Federal Regulations, part 431 is proposed to be amended to read as set forth below.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. Section 431.92 of Subpart F is amended by adding in alphabetical order new definitions for ''Non-standard size'' and ''Standard size,'' to read as follows:

§ 431.92 Definitions concerning commercial air conditioners and heat pumps.

* * * * *

Non-standard size means a packaged terminal air conditioner or packaged terminal heat pump with wall sleeve dimensions less than 16 inches high and less than 42 inches wide.

* * * * *

Standard size means a packaged terminal air conditioner or packaged terminal heat pump with a wall sleeve dimension greater than or equal to 16 inches high, or greater than or equal to 42 inches wide.

* * * * *

3. Section 431.97 of Subpart F is amended by revising paragraph (a), including Tables 1 and 2, and by adding a new paragraph (c) to read as follows:

§ 431.97 Energy efficiency standards and their effective dates.

(a) All small or large commercial package air-conditioning and heating equipment manufactured on or after January 1, 1994 (except for large commercial package air-conditioning and heating equipment, for which the effective date is January 1, 1995), and before January 1, 2010 in the case of the air-cooled equipment covered by the standards in paragraph (b), must meet the applicable minimum energy efficiency standard level(s) set forth in Tables 1 and 2 of this section. Each packaged terminal air conditioner or packaged terminal heat pump manufactured on or after January 1, 1994, and before September 30, 2012, must meet the applicable minimum energy efficiency standard level(s) set forth in Tables 1 and 2 of this section.

TABLE 1 TO § 431.97.—MINIMUM COOLING EFFICIENCY LEVELS

Product	Category	Cooling capacity	Sub-category	Efficiency level[1]	
				Products manufactured until October 29, 2003	Products manufactured on and after October 29, 2003
Small Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled, 3 Phase	<65,000 Btu/h	Split System Single Package	SEER = 10.0 SEER = 9.7	SEER = 10.0. SEER = 9.7.
	Air Cooled	≥65,000 Btu/h and <135,000 Btu/h.	All	EER = 8.9	EER = 8.9.
	Water Cooled Evaporatively Cooled, and Water-Source.	<17,000 Btu/h	AC HP	EER = 9.3 EER = 9.3	EER = 12.1. EER = 11.2.
		≥17,000 Btu/h and <65,000 Btu/h.	AC HP	EER = 9.3 EER = 9.3	EER = 12.1. EER = 12.0.
		≥65,000 Btu/h and <135,000 Btu/h.	AC HP	EER = 10.5 EER = 10.5	EER = 11.5.[2] EER = 12.0.
Large Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled	≥135,000 Btu/h and <240,000 Btu/h.	All	EER = 8.5	EER = 8.5.
	Water-Cooled and Evaporatively Cooled.	≥135,000 Btu/h and <240,000 Btu/h.	All	EER = 9.6	EER = 9.6.[3]
Packaged Terminal Air Conditioners and Heat Pumps.	All	<7,000 Btu/h	All	EER = 8.88	EER = 8.88.
		≥7,000 Btu/h and ≤15,000 Btu/h		EER = 10.0 − (0.16 × capacity [in kBtu/h at 95°F outdoor dry-bulb temperature]).	EER = 10.0 − (0.16 × capacity [in kBtu/h at 95°F outdoor dry-bulb temperature]).
		>15,000 Btu/h		EER = 7.6	EER = 7.6

[1] For equipment rated according to the ARI standards, all EER values must be rated at 95 °F outdoor dry-bulb temperature for air-cooled products and evaporatively-cooled products and at 85 °F entering water temperature for water-cooled products. For water-source heat pumps rated according to the ISO standard, EER must be rated at 30 °C (86 °F) entering water temperature.

[2] Deduct 0.2 from the required EER for units with heating sections other than electric resistance heat.

[3] Effective 10/29/2004, the minimum value became EER = 11.0.

TABLE 2 TO § 431.97.—MINIMUM HEATING EFFICIENCY LEVELS

Product	Category	Cooling capacity	Sub-category	Efficiency level [1]	
				Products manufactured until October 29, 2003	Products manufactured on and after October 29, 2003
Small Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled, 3 Phase	<65,000 Btu/h	Split System Single Package	HSPF = 6.8 HSPF = 6.6	HSPF = 6.8. HSPF = 6.6.
	Water-Source	<135,000 Btu/h	Split System and Single Package.	COP = 3.8	COP = 4.2.
	Air Cooled	≥65,000 Btu/h and ≤135,000 Btu/h.	All	COP = 3.0	COP = 3.0.
Large Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled	≥135,000 Btu/h and <0,000 Btu/h.	Split System and Single Package.	COP = 2.9	COP = 2.9.
Packaged Terminal Heat Pumps.	All	All	All	COP = 1.3+(0.16 × the applicable minimum cooling EER prescribed in Table 1—Minimum Cooling Efficiency Levels).	COP = 1.3+(0.16 × the applicable minimum cooling EER prescribed in Table 1—Minimum Cooling Efficiency Levels).

[1] For units tested by ARI standards, all COP values must be rated at 47° F outdoor dry-bulb temperature for air-cooled products, and at 70° F entering water temperature for water-source heat pumps. For heat pumps tested by the ISO Standard 13256–1, the COP values must be obtained at the rating point with 20° C (68° F) entering water temperature.

* * * * *

(c) Each packaged terminal air conditioner or packaged terminal heat pump manufactured on or after September 30, 2012, shall have an Energy Efficiency Ratio and Coefficient of Performance no less than:

Equipment	Category	Cooling capacity	Efficiency level [*]
Packaged Terminal Air Conditioner.	Standard Size	<7,000 Btu/h	EER = 11.4
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 13.0—(0.233 × Cap [**])
		>15,000 Btu/h	EER = 9.5
	Non-Standard Size	<7,000 Btu/h	EER = 10.2
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 11.7—(0.213 × Cap [**])
		>15,000 Btu/h	EER = 8.5
Packaged Terminal Heat Pump.	Standard Size	<7,000 Btu/h	EER = 11.8 COP = 3.3
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 13.4—(0.233 × Cap [**]) COP = 3.7—(0.053 × Cap [**])
		>15,000 Btu/h	EER = 9.9 COP = 2.9
	Non-Standard Size	<7,000 Btu/h	EER = 10.8 COP = 3.0
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 12.3—(0.213 × Cap [**]) COP = 3.1—(0.026 × Cap [**])
		>15,000 Btu/h	EER = 9.1 COP = 2.8

[*] For equipment rated according to the DOE test procedure, all EER values must be rated at 95° F outdoor dry-bulb temperature for air-cooled products and evaporatively-cooled products and at 85° F entering water temperature for water cooled products. All COP values must be rated at 47° F outdoor dry-bulb temperature for air-cooled products, and at 70° F entering water temperature for water-source heat pumps.

[**] Cap means cooling capacity in thousand British thermal units per hour (Btu/h) at 95° F outdoor dry-bulb temperature.

[FR Doc. E8–6907 Filed 4–4–08; 8:45 am]

BILLING CODE 6450–01–P

Federal Register

Monday,
April 7, 2008

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 423

Medicare Program; Standards for E-Prescribing Under Medicare Part D and Identification of Backward Compatible Version of Adopted Standard for E-Prescribing and the Medicare Prescriptions Drug Program (Version 8.1); Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 423

[CMS–0016–F and CMS–0018–F]

RINs 0938–AO66 and 0938–AO42

Medicare Program; Standards for E-Prescribing Under Medicare Part D and Identification of Backward Compatible Version of Adopted Standard for E-Prescribing and the Medicare Prescription Drug Program (Version 8.1)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule adopts uniform standards for medication history, formulary and benefits, and fill status notification (RxFill) for the Medicare Part D electronic prescribing (e-prescribing) drug program as required by section 1860D–4(e)(4)(D) of the Social Security Act (the Act). In addition, we are adopting the National Provider Identifier (NPI) as a standard for identifying health care providers in e-prescribing transactions. It also finalizes the June 23, 2006 interim final rule with comment period that identified the National Council for Prescription Drug Programs (NCPDP) Prescriber/Pharmacist Interface SCRIPT standard, Implementation Guide, Version 8.1 (''NCPDP SCRIPT 8.1'') as a backward compatible update of the NCPDP SCRIPT 5.0 (''NCPDP SCRIPT 5.0''), until April 1, 2009. This final rule also retires NCPDP SCRIPT 5.0 and adopts the newer version, NCPDP SCRIPT 8.1, as the adopted standard. Finally, except as otherwise set forth herein, we are implementing our compliance date of 1 year after the publication of these final uniform standards. This is the second set in a continuing process of issuing e-prescribing final standards for the Medicare Part D program,

DATES: *Effective Date:* These regulations are effective on June 6, 2008. The incorporation by reference of the publications listed in this final rule is approved by the Director of the **Federal Register** June 6, 2008.

FOR FURTHER INFORMATION CONTACT: Denise M. Buenning, (410–786–6711) or Andrew Morgan, (410) 786–2543.

SUPPLEMENTARY INFORMATION:

I. Background

Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) amended Title XVIII of the Social Security Act (the Act) to establish a voluntary prescription drug benefit program. Prescription Drug Plan (PDP) sponsors, Medicare Advantage (MA) organizations offering Medicare Advantage-Prescription Drug Plans (MAPDs) and other Medicare Part D sponsors are required to establish electronic prescription drug programs to provide for electronic transmittal of certain information to the prescribing provider and dispensing pharmacy and the dispenser. This includes information about eligibility, benefits (including drugs included in the applicable formulary, any tiered formulary structure and any requirements for prior authorization), the drug being prescribed or dispensed and other drugs listed in the medication history, as well as the availability of lower cost, therapeutically appropriate alternatives (if any) for the drug prescribed. Section 101 of the MMA established section 1860D–4(e)(4)(D) of the Act, which directed the Secretary to promulgate final uniform standards for the electronic transmission of such data.

There is no requirement that prescribers or dispensers implement e-prescribing. However, prescribers and dispensers who electronically transmit prescription and certain other prescription-related information for Medicare Part D covered drugs prescribed for Medicare Part D eligible individuals, directly or through an intermediary, are required to comply with any applicable final standards that are in effect.

Section 1860D–4(e)(4) of the Act generally requires the Secretary to conduct a pilot project to test initial standards recognized under section 1860D–4(e)(4)(A) of the Act, prior to issuing final standards in accordance with section 1860D–4(e)(4)(D) of the Act. Section 1860D–4(e)(4)(C)(ii) of the Act created an exception to the requirement for pilot testing of standards where, after consultation with the National Committee on Vital and Health Statistics (NCVHS), the Secretary determined that there already was adequate industry experience with the standards. Such standards could be recognized by the Secretary and adopted through notice and comment rulemaking as final standards without pilot testing.

We exercised this option in the E-Prescribing and Prescription Drug Program final rule, published on November 7, 2005 (70 FR 67568), when we adopted three ''foundation standards'' that met the criteria for adoption without pilot testing. Those foundation standards are as follows:

- The National Council for Prescription Drug Programs (NCPDP) SCRIPT standard, Implementation Guide, Version 5, Release 0 (Version 5.0), hereinafter referred to as ''NCPDP SCRIPT 5.0,'' for communicating prescription or prescription related information between prescribers and dispensers for the transactions listed at § 423.160(b)(2).
- Accredited Standards Committee (ASC) X12N 270/271–Health Care Eligibility Benefit Inquiry and Response, Version 4010 and Addenda to Health Care Eligibility Benefit Inquiry and Response, Version 4010A1 for communicating eligibility information between Medicare Part D sponsors and prescribers.
- NCPDP Telecommunication Standard Specification, Version 5, Release 1 (Version 5.1) and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1) supporting Telecommunications Standard Implementation Guide, Version 5, Release 1 (Version 5.1) for NCPDP Data Record in the Detail Data Record, hereinafter referred to as ''NCPDP Telecom 5.1'' for communicating eligibility information between Medicare Part D sponsors and dispensers.

In that same final rule, we established three exemptions to the use of the NCPDP SCRIPT foundation standard. The first exemption provided for entities transmitting prescriptions or prescription-related information by means of computer-generated facsimile. We ultimately modified this exemption in the CY 2008 Physician Fee Schedule final rule with comment period, which was published November 27, 2007 (72 FR 66222). (For a more in-depth discussion of the computer-generated facsimile exemption, please see the preamble discussion in the November 27, 2007 final rule with comment at 72 FR 66334.)

The second exemption required the use of either HL7 or the adopted NCPDP SCRIPT standards in electronic transmittals of prescriptions or prescription related information when the sender and recipient are part of the same legal entity (for example, within a staff model HMO). The third exemption was when an entity is required by law to issue a prescription for a patient to a nonprescribing provider (such as a nursing facility) that in turn forwards the prescription to a dispenser. This

exemption was established to accommodate many legitimate business needs of entities in the long-term care setting.

The November 7, 2005 final rule (70 FR 67579) also established a means of addressing the industry's desire for a streamlined standards updating and maintenance process that could keep pace with changing business needs. That process provided that a standard could be updated with a new version, and identified whether and when the update/maintenance would necessitate notice and comment rulemaking. Where it is determined that the notice and comment rulemaking is not required, the new version is adopted by incorporating the new version by reference through a **Federal Register** publication. In that case, use of either the new or old version would be considered compliant. ''Backward compatible'' new versions of standards are eligible for recognition through this process. This version updating and maintenance of the implementation specifications for the adopted identifying and e-prescribing standards allows for the correction of technical errors, the elimination of technical inconsistencies, and the addition of functions that are unnecessary for the specified e-prescribing transaction.

Subsequent industry input indicated that the adopted e-prescribing standard for the transactions listed at § 423.160(b)(2) should be updated to permit the use of NCPDP SCRIPT 5.0 or a later version of the standard, NCPDP SCRIPT standard, Implementation Guide, Version 8, Release 1 (Version 8.1), October 2005, hereinafter referred to as NCPDP SCRIPT 8.1.

Using the streamlined process established in the November 7, 2005 rule, we published an interim final rule with comment period on June 23, 2006, updating the adopted NCPDP SCRIPT standard, thereby permitting either NCPDP SCRIPT 5.0 or 8.1 to be used. (For more information, see section III of this final rule and the June 23, 2006 interim final rule with comment period (71 FR 36020).)

Previously, six initial standards were recognized by the Secretary in 2005 and then tested in a pilot project during calendar year (CY) 2006. Based upon the evaluation of the pilot project, the Secretary issued a report to Congress on the pilot results. The Secretary is required to issue this set of final uniform standards for e-prescribing by no later than April 1, 2008. These final standards must be effective not later than 1 year after the date of their issuance.

Based on the pilot results as detailed in the report to Congress, we issued a notice of proposed rulemaking on November 16, 2007 (72 FR 64900) and solicited comments from stakeholders and other interested parties on industry experience with certain standards. In that proposed rule (72 FR 64906 through 64907), we also solicited comments regarding the impact of adopting NCPDP SCRIPT 8.1 and retiring SCRIPT 5.0. Those comments and our responses are addressed in section III. B.1. of this final rule.

For a complete discussion of the statutory basis for this final rule and the statutory requirements at section 1860D–4(e) of the Act, please refer to the E–Prescribing and the Prescription Drug Program proposed rule published November 16, 2007 (72 FR 64901).

II. Pilot Testing of Initial Standards

In the November 16, 2007 proposed rule (72 FR 64901), we discussed the provision at section 1860D–4(e)(4)(A) of the Act which requires the Secretary develop, adopt, recognize or modify ''initial uniform standards'' for e-prescribing in 2005 and pilot test these initial e-prescribing standards in 2006. To fulfill this requirement, the Secretary ultimately recognized (based in part on NCVHS input) six ''initial'' standards in a September 2005 ''Request for Applications''. For more information on the pilot test findings, refer to the November 16, 2007 proposed rule (72 FR 64904 through 64906).

In the November 16, 2007 proposed rule (72 FR 64903) we noted that, as we had not published a final rule identifying the foundation standards at the time the Request for Applications was published, the proposed foundation standards were included among the Request for Applications list of ''initial standards'' to be tested. Any proposed foundation standards that were not adopted as foundation standards were to be tested as initial standards in the pilot project. Furthermore, if the proposed foundation standards were ultimately adopted as foundation standards, those standards nevertheless were to be used in the pilot project to ensure interoperability with the initial standards.

The Request for Applications also specified that pilot sites would use NCPDP SCRIPT 5.0. With the Secretary's adoption of the updated NCPDP SCRIPT 8.1, the Agency for Healthcare Research and Quality (AHRQ), in its capacity as the administrator of the pilot project, gave pilot sites the option to voluntarily use NCPDP SCRIPT 8.1 in place of NCPDP SCRIPT 5.0.

As a result, all grantees/contractors in the pilot sites voluntarily decided to use the updated NCPDP SCRIPT 8.1 in their various testing modalities.

The initial standards and the results of the pilot test are as follows:

- *Formulary and benefits information*—NCPDP Formulary and Benefits Standard, Implementation Guide, Version 1, Release 0 (hereinafter referred to as NCPDP Formulary and Benefits 1.0), to provide prescribers with information from a plan about a patient's drug coverage at the point of care.

The Medicare Part D e-prescribing formulary and benefits standard must provide a uniform means for pharmacy benefit payers (Medicare Part D sponsors) to communicate a range of formulary and benefits information to prescribers via point-of-care (POC) systems. These include general formulary data; formulary status of individual drugs; preferred alternatives (including any coverage restrictions, such as quantity limits and need for prior authorization); and co-payment. NCPDP Formulary and Benefits 1.0 enables the prescriber to consider this information at the point of care and make the most appropriate drug choice without extensive back-and-forth administrative activities with the pharmacy or the health plan. The pilot sites demonstrated that NCPDP Formulary and Benefits 1.0 can be successfully implemented between prescriber and plan, and is ready to be used as part of the e-prescribing program under Medicare Part D.

- *Exchange of medication history*—''The Medication History Standard'', included in the National Council for Prescription Drug Programs (NCPDP) Prescriber/Pharmacist Interface SCRIPT standard, Version 8, Release 1 and its equivalent NCPDP Prescriber/Pharmacist Interface SCRIPT Implementation Guide, Version 8, Release 1 (hereinafter referred to as the Medication History Standard), provides a uniform means for prescribers and payers to communicate about the list of drugs that have been dispensed to a patient. It may provide information that would help identify potential drug interactions. This Medication History Standard meets the requisite objectives, functionality and criteria required by the MMA for use in the Medicare Part D e-prescribing program and has been widely adopted by the prescribing industry. The pilot sites found that the Medication History Standard supported the exchange of this information, and is ready to be used for the Medicare Part D e-prescribing program.

• *Structured and Codified Sig*—NCPDP Structured and Codified Sig Standard 1.0, (hereinafter referred to as NCPDP Structured and Codified Sig 1.0), provides a standard structured code set for expressing patient instructions for taking medications (such as ''by mouth, three times a day''). These instructions are currently generally provided as free text at the end of a prescription. Pilot sites tested NCPDP Structured and Codified Sig 1.0 and found that it needed additional work on field definitions and examples, field naming conventions, and clarifications of field use. There were contradictions with other structured fields, and there were limitations on the ability to capture directions for use of topical drugs (such as the area of application). Analysis showed that NCPDP Structured and Codified Sig 1.0 was not able to meet the requisite objectives, functionality and criteria required by the MMA for use in the Medicare Part D e-prescribing program.

• *Fill status notification*—The Fill Status Notification, or RxFill, was included in NCPDP SCRIPT 5.0 and the updated NCPDP SCRIPT 8.1, but it previously was not proposed as a foundation standard due to a lack of adequate industry experience. RxFill is a function within versions 5.0 and 8.1 of the NCPDP SCRIPT standard that enables a pharmacy to notify a prescriber when the prescription has been dispensed (medication picked up by patient), partially dispensed (partial amount of medication picked up by the patient), or not dispensed (medication not picked up by patient, resulting in the medication being returned to stock). This information can provide prescribers with information regarding their patients' adherence to a prescribed medication regimen, especially for those patients with chronic conditions such as hypertension and diabetes, which require medication management. It also has the potential to assist in combating fraud and abuse, and contribute to preventing prescription drug diversion. While the standard was technically capable of performing the function, the pilot sites' experiences and observations indicated there was no marketplace demand for this information. Prescribers had previously expressed concerns about being inundated with data if they were to receive fill status notifications every time a patient picked up a prescription at the pharmacy, and weren't sure how useful the information that the Fill Status Notification transaction generated would be in their medical practices. Dispensers were concerned about having to make significant business process changes, such as, having to check to make sure that fill status notification information was being transmitted by their pharmacy to those prescribers who requested it. The proposed rule therefore relayed that adoption of RxFill ''May cause an unnecessary administrative burden on prescribers and dispensers.'' (72 FR 64905). As such, in the proposed rule, we asked about the marketplace demand for Fill Status Notification and solicited stakeholder comments regarding their potential utilization of RxFill for the Fill Status Notification transaction. Those comments and our responses are addressed in section III.C.1. of this final rule.

• *Clinical drug terminology*—RxNorm, a standardized nomenclature for clinical drugs developed by the National Library of Medicine (NLM), provides standard names for clinical drugs (active ingredient + strength + dose form) and for dose forms as administered to a patient. These concepts are relevant to how a physician would order a drug. It provides links from clinical drugs, both branded and generic, to their active ingredients, drug components (active ingredient + strength), and related brand names. National Drug Codes (NDCs) for specific drug products (where there are often many NDCs for a single product) are linked to that product in RxNorm. NDCs for specific drug products identify not only the drug but also the manufacturer and the size of the package from which it is dispensed. NDCs are relevant to how a pharmacy would dispense the drug. There are often several NDCs for any specific drug product, which are linked to a specific drug product code in RxNorm. RxNorm links its drug product codes to many of the drug vocabularies commonly used in pharmacy management and drug interaction software. By providing links between these vocabularies, RxNorm can mediate messages between systems not using the same software and vocabulary.

The pilot sites demonstrated that RxNorm had significant potential to simplify e-prescribing, create efficiencies, and reduce dependence on NDCs among dispensers. In some testing, RxNorm erroneously linked some NDCs to lists of ingredients rather than to the drugs themselves and sometimes the NDCs linked by RxNorm did not match to the semantic clinical drug (SCD), which always contains the ingredient(s), strength and dose form, in that order. This indicates either an error in matching to the correct RxNorm concept, or an error with RxNorm itself, with more than one term being available for the same clinical drug concept (that is, unresolved synonymy). Analysis showed that, as of the time of the pilot study, RxNorm was not able to meet the requisite objectives, functionality and criteria required by section 1860D–4(e)(3) of the Act for use for Medicare Part D e-prescribing.

• *Prior authorization*—The Accredited Standards Committee (ASC) X12N 275 Version 4010 with HL7, and ASC X12N 278, Version 4010 and addendum 4010A1, (hereinafter collectively referred to as the Prior Authorization standard), were utilized in concert to allow prescribers to obtain certification from a plan that a patient meets the coverage criteria for a given drug. Prior Authorization is a very complex standard to implement, involving four different standards and multiple payer requirements. The pilot sites found that the combination of the ASC X12N 278, and the ASC X12N 275 with the HL7 Prior Authorization (PA) attachment was cumbersome, confusing and required expertise that may limit adoption. Because health plans typically require prior authorization only for a small subset of drugs, the pilot sites had limited live experience with this standard.

Investigators agreed that the HIPAA Prior Authorization standard—the ASC X12N 278 Version 4010, and Addendum 4010A— was not adequate to support e-prescribing prior authorization because it was designed for service or procedure prior authorizations, not for medication prior authorization. Modifications to the standard would need to be made prior to adoption as a final standard for the Medicare Part D e-prescribing program.

As required by section 1860D–4(e)(4)(C)(iv)(II), the Secretary issued a report to Congress, ''Pilot Testing of Initial Electronic Prescribing Standards,'' in April 2007 on the results of the pilot test of the initial standards. The report is available at *http://www.healthit.ahrq.gov/erxpilots.*

III. Provisions of and Analysis and Response to Public Comments for the June 23, 2006 Interim Final Rule With Comment Period and the November 16, 2007 Proposed Rule

A. June 23, 2006 Interim Final Rule With Comment Period

Using the streamlined process established in the November 7, 2005 rule, we published an interim final rule with comment on June 23, 2006 updating the adopted NCPDP SCRIPT standard, thereby permitting either NCPDP SCRIPT 5.0 or 8.1 to be used for the covered transactions listed below

effective June 23, 2006. Version 8.1 of the NCPDP SCRIPT standard is an update to Version 5.0, and we had determined that it was backward compatible with the adopted NCPDP SCRIPT Version 5.0. (Although Version 8.1 of the NCPDP SCRIPT standard has additional e-prescribing functionalities, we did not adopt any of these additional functionalities at that time.) Use of Version 8.1 of the NCPDP SCRIPT standard for the communication of a prescription or prescription-related information between prescribers and dispensers, for the following functions, therefore constituted compliance with the adopted e-prescribing standard:

- Get message transaction.
- Status response transaction.
- Error response transaction.
- New prescription transaction.
- Prescription change request transaction.
- Prescription change response transaction.
- Refill prescription request transaction.
- Refill prescription response transaction.
- Verification transaction.
- Password change transaction.
- Cancel prescription request transaction.
- Cancel prescription response transaction.

We received 5 timely public comments on this interim final rule with comment period. The following is a summary of the comments and our responses:

Comment: All commenters supported the voluntary use of the backward compatible functions of version 8.1 of the NCPDP SCRIPT standard. Four commenters recommended that it be adopted as soon as reasonably possible, and that NCPDP SCRIPT 5.0 be retired as soon as reasonably practicable. They also indicated that NCPDP SCRIPT 8.1 was already in widespread use throughout their respective industries. One commenter indicated a concern with making backward compatibility ''the criteria'' for determining if notice and comment rulemaking is required. The commenter stated that backward compatibility must be viewed as just one factor in making a determination to adopt a modified standard.

Response: We agree with the commenters who supported the retirement of NCPDP SCRIPT 5.0 in favor of NCPDP SCRIPT 8.1. Regarding the comment that backward compatibility should not be the single criterion for determining if notice and comment rulemaking is used for the purpose of adopting a modified standard and that we should look for and support other effective alternatives to the backward compatibility issue, we note that we are required by law to employ notice and comment rulemaking to modify an adopted e-prescribing standard. We are also required by section 1860D–4(e)(3) of the Act to ensure, among other things, that the adopted standards meet certain objectives and design criteria. Based on these various statutory requirements and our own policies, we analyze various factors in addition to backward compatibility such as the standard modification's impact on affected entities relative to cost and benefit projections, productivity and workflow losses/gains, etc., as well as industry and stakeholder feedback by both the written comment process and input from the NCVHS. (For more information, see the June 23, 2006 interim final rule with comment (71 FR 36020).

B. November 16, 2007 Proposed Rule

In the November 16, 2007 proposed rule (72 FR 64900) we discussed the results of the pilot test, and based largely on those results, we proposed the following:

- To retire NCPDP SCRIPT 5.0 and adopt NCPDP SCRIPT 8.1 as a final standard for the transactions listed at § 423.160(b)(1).
- To adopt a final e-prescribing standard for the medication history transaction.
- To adopt a final e-prescribing standard for the formulary and benefits transaction.
- To adopt the National Provider Identifier (NPI) as a standard for identifying health care providers in e-prescribing transactions.
- To establish a compliance date of 1 year after the publication of the final uniform standards.

We received 70 timely comments on the November 16, 2007 proposed rule from dispensers and physicians; national retail drug store chains; vendors; national healthcare industry professional and trade associations; a standards development organization (SDO); state pharmacy associations; a state department of health; healthcare plans and systems; consumer/beneficiary advocacy groups; national prescription information exchange networks; long-term care industry representatives; corporations and pharmaceutical manufacturers, and a federal government agency. These documents frequently contained multiple comments on the various proposals and issues detailed in the proposed rule.

We also received comments outside the scope of the proposed rule. These included one set of comments on another, unrelated notice of proposed rulemaking, and comments on Medicare program operations that are outside the scope of this final rule. The relevant and timely comments within the scope of the proposed rule that we received and our responses to those comments, are discussed in the following sections.

1. Proposed Retirement of NCPDP SCRIPT 5.0 and Adoption of NCPDP SCRIPT 8.1 as a Final Standard

In section III.A. of this final rule we discussed the identification of NCPDP SCRIPT 8.1 as a backward compatible update to NCPDP SCRIPT 5.0. In that discussion, we noted that under the interim final rule with comment, the use of NCPDP SCRIPT 8.1 was voluntary. Commenters to this rule recommended that NCPDP SCRIPT 8.1 be adopted as soon as possible and that NCPDP SCRIPT 5.0 be retired.

Therefore, in the November 16, 2007 proposed rule (72 FR 64906 through 64907), we summarized comments received on the voluntary use of NCPDP SCRIPT 8.1 and proposed to revise § 423.160(b)(1) and (c) to replace the NCPDP SCRIPT 5.0 standard with NCPDP SCRIPT 8.1 for the transactions listed at § 423.160(b)(1) (see section III.A. of this final rule). We also solicited additional comments on the retirement of NCPDP SCRIPT 5.0.

Comment: Most commenters supported the adoption of NCPDP SCRIPT 8.1, and retirement of NCPDP SCRIPT 5.0, for the transactions listed at § 423.160(b)(1). They noted that NCPDP SCRIPT 8.1 will provide a uniform communications mechanism for prescribers, dispensers, and payers, support reconciliation of useful data from a larger number of sources, and raise awareness of the availability of medication history and, subsequently, its use among prescribers. Some commenters noted that the industry is already using NCPDP SCRIPT 8.1, so there would be limited impact of converting to NCPDP SCRIPT 8.1 to only those few still using NCPDP SCRIPT 5.0. They indicated that conversion from NCPDP SCRIPT 5.0 to NCPDP SCRIPT 8.1 would not require any significant enhancements for the majority of entities. Seven commenters supported ultimately moving to NCPDP SCRIPT 10.5, but only one commenter recommended bypassing NCPDP SCRIPT 8.1 and adopting version NCPDP SCRIPT 10.5 directly.

Response: NCPDP SCRIPT 8.1 is already in widespread use, has adequate industry experience, and supports the

e-prescribing transactions for which it was pilot tested (with the exception of long-term care e-prescribing applications). Therefore, we believe at this time that NCPDP SCRIPT 8.1 should be adopted in place of NCPDP SCRIPT 5.0 at § 423.160(b)(2)(ii) and (c). In keeping with the pilot findings, the exception to this standard at § 423.160(a)(3)(iii) for e-prescribing in long-term care settings will be retained until a subsequent version of NCPDP SCRIPT is adopted that will support transactions in that setting.

Regarding the comment that we bypass NCPDP SCRIPT 8.1, and adopt NCPDP SCRIPT 10.5, NCPDP SCRIPT 10.5 has not yet been approved by the NCPDP Board of Directors and the Accredited National Standards Institute (ANSI).[1] Based on the Department's criteria consistently applied to the adoption of e-prescribing standards, NCPDP SCRIPT 10.5 will not be considered by the Secretary for adoption until such time as that SDO/ANSI approval process has been completed.

Comment: A number of commenters favored adoption of NCPDP SCRIPT 8.1, but with the caveat that CMS not preclude stakeholders who need to use the advanced functionalities of NCPDP SCRIPT 10.2 or higher, such as those in long-term care settings, from doing so voluntarily. One commenter noted that any version of NCPDP SCRIPT 10.0 or higher would be acceptable. Others said that NCPDP SCRIPT 10.2 or 10.3 would be the appropriate standard for use in long-term care. We also received comments that the agency should retire NCPDP SCRIPT 8.1 in favor of NCPDP SCRIPT 10.5 by the year 2010, and one commenter supported the current adoption of NCPDP SCRIPT 8.1, but with adoption of NCPDP SCRIPT 10.5 within a year's time.

Response: By their very nature, standards are subject to updating and modifications as new business needs, workflows and other issues are identified and resolved. We recognize industry's desire for adoption of the most current and robust versions of standards. We note that, in instances where a subsequent standard is backward compatible with previously adopted standards, the streamlined process described earlier can allow for use of subsequent versions of the adopted standard as well as the previously adopted version of the standard. Under this process, the Secretary may identify a subsequent backward compatible version(s) of an adopted non-HIPAA standard, and, with publication of an interim final rule with comment in the **Federal Register**, adopt such subsequent versions of the standard for voluntary use. As new backward compatible versions of non-HIPAA e-prescribing standards such as NCPDP SCRIPT are identified, they could be adopted under this process for voluntary use as an alternative to NCPDP SCRIPT 8.1.

With regard to the recommendation that we adopt versions of standards ''X.X or higher,'' we cannot adopt versions of standards that do not currently exist. Notice and comment rulemaking requires a meaningful opportunity to comment. It is not possible to comment meaningfully on a version of a standard that is not yet in existence, and as such, is not available for public review.

Comment: One commenter suggested voluntary use of the Get Message and Password Change transactions supported by NCPDP SCRIPT 8.1.

Response: The NCPDP SCRIPT 5.0 standard includes standards for the Get Messsage and Password Change transactions (70 FR 67594). The NCPDP SCRIPT 8.1 standard also includes standards that support these transactions. Those who elect to electronically transmit prescription and prescription-related information for Medicare Part D covered drugs prescribed for Medicare Part D eligible individuals, directly or through an intermediary, are required to comply with final standards that are in effect.

We will finalize the recognition of NCPDP SCRIPT 8.1 as a backward compatible version of the adopted NCPDP SCRIPT 5.0, but in response to the comments that were received to that interim final rule with comment, as of April 1, 2009, we will retire NCPDP SCRIPT 5.0 and leave NCPDP SCRIPT 8.1 as the adopted standard. To effectuate this, we are—

- Redesignating and amending proposed § 423.160(b)(1) as § 423.160(b)(2)(ii) to apply to transactions on or after April 1, 2009;
- Adding a new § 423.160(b)(1) to identify which paragraphs are applicable to which timeframes; and
- Adding new § 423.160(b)(2)(i) to apply to transactions before April 1, 2009 and adding the appropriate regulatory citations to § 423.160(b) to identify where each standard is incorporated by reference, if applicable.

2. Proposed Adoption of an E-Prescribing Standard for Medication History Transaction

In the November 16, 2007 proposed rule (72 FR 64907), we discussed that if NCPDP SCRIPT 8.1 is adopted in place of NCPDP SCRIPT 5.0 at § 423.160(b)(1), we would also add a new § 423.160(b)(3) to adopt the NCPDP SCRIPT 8.1 Medication History Standard for electronic medication history exchange among the Medicare Part D sponsor, prescriber, and the dispenser when e-prescribing Medicare Part D covered drugs for Medicare Part D eligible individuals.

We also discussed how the adoption of the NCPDP SCRIPT 8.1 Medication History Standard will provide a uniform communications mechanism for prescribers, dispensers and payers, support reconciliation of useful data from a large number of sources, and raise awareness of medication history availability and use among prescribers.

Comment: Most commenters supported the adoption of the NCPDP SCRIPT 8.1 Medication History Standard, noting that over time, medication history will help reduce adverse drug events, doctor shopping, and prescription drug diversion/fraud, and provide for emergency prescription drug histories in case of natural disasters. One commenter believes that large scale implementation of the NCPDP SCRIPT 8.1 Medication History Standard will result in significant challenges as well as useful refinement of the standard.

A number of commenters supported adoption of the standard, but only on a voluntary basis between trading partners, noting that requiring use of the medication history function could cause some current e-prescribers to revert to paper prescribing if they cannot meet the compliance date. One commenter on the NCPDP SCRIPT 8.1 Medication History Standard stated that the pilot test was performed in a closed system and is not scalable in larger deployments, and also indicated that the medication history transaction, while relatively mature in the prescribing sector, is not widely used in the dispensing sector. The commenter recommended that the use of the standard be encouraged but not required.

Response: The Medication History Standard was tested in four of five pilot project sites, among community physicians, dispensers, plans and payers. The testing included the two national prescription information exchange networks. While tested within closed systems, the pilot project

[1] ANSI accredits the procedures of national standards development organizations. Accreditation by ANSI signifies that the procedures used by the standards body in connection with the standard's development meet the Institute's requirements for openness, balance, consensus and due process. Refer to *www.ansi.org* for additional information.

evaluators determined that the testing adequately supported concluding that the standard met the requisite objectives, functionality and criteria (including not imposing an undue burden on the industry thanks to there being adequate health care industry experience with the standard) for adoption as a Medicare Part D e-prescribing standard. The pilot project demonstrated that the NCPDP SCRIPT 8.1 Medication History Standard works effectively, and includes the functionality and meets the e-prescribing standards criteria and objectives identified in sections 1860D–4(e)(2) and 1860D–4(e)(3) of the Act, and we will adopt it as a standard. We note that, while Medicare Part D sponsors are required to support all e-prescribing functions for which standards have been adopted, prescribers and dispensers are not required to do so. As a result, prescribers and dispensers who currently use e-prescribing but do not utilize the medication history function will not be required to conduct transactions using the NCPDP SCRIPT 8.1 Medication History Standard. However, if they choose to conduct an electronic medication history transaction in the context of e-prescribing Medicare Part D covered drugs for Medicare Part D eligible individuals, they must use the adopted standard. Regarding the comment that some current e-prescribers might revert to paper prescribing if they are required to use the NCPDP SCRIPT 8.1 Medication History Standard by the proposed compliance date, we refer back to comments received from a wide spectrum of the industry, that NCPDP SCRIPT 8.1 is already in widespread use, and the Medication History function already resides on the standard. Most providers need only to enable the function on their software system. For those who already enjoy the benefits of e-prescribing, reverting to paper would constitute a setback for their practices. We assume that they would continue to build upon the investment they have already made in their e-prescribing systems and become current, within the time allowed, with the adopted standards for those e-prescribing functionalities they choose to transact.

Comment: Commenters made a number of recommendations about the completeness and availability of medication history data to prescribers and dispensers. Several noted that information about all medications should be made available through the medication history transaction, including controlled substances (which cannot be e-prescribed under current law), over-the-counter drugs, drugs for which the beneficiary paid in cash, and drugs not covered under Medicare Part D, including those prescribed in the hospital setting. Other commenters recommended that medication history should be available 24 hours a day, 7 days a week through downloads to any prescriber and pharmacy, and that medication history data should not be limited to those who subscribe to any given e-prescribing system or network. One commenter suggested that any Medicare Part D e-prescribing standard for medication history should accommodate family and medical history information that supports linkage of these data sources to an electronic health record system.

Response: Our intent for the scope of this final rule is to establish standards that will be used to support the Medicare electronic prescription program. These standards will provide additional common language and terminology for those operating in the Medicare Part D e-prescribing environment that will further the electronic exchange of information in a data format that is consistent and recognizable.

We agree that the more complete a medication history is, the more useful it will be to the prescriber. However, prescriptions paid for in cash that are not adjudicated through insurance claims systems, and over-the-counter medications, for example, may not be captured by the patient's Medicare Part D sponsor medication history, and therefore would not be available for communication using the standard. The suggestion that we include family and medical history information in the NCPDP SCRIPT 8.1 Medication History Standard is outside of the scope of this rule. While the MMA does provide for the establishment of appropriate medical history standards, no initial standards were identified for this function. The NCPDP SCRIPT 8.1 Medication History Standard is the product of NCPDP, a voluntary consensus standards development organization. Only NCPDP could expand the NCPDP SCRIPT 8.1 Medication History Standard to encompass medical history. Despite its limited function, we believe that the NCPDP SCRIPT 8.1 Medication History Standard will facilitate the flow of available medication history data from Medicare Part D sponsors, and we expect this will have a positive impact on medication errors and ADEs.

Comment: Several commenters noted operational and business flow shortcomings that could limit the utility of medication history. One commenter indicated that the current criteria for medication history match is higher than that for formulary and benefits, and that current experience with one prescription information exchange network demonstrates a 50 to 65 percent match rate for submitted eligibility requests. Another commenter mentioned that many physicians are unable to access all medication history information, and that physicians should be able to add medications to the medication history without having to generate a prescription. Another commenter noted that as the pilot results showed, clinicians' willingness to access medication history was limited due to incomplete information, and that further testing of the standard is needed prior to adoption to clarify requirements for completeness and usability of information, and to determine where the information can be most effectively introduced and exchanged within the provider's workflow. Another commenter noted that the current medication history transaction does not support drug utilization review and medication management.

Response: In the November 16, 2007, proposed rule, we acknowledged that many physicians were unaware of the medication history function likely because, while it resides within the widely used NCPDP SCRIPT 8.1 suite of functional standards, most users have apparently not activated this feature on their e-prescribing systems. We expect that, as the standard achieves widespread use, industry feedback to the SDO will result in improvements and modifications that support more robust and complete medication history capacities. While industry input indicates there may be many reasons for less than a 100 percent match rate, including incomplete access to eligibility data, data inconsistencies and inaccuracies, etc., they also indicate that this could be corrected through the use of a unique identifier. While there is significant opportunity to improve the use of medication history, we believe that adopting the standard and expanding its use will help identify and drive process improvements.

We have adopted the NCPDP SCRIPT 8.1 Medication History Standard as proposed with two technical changes. We redesignated the standard from § 423.160(b)(3) to § 423.160(b)(4) and added a reference to the paragraph regarding the incorporation by reference of this standard.

3. Proposed Adoption of an E-prescribing Standard for Formulary and Benefits

In the November 16, 2007, proposed rule (72 FR 64907), we discussed that, as a result of pilot testing, we proposed to add § 423.160(b)(4) to adopt NCPDP Formulary and Benefits 1.0, as a standard for electronic transactions communicating formulary and benefits information between the prescriber and the Medicare Part D sponsor when e-prescribing for covered Medicare Part D drugs for Medicare Part D eligible individuals.

Comment: We received many comments supporting adoption of the NCPDP Formulary and Benefits 1.0, which noted that the pilot test demonstrated that NCPDP Formulary and Benefits 1.0 was technically capable of communicating the intended information to support this transaction. A prescription information exchange network also concurred, relaying that they began certifying physician software vendors and payers for formulary and benefits functionality last year, and have had good results implementing it since that time. A few commenters also pointed to the inherent complexities associated with implementing the standard, saying that without real-time information, patient information is often outdated and lacks detail, which can lead to higher co-pays and confusion for patients. They said that plans, carriers, and pharmacy benefit managers (PBMs) should be required to provide accurate, timely and complete formulary and benefits information. One commenter recommended that plans not be required to conduct the transaction, but if they do so, they must use the standard. Several commenters indicated that use of the transaction be voluntary among trading partners.

Response: Based on pilot test results and industry comments on the proposed rule, we agree that NCPDP Formulary and Benefits 1.0 has met the requisite objectives, functionality and criteria requirements of the MMA for use in the Medicare Part D e-prescribing program, and we will adopt it as a standard.

E-prescribing under Medicare Part D, as outlined in section 101 of the MMA, is voluntary for providers and dispensers. However, Medicare Part D sponsors must support the use of, and comply with, these standards when electronically transmitting prescriptions or prescription-related information for covered Medicare Part D drugs for Medicare Part D eligible individuals.

We do not believe that there would be any additional value gained from continued pilot testing of the standard. We acknowledge that formularies are complex, frequently change due to updates in coverage decisions, and that coverage benefits are fluid, sometimes changing from day to day. Currently, the industry practice is to send formulary and benefits information periodically and in batch-file format. We agree that the capacity to provide this information on a real-time basis is an important step toward realizing the full potential of the benefit of the standard, and expect that, as the standard gains widespread use, marketplace forces will encourage incorporation of real-time transaction capacities into the formulary and benefits e-prescribing process. In the meantime, we believe that additional testing, not of the standard itself but of the ability to provide real-time benefit responses, is desirable as the industry seeks to maximize e-prescribing system capabilities, and it is our understanding that industry efforts are underway to test real-time transactions through electronic prescription information exchange networks.

Also, as the NCPDP commented, there is an effort underway to bring industry participants together for further analysis and testing to address any remaining NCPDP Formulary and Benefits 1.0 implementation issues, which result from missing or incomplete data, and are not the result of the standard functioning inadequately for the transaction. NCPDP also is following up on a Healthcare Information Technology Standards Panel (HITSP) recommendation that NCPDP evaluate data element/list requirements and propose solutions to any outstanding issues.

Comment: Several commenters stated the need to restrict the ''list of alternative drugs'' to only those products that are bioequivalent or that have received the ''AB'' designation from the Food and Drug Administration (FDA), preventing the prescribing of potentially inappropriate or unsafe therapeutic substitutions. They supported adoption of the standard, but not the current version that includes ''preferred'' or ''formulary alternatives lists.''

Response: NCPDP Formulary and Benefits 1.0 supports a codified way of sending information that includes ''preferred'' or ''formulary alternatives lists,'' if a health plan offers such products. The standard does not assess the appropriateness of the alternatives, rather it merely conveys the applicable formulary requirements, including any step therapy requirements, of a given patient's health coverage. The Medicare Part D program provides for formularies in which therapeutically non-equivalent and non-bioequivalent drugs are offered in each category and class of a Medicare Part D drug formulary. (See § 423.120(b)(2).) The Medicare Part D program allows Medicare Part D sponsors to have utilization review management procedures, including step therapy guidelines, within approved formularies. Our adoption of NCPDP Formulary and Benefits 1.0 applies specifically to e-prescriptions for Medicare Part D covered drugs prescribed for Medicare Part D eligible individuals. As such, we believe that it should support conveying formulary information about the non-equivalent and non-bioequivalent drugs that are part of an approved Medicare Part D sponsor's formulary.

We have adopted the NCPDP Formulary and Benefits 1.0 standard as proposed with two technical changes. We redesignated the standard from the proposed § 423.160(b)(4) to § 423.160(b)(5) and added a reference to the paragraph regarding the incorporation by reference of this standard.

4. Adoption of the National Provider Identifier (NPI) as a Standard for Use in E-Prescribing

In the November 16, 2007, proposed rule (72 FR 64908), we proposed to add § 423.160(b)(5) to adopt the National Provider Identifier (NPI) as a standard identifier for health care providers for use in e-prescribing among the Medicare Part D sponsor, prescriber, and the dispenser. NCPDP SCRIPT 8.1, which we proposed to adopt, supports the use of the NPI.

We solicited comments from the industry and other stakeholders on the adoption of the NPI as an e-prescribing standard, and we specifically requested comments as to whether use of the NPI in HIPAA-compliant transactions constitutes adequate industry experience for purposes of using NPI as a covered health care provider identifier in Medicare Part D e-prescribing transactions.

Comment: Commenters generally acknowledged industry familiarity with the NPI from having used it in HIPAA standard transactions. While most commenters supported the use of the NPI on electronic prescriptions to identify the prescriber and the dispenser, they agreed that the NPI must not be used for routing transactions (message envelope), or sender/receiver-level information used in e-prescribing routing transactions, as it does not offer the clarity needed for routing data to destinations. However, it can be used to identify an organization or a provider involved in electronic prescribing

transactions. We received several comments about how the adoption of the NPI as a health care provider identifier for use in e-prescribing would improve the ability to uniquely identify a prescriber, but that the NPI must be used to identify a prescriber at the individual versus organizational level. A number of commenters urged CMS to provide more specific guidance on the use of the NPI in e-prescribing.

Three commenters opposed the adoption of the NPI as a standard identifier for use in Medicare e-prescribing because they contend that, as it is currently constructed, the NPI does not convey appropriate location and routing information which is essential to the e-prescribing process. One commenter said the NPI works as a name, but not as an address (that is, the location and setting of the prescriber). Another commenter stated that they do not use the NPI for e-prescribing because its use would force the industry to incur significant implementation costs. This commenter took issue with CMS' assumption that experience in using NPI in HIPAA-covered transactions constitutes adequate industry experience for adopting it for use in e-prescribing Medicare Part D covered drugs for Medicare Part D eligible individuals. One other commenter stated that, since it was not pilot tested, the NPI should be adopted only after pilot testing has been conducted and evaluated.

Response: Our intention in proposing the use of the NPI in e-prescribing transactions was to extend the functionality of the NPI from HIPAA-covered transactions to non-HIPAA e-prescribing transactions so that those with NPIs could use one identifier for both HIPAA-covered transactions and non-HIPAA e-prescribing transactions, versus a separate identifier(s), and allow the identification of both an individual prescriber and the dispensers. As the NPI has the ability to identify health care providers such as prescribers and dispensers, and as NCPDP SCRIPT 8.1 supports the NPI, its use in the e-prescribing of Medicare Part D covered drugs for Medicare Part D eligible individuals would fulfill the function for which it was intended. If the NPI is used as we proposed, as that of an identifier of individual, non-institutional health care providers, and not for routing or location purposes, we see nothing that would preclude its use for purposes of identification, or that would require pilot testing. Therefore, in NCPDP SCRIPT 8.1, the NPI would be used in the PVD Provider Segments to identify the prescriber or the dispenser. However, the NPI would not be used in the UIH Interactive Interchange Control Segment to route the transaction.

Based on our analysis of the comments received, we will adopt the NPI for use in e-prescribing to identify the individual healthcare prescriber and the dispenser. We note that, in doing this, we do not alter the compliance dates or other requirements under HIPAA for covered entities with respect to e-prescribing transactions that are also HIPAA covered transactions. For instance, we do not intend to alter any provisions requiring the use of the NPI for identifying institutional providers in HIPAA transactions, including those HIPAA transactions which are also e-prescribing transactions. We will also provide specific guidance in the future regarding how the NPI should and should not be used in e-prescribing Medicare Part D covered drugs for Medicare Part D eligible individuals.

Comment: A number of commenters noted that not all prescribers are covered entities under HIPAA, and expressed concern that if the NPI were mandated as the sole identifier for prescribers, prescribers who do not have an NPI may not be able to engage in e-prescribing.

Response: While not all providers are required by HIPAA to obtain an NPI, they are all permitted to do so. Moreover, we believe that most, if not all, providers who treat Medicare beneficiaries, already have an NPI, either because they are HIPAA-covered entities, or if not, because as providers they are otherwise identified on HIPAA transactions (for example, as a rendering physician) or on submitted paper claims, as Medicare requires the use of the NPI on paper claims.

Comment: One commenter suggested that the DEA number be used to clarify the identity of the prescribing provider when the NPI number is not adequately specific. Another noted that the DEA number is still required for prescribing controlled substances, but it is unclear as to whether prescribers will need to use their DEA number in the e-prescribing of controlled substances once it is allowable under law.

Response: Not all providers prescribe controlled substances and thus, not all providers have DEA numbers. As e-prescribing of controlled substances is still not allowed by law, we cannot speculate as to the potential role of the DEA number in that process. We also note that as the intent of the NPI is to consolidate multiple and/or proprietary prescriber identifiers for use in the Medicare program, it would appear to be counterproductive to use one number, namely the DEA number, to clarify another number, the NPI.

Comment: One commenter requested that CMS allow adequate time for adoption.

Response: We will monitor industry feedback regarding this issue and respond accordingly.

Comment: One commenter stated that dispensers should not be deemed to be in violation of e-prescribing standards if the prescriber does not have an NPI or fails to include an NPI in an e-prescribing message, and questioned what effect that may have on the dispenser's compliance with e-prescribing regulations.

Response: If a prescriber is e-prescribing under the Medicare Part D program, the prescriber is required to use the adopted standards, in this case, the NPI, to identify an individual e-prescribing provider. By the compliance date of this final rule, we expect that providers who participate in Medicare, including those who submit paper claims, will have already have obtained their NPI for claims reimbursement purposes.

Absent an NPI, prescribers likely would not be engaged in e-prescribing. However, in the instance of a dispenser receiving an e-prescription for a Part D covered drug for a Part D eligible individual from a prescriber without an NPI, the prescriber, not the dispenser, would be considered to be in violation of Part D e-prescribing regulations.

We have adopted the NPI as a standard identifier as proposed with a technical change. We redesignated this standard from the proposed § 423.160(b)(5) to § 423.160(b)(6).

5. Proposed Compliance Date

In accordance with sections 1860D–4(e)(1) and 1860D–4(e)(4)(D) of the Act, the Secretary must issue certain final uniform standards for e-prescribing no later than April 1, 2008, to become effective not later than 1 year after the date of their promulgation. Therefore, in accordance with this requirement, we proposed a compliance date of 1 year after the publication of the final rule. We also proposed adopting NCPDP SCRIPT 8.1 as the e-prescribing standard for the transactions listed in section II.A. of the proposed rule (72 FR 64906), effective 1 year after publication of the final rule. We solicited comments in the proposed rule regarding the impact of these proposed dates on industry and other interested stakeholders, and whether an earlier compliance date should be established.

Comment: Many commenters supported a compliance date of 1 year after issuance of the final rule, stating that based on their respective industry feedback and experience with NCPDP

SCRIPT 8.1, 1 year should be adequate time for the industry to work toward implementation of these standards with minimum impact. A few thought that industry compliance prior to that time could be achieved. A few other commenters said that the proposed compliance date is extremely aggressive and does not take into consideration vendor system development life cycles, release dates of supporting systems, and time and resources required for health systems to adopt and deploy the needed infrastructure to attain the expected financial and safety benefits of e-prescribing. One commenter stated that the proposed implementation date is problematic for Medicare Part D sponsors that own dispensers that have already begun to adopt e-prescribing, because having to retrofit standards into existing systems may be more costly and time consuming. This commenter suggested an additional year or two beyond the proposed compliance date to allow adopters to bring current e-prescribing systems into compliance. Another recommended that providers be given a minimum of 2 years to comply. Two commenters requested that we consider contingency plans if the industry is unable to meet the 1 year compliance timeframe. One commenter recommended that CMS conduct a study to identify pharmacy preparedness, and that once the final rule is released, that CMS monitor the progress of the industry in implementing the standards, and develop an extended adoption timeframe as warranted.

Response: Section 1840D–4(e)(4)(D) of the Act requires that final e-prescribing standards be promulgated by the Secretary by April 1, 2008, with implementation no more than 1 year following that date, which would place the latest possible implementation date at April 1, 2009. We agree that, based on comments received, adoption of these standards with the 1 year compliance date imposes no undue burden on the industry, and concur with commenters who supported the proposed 1 year compliance date.

Based on industry feedback, numerous e-prescribing software systems now using NCPDP SCRIPT 8.1 have been certified for use by electronic prescribing networks. The NCPDP Formulary and Benefits 1.0 standard is based on a proprietary transaction developed by RxHub, which is currently being used to communicate this information in many e-prescribing products. The NCPDP SCRIPT 8.1 Medication History Standard is already contained in NCPDP SCRIPT 8.1, which is in widespread use. We anticipate that any e-prescribing software vendor or service has already, or will provide, these standards upgrades as part of a monthly subscription charge or annual maintenance fee, and that it would not require massive systems changes that would be overly burdensome. We have received no extensive stakeholder or vendor feedback that upgrades to current e-prescribing systems are more burdensome than installations of new e-prescribing systems. There will always be modifications to standards to which e-prescribing systems must be retrofitted, and we trust that industry software vendors will anticipate these modifications and accommodate standards upgrades to make their use by existing customers as smooth and seamless a transition as possible. We cannot delay the implementation date for the standards adopted under section 1860D–4(e)(4)(D) of the Act, which is set by statute, and continue to believe that 1 year is adequate time to accomplish any system changes necessitated by the adoption of these final standards. However, we will monitor industry feedback relative to their ability to meet the 1 year compliance timeframe and determine the need for any other action based on that information within the applicable statutory parameters.

We are adopting a compliance date of 1 year after publication of the final standards as proposed. Therefore, to clarify the compliance dates for the revised and existing standards, we have revised § 423.160(b) as follows:

- Redesignated the proposed paragraphs (b)(1) through (b)(5) (we proposed to add new paragraphs (b)(3) through (b)(5)) as paragraphs (b)(2) through (b)(6).
- Added a new paragraph (b)(1) that identifies the compliance dates for each standards in paragraphs (b)(2) through (b)(6).
- In newly redesignated (b)(2) (the prescription standard), revised the standard to separately identify the NCPDP SCRIPT 8.1 and NCPDP SCRIPT 5.0 based on the compliance dates of these standards.

C. Related Issues Included in and Analysis and Response to Public Comments for the November 16, 2007 Proposed Rule

In the November 16, 2007 proposed rule, we requested comments on various issues related to the e-prescribing process. We received numerous comments on those and other issues and we discuss those comments and our responses below.

1. Fill Status Notification (RxFill)

In the November 16, 2007 proposed rule, we explained that the Fill Status Notification within the NCPDP SCRIPT 8.1 enables a pharmacy to notify a prescriber when the prescription has been dispensed, partially dispensed, or not dispensed. The pilot test demonstrated that the standard was technically capable of performing this function, but pilot sites questioned whether prescribers would be inundated with data, and dispensers would be burdened by the business process changes that would ensue. We solicited industry comments regarding RxFill's usefulness.

Comment: Many commenters noted that RxFill contains useful functionality, such as monitoring patient adherence to a medication regimen, or identifying drug diversion/abuse. However, most recommended that the transaction be used on a voluntary basis among trading partners, noting that the need for information provided by RxFill varies by prescriber. One commenter predicted that physician demand for this standard will increase dramatically following the rollout of the 2008 Physician Quality Reporting Initiative (PQRI) measures, as performance on these measures is influenced by patient compliance with therapy.

Several commenters stated that the NCPDP SCRIPT 8.1 Medication History Standard offers prescribers and dispensers similar but richer information, making RxFill unnecessary.

A number of commenters noted that there were business process and implementation issues associated with RxFill. Others noted shortcomings in the standard, such as omission of features such as pharmacy receipt, patient pick up, reason for refusal of fill, and the placement of the order in the prescription filling process. They recommended additional analysis and testing prior to adoption.

Response: As stated in the November 16, 2007 proposed rule, we previously referenced industry feedback that had indicated that the adoption of RxFill ''may cause an unnecessary administrative burden on prescribers and dispensers'' as a basis for not proposing the adoption of RxFill. This feedback was derived from the findings contained in the report to Congress on the results of the CY 2006 e-prescribing pilot (*http://www.healthit.ahrq.gov/erxpilots*). The report noted that the industry feared that adoption of the RxFill standard for electronic fill status notification transactions might result in increased ''administrative workflow''

issues, namely being inundated with fill status notifications every time a patient picked up (or conversely, did not pick up) a prescription. However, it is now clear from the comments received in response to the November 16, 2007 proposed rule that the industry, upon further consideration, now perceives there to be no administrative burden associated with the adoption of the RxFill standard. This is a result of the realization by the industry that the prescriber would have to use their e-prescribing system to electronically ''flag'' or switch on the fill status notification transaction for those patients whose medication adherence they wish to monitor. When a patient picks up a prescription at the pharmacy, they likely sign an electronic signature log. In instances in which the prescriber has switched on the fill status notification transaction in their eRx system, this electronic signature triggers a pharmacy software system update which, in turn, would trigger a fill status notification message using the RxFill standard to be sent back to the prescriber. Prescriber comments in response to the proposed rule indicates that they perceived real value in RxFill for prescribers whose patients with chronic conditions may benefit from closer medication adherence monitoring. In addition, the pilot demonstrated that RxFill supports the transactions for which it was tested. Given the voluntary nature of e-prescribing for dispensers and prescribers under Medicare Part D, prescribers can choose whether or not they want to avail themselves of the information that use of this standard in the electronic Fill Status Notification transaction would provide, and voluntarily incur costs, if any, associated with its use. Therefore, we will revise § 423.160(c) and add a paragraph (M) to § 423.160(b)(2)(ii) to adopt the Rxfill standard by adding the prescription Fill Status Notification and its three business cases; Prescription Fill Status Notification Transaction—Filled, Prescription Fill Status Notification Transaction—Not Filled, and Prescription Fill Status Notification Transaction—Partial Fill) to provide for the communication of fill status notification of Medicare Part D prescription drugs for Medicare Part D eligible individuals, among Medicare Part D sponsors, prescribers and dispensers, to the list of transactions for which NCPDP SCRIPT 8.1 is used.

Comment: Several commenters who supported RxFill's adoption suggested modifications that they believed might make it less burdensome to providers. These included the suggestion of identifying only key categories of drugs, such as blood pressure or diabetes medications, that would trigger an RxFill notification to a provider from a pharmacy; or an RxFill notification if a patient did not pick up an e-prescribed prescription at their pharmacy within one week to 10 days after its transmission. One commenter also suggested the use of RxFill as a way to auto-populate medication history fields.

Response: We expect that increased use of RxFill will allow the industry to identify a variety of functional and business flow improvements that could be incorporated through the standards maintenance process. The Department will continue to monitor the further development of, and revisions to, this standard and will consider updating the adopted standard when and as appropriate.

2. RxNORM, Structured and Codified Sig, and Prior Authorization

In the proposed rule we identified three of the six initial standards that the pilot results showed were not ready for adoption: RxNORM, NCPDP Structured and Codified Sig 1.0, and the Prior Authorization Standard. We also noted that RxFill was technically ready for adoption, but as previously discussed, we were unsure as to industry's desire to adopt it as a standard. As a result, we did not propose to adopt these standards, but we solicited public comment on this decision.

Comment: Most commenters agreed that the standards for NCPDP Structured and Codified Sig 1.0, clinical drug terminology (RxNorm) and the Prior Authorization Standard were technically unable to convey the needed information and lacked adequate industry experience. Only one commenter asserted that all six initial standards tested in the CY 2006 pilot could feasibly be implemented by 2009.

Response: We agree that these standards are not ready for implementation, and are not adopting them at this time.

Comment: Many commenters stressed the potential value of these standards, and urged us to work actively with the industry to promptly mitigate the problems and concerns with the standards. Commenters also noted that there are efforts underway to bring industry participants together for further analysis and testing of RxNorm, NCPDP Structured and Codified Sig 1.0, and the Prior Authorization Standard, to expand upon and bring to completion the work begun in the CY 2006 e-prescribing pilot. Several commenters asked that CMS include language ''in the standards that commits it (CMS) to development and pilot testing of the Prior Authorization Standard.''

One commenter who was familiar with the pilot of the initial standards stated that many of the shortcomings of RxNorm that were identified in the pilot test were focused on difficulties in conveying information about drug delivery devices and packages, and not the overall function of the standard in other contexts. They said that while there may have been instances of unresolved synonymy, that at least half of them, if not all of them, have already been resolved.

Commenters stated that they believed the Prior Authorization Standard is an inefficient, time consuming process that is a source of frustration for both physicians and patients, and a process that is ripe for improvement. One commenter recommended additional research on the Prior Authorization Standard to alleviate the manual administrative burden associated with the high volume of prior authorizations in the long-term care setting.

Response: One commenter asked that CMS include language in the standards that commits it to development and pilot testing of the prior authorization standard. We note that standards are guidelines, rules or characteristics for activities, and are the purview of the standards development organizations and not CMS; therefore, the inclusion of such language as part of the technical specifications of a standard would be inappropriate.

We agree that these three standards would contribute significant value to e-prescribing, and will continue to work with the SDOs, industry, and interested stakeholders toward readying these standards for consideration by the Secretary for adoption as final standards for e-prescribing Medicare Part D covered drugs for Medicare Part D eligible individuals.

3. Exemption for Computer-Generated Facsimiles

The November 2, 2005 foundation standards final rule (70 FR 67568) exempted entities that transmit prescriptions or prescription-related information by means of a computer-generated facsimile from the requirement to use the adopted NCPDP SCRIPT standard for the transactions that, prior to this rule, were listed at § 423.160(b)(1). In response to industry concerns that the exemption was hindering the movement toward computer-to-computer e-prescribing, we included a proposal to eliminate the exemption in the CY 2008 Physician Fee Schedule proposed rule (July 12, 2007

(72 FR 38122, 38196)), effective January 2009. In the November 27, 2007 CY 2008 Physician Fee Schedule Final Rule with Comment, 72 FR 66334, we modified the computer-generated facsimiles exemption, but did not eliminate it entirely, allowing computer-generated facsimiles to be used in the event that an EDI-transmitted prescription fails due to network transmission failures or similar, temporary communication problems that are episodic and nonrepetitive in nature.

In the November 16, 2007 proposed rule (72 FR 64902) we referenced, but did not solicit comments on our inclusion of a proposal to remove the exemption for computer-generated facsimiles in the CY 2008 Physician Fee Schedule proposed rule (72 FR 8196). However, we received comments on this provision in response to our solicitation for comments on the November 16, 2007 proposed rule.

Comment: Several commenters requested that we not eliminate the use of all facsimiles (including computer-generated facsimiles) as a means of transmitting prescriptions and prescription-related information between provider and pharmacy, and vice versa. Commenters stated that if all facsimiles of prescriptions and prescription-related information were eliminated, it would constitute a burden on dispensers and provider offices that would have to revert to paper, which would result in decreased productivity and increased costs. Another commenter stated that use of secure facsimile via computer to computer link or computer to facsimile link, should be allowed when the NCPDP SCRIPT 8.1 standard transmission is ''not available'' to all prescribers.

Two commenters stated that the elimination of the exemption for computer-generated facsimiles should be delayed until January 2010; and that the provisions of the final rule should be modified to allow its use when transmitting prescription or prescription-related information to dispensers and facilities that do not e-prescribe, or when prescribing controlled substances.

Response: First, we note that transmitting paper prescriptions from one facsimile machine to another for Medicare Part D covered drugs for Medicare Part D eligible individuals, as described by one of the commenters, does not constitute electronic data interchange. Such paper faxing is not subject to the Medicare Part D e-prescribing standards adopted for the e-prescribing of Medicare Part D covered drugs for Medicare Part D eligible individuals.

In the July 2007 proposed rule, we did not propose the elimination of the use of paper facsimiles as a way to transmit prescriptions and prescription-related information. Rather, we proposed eliminating the exemption for computer-generated e-prescribing facsimiles from the adopted NCPDP SCRIPT standard for the communication of prescriptions and prescription-related information between prescribers and dispensers for the transactions listed at § 423.160(b)(1)(i) through (xii). In the final rule, we acknowledged that computer-generated facsimiles may be needed for prescriptions which fail due to network transmission failures or similar, temporary communication problems that are episodic and non-repetitive in nature and preclude the use of NCPDP SCRIPT. However, this exception applies only to transmission failures, and not simply to those who choose to use e-prescribing software that does not employ the NCPDP SCRIPT standard. We assume the commenter is referring to such a situation when referencing that computer to computer link or computer to facsimile link, should be allowed when the NCPDP SCRIPT 8.1 standard transmission is ''not available'' to all prescribers.

During the time period allotted for comment following the issuance of the July 2007 proposed rule we received several comments regarding the elimination of the exemption for computer-generated facsimiles. A number of commenters disagreed with the lifting of the exemption, indicating that its elimination could be problematic in performing a certain e-prescribing function, that of prescription refill requests, but only one of those commenters offered substantiation. Absent receipt of any other industry feedback on the impact of the elimination of computer-generated facsimiles on prescription refill requests, and not considering these comments to constitute widespread concern regarding the refill request function, we proceeded in CY 2008 Physician Fee Schedule final rule (72 FR 66334) to amend the exemption to eliminate the exemption except, as noted above, in cases of network failure. Taken in the aggregate, we determined that the 1 year time period was adequate time during which providers and dispensers would have the opportunity to change over to conducting true e-prescribing (computer to computer EDI) and that costs would be mitigated due to the growing volume of e-prescriptions and practice of e-prescribing, with a commensurate reduction in transmission, software and other costs during that 1 year time period. These changes are due to become effective in January 2009.

Since that time, we have been informed by the industry that the elimination of the exemption for computer-generated facsimiles would have a significant adverse effect in the electronic transmission of prescription refill requests, and interested stakeholders have provided us with more specific information regarding the economic and workflow impact that will result from the modification of the exemption that was not forthcoming during the public comment period. In particular, dispensers have indicated that they use computer-generated facsimiles for a significant volume of refill requests, and that eliminating the exemption would require them to revert to paper facsimiles for those transactions. We are now in the process of examining and considering these data, and may soon issue a proposed solution through the rulemaking process that we intend to finalize prior to the scheduled January 2009 effective date. Through this process the public will, once again, be afforded an opportunity to offer public comment.

4. Elimination of the Exemption for Non-Prescribing Providers (Long Term Care)

In the proposed rule (72 FR 64902 through 64906), we noted that, because NCPDP SCRIPT was not proven to support the workflows and legal responsibilities in the long-term care setting, entities transmitting prescriptions or prescription-related information where the prescriber is required by law to issue a prescription for a patient to a non-prescribing provider (such as a nursing facility) that in turn forwards the prescription to a dispenser (''three-way prescribing communications'' between facility, physician, and pharmacy), were provided with an exemption from the requirement to use NCPDP SCRIPT 5.0 in transmitting such prescriptions or prescription-related information. We also noted the results of the CY 2006 e-prescribing pilot relative to the use of NCPDP SCRIPT 8.1 in the long-term care setting, namely that workarounds were needed to accommodate the unique workflow needs in long term care. We conveyed that, when an updated version of the NCPDP SCRIPT standard in the long-term care setting, we would consider removing the current exemption. We then solicited comments on the impact and timing of lifting this exemption.

Comment: Commenters generally acknowledged that progress is being made toward accommodating the specific needs of the long term industry in e-prescribing standards, and supported the eventual elimination of the long-term care exemption to the NCPDP SCRIPT standard. They noted that, while NCPDP SCRIPT 8.1 may work well in most instances, each higher level of NCPDP SCRIPT (10.0 or higher) contains more functionality that ultimately will build to that which will be needed for long-term care applications. They noted that one of these higher level standards should be the designated standard for use if/when the exemption for e-prescribing in the long-term care setting is eliminated. Several commenters stated that the exemption for e-prescribing in long-term care could be lifted upon adoption of NCPDP SCRIPT version 10.2. This newer version of the standard is ANSI approved, and, according to these commenters, meets the basic e-prescribing needs of the long-term care industry. Another commenter recommended adoption of NCPDP SCRIPT 10.3, citing its expanded ability to support resupply requests, fill status and census notification messages in the long-term care setting. Still other commenters insisted that CMS should adopt NCPDP SCRIPT 10.5 for use in e-prescribing in the long-term care setting. Commenters also stated that they anticipated that the Certification Commission for Healthcare Information Technology (CCHIT) would begin work in 2009 to launch certification of electronic health records products for long-term care, and that in preparation for that activity, national standards for e-prescribing for long-term care will need to be in place. One commenter stated that the long-term care exemption should remain in place until such time as e-prescribing standards can support the needs of long-term care, taking in account medication management across multiple care settings and providers. Another stated that the exemption should not be lifted until all standards for e-prescribing had been adopted, and the industry had conducted adequate testing. One commenter recommended that CMS should, with this final rule, remove the current exemption for long term care entities from using the Medicare Part D e-prescribing standards, effective with the compliance date of this rule.

Response: While NCPDP SCRIPT 10.2 was approved in July 2007, NCPDP SCRIPT 10.3 is not scheduled for approval until April 2008, and NCPDP SCRIPT 10.5 is not scheduled for approval until July 2008. We agree with commenters that NCPDP SCRIPT 10.5 appears to meet all of the long-term care business needs that have been identified to date, and therefore would be appropriate for adoption. When NCPDP SCRIPT 10.5 is approved by NCPDP, we will review it with the purpose of ascertaining whether it is backward compatible with the adopted standard, and thus a candidate for the streamlined process outlined earlier that would permit its use in place of NCPDP SCRIPT 8.1, or if rulemaking will be required. We anticipate eliminating the long-term care exemption when rulemaking is utilized to retire the then-existing standard in favor of version 10.5. From feedback received from the industry, NCPDP SCRIPT 10.2 meets the basic needs of the long-term care industry relative to e-prescribing, including the ''need no later than'' date/time added for special delivery needs. NCPDP SCRIPT 10.3 features this as well as additional functionality, including medication history source and fill number information for de-duplicate processing. NCPDP SCRIPT 10.5 features all of the functionality of these previous NCPDP SCRIPT 10.0 and above versions, and supports federal medication terminologies code sets. We agree with commenters that NCPDP SCRIPT 10.5 appears to meet all of the long-term care business needs identified to date. Therefore, it would be appropriate to adopt the standard with the most robust functions, since this is what vendors will incorporate into their products. As we indicated in the previous discussion, once NCPDP SCRIPT 10.5. is balloted and approved by the NCPDP, and then approved by the Accredited National Standards Institute (ANSI), we will review it with the intent of moving forward if appropriate. However, we note that long-term care facilities may voluntarily use the standard at any time, and we encourage its adoption in that setting.

5. Electronic Prescribing for Controlled Substances

Comment: Several commenters noted that all categories of prescriptions—including controlled substances—should be able to be electronically prescribed, and that to require handwritten prescriptions for controlled substances would necessitate a dual paper/electronic system which would be a major barrier to adoption. For example, a physician noted that one out of every ten prescriptions he wrote could not be e-prescribed because they were for controlled substances. One commenter recommended that it be mandated that prescribers should check the identification of patients before prescribing for them electronically.

Response: We agree that the inability to e-prescribe controlled substances can hinder broader e-prescribing adoption. The Drug Enforcement Administration (DEA) which has responsibility for administering the Controlled Substances Act, currently requires that controlled substances be prescribed on paper with a written signature. We continue to work with the DEA toward revised requirements that would permit such e-prescribing while maintaining safeguards against drug diversion.

6. Diagnosis on Prescription

Comment: One commenter proposed that Medicare require diagnosis information on electronic prescriptions, arguing that this would allow the pharmacy to evaluate the drug prescribed against the diagnosis and thus identify potential errors.

Response: NCPDP SCRIPT 8.1 does contain an optional field for diagnosis, but requiring its use is outside the scope of our proposed rule. We have not solicited nor have we received any industry feedback on this issue, and therefore cannot attest as to the industry's use and/or perceived value of this feature.

7. Issues Related to State Law

Comment: One commenter urged CMS to take a broader view of the authority to preempt state law than we outlined in the November 7, 2005 final rule (70 FR 67574 through 67576). They stated that the lack of national applicability of the standards we adopt serves as a barrier to broader adoption of e-prescribing.

Response: In the November 7, 2005 final rule, we identified four categories of State law that restrict the ability to carry out Medicare Part D standards, and which pertain to electronic transmission of prescription-related information. We encouraged States to consider the impact on Federal e-prescribing standards of laws that could directly or indirectly impede the adoption of e-prescribing technology and standards on a statewide and national basis. We also urged States to enact legislation consistent with, and complementary to, the goals of the MMA's e-prescribing provisions. This included removing existing barriers to e-prescribing.

The commenter did not identify any specific State laws that stand as an obstacle to Congress's goal of implementing uniform e-prescribing standards that are to be used in e-prescribing of Medicare Part D covered drugs for Medicare Part D

eligible individuals. Therefore, we will not re-evaluate the scope of preemption at this time. We would consider recommendations related to any specific statute or regulation if such laws and recommendations are brought to our attention at some point in the future.

Comment: Another commenter noted that some State laws restrict communication of ''sensitive'' medication information (for example, drugs indicative of HIV status, substance abuse, genetic disorder, etc.). The commenter recommended that we preempt any State or local statute or regulation that would limit disclosure of a patient's medication history, noting that these laws and regulations are often inconsistent and hard to find, impeding the ability of vendors to display this information to the prescriber at the point of care.

Response: We acknowledge that medication history data will be most valuable to the prescriber when it is complete. However, these laws do provide patients with additional safeguards for certain categories of medical information. We believe that, as medication history becomes more available to prescribers, these limitations will be identified, and may be appropriate for future regulation. We will not, however, address this issue at this time since it is outside of the scope of this final rule.

8. Incentives to e-prescribing

Comment: A number of commenters suggested that CMS should support adequate financial incentives, and should itself provide financial incentives, to physicians and dispensers to assist them with their investments in, and implementation of, e-prescribing.

Response: The Administration supports the adoption of health information technology as a normal cost of doing business. However, other means of encouraging the adoption of e-prescribing are already in place, such as regulations that provide a safe harbor under the federal anti-kickback statute and an exception under the federal Physician Self-Referral (''Stark'') Law for certain arrangements involving the donation of e-prescribing and electronic health records technology. These regulations pave the way for increased adoption of health information technology by physicians and other health care providers. We also note that providers may participate in, and receive incentives through, the 2008 Physician Quality Reporting Initiative (PQRI). This project includes measures for patient compliance with therapy, which can be supported through the utilization of e-prescribing transactions such as fill status notification.

9. ''Pharmacist'' versus ''Dispenser''

Comment: One comment included a recommendation that we refer to ''pharmacists'', rather than ''dispensers'' in the final rule because referring to a pharmacist as a ''dispenser'' ignores the clinical component of pharmacist-patient interactions.

Response: We fully recognize and appreciate the importance of the pharmacist-patient relationship, which provides critical clinical and educational support to the patient. However, we wish to clarify that we have defined the term ''dispenser'' at 42 CFR 423.159 to mean a person or other legal entity licensed, registered, or otherwise permitted by the jurisdiction in which the person practices or the entity is located to provide drug products for human use by prescription. Based on this definition, we will continue to use the term ''dispenser'' when referencing these entities.

Comment: A number of commenters stated that the benefits of e-prescribing will not be fully realized until e-prescribing is included among CCHIT-certified interoperable electronic health records (EHR) featuring robust decision-making software.

Response: We recognize the immediate benefits that e-prescribing as a stand-alone function can bring to the health care community. However, we support the Administration's health information technology initiatives including EHR certification and standards harmonization, and agree that the full benefits of e-prescribing will be realized through the adoption of certified interoperable electronic health records. Additionally, CMS has participated in the development of the medication management use case that will ultimately result in harmonized standards and support interoperable e-prescribing functionality.

10. Mandatory e-prescribing

Comment: One commenter expressed support for the recommendation from the American Health Information Community (AHIC) that the Secretary seek authority to mandate e-prescribing under Medicare. Another commenter opposed mandating e-prescribing, and another suggested it not be mandated until at least 50 percent of prescribers and dispensers are e-prescribing.

Response: Currently, e-prescribing under Medicare Part D, as outlined in the MMA, is voluntary for prescribers and dispensers. Medicare Part D sponsors must support the use of these standards in e-prescribing transactions. The breadth of this final rule is limited to that statutory authority.

11. Exemption for e-prescribing in a Closed Enterprise

Comment: Several commenters requested clarification regarding whether prescriptions transmitted within a closed enterprise (for example, from prescribers within an HMO plan to a plan-owned pharmacy) are exempted from the use of the NCPDP SCRIPT standard.

Response: Entities may use either HL7 messages or the adopted NCPDP SCRIPT standard to conduct internal electronic transmittals (that is, when all parties to the transaction are employed by, and part of, the same legal entity) for the specified NCPDP SCRIPT transactions as described above.

12. Commercial Messaging

Comment: One commenter said that commercially oriented messages should not be permitted in e-prescribing until adequate standards for content, integrity, and display of these messages have been developed.

Response: We agree that there needs to be an appropriate balance between providing appropriate information at the point of care, and messaging that might steer the prescriber to use specific drugs and therapeutics as specified at section 1860 D–4(e)(3)(D) of the Act. We also recognize the potential for inappropriate messaging to occur in e-prescribing and share concerns about how the provision of certain information may unduly influence physician prescribing patterns. For example, inappropriate messages include those that would steer the filling of a prescription to a particular mail order pharmacy versus a retail pharmacy, and electronic ''detailing'' messages from a manufacturer promoting a particular brand or brand-name drug over and above that which the Medicare Part D sponsor requires or to which it gives preference. Moreover, if a drug manufacturer engages in this practice to promote unapproved uses for a drug, this could be a violation of the Federal Food, Drug, and Cosmetic Act. We will monitor this as an operational issue and will provide guidance to Medicare Part D sponsors at a future date and, if necessary, propose more specific standards for messaging.

13. E-prescribing Errors

Comment: One commenter noted an increasing number of new errors are associated with electronic prescribing. Computerized Physician Order Entry (CPOE) systems have the potential to contribute to errors in certain situations,

such as the selection of a wrong drug or dose selection from a drop down menu that a dispenser, if they are aware of the error, must then communicate to the prescriber to address. The commenter urged us to consider the potential for new types of errors as the industry implements e-prescribing standards and clarify in the final regulation ways the agency will address or prevent such errors.

Response: We cite this commenter's example to raise the point that no system, whether electronic or paper, is infallible. Just as in paper prescribing, errors can still take place. E-prescribing helps to substantially mitigate some risk, such as illegible prescriber hand writing on a paper script that could be mis-interpreted by the dispenser; and medication history, which supports the reduction of the occurrence of adverse drug events at the prescriber level. We would expect that e-prescribing software systems would employ safeguards and redundancies, such as multiple prompts asking for prescriber review and confirmation of non-conforming information, prior to transmission.

14. Privacy and Medication History

Comment: Two commenters expressed concern with privacy and medication history. One inquired as to who would have access to medication history under the HIPAA Privacy Rule; the other stated that the HIPAA notice of privacy practices should make it very clear that e-prescribing is taking place and that prescription information is part of one's medical record. One commenter felt that individuals should have the right not to participate in either e-prescribing or electronic medical records, and to have the right to determine who has access to their prescription histories.

Response: Patients can always ask their physicians to refrain from requesting their personal medication histories as derived from the patient's Medicare Part D sponsor. While there is no legal guarantee a provider would agree to their request, patients may always ask that their prescribers only use paper prescriptions when prescribing for them.

15. Regular Cycle of Rulemaking

Comment: Two commenters suggested that CMS consider creating a regular cycle of rulemaking in order to keep standards adoption in sync with the rapid pace of standards development by the industry. For example, CMS could issue a new notice of proposed rulemaking for e-prescribing standards every 2 years in a particular month.

Response: The creation of a regular cycle of rulemaking to adopt e-prescribing standards would restrict CMS' ability to adopt standards when they meet the requisite objectives, functionality and other criteria required that CMS employs in deciding whether to adopt e-prescribing standards. We further reiterate that in response to industry's desire for a streamlined updating process that could keep pace with changing business needs, as previously discussed in this final rule, we adopted a process for the Secretary to adopt subsequent version(s) of a standard for voluntary use where the new version(s) are backwards compatible with the adopted standard. The industry's request for a regular cycle of rulemaking clearly indicates a desire to adopt standards as soon as possible, which is contrary to a bi-annual rulemaking process.

16. Medicaid Prescription Requirements

Comment: One commenter raised the issue that federal Medicaid regulations require a prescriber's hand written authorization for dispensers to dispense brand name drugs when an equivalent generic is available, which would appear to be in conflict with federal e-prescribing guidelines.

Response: The issue that the commenter raised applies to prescriptions obtained under their Medicaid benefits. Under section 1860D–4(e) of the Act, e-prescribing regulations apply only to covered Medicare Part D covered drugs prescribed for Medicare Part D eligible individuals. In those instances in which Medicare Part D provides prescription drug coverage for beneficiaries who receive their Medicaid prescription drug benefits through the Medicare program (dual-eligible beneficiaries), Medicare Part D e-prescribing regulations would apply.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency.
- The accuracy of the agency's estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited public comment on each of these issues for 42 CFR 423.160, ''Standards for Electronic Prescribing.''

The emerging and increasing use of health care electronic data interchange (EDI) standards and transactions have raised the issue of the applicability of the PRA. It has been determined that a regulatory requirement mandating the use of a particular EDI standard constitutes an agency-sponsored third-party disclosure as defined under the PRA.

As a third-party disclosure requirement subject to the PRA, Medicare Part D sponsors must support and comply with the adopted e-prescribing standards relating to covered Medicare Part D drugs, prescribed for Medicare Part D eligible individuals.

However, the requirement that Medicare Part D sponsors support electronic prescription drug programs in accordance with standards set forth in this section, as established by the Secretary, does not require that prescriptions be written or transmitted electronically by prescribers or dispensers. These entities are required to comply with the adopted standards when they electronically transmit prescription or prescription-related information for covered transactions.

Testimony presented to the NCVHS indicates that most health plans/PBMs currently have e-prescribing capability either directly or through contract with another entity. Therefore, we do not believe that utilizing the adopted standards will impose an additional burden on Medicare Part D sponsors.

Since the standards that have been adopted are already familiar to industry, we believe the requirement to utilize them in covered e-prescribing transactions constitutes a usual and customary business practice. As such, the burden associated with the requirements is exempt from the PRA as stipulated under 5 CFR section 1320.3(b)(2). As required by section 3504(h) of the Paperwork Reduction Act of 1995, we have submitted a copy of this document to OMB for its review of these information collection requirements.

V. Regulatory Impact Analysis

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, as further amended, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (March 22, 1995, Pub. L. 104–4), Executive Order 13132 on Federalism and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties, and as further amended by Executive Order 13422) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Among other things, a regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

We estimate that this rulemaking will have an annual benefit on the economy of $100 million or more and will have ''economically significant effects.'' We believe that prescribers and dispensers that are now e-prescribing have already largely invested in the hardware, software and connectivity necessary to e-prescribe. We do not anticipate that the retirement of NCPDP SCRIPT 5.0 in favor of NCPDP SCRIPT 8.1 for the transactions listed at § 423.160(b)(2), the adoption of the NCPDP SCRIPT 8.1 Medication History Standard for the exchange of medication history information, the adoption of the NCPDP Formulary and Benefits 1.0 for formulary and benefits transactions, the adoption of NPI for use in e-prescribing transactions and the adoption of NCPDP SCRIPT 8.1 (RxFill) for electronic fill status notification purposes will result in significant costs. We solicited industry and other interested stakeholder comment and input on this issue.

We anticipate that the ability to utilize electronic formulary and benefits inquiries will result in administrative efficiencies and increased prescribing of generic drugs versus brand name drugs, and the access to medication history at the point of care will result in reduced adverse drug events (ADEs). The benefits accruing from using the adopted standards in these transactions will have an economically significant effect on Medicare Part D program costs and patient safety. As this is a significant rule under Executive Order 12866, we are required to prepare a regulatory impact analysis (RIA) for this final rule.

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by qualifying as small businesses under the Small Business Administration's size standards (revenues of $6.5 million to $31.5 million in any 1 year for the health care industry). States and individuals are not included in the definition of a small entity. For details, see the Small Business Administration's regulation that set forth the current size standards for health care industries at *http://sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf* (refer to the 620000 series).

Based on our initial analysis, we expect this rulemaking will not have a significant impact on a substantial number of small entities because, while many prescribing physician practices and independent dispensers would be small entities, e-prescribing is voluntary for prescribers and dispensers. For prescribers and dispensers that have already implemented e-prescribing, the adoption of NCPDP SCRIPT 8.1 would in most cases be accommodated through software upgrades whose cost would already be included in annual maintenance fees. Medicare Part D sponsors are required to support e-prescribing, and may incur some costs to support the NCPDP Formulary and Benefits 1.0, the NCPDP SCRIPT 8.1 Medication History Standard, the NCPDP SCRIPT 8.1 standard for fill status notification (RxFill), and the National Provider Identifier (NPI). However, using the SBA revenue guidelines, the majority of Medicare Part D sponsors would not be considered small entities as they represent major insurance companies with annual revenues of over $31.5 million. We also do not anticipate that the requirement to use NPI in e-prescribing would have any effect on Medicare Part D sponsors, prescribers or dispensers as they likely are already using the NPI in HIPAA-covered transactions.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a core-bed Metropolitan Statistical Area and has fewer than 100 beds. This rule will not affect small rural hospitals because the program will be directed at outpatient prescription drugs covered under Medicare Part D and not drugs provided during a hospital stay. Prescription drugs provided during hospital stays are covered under Medicare Part A as part of Medicare payments to hospitals. Therefore, for purposes of our obligations under section 1102(b) of the Act, we are not providing an analysis.

Comment: It was recommended by one commenter that CMS prepare a regulatory impact analysis for small rural hospitals, as this rule may have a significant impact on small rural hospitals that dispense discharge medication and ''after hours'' emergency medications to patients.

Response: In the November 16, 2007 proposed rule (72 FR 64909), we considered how adoption of these standards might affect small rural hospitals. We determined that drugs dispensed to Medicare beneficiaries by small rural hospitals are, for the most part, drugs dispensed in an inpatient setting and as such, are covered under Medicare Part A. The smaller volume of Medicare Part D drugs that might be dispensed as noted by the commenter did not constitute a major impact to the extent that it that would necessitate a regulatory impact analysis.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2008, that threshold is approximately $127 million. Since only Medicare Part D sponsors are required to support e-prescribing, this rule does not include any mandate that would result in this spending by State, local or tribal governments. We acknowledge that there may be transaction costs borne by payers and pharmacy benefit managers (PBMs), but, based on our analysis, they would fall below the $127 million threshold. We would expect that many Medicare Part D sponsors already support the exchange of formulary, benefits, and medication history, because the standards we are proposing are based on proprietary transactions originally developed by RxHub which are already in use in the current e-prescribing environment.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has Federalism implications. No State categorically bars e-prescribing. In recent years, many States have more actively legislated in this area. Should a State law be contrary to the Medicare Part D e-prescribing standards, or should it restrict the ability to carry out the Medicare Part D e-prescribing program, section 101 of the MMA established preemption of that State law at section 1860D–4(e)(5) of the Act. It provides the following:

(5) Relation to State Laws. The standards promulgated under this subsection shall supersede any State law or regulation that—

(A) Is contrary to the standards or restricts the ability to carry out this part; and

(B) Pertains to the electronic transmission of medication history and of information on eligibility, benefits, and prescriptions with respect to covered Medicare Part D drugs under this part.

For the same reasons given above, we have determined that States would not incur any direct costs as a result of this proposed rule. We believe that, taken as a whole, this final rule would meet these requirements. We have consulted with the National Association of Boards of Pharmacy directly and through participation in NCVHS hearings, and we believe that the approach we suggested provides both States and other affected entities the best possible means of addressing preemption issues. This section constitutes the Federalism summary impact statement required under the Executive Order.

The objective of this regulatory impact analysis is to summarize the cost and benefits of implementing the standards for the conversion from NCPDP SCRIPT 5.0 to NCPDP SCRIPT 8.1 at § 423.160(b)(2); the adoption of final uniform standards for the electronic communication of prescription and prescription-related information on formulary and benefits, medication history, and prescription fill notification status; and the adoption of NPI for use as a health provider identifier in e-prescribing. The adoption of these standards for use in Medicare Part D e-prescribing will build upon the foundation standards e-prescribing requirements that were published as a final rule on November 7, 2005 (70 FR 67568). That rule contained an impact analysis that addressed the costs associated with implementing the use of those foundation standards, and it also discussed, in concept, the benefits that will accrue from e-prescribing in general. In the November 7, 2005 final rule (70 FR 67589), we noted that commenters had suggested that the estimated e-prescribing start-up costs for an individual physician to be at least $1,500 and perhaps in excess of $2,000. For average e-prescribing software implementation, according to a 2003 Center for Information Technology Leadership (CITL) Report, ''The Value of Computerized Provider Order Entry'' (*http://www.citl.org/research*), a basic-e-prescribing system cost $1,248 plus $1,690 for annual support, maintenance, infrastructure and licensing costs. The total first year cost averaged approximately $3,000. The Journal of Healthcare Information Management has published that physicians reported paying user-based licensing fees ranging from $80 to $400 per month, although we believe through anecdotal information that these licensing fees have decreased over time to between $25 to $66 a month ($300 to $800 annually). (For further discussion of the start-up costs associated with e-prescribing, see the November 7, 2005 final rule (70 FR 67589)). The impact analysis built upon the foundation rule analysis, and we referred to the foundation rule analysis to assure that costs and benefits were not counted twice.

Comment: One commenter discussed CMS' assumptions regarding the cost of e-prescribing systems for physicians, especially those practices which have five or less physicians, which they categorize as small practices. One commenter suggested that CMS consider scaling the savings to be realized through e-prescribing according to practice size. Another comment was that CMS omitted opportunity costs, and that advanced e-prescribing systems that have more robust features differ significantly from basic systems and are therefore, more costly, which CMS did not take into account. They contend that CMS may have double counted licensing fees that were already included in overall cost figures, and that there are significant technology, training and upgrade costs, as well as significant differences between the cost of a T1 Internet access line in a rural versus urban area which the agency should take into account. As only three of the six initial standards were found to be technologically ready for use, they asked that the adoption of standards should continue to be voluntary for physicians, thus keeping their costs at a minimum. Another commenter also asked that CMS recognize additional costs related to processing e-prescriptions, and the ongoing expenses incurred by prescribers for hardware/software and other associated costs.

Response: In the impact analysis for the November 16, 2007 proposed rule, we attempted to address the cost and benefit of implementation of the two standards that were proposed for adoption at that time, namely medication history and formulary and benefits, and not that of e-prescribing in general, so as not to double count costs already attributed to the implementation of the foundation standards. In the November 7, 2005 final rule (70 FR 67589), we considered the cost of e-prescribing in general. At that time, all of the commenters suggested estimated start-up costs for an individual physician to be at least $1,500 and perhaps exceeding $2,000. This estimate would vary based on market share, covered lives and local market competition. Given that, we proffered a conservative estimate of $3,000, taking into account variations in products, level of adoption, etc., and industry feedback indicated that vendors often provided free and low cost handheld or similar devices. The Journal of Healthcare Information Management report cited by one commenter took this practice into account, but also noted that physicians reported paying user-based licensing fees ranging from $80 to $400 per month. We did not note that this cost was included in the overall cost of e-prescribing as cited in that report, nor at that time did we account for opportunity costs because e-prescribing for Medicare Part D is voluntary for providers and dispensers, and we received no feedback from industry and other interested stakeholders indicating that opportunity costs should be considered.

As one commenter noted, The Journal of Healthcare Information Management also reported that in some instances prescribers had to invest in new or updated hardware, such as computer servers, and networking infrastructure to use an e-prescribing system, but again, that the amount varied significantly by product and level of adoption. Since that time, we note that the cost of new or updated hardware in particular has come down dramatically due to increased semi-conductor production, improved computer manufacturing methods and total factor productivity growth.[2] One commenter said that e-prescribing requires a T1 data transmission line, which may be

[2] Congressional Budget Office, The Role of Computer Technology in the Growth of Productivity May 2002, *http://www.cbo.gov/*.

true for very large practices, but if the mainstream physician practice constitutes less than five physicians, we believe that e-prescribing can be initiated by many physician practices without the installation of a T1 data transmission line.

We have acknowledged, and continue to acknowledge, that e-prescribing has both initial and ongoing costs associated with it. Those include, and for the most part we have accounted for, some initial loss of productivity, hardware costs, software costs, training, etc., but with widespread e-prescribing, we anticipate that prescribers will eventually absorb these as a cost of doing business, much as they would any purchase of equipment. Additionally, provider costs for e-prescribing are very much contingent on a wide variety of factors, including the size of the practice; whether an e-prescribing system under consideration for purchase is a stand-alone versus integrated into an electronic health record system; the level at which a provider enters into e-prescribing (in other words, entry-level necessitating the purchase of hardware/software, versus integrating into existing hardware/software); whether the provider is located in an urban versus rural area, and the related costs/availability of connectivity; the features, whether basic, intermediate or advanced, of any given e-prescribing package; the number of patients seen per year, and the number of prescriptions written, etc. Physicians in some medical specialties (such as geriatrics or internal medicine) may regularly prescribe a higher volume of prescription drugs per patient due to severity of illness, multiple diagnoses, etc., versus other medical specialties, and thus realize more benefits through more frequent, repeated use. We also acknowledged in the proposed rule that benefits will not be immediately recognized, that benefits will accrue over a multi-year timeframe and that, with more widespread adoption, we anticipate that costs will come down, systems capabilities will be more robust, and the full benefits of e-prescribing will be realized.

We again reiterate that nothing in the proposed rule or this final rule changes the tenet of section 101 of the MMA that e-prescribing Medicare Part D covered drugs for Medicare Part D eligible individuals is voluntary for prescribers and dispensers. Because adoption of e-prescribing is voluntary under Medicare Part D, we also assume that an individual provider or group practice will perform their own cost/benefit analysis, and will make the decision to invest in e-prescribing if they determine that their investment will yield a net benefit and positive patient outcome results. Dispensers may incur higher transaction fee costs as a result of the increased volume of electronic prescriptions, and any costs associated with dispenser access to medication history. Again, we anticipate that with this increased volume of e-prescriptions, transaction fees will decrease, and whatever residual transaction and/or access costs associated with medication history remain, eventually will be absorbed into the dispenser's cost of doing business, while benefits continue to accrue.

Comment: One commenter said that there currently is no way to verify that the pharmacy has received an electronically transmitted prescription or renewal, which, since many dispensers do not routinely check their electronic prescription messages or facsimiles, results in an increase of physician office inquiries and call backs from the pharmacy. The commenter noted that this workflow issue was not accounted for in the impact analysis relative to physician costs of e-prescribing.

Response: We have received industry feedback that most physician e-prescribing software packages feature a response mechanism that indicates a successful transmission of the electronic prescription to the pharmacy. In the case of EDI transmissions, we also understand that the failure rate of EDI transmission is less than three tenths of one percent. We assume that the small failure rate of EDI transmission, combined with basic pharmacy workflow adjustments to routinely check on the receipt of electronic prescriptions, that any resulting call backs to physicians' offices would be minimized, and would not represent a significant cost for either the dispenser or provider.

A. Overall Impact

In the November 7, 2007 proposed rule (72 FR 64912) we noted that according to 2006 CMS data, approximately 24 million beneficiaries were enrolled in a Medicare Part D sponsor's plan, either a stand-alone Prescription Drug Plan or a Medicare Advantage Drug Plan. This data has since been revised to approximately 25 million Medicare beneficiaries.[3] Another 7 million retirees were enrolled in employer or union-sponsored retiree drug coverage receiving the Retiree Drug Subsidy (RDS); 3 million in Federal retiree programs such as TRICARE and the Federal Employees Health Benefits Plans (FEHBP) and 5 million receiving drug coverage from alternative sources, including 2 million who have coverage through the Veterans' Administration. The breadth of Medicare's coverage suggests that e-prescribing under Medicare Part D could impact virtually every pharmacy and a large percentage of the physician practices in the country. Standards established for the e-prescribing of Medicare Part D covered drugs for Medicare Part D eligible individuals will, as a matter of economic necessity, be adopted by vendors of e-prescribing and pharmacy software, and as a result, would extend to other e-prescribing populations unless they are manifestly unsuited for the purpose. However, we note again that e-prescribing Medicare Part D covered drugs for Medicare Part D eligible individuals is voluntary for both prescribers and dispensers under the Medicare Part D e-prescribing program.

Our pilot testing and industry collaboration activities were partially intended to prevent the development of multiple, ''parallel'' e-prescribing environments, with their attendant incremental costs. We have worked to avoid imposing an undue administrative burden on prescribing health care professionals, and dispensers. With the exception of the NPI, the standards we are adopting in this final rule, as with the foundation standards adopted previously, are maintained by accredited standards development organizations. The standards for the Medication History, Formulary and Benefits, and Fill Status Notification transactions have been shown through pilot testing to work effectively with the foundation standards.

B. Costs

Because e-prescribing is voluntary for prescribers and dispensers, we anticipate that entities who currently do not now e-prescribe and who will not implement e-prescribing during the period reflected in the regulatory impact analysis will incur neither costs nor benefits.

Entities that do not now e-prescribe, but that will implement e-prescribing during the period reflected in the regulatory impact analysis will incur the costs and benefits associated with the foundation standards (which we discussed in the November 7, 2005 final rule (70 FR 67568) but we do not claim either in this analysis). We assume that as e-prescribing becomes more widespread, workflow adjustments will follow that will result in the full range

[3] CMS, Total Medicare Beneficiaries with Prescription Drug Coverage as of January 2008, 1–31–08, *http://www.cms.hhs.gov/PrescriptionDrugCovGenIn/*.

of benefits that can potentially be realized through e-prescribing. Also, implementation of the standards that are adopted in this rule will not materially affect the implementation cost that was projected for NCPDP SCRIPT 5.0 in the foundation standards final rule. That is, the cost to implement NCPDP SCRIPT 8.1 under § 423.160(b)(2), the NCPDP SCRIPT 8.1 Medication History Standard, NCPDP Formulary and Benefits 1.0, the National Provider Identifier (NPI) and the NCPDP SCRIPT 8.1 standard for fill status notification (RxFill) are not materially higher than the cost of implementing the NCPDP SCRIPT 5.0 foundation standard alone. These entities could incur additional costs for the purchase of new e-prescribing products that include functions that support the ability to conduct transactions using these e-prescribing standards. They would also incur the benefits of the all of these final standards.

Comment: One commenter stated that our analysis did not take into account the adoption of RxFill, and any associated costs and benefits.

Response: In the November 16, 2007, proposed rule we asked for stakeholder comments on the potential utilization of RxFill in Medicare Part D e-prescribing, but did not propose its adoption. As previously discussed, in the proposed rule we referenced industry feedback that the adoption of RxFill ''may cause an unnecessary administrative burden on prescribers and dispensers,'' and solicited feedback regarding industry's views on any potential administrative burden associated with its use. Therefore, no cost/benefit analysis was performed in consideration of the adoption of RxFill as a final uniform standard. As a result of comments received through the notice and comment rulemaking process, and as we discussed above, the industry has now indicated that it believes there will be no administrative burden associated with the adoption of the RxFill standard. Therefore, we will adopt both the NPI, and the RxFill standard for fill status notification transactions for use by providers who see value in utilizing electronic transaction using the adopted standards to support patient medication management and discuss both the costs and benefits here.

Because use of the electronic fill status notification transaction is voluntary, we have no clear indication from the industry as to how many providers potentially will see value in, and use transactions utilizing the adopted e-prescribing standards for this function. The feedback we have received from provider organizations indicates that they envision that its use will be more prevalent among those providers who wish to track medication adherence for Medicare Part D beneficiaries who have chronic medical conditions, such as diabetes, hypertension, etc., for whom following a medication regimen is imperative. We also note that RxFill is limited to informing the prescriber that the prescription has been filled, not filled, etc., and it is but an initial indicator of a patient's intention to actually take the prescribed medication. The assumption here is that a patient is more likely to take a medication prescribed for him/her if they know that the prescriber will be monitoring this information, and more likely to take the medication if they have made the effort to go to the pharmacy, purchase and take the prescription drug home.

We also understand from industry feedback that prescription information exchange networks have fill status notification functionality (RxFill) built into their systems but that most physicians currently are not signed up to use it. When a patient picks up a prescription at the pharmacy, they likely sign an electronic signature log. This electronic signature triggers a pharmacy software system update which, in turn, triggers a fill status notification message transaction using the RxFill standard to be sent to the prescriber, if the prescriber has requested receipt of such information. Conversely, when a prescription is not picked up and returned to inventory, this activity also triggers a similar message if the prescriber has requested receipt of such information. Stand alone e-prescribing systems usually send such updates to requesting prescribers overnight; however, there are integrated e-Signature systems which employ real-time notification. Given that most dispensers who are already e-prescribing use an electronic signature pad to verify prescription pick-up by the patient are already gathering this information and need acknowledgement from the prescriber through a ''flag'' in their e-prescribing software system that they want to receive this information, we do not believe that there will be any significant changes to pharmacy or prescriber workflows once that ''flag'' is activated, and no cost impact associated with the use of RxFill for those prescribers and dispensers who are currently e-prescribing.

Those dispensers still using paper logs to record patient pick-up of a prescription likely are not e-prescribing and therefore, would not be impacted either from a workflow or economic perspective.

We agree with commenters who stated that neither the medication history nor the formulary and benefits standard would result in additional e-prescribing costs for those already e-prescribing, and apply that rationale to RxFill. As the fill status notification function resides on the NCPDP SCRIPT 8.1 standard alongside the medication history function, we expect that it would also not result in any additional costs being incurred. For those not currently e-prescribing, they would incur the costs and benefits associated with the foundation standards (which we discussed in the final rule at 70 FR 67568), but which we did not claim in our analysis.

One potential benefit anticipated from the use of RxFill are those associated with better medication adherence on the part of patients, and this varies depending on the clinical condition. According to a study entitled, ''Impact of Medication Adherence on Hospitalization Risk and Healthcare Cost'',[4] adherence with medication therapy is generally low—approximately 50 to 65 percent, on average, for common chronic conditions such as hypertension and diabetes. In this study, for diabetes, the average annual incremental drug cost associated with a 20 percent increase in drug utilization was $177, and the associated disease-related medical cost reduction was $1,251, for a net savings of $1,074 per patient, or an average return on investment of 7.1:1. Other studies of a mental health condition such as schizophrenia estimate the cost of non-compliance with medication therapy to be about $705 million over a 2-year period.[5] Another study on medication therapy adherence in hypertensive patients showed that interventions aimed at improving compliance with medication regimens increased patient adherence by up to 11 percent, and that when it came to prescription refills, partial compliance with prescription refills identified important clinical consequences of reduced compliance, with gaps in taking medication resulting in an increase in hospitalizations.[6]

[4] Michael C. Sokol, M.D., M.S.; Kimberly A. McGuigan, PhD; Robert R. Vebrugge, PhD. And Robert S. Epstein, M.D., M.S.. Impact of Medication Adherence on Hospitalization Risk and Healthcare Cost. Medical Care. 2005;43:521–530.

[5] Theida, Patricia, M.A., Beard, Stephen, M.S., Richter, Anke, Ph.D., and Kane, John, M.D. An Economic Review of Compliance with Medication Therapy in the Treatment of Schizophrenia. Psychiatric Services. April 2003: 54:508–516.

[6] Steiner, J.F., Prochazka, A.V. The assessment or refill compliance using pharmacy records: methods, validity and applications. Journal of Clinical Epidemiology. 1997: 50:105–116.

Researchers generally agree that it is difficult to arrive at a dollar figure that would reflect the outcomes of medication adherence for all clinical conditions, but we believe that, based on studies such as those cited, it is prudent to assume that in the Medicare Part D program, an increase in prescription drug utilization by patients as a result of better medication adherence would be far offset by a larger reduction in the cost of Medicare beneficiary hospitalizations, outpatient procedures and other clinical treatments that might result from non-adherence to medication regimens.

Relative to the NPI, in the proposed rule we discussed that we did not anticipate any significant costs to be associated with the use of the NPI by vendors, prescribers, dispensers or Medicare Part D sponsors for e-prescribing transactions under section 1860D–4(e). Use of the NPI is already required in order to conduct HIPAA-covered transactions which require the identity of HIPAA-covered health care providers; and the compliance date for the NPI, May 27, 2007, has already passed. The NPI is easily obtainable, and there is no cost associated with applying for and/or obtaining an NPI. Once received, the NPI is usually entered by the physician initially into their e-prescribing software system, and it is carried thereafter by the system, which automatically populates the NPI field on the NCPDP SCRIPT 8.1 standard. The NPI is in widespread use by HIPAA-covered entities in HIPAA transactions. Although the transactions using the NCPDP SCRIPT standard are not HIPAA transactions, the prescribers and dispensers that conduct such transactions would be HIPAA-covered entities, and as such, they would already be using NPI as they conduct their HIPAA transactions. They would, therefore, already be familiar with the NPI, even though they may not currently use it in the context of transactions using the NCPDP SCRIPT standard.

For e-prescribers whose software products are not able to generate transactions using the NCPDP SCRIPT 8.1 standard, they will not have the capability to use the NCPDP Formulary and Benefits Standard 1.0, the NCPDP SCRIPT 8.1 Medication History transaction, or the NCPDP SCRIPT 8.1 RxFill standard. Costs would be incurred if they were to replace such software with software that generates transactions that comply with the adopted standards. We anticipate that the NCPDP SCRIPT 8.1 will be accommodated in later software version upgrades where that standard is not already utilized. We believe that the implementation of the NPI would be accomplished as part of this transition. Prescribers and dispensers already should be using the NPI to conduct retail pharmacy drug claim transactions.

Medicare Part D sponsors will not be significantly affected by the adoption of the NPI because the Medicare Part D sponsors already use the NPI in HIPAA transactions, such as the retail pharmacy drug claim.

Software vendors are already implementing NCPDP SCRIPT 8.1 in their products, NPI is supported by NCPDP SCRIPT 8.1, and we believe that any needed upgrades will be included in routine version upgrades.

Benefits for the use of the NPI in e-prescribing under Medicare Part D have not been quantified by the industry. The NPI provides a standard way for dispensers to identity individual prescribers in an e-prescribing transaction. We anticipate that its use will help dispensers reduce the number of callbacks to a physicians office to verify an e-prescriber's identity, although it is unclear and unsubstantiated from industry feedback as to what percentage of callbacks between the dispenser and the prescriber can be attributed solely to this inquiry.

Comment: One commenter offered that neither the adoption of NCPDP SCRIPT 8.1 nor adoption of the standards for medication history and formulary and benefits would result in significant costs as the majority of the e-prescribing industry is already using these standards. The commenter agreed that the costs for entities that do not now e-prescribe, but will be implementing the e-prescribing technology in the future, would not be substantially increased by the adoption of these standards. Another commenter said although the NCPDP SCRIPT 8.1 Medication History transaction and the NCPDP Formulary Benefit Standard 1.0 are relatively new, it is not accurate for CMS to state that they are not currently deployed for use in the functions that were listed at § 423.160(b)(1).

Response: From industry feedback, we have learned that the medication history and formulary and benefits functions were adopted by some entities nearly two years ago, and there are others in the industry that have been using them for even longer. As such, our conclusion remains the same that adoption of these standards now would result in no new additional costs.

Entities that e-prescribe now using a software product that cannot use the NPI and conduct medication history, formulary and benefits, and fill status notification standards, and that cannot be upgraded to conduct them (for example, stand-alone Microsoft Word-based prescription writers) will not be required to conduct these transactions (if they choose to conduct these transactions) using the NCPDP SCRIPT standard until April 2009. If they decide to upgrade their entire e-prescribing system to take advantage of the benefits of these new standards, they would incur costs. However, we have no clear sense of how many entities would fall into this category.

Entities that e-prescribe now using a product that could be upgraded to conduct medication history, formulary and benefits, and fill status notification using the three adopted standards would incur no cost or benefit if they decide not to upgrade. If they decide to upgrade, they would incur the cost of the upgrade (unless the upgrade is included in their maintenance agreement) and any testing costs, and would incur the benefits of utilizing these three standards. This would also apply to entities that e-prescribe now using a product that conducts the three transactions using nonstandard (Non NCPDP SCRIPT) formats, but the functionality is not used. Based on our research, this category likely is the one in which most current e-prescribers fall.

Entities that e-prescribe now using a product that conducts one or more of the three transactions using nonstandard formats and who continue to use the electronic transactions would have to upgrade their software. They would not enjoy all the benefits of conducting transactions using the three new standards since they would have already been performing them in some manner, but definitely would incur cost savings due to the increased interoperability of using the NCPDP SCRIPT standards. However, any entity engaging in e-prescribing would incur benefits due to increased interoperability, as the existence of standards simplifies data exchange product selection and testing.

1. Retail Pharmacy

Because e-prescribing is voluntary for dispensers, unless they were to commence e-prescribing, those who do not currently conduct e-prescribing would not incur any costs related to any of the provisions of this rule. However, we recognize that costs would be incurred by those dispensers that currently conduct e-prescribing transactions, as well as those who voluntarily implement e-prescribing during the period reflected in our regulatory impact analysis. Industry estimates are that 97 percent of the

nation's retail chain dispensers currently e-prescribe, in contrast to only 27 percent of independent dispensers that e-prescribe.[7]

Transactions using NCPDP Formulary and Benefits 1.0 are carried out between the plan and prescriber and, therefore, dispensers will not incur any cost related to this transaction.

While the NCPDP SCRIPT 8.1 Medication History Standard can be used in transactions to support communication between the dispenser and prescriber, its use is, nonetheless, voluntary for both. We assume for purposes of this analysis that the NCPDP SCRIPT 8.1 Medication History Standard will be used in medication history exchange transactions.

Effective May 23, 2008 dispensers are required under HIPAA to use the NPI to conduct retail pharmacy drug claim transactions. Therefore, we associate no additional costs with the use of the NPI in Medicare Part D e-prescribing for retail dispensers.

Comment: One commenter remarked that the cost of migrating to NCPDP SCRIPT 8.1 has already been borne by dispensers and their system vendors, and that there should be no cost associated with adoption of NCPDP Formulary and Benefits 1.0. However, the commenter acknowledged that there may be some costs to dispensers that supply data to support the medication history functionality and these costs are already being borne by participating dispensers.

Response: The benefits of e-prescribing in general, and the specific standards to be adopted through this final rule, are significant, especially in terms of patient safety. As noted in the November 16, 2007 proposed rule (72 FR 64912), depending on their stage of e-prescribing adoption, there may be costs associated with the adoption of these standards for dispensers. These costs are far outweighed by the eventual economies realized by improved workflows and productivity savings within the pharmacy environment; marketplace forces should come into play as e-prescribing volume increases, which will help drive down costs and realize economies of scale.

The adoption of NCPDP SCRIPT 8.1 in place of the NCPDP SCRIPT 5.0 foundation standard for the transactions listed at § 423.160(b)(2) will impact dispensers that conduct e-prescribing. Dispensers will have to ensure that their software can accept prescription transactions using the NCPDP SCRIPT 8.1 standard, and they will need to test with prescribers to assure that their electronic transactions are being received and can be processed. We believe there is little, if any, incremental costs associated with these activities. Software vendors have or are already incorporating NCPDP SCRIPT 8.1 in their products, and we believe that any needed upgrades will be included in routine version upgrades. The number of current e-prescribers per pharmacy is small, and the testing process is not complicated. We believe that the implementation of the NPI will be accomplished as part of this transition. Prescribers and dispensers already use the NPI to conduct retail pharmacy drug claim transactions.

2. Medical Practices

Medical practices, compared to dispensers, face a different set of costs in implementing information systems for clinical care and financial management. Unlike dispensers, where technology has become an important part of operations (especially for larger retail chains), many providers have been cautious in their adoption of health information technology. We assume that, based on industry estimates, anywhere from 5 to 18 percent of physicians are e-prescribing today.[8] Because e-prescribing is voluntary for prescribers, medical practices that do not currently conduct e-prescribing would not incur any costs related to any of the provisions of this rule. However, we recognize that costs would be incurred by those prescribers currently e-prescribing, as well as those who voluntarily begin to e-prescribe during the period reflected in our regulatory impact analysis. If a practice decides to implement e-prescribing at a later time, we anticipate that the software products on the market would be compliant with these standards and, therefore, no additional cost would be incurred. In assessing the cost to prescribers that are currently e-prescribing, many of the e-prescribing software products generally already contain some capability to communicate formulary and benefits and medication history information because they incorporate the RxHub proprietary format on which the proposed standards were based. We expect that any changes that might be necessary as a result of this rulemaking would likely be included in routine version upgrades that are covered by annual maintenance and subscription fees.

For e-prescribers whose software products are not able to generate transactions using the NCPDP SCRIPT 8.1 standards, they will not have the capability to conduct electronic transactions using the NCPDP Formulary and Benefits Standard 1.0 and NCPDP SCRIPT 8.1 Medication History Standard. Costs would be incurred if they were to replace such software with software that can conduct transactions that comply with the proposed standards. We anticipate that the NCPDP SCRIPT 8.1 will be accommodated in later software version upgrades where that standard is not already utilized. We believe that the implementation of the NPI will be accomplished as part of this transition.

As the fill status notification function resides on the NCPDP SCRIPT 8.1 standard alongside the medication history function, we expect that it would also not result in any additional costs being incurred. However, we recognize that the use of RxFill may result in workflow changes for the prescriber who must determine what he/she will do with the information provided by the RxFill transaction relative to their clinical practices. For those not currently e-prescribing, they would incur the costs and benefits associated with the foundation standards (which we discussed in the final rule at (70 FR 67568)), but which we did not claim in our analysis.

3. Medicare Part D Sponsors and Pharmacy Benefit Managers (PBMs)

Medicare Part D sponsors will be required to support NCPDP SCRIPT 8.1 for the transactions listed at § 423.160(b)(2), the NCPDP Formulary and Benefits 1.0, and the NCPDP SCRIPT 8.1 Medication History Standard. They will need to assure that their software can receive and conduct transactions utilizing NCPDP Formulary and Benefits 1.0 and the NCPDP SCRIPT 8.1 Medication History Standard, and that their internal systems and databases can supply the information needed to build the transaction. For example, they will need to be able to extract prescription claims history and format it according to the NCPDP SCRIPT 8.1 Medication History Standard. We believe that many Medicare Part D sponsors will have already implemented this functionality because the standards we are proposing are based on proprietary file transfer protocols developed by Rx-Hub that have been included in many e-prescribing products. Medicare Part D sponsors may need to restructure systems to assure

[7] Surescripts, National Report on E-prescribing, December 2007. *http://www.surescripts.com/report/.*

[8] E-Prescribing and the Prescription Drug Program final rule, published November 7, 2005 (70 FR 67568).

that the data output is in the proper format, but, for the most part, the needed functionality is in place.

We recognize that some Medicare Part D sponsors may need to make additional investments to support these standards.

Because plans typically pay the per transaction network fees for eligibility transactions, which likely includes providing a formulary and benefits response as well as a medication history response, Medicare Part D sponsors will incur increased transaction costs for formulary and benefits and medication history transactions as the frequency in which these transactions are conducted electronically increases.

Through information provided by SureScripts and industry consultants, this transaction fee appears to range from 6 cents to 25 cents per transaction, with the midpoint being 15 cents. In 2006, RxHub, one of the nation's largest electronic prescription and prescription-related information routing networks, estimated that their transaction volume increased 50 percent, from 29 million in 2005 to more than 43 million in 2006. These transactions were real-time requests for patient eligibility and benefits, formulary, and medication history information.[9]

Based on data available at that time, we estimated that approximately 24 million Medicare beneficiaries received Medicare Part D benefits in 2006. (These data have since been revised to approximately 25 million Medicare beneficiaries). [10] This figure reflected those Medicare beneficiaries enrolled in a Medicare Prescription Drug Plan (PDP) or a Medicare Advantage plan with Prescription Drug coverage (MA–PD) or both, for which we have prescription drug event data. Approximately 825,000,000 claims (prescription drug events) were finalized and accepted for 2006 payment. The annual percentage increase in the number of Medicare Part D prescriptions was estimated by CMS at 4.6 percent based on industry feedback (*http://www.imshealth.com/ims/portal/front/articleC/0,2777,6599_3665_80415465,00.html*). So that impact comparisons could be made equally across all years, inflation was removed from the price effects. Conservatively, we calculated the increase in the number of Medicare Part D prescriptions and applied the current estimates of 5 and 18 percent electronic prescribing adoption rates to arrive at the number of Medicare Part D electronic transactions, and cost them out at a range of a low of 6 cents per transaction to a high of 25 cents per transaction. We estimated costs for Medicare Part D sponsors of between $2 million to $46 million per year.

Medicare Part D sponsors may negotiate the cost of e-prescribing transactions as part of the dispensing fees included in their pharmacy contracts, and account for these costs in their annual bids to participate in the Medicare Part D program. In these instances, inclusion of these costs may increase the cost of their Medicare Part D bids. However, we anticipated that these costs would be negated by the savings from an increased rate of conversion from brand name to generic prescriptions realized through utilization of NCPDP Formulary and Benefits 1.0, which would more than offset the transaction costs.

Medicare Part D sponsors would not be affected by the adoption of the NCPDP SCRIPT 8.1 for the transactions listed at § 423.160(b)(2) because these transactions are conducted between prescribers and dispensers, and Medicare Part D sponsors are not involved.

Medicare Part D sponsors would not be significantly affected by the adoption of the NPI as a standard for use in e-prescribing transactions among the Medicare Part D sponsors, prescribers, and dispensers because the Medicare Part D sponsors already use the NPI in HIPAA transactions, such as the retail pharmacy drug claim.

4. Vendors

Vendors of e-prescribing software would incur costs to bring their products into compliance with these requirements. However, we considered the need to enhance functionality and comply with industry standards to be a normal cost of doing business that will be subsumed into normal version upgrade activities. Vendors may incur somewhat higher costs connected with testing activities but vendors should be able to address this potential workload on a flow basis. We believed these costs to be minimal.

Comment: A commenter noted that the costs to vendors of migrating to NCPDP SCRIPT 8.1 for the transactions listed at § 423.160(b)(2), as well as adding the NCPDP SCRIPT 8.1 Medication History Standard, the fill status notification standard (RxFill), and the NCPDP Formulary and Benefits 1.0 to their applications, are a normal cost of vendors doing business, and these costs have in large part already been borne by e-prescribing vendors.

Response: We agree with the commenter's contention that minimal additional costs will be incurred by vendors by switching to the NCPDP SCRIPT 8.1 standard, nor by adding the use of the NPI, RxFill, the NCPDP SCRIPT 8.1 Medication History Standard and the NCPDP Formulary and Benefits 1.0 to their applications. Many of them have already incorporated Formulary and Benefits 1.0 into their software products, and have already transitioned to NCPDP SCRIPT 8.1, which houses the RxFill and the Medication History functionality on its platform. As previously discussed in the Cost section of this regulatory impact analysis, software vendors are already implementing NCPDP SCRIPT 8.1 in their products, NPI is supported by NCPDP SCRIPT 8.1, and we believe that any needed upgrades will be included in routine version upgrades. Vendors did not indicate in their comments in response to the proposed rule that the use of the NPI in e-prescribing will create any additional vendor costs, and we assume that any costs that might be incurred, such as testing, would be absorbed by vendors as a cost of doing business.

C. Benefits

In the November 16, 2007 proposed rule (72 FR 64913), we assumed that the benefits of the proposed adoption of standards for formulary and benefits and medication history transactions would take place over a multiyear timeframe. (For discussion of the benefits associated with the adoption of these standards, refer to the discussion in the November 16, 2007 proposed rule (72 FR 64913).)

1. Formulary and Benefits Standard—Generic Drug Usage

We based our assumptions on industry estimates that approximately 5 percent to 18 percent of group practices are e-prescribing today. We anticipated that transactions utilizing NCPDP Formulary and Benefits 1.0 would allow the prescriber to view formulary drugs, alternative preferred drugs in a given class that may offer savings to the patient, or to see in advance what other, less costly drugs within a given drug classification or generic drugs can be substituted for a given brand name prescription drug, resulting in reduced calls to the plan, and fewer callbacks from a pharmacy because a prescribed drug is not on a beneficiary's drug plan formulary.

In the first half of 2006, the ratio of generic versus brand name prescription drugs in the Medicare Part D program was 60 percent versus 40 percent. An

[9] RxHub Announces 2006 e-Prescribing Results and Highlights Milestones for 2007, St. Paul, MN, February 23, 2007, *http://www.rxhub.com.*

[10] CMS, Total Medicare Beneficiaries with Prescription Drug Coverage as of January 2008, 1–31–08, *http://www.cms.hhs.gov/PrescriptionDrugCovGenIn/.*

industry study indicated a 15 percent increase in generic substitution rates for physicians with e-prescribing. However, not all beneficiaries will accept generic prescription drugs and there are some instances in which the brand name prescription drug has proven through physician experience to be the more effective drug. Therefore, we applied a more conservative 7 percent increase in generic prescriptions.

Based on industry data, we assumed the cost of a brand name prescription drug at $111.02 and the cost of a generic drug at $32.23.[11]

While Medicare beneficiaries will be the most direct recipients of the savings realized by the conversion of brand name to generic prescription drugs, the Medicare program also will save money as it will be paying for an increased number of lower cost generic prescriptions versus higher cost, brand-name prescription drugs. We calculated a ten-year cost savings of $95 million to $410 million.

Comment: A commenter agreed that while they did not conduct a financial analysis, the benefits identified by CMS in the proposed rule appeared to be reasonable. Another commenter stated that CMS underestimated the benefits that the switch from brand name to generic drugs would generate as a result of prescribers having access to formulary and benefits information at the point of care, and that it would vastly exceed CMS' 7 percent estimate.

Response: We made a good faith effort to estimate both costs and benefits associated with the adoption of these standards using very conservative assumptions on the benefit side, and estimating costs so as to elicit industry and stakeholder comments on the feasibility of our approach. While we believe that the benefits of adoption of these standards could far exceed expectations, we also caution that any one of a number of factors—for example, delays in making real-time formulary and benefits information available to prescribers at the point of care—could hinder the adoption of e-prescribing and the benefits to be realized through, for example, anticipated wider use of generic versus brand name prescription drugs in the Medicare Part D prescription drug program. Given this, we estimated that realistically, a 7 percent increase in the prescribing of generic versus brand name drugs could be achieved through the use of formulary and benefits information.

[11] *http://www.nacds.org/wmspage.cfm?parm1=5507.* National Association of Chain Drug Stores data.

2. Formulary and Benefits Standard—Administrative Savings

a. Physician and Physician Office Staff

The 2004 Medical Group Management Association (MGMA) survey entitled, ''Analyzing the Cost of Administrative Complexity'' (*http://www.mgma.com/about/default.aspx?id=280*) estimated the staff and physician time spent, on a per physician full time equivalent (FTE) basis, interacting with dispensers on formulary questions and generic substitutions. Physician time was estimated at almost 16 hours a year; another 14 hours were spent per physician per year on generic substitution issues. Staff spent almost 26 hours per FTE physician on formulary issues, and another 24 hours per FTE physician on generic substitution issues.

CMS estimated the number of physicians in active practice who participated in the Medicare program in 2006 at 1,048,243, and a percentage rise in the number of physicians participating in the Medicare program of .94 percent per year, so we applied that percentage increase to estimate the number of Medicare physicians for 2009 through 2013. We also applied the previous assumption that from 5 to 18 percent of prescribers are e-prescribing today. Per the MGMA survey, we assumed a physician labor cost of $100 per hour and an average staff labor cost of $22 per hour per physician FTE.

Pilot site experience shows that with e-prescribing, responding to refill requests, and resolving pharmacy callbacks were all done more efficiently with e-prescribing than before. However, full implementation would be difficult to achieve, and we used an estimate of 25 percent implementation. Our model calculated that, at that rate of implementation, physicians and staff would realize savings ranging from $55 million to $206 million.

b. Dispensers

If each physician and their office staff saved a total of 80 hours a year by using the NCPDP Formulary and Benefits 1.0, and reduced the time spent on the phone with dispensers, we assumed that dispensers would save the equivalent amount of time by not making these calls. Since the MGMA survey assumed a dispenser labor rate of $60 per hour, our model predicted an annualized cost benefit savings ranging from a low of $65 million to a high of $242 million at 25 percent implementation.

Comment: A commenter expressed concern that the administrative savings for dispensers as represented in Table 4 of the proposed rule overestimated the administrative cost savings for dispensers. They stated that while dispensers are on the phone waiting for a response from a physician on a formulary question, dispensers often perform other work concurrently, and thus devote less time than was estimated for this particular task, which in turn affects the overall estimate of administrative cost-savings benefits to dispensers.

Response: When estimating the benefits accrued to dispensers in Table 4 of the proposed rule, we were conservative in our assumptions so as not to unnecessarily inflate the benefit projections. We used the generally accepted 5 and 18 percent e-prescribing adoption rates versus much higher rates as projected in some widely read industry publications. We relied upon the Medical Group Management Association (MGMA) study of physician and staff time spent on the phone resolving, among other things, formulary and benefits issues, and further reduced our benefit projects down to the 25 percent level.

3. Medication History Standard—Reduction of Adverse Drug Events (ADEs)

Utilizing the medication history standard in the transmission of medication history information will simplify medication reconciliation through transitions in care and, in so doing, provide consumers with a safer medication delivery system, and greater convenience.

Although outpatient ADEs were difficult to estimate, literature estimated that, as of 2005, there were 530,000 preventable ADEs for Medicare beneficiaries annually. Moreover, the estimated cost per ADE ranged from $2,000 to upwards of $6,000 depending on the care setting. We computed the benefits of using the NCPDP SCRIPT 8.1 Medication History Standard based on data regarding ADEs as a percentage of the total Medicare population. Based on CMS Medicare population data, we calculated that of the total Medicare population, ADEs occur in about 1.24 percent of that population each year.

Based on pilot experience, we assumed that the reduction in the risk of ADEs could be attributed mostly to the use of the NCPDP SCRIPT 8.1 Medication History Standard history rather than to e-prescribing in general. The pilot project demonstrated that 50 percent of preventable ADEs could be eliminated if e-prescribing is used, but also recognized that the pilot project may not have accurately represented mainstream experience. Given that, we conservatively assumed that the number

of ambulatory ADEs associated with Medicare Part D beneficiaries could be reduced by the use of medication history by 25 percent for those patients for whom prescriptions were written electronically; we used the same uptake e-prescribing estimates (5 to 18 percent) as earlier for e-prescribing adoption. We estimated a potential cost savings over 10 years of $13 million to $156 million from avoided ADEs.

4. RxFill—Medication Adherence

As previously discussed in the Cost section of this regulatory impact analysis, one potential benefit anticipated from the use of RxFill are those associated with better medication adherence on the part of patients, and this varies depending on the clinical condition. Researchers generally agree that it is difficult to arrive at a dollar figure that would reflect the outcomes of medication adherence for all clinical conditions, but we believe that it is prudent to assume that in the Medicare Part D program, an increase in prescription drug utilization by patients as a result of better medication adherence would be far offset by a larger reduction in the cost of Medicare beneficiary hospitalizations, outpatient procedures and other clinical treatments that might result from non-adherence to medication regimens. See the Cost section of this regulatory impact analysis for more details regarding our benefit assumption for the use of RxFill.

5. National Provider Identifier (NPI)—Reduced Callbacks

We reiterate our previous discussion in the Cost section of this regulatory impact analysis that benefits for the use of the NPI in e-prescribing under Medicare Part D have not been quantified by the industry. We anticipate that its use will help dispensers reduce the number of callbacks to a physicians office to verify an e-prescriber's identity, although it is unclear and unsubstantiated from industry feedback as to what percentage of call backs between the dispenser and the prescriber can be attributed solely to this inquiry.

D. Total Impact

We concluded that the cost of implementing these standards is minimal, with quantifiable benefits reaped by dispensers, prescribers, and beneficiaries. Over five years, we expected that these groups will see average net benefits in a range from $218.0 million to $863.9 million from the utilization of formulary and benefits and medication history transactions, and the promulgation of these standards. As previously discussed, we do not expect that the adoption of RxFill and the use of the NPI in e-prescribing will result in any additional costs. We expect that their use will result in unquantifiable benefits which include the assumption, in the case of RxFill, of better patient medication adherence that will likely result in long-term savings for the Medicare program; and for the NPI, in improved pharmacy workflows via reduced call backs to physician offices to identify individual prescribers.

Comment: A prescription information exchange network agreed that the benefits to all stakeholders of utilizing the NCPDP Formulary and Benefits 1.0 and adopting NCPDP SCRIPT 8.1 for the transactions listed at § 423.160(b)(2) will far exceed the financial costs. In their estimation, the total benefits range of $218 to $863.9 million appears to be realistic.

Response: Again, efforts were made to estimate both costs and benefits associated with the adoption of the final standards using very conservative assumptions on the benefit side, and conversely, overestimating costs so as to elicit industry and stakeholder comments on the feasibility of our approach. As previously discussed, in addition to the anticipated costs and benefits associated with use of medication history and formulary and benefits, we expect there will be minimal or no cost associated with the use of either the NPI, or RxFill by providers who find value in use of an electronic fill status transaction for purposes of tracking patient adherence to medication therapies. We expect use of the NPI will assist dispensers to identify individual e-prescribing providers, resulting in a reduction of call backs to physician offices. The use of the Fill Status Notification standard by those providers who use an electronic fill status transaction to monitor patient medication adherence will realize benefits such as reduced patient hospitalizations, outpatient procedures, and clinical treatments, and improved patient outcomes.

Comment: One commenter made the observation that actual drug costs will increase due to increased volume related to improved patient compliance, and that CMS should account for this in its discussions of costs and benefits.

Response: We believe that the commenter was referring to the increased drug cost to the Medicare Part D program because the number of prescriptions being picked up at the pharmacy by a Medicare beneficiary might increase with the use of the fill status notification, and not an increase in the the actual cost of the drug itself. It is true that the Medicare Part D program may incur additional costs if more patients had their prescriptions filled, and in some studies this could account for as much as an 11 percent increase, depending on the clinical condition for which the prescription is being dispensed (for example, diabetes versus hypertension). However, we anticipate that medication adherence could result in lower disease-related medical costs, such as hospitalization, that would benefit the Medicare program. In the study, ''Impact of Medication Adherence on Hospitalization Risk and Healthcare Cost,'' results showed that, for the four clinical conditions studied, hospitalization rates were significantly lower for patients with high medication adherence, and that drug costs are a relatively small fraction of total healthcare costs. Drug costs have high leverage; in other words, a small increase in drug costs (associated with improved adherence) can produce a much larger reduction in medical costs. This leverage will become even stronger as medications become available, and are prescribed as generic drugs, lowering drug costs even more.[12]

E. Alternatives Considered

For more information on all the alternatives considered, refer to the discussion in the November 16, 2007 proposed rule (72 FR 64916).

As we had successful results from the e-prescribing pilot project, and the value added by the proposed additional standards is substantial, we chose to proceed to a final rule. We considered adopting the prior authorization, Structured and Codified Sig and RxNorm standards for adoption, and elected not to do so until outstanding issues with these standards have been resolved. In the case of the RxFill standard, we considered not adopting it, but based on industry feedback, opted for adoption so that those providers who felt it was of value could benefit from the existence of a standard for use in electronic fill status transactions.

We considered not adopting the NPI as a standard for identifying health care providers in e-prescribing transactions for Medicare Part D covered drugs for Medicare Part D eligible individuals. The fact that large portions of the health care industry are required to use NPI as a HIPAA standard, convinced us that

[12] Michael C. Sokol, M.D., M.S.; Kimberly A. McGuigan, PhD; Robert R. Vebrugge, PhD; and Robert S. Epstein, M.D., M.S. Impact of Medication Adherence on Hospitalization Risk and Healthcare Cost. Medical Care. 2005;43:521–530.

adoption at this time was feasible and desirable.

We considered providing for an effective date for these new and updated standards that was less than the maximum amount of time allowed by the MMA. Based on industry feedback, however, we decided to provide the maximum allowed time prior to the effective date of this rule.

List of Subjects in 42 CFR Part 423

Administrative practice and procedure, Emergency medical services, Health facilities, Health maintenance organizations (HMO), Health professions, Incorporation by Reference, Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR part 423 as follows:

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

■ 1. The authority citation for part 423 continues to read as follows:

Authority: Secs. 1102, 1860D–1 through 1860D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395W–101 through 1395w–152, and 1395hh).

■ 2. Section 423.160 is amended by revising paragraphs (b) and (c) to read as follows:

§ 423.160 Standards for electronic prescribing.

* * * * *

(b) Standards. (1) Entities described in paragraph (a) of this section must comply with the following adopted standards for transactions under this section:

(i) Before April 1, 2009 the standards specified in paragraphs (b)(2)(i) and (b)(3) of this section.

(ii) On or after April 1, 2009, the standards specified in paragraphs (b)(2)(ii) and (b)(3) through (b)(6) of this section.

(2) *Prescription.* (i) The National Council for Prescription Drug Programs SCRIPT Standard, Implementation Guide, Version 5, Release 0, (Version 5.0) May 12, 2004 (incorporated by reference in paragraph (c)(1)(iv) of this section), or the National Council for Prescription Drug Programs Prescriber/Pharmacist Interface SCRIPT Standard, Implementation Guide, Version 8, Release 1, (Version 8.1) October 2005 (incorporated by reference in paragraph (c)(1)(i) of this section), to provide for the communication of a prescription or prescription-related information between prescribers and dispensers, for the following:

(A) Get message transaction.

(B) Status response transaction.

(C) Error response transaction.

(D) New prescription transaction.

(E) Prescription change request transaction.

(F) Prescription change response transaction.

(G) Refill prescription request transaction.

(H) Refill prescription response transaction.

(I) Verification transaction.

(J) Password change transaction.

(K) Cancel prescription request transaction.

(L) Cancel prescription response transaction.

(ii) The National Council for the Prescription Drug Programs Prescriber/Pharmacist Interface SCRIPT standard, Implementation Guide, Version 8, Release 1 (Version 8.1) October 2005 (incorporated by reference in paragraph (c)(1)(i) of this section), to provide for the communication of a prescription or prescription-related information between prescribers and dispensers, for the following:

(A) Get message transaction.

(B) Status response transaction.

(C) Error response transaction.

(D) New prescription transaction.

(E) Prescription change request transaction.

(F) Prescription change response transaction.

(G) Refill prescription request transaction.

(H) Refill prescription response transaction.

(I) Verification transaction.

(J) Password change transaction.

(K) Cancel prescription request transaction.

(L) Cancel prescription response transaction.

(M) Fill status notification transaction.

(3) *Eligibility.* (i) The Accredited Standards Committee X12N 270/271-Health Care Eligibility Benefit Inquiry and Response, Version 4010, May 2000, Washington Publishing Company, 004010X092 and Addenda to Health Care Eligibility Benefit Inquiry and Response, Version 4010, A1, October 2002, Washington Publishing Company, 004010X092A1 (incorporated by reference in paragraph (c)(2)(i) of this section), for transmitting eligibility inquiries and responses between prescribers and Part D sponsors.

(ii) The National Council for Prescription Drug Programs Telecommunication Standard Specification, Version 5, Release 1 (Version 5.1), September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000 supporting Telecommunications Standard Implementation Guide, Version 5, Release 1 (Version 5.1), September 1999, for the NCPDP Data Record in the Detail Data Record (incorporated by reference in paragraph (c)(1)(iii) of this section), for transmitting eligibility inquiries and responses between dispensers and Part D sponsors.

(4) *Medication history.* The National Council for Prescription Drug Programs Prescriber/Pharmacist Interface SCRIPT Standard, Implementation Guide, Version 8, Release 1 (Version 8.1), October 2005 (incorporated by reference in paragraph (c)(1)(i) of this section) to provide for the communication of Medicare Part D medication history information among Medicare Part D sponsors, prescribers, and dispensers.

(5) *Formulary and benefits.* The National Council for Prescription Drug Programs Formulary and Benefits Standard, Implementation Guide, Version 1, Release 0 (Version 1.0), October 2005 (incorporated by reference in paragraph (c)(1)(ii) of this section) for transmitting formulary and benefits information between prescribers and Medicare Part D sponsors.

(6) *Provider identifier.* The National Provider Identifier (NPI), as defined at 45 CFR 162.406, to identify an individual health care provider to Medicare Part D sponsors, prescribers and dispensers, in electronically transmitted prescriptions or prescription-related materials for Medicare Part D covered drugs for Medicare Part D eligible individuals.

(c) *Incorporation by reference.* The Director of the Federal Register approves, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51, the incorporation by reference of certain publications into this section. You may inspect copies of these publications at the headquarters of the Centers for Medicare & Medicaid Services (CMS), 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday from 8:30 a.m. to 4 p.m. or at the National Archives and Records Administration (NARA). For more information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* The publications approved for incorporation by reference and their original sources are as follows:

(1) National Council for Prescription Drug Programs, Incorporated, 9240 E. Raintree Drive, Scottsdale, AZ 85260–7518; Telephone (480) 477–1000; and

Facsimile (480) 767–1042 or *http://www.ncpdp.org.*

(i) National Council for Prescription Drug Programs Prescriber/Pharmacist Interface SCRIPT Standard, Implementation Guide, Version 8, Release 1, October 2005.

(ii) The National Council for Prescription Drug Programs Formulary and Benefits Standard, Implementation Guide, Version 1, Release 0, October 2005.

(iii) National Council for Prescription Drug Programs Telecommunication Standard Specification, Version 5, Release 1 (Version 5.1), September 1999 and equivalent National Council for Prescription Drug Programs (NCPDP) Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000 supporting Telecommunication Standard Implementation Guide, Version 5, Release 1 (Version 5.1) for the NCPDP Data Record in the Detail Data Record.

(iv) National Council for Prescription Drug Programs SCRIPT Standard, Implementation Guide, Version 5, Release 0, May 12, 2004, excluding the Prescription Fill Status Notification Transaction (and its three business cases; Prescription Fill Status Notification Transaction—Filled, Prescription Fill Status Notification Transaction—Not Filled, and Prescription Fill Status Notification Transaction—Partial Fill).

(2) Accredited Standards Committee, 7600 Leesburg Pike, Suite 430, Falls Church, VA 22043; Telephone (301) 970–4488; and Facsimile: (703) 970–4488 or *http://www.x12.org.*

(i) Accredited Standards Committee (ASC) X12N 270/271-Health Care Eligibility Benefit Inquiry and Response, Version 4010, May 2000, Washington Publishing Company, 004010X092 and Addenda to Health Care Eligibility Benefit Inquiry and Response, Version 4010A1, October 2002, Washington Publishing Company, 004010X092A1.

(ii) Reserved.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 14, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: March 28, 2008.

Michael O. Leavitt,

Secretary.

[FR Doc. 08–1094 Filed 4–2–08; 10:44 am]

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32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–062–00120–7)	61.00	July 1, 2007
191–399	(869–062–00121–5)	63.00	July 1, 2007
400–629	(869–062–00122–3)	61.00	July 1, 2007
630–699	(869–062–00123–1)	37.00	July 1, 2007
700–799	(869–062–00124–0)	46.00	July 1, 2007
800–End	(869–062–00125–8)	47.00	July 1, 2007
33 Parts:			
1–124	(869–062–00126–6)	57.00	July 1, 2007
125–199	(869–062–00127–4)	61.00	July 1, 2007
200–End	(869–062–00128–2)	57.00	July 1, 2007
34 Parts:			
1–299	(869–062–00129–1)	50.00	July 1, 2007
300–399	(869–062–00130–4)	40.00	July 1, 2007
400–End & 35	(869–062–00131–2)	61.00	July 1, 2007
36 Parts:			
1–199	(869–062–00132–1)	37.00	July 1, 2007
200–299	(869–062–00133–9)	37.00	July 1, 2007
300–End	(869–062–00134–7)	61.00	July 1, 2007
37	(869–062–00135–5)	58.00	July 1, 2007
38 Parts:			
0–17	(869–062–00136–3)	60.00	July 1, 2007
18–End	(869–062–00137–1)	62.00	July 1, 2007
39	(869–062–00138–0)	42.00	July 1, 2007
40 Parts:			
1–49	(869–062–00139–8)	60.00	July 1, 2007
50–51	(869–062–00140–1)	45.00	July 1, 2007
52 (52.01–52.1018)	(869–062–00141–0)	60.00	July 1, 2007
52 (52.1019–End)	(869–062–00142–8)	64.00	July 1, 2007
53–59	(869–062–00143–6)	31.00	July 1, 2007
60 (60.1–End)	(869–062–00144–4)	58.00	July 1, 2007
60 (Apps)	(869–062–00145–2)	57.00	July 1, 2007
61–62	(869–062–00146–1)	45.00	July 1, 2007
63 (63.1–63.599)	(869–062–00147–9)	58.00	July 1, 2007
63 (63.600–63.1199)	(869–062–00148–7)	50.00	July 1, 2007
63 (63.1200–63.1439)	(869–062–00149–5)	50.00	July 1, 2007
63 (63.1440–63.6175)	(869–062–00150–9)	32.00	July 1, 2007
63 (63.6580–63.8830)	(869–062–00151–7)	32.00	July 1, 2007
63 (63.8980–End)	(869–062–00152–5)	35.00	July 1, 2007
64–71	(869–062–00153–3)	29.00	July 1, 2007
72–80	(869–062–00154–1)	62.00	July 1, 2007
81–84	(869–062–00155–0)	50.00	July 1, 2007
85–86 (85–86.599–99)	(869–062–00156–8)	61.00	July 1, 2007
86 (86.600–1–End)	(869–062–00157–6)	61.00	July 1, 2007
87–99	(869–062–00158–4)	60.00	July 1, 2007
100–135	(869–062–00159–2)	45.00	July 1, 2007
136–149	(869–062–00160–6)	61.00	July 1, 2007
150–189	(869–062–00161–4)	50.00	July 1, 2007
190–259	(869–062–00162–2)	39.00	[7] July 1, 2007
260–265	(869–062–00163–1)	50.00	July 1, 2007
266–299	(869–062–00164–9)	50.00	July 1, 2007
300–399	(869–062–00165–7)	42.00	July 1, 2007
400–424	(869–062–00166–5)	56.00	[7] July 1, 2007
425–699	(869–062–00167–3)	61.00	July 1, 2007
700–789	(869–062–00168–1)	61.00	July 1, 2007
790–End	(869–062–00169–0)	61.00	July 1, 2007
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–062–00170–3)	24.00	July 1, 2007
101	(869–062–00171–1)	21.00	July 1, 2007
102–200	(869–062–00172–0)	56.00	July 1, 2007
201–End	(869–062–00173–8)	24.00	July 1, 2007
42 Parts:			
1–399	(869–062–00174–6)	61.00	Oct. 1, 2007
400–413	(869–062–00175–4)	32.00	Oct. 1, 2007
414–429	(869–062–00176–2)	32.00	Oct. 1, 2007
430–End	(869–062–00177–1)	64.00	Oct. 1, 2007
43 Parts:			
1–999	(869–062–00178–9)	56.00	Oct. 1, 2007
1000–end	(869–062–00179–7)	62.00	Oct. 1, 2007
44	(869–062–00180–1)	50.00	Oct. 1, 2007
45 Parts:			
1–199	(869–062–00181–9)	60.00	Oct. 1, 2007
200–499	(869–060–00182–7)	34.00	[9] Oct. 1, 2007
500–1199	(869–062–00183–5)	56.00	Oct. 1, 2007
1200–End	(869–062–00184–3)	61.00	Oct. 1, 2007
46 Parts:			
1–40	(869–062–00185–1)	46.00	Oct. 1, 2007
41–69	(869–062–00186–0)	39.00	Oct. 1, 2007
70–89	(869–062–00187–8)	14.00	Oct. 1, 2007
90–139	(869–062–00188–6)	44.00	Oct. 1, 2007
140–155	(869–062–00189–4)	25.00	Oct. 1, 2007
156–165	(869–062–00190–8)	34.00	Oct. 1, 2007
166–199	(869–062–00191–6)	46.00	Oct. 1, 2007
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
47 Parts:			
0–19	(869–062–00194–1)	61.00	Oct. 1, 2007
20–39	(869–062–00195–9)	46.00	Oct. 1, 2007
40–69	(869–062–00196–7)	40.00	Oct. 1, 2007
70–79	(869–062–00197–5)	61.00	Oct. 1, 2007
80–End	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007
1 (Parts 52–99)	(869–062–00200–9)	49.00	Oct. 1, 2007
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
3–6	(869–062–00202–5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7–14	(869–062–00203–3)	56.00	Oct. 1, 2007
15–28	(869–062–00204–1)	47.00	Oct. 1, 2007
29–End	(869–062–00205–0)	47.00	Oct. 1, 2007
49 Parts:			
1–99	(869–062–00206–8)	60.00	Oct. 1, 2007
100–185	(869–062–00207–6)	63.00	Oct. 1, 2007
186–199	(869–062–00208–4)	23.00	Oct. 1, 2007
200–299	(869–062–00208–1)	32.00	Oct. 1, 2007
300–399	(869–062–00210–6)	32.00	Oct. 1, 2007
400–599	(869–062–00210–3)	64.00	Oct. 1, 2007
600–999	(869–062–00212–2)	19.00	Oct. 1, 2007
1000–1199	(869–062–00213–1)	28.00	Oct. 1, 2007
1200–End	(869–062–00214–9)	34.00	Oct. 1, 2007
50 Parts:			
1–16	(869–062–00215–7)	11.00	Oct. 1, 2007
17.1–17.95(b)	(869–062–00216–5)	32.00	Oct. 1, 2007
17.95(c)–end	(869–062–00217–3)	32.00	Oct. 1, 2007
17.96–17.99(h)	(869–062–00218–1)	61.00	Oct. 1, 2007
17.99(i)–end and 17.100–end	(869–062–00219–0)	47.00	[8] Oct. 1, 2007
18–199	(869–062–00226–3)	50.00	Oct. 1, 2007
200–599	(869–062–00221–1)	45.00	Oct. 1, 2007
600–659	(869–062–00222–0)	31.00	Oct. 1, 2007
660–End	(869–062–00223–8)	31.00	Oct. 1, 2007
CFR Index and Findings Aids	(869–062–00050–2)	62.00	Jan. 1, 2007
Complete 2007 CFR set		1,499.00	2008
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Subscription (mailed as issued)		406.00	2008
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Complete set (one-time mailing)		332.00	2006

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2007. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2007. The CFR volume issued as of October 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.