7–14–09 Tuesday
Vol. 74 No. 133 July 14, 2009

Pages 33901–34208

Federal Register

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 74 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, July 14, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Contents

Federal Register

Vol. 74, No. 133

Tuesday, July 14, 2009

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR

Proposed Rules:

1245 (2 documents) 34182, 34200

10 CFR

35.....33901
430.....34080

Proposed Rules:

35.....33925

12 CFR

913.....33907
1204.....33907
1702.....33907

13 CFR

107.....33911

14 CFR

97 (2 documents) 33917, 33918

Proposed Rules:

39.....33928

19 CFR

149.....33920

33 CFR

165.....33922

37 CFR

Proposed Rules:

201.....33930
202.....33930

40 CFR

Proposed Rules:

52 (3 documents) 33933, 33948, 33950

48 CFR

Ch 1 (2 documents).....34206
17.....34206
22.....34206
36.....34206

Proposed Rules:

2.....33953
17.....33953
22.....33953
36.....33953
52.....33953

49 CFR

265.....33923

50 CFR

679.....33923

Proposed Rules:

17.....33957
218.....33960
648.....33986

Rules and Regulations

Federal Register
Vol. 74, No. 133
Tuesday, July 14, 2009

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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[NRC–2009–0098]

RIN 3150–AI59

Medical Use of Byproduct Material—Authorized User Clarification

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to clarify that individuals who do not need to comply with the training and experience requirements as described in the applicable regulations for the medical use of byproduct material (*i.e.*, are ''grandfathered'') may serve as preceptors and work experience supervisors for individuals seeking recognition on NRC licenses for the same medical uses of byproduct material. The regulations that govern the medical use of byproduct material were amended in their entirety in 2002 and again in 2005. Currently, individuals who were identified on an NRC or Agreement State license or permit before the regulations were amended do not need to requalify by meeting the training and experience (T&E) requirements of the applicable regulations. When the regulations were revised, the NRC intended that those authorized individuals would also be able to serve as preceptors and work experience supervisors. However, the regulations as they are currently written do not specifically state that grandfathered individuals can be work experience supervisors and preceptors.

This direct final rule amends the regulations to clarify that all individuals grandfathered under the applicable regulations may serve as preceptors and work experience supervisors for individuals seeking recognition on an NRC license for the same uses. Additionally, several minor administrative changes are included in this rulemaking.

DATES: The final rule is effective September 28, 2009, unless a significant adverse comment is received by August 13, 2009. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Please include the number RIN 3150–AI59 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC's Web site in the Agencywide Documents Access and Management System (ADAMS) and at *http://www.regulations.gov.* Personal information, such as your name, address, telephone number, e-mail address, *etc.,* will not be removed from your submission. You may submit comments by any one of the following methods:

Federal e-Rulemaking portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0098 and follow instructions for submitting comments. Address questions about NRC dockets to Carol Gallagher at 301–492–3668, e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301–415–1677).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including any comments, may be viewed and downloaded via the e-Rulemaking Portal at *http://www.regulations.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Edward M. Lohr, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–0253, e-mail—*Edward.Lohr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On April 24, 2002 (67 FR 20250), and again on March 30, 2005 (70 FR 16336), the NRC revised the T&E requirements contained in 10 CFR Part 35 for individuals seeking recognition on NRC medical licenses. Individuals who were authorized on a license or permit at the time that the 2002 and 2005 regulations went into effect were ''grandfathered'' under § 35.57 (*i.e.*, did not need to comply with the new training and experience requirements). However, § 35.57 does not specifically state that those individuals may also provide work experience supervision or preceptor attestations for individuals seeking recognition for the same uses on NRC licenses or permits.

Discussion

The current language of the T&E requirements contained in 10 CFR part 35 is inconsistent as to whether individuals grandfathered under § 35.57 may serve as preceptors and/or work experience supervisors. Under § 35.50, Training for Radiation Safety Officer, any individual who is identified as the

Radiation Safety Officer on an NRC or Agreement State license or permit may serve as a preceptor or work experience supervisor; however, only those physicians who meet the current requirements for authorized users (AUs) may serve as work experience supervisors. Under § 35.51, ''Training for an authorized medical physicist,'' work experience may be obtained under the supervision of an individual who meets the requirements for an authorized medical physicist (AMP) for the type of use for which the individual is seeking authorization; however, individuals seeking recognition on an NRC license or permit must obtain a written attestation that may be signed only by a preceptor AMP who meets the current requirements. Section 35.55 does not limit work experience supervisors or preceptors to individuals meeting the current requirements, as it provides that supervised practical experience may be in ''a nuclear pharmacy,'' and the written attestation may be signed by ''a preceptor authorized nuclear pharmacist.'' With regard to AUs, under §§ 35.190, 35.290, 35.390, 35.392, 35.394, 35.396, 35.490, and 35.690, only those AUs who meet the current requirements may serve as either preceptors or work experience supervisors. However, under § 35.491, while the preceptor must be an AU who meets the current requirements, the regulation provides that supervised clinical training may be under the supervision of ''an authorized user.''

The **SUPPLEMENTARY INFORMATION** section of the preamble to the final rule amending 10 CFR part 35 in 2005 indicated that it was the NRC's intent to permit individuals grandfathered under § 35.57 to serve as work experience supervisors and preceptors for individuals seeking recognition on NRC licenses or permits for the same uses. Specifically, in the Summary of Public Comments and Responses to Comments, a comment from the public on the proposed rule stated that clarification was needed for grandfathering AMPs so ''there could be an initial pool of AMPs to serve as preceptors.'' In response to this comment, the NRC stated: ''These individuals, who have been identified on a license, would also be able to serve as preceptors for individuals to become AMPs.'' However, § 35.51, ''Training for an authorized medical physicist,'' was not revised to implement that intent. Specifically, § 35.51(b)(2) states that individuals seeking recognition on an NRC license or permit must have obtained a written attestation that ''must be signed by a preceptor authorized medical physicist who meets the requirements in section 35.51, or equivalent Agreement State requirements for an authorized medical physicist * * *.''

Although the response to the comment addresses only AMPs, it was the NRC's intent to allow other individuals authorized on NRC and Agreement State licenses and permits to serve as both preceptors and work experience supervisors for individuals seeking recognition on NRC licenses or permits for the same uses. If individuals grandfathered under § 35.57 are unable to provide attestations and work experience supervision for applicants, there will not be a sufficient pool of professionals to provide attestations or work experience supervision for new applicants to become authorized individuals on NRC medical use licenses. This may create a serious shortage of authorized individuals in the medical community, which may result in a negative impact on health care. Therefore, the NRC is revising the T&E regulations to implement its intent that all individuals grandfathered under § 35.57 may serve as preceptors and work experience supervisors for individuals seeking recognition on NRC licenses or permits for the same uses.

Discussion of Amendments by Section

1. Section 35.50 Training for Radiation Safety Officer.

This section is amended to clarify that radiation safety officers may have practical training and/or supervised experience in medical physics under the direction of physicians who meet the requirements for authorized users in § 35.57.

2. Section 35.51 Training for an authorized medical physicist.

This section is amended to clarify that authorized medical physicists may have practical training and/or supervised experience in medical physics under the direction of physicians who meet the requirements for authorized users in § 35.57 and that preceptors for medical physicists may be medical physicists who meet the requirements in § 35.57. Additionally, a minor administrative change is made for clarification.

3. Section 35.57 Training for experienced Radiation Safety Officer, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist, and authorized nuclear pharmacist.

This section is amended to clarify that individuals who need not comply with training requirements as described in § 35.57 may serve as preceptors for, and supervisors of, applicants seeking authorization on NRC licenses for the same uses for which these individuals are authorized.

4. Section 35.190 Training for uptake, dilution, and excretion studies.

This section is amended to clarify that authorized users may have work experience under the supervision of authorized users who meet the requirements in § 35.57 and may obtain written attestations signed by preceptor authorized users who meet the requirements in § 35.57.

5. Section 35.290 Training for imaging and localization studies.

This section is amended to clarify that authorized users may have work experience under the supervision of authorized users who meet the requirements in § 35.57 and obtain written attestations signed by preceptor authorized users who meet the requirements in § 35.57. Additionally, a minor administrative change is made to the language to make it consistent throughout the section.

6. Section 35.390 Training for use of unsealed byproduct material for which a written directive is required.

This section is amended to clarify that authorized users may have work experience under the supervision of authorized users who meet the requirements in § 35.57 and may obtain written attestations signed by preceptor authorized users who meet the requirements in § 35.57.

7. Section 35.392 Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries).

This section is amended to clarify that authorized users may have work experience under the supervision of authorized users who meet the requirements in § 35.57 and may obtain written attestations signed by preceptor authorized users who meet the requirements in § 35.57. Additionally, a minor administrative change is made for clarification.

8. Section 35.394 Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries).

This section is amended to clarify that authorized users may have work experience under the supervision of authorized users who meet the requirements in § 35.57 and may obtain written attestations signed by preceptor authorized users who meet the requirements in § 35.57.

9. Section 35.396 Training for the parenteral administration of unsealed byproduct material requiring a written directive.

This section is amended to clarify that authorized users may have work experience under the supervision of authorized users who meet the requirements in § 35.57 and may obtain written attestations signed by preceptor authorized users who meet the requirements in § 35.57.

10. Section 35.490 Training for use of manual brachytherapy sources.

This section is amended to clarify that authorized users may have work experience under the supervision of authorized users who meet the requirements in § 35.57, may have supervised clinical experience in radiation oncology under authorized users who meet the requirements in § 35.57, and may obtain written attestations signed by preceptor authorized users who meet the requirements in § 35.57. Additionally, a minor administrative change is made for clarification.

11. Section 35.491 Training for ophthalmic use of strontium-90.

This section is amended to clarify that authorized users may obtain written attestations signed by preceptor authorized users who meet the requirements in § 35.57. Additionally, a minor error in the text of § 35.491(b)(3) is corrected to clarify that the preceptor authorized user does not need to attest that the individual has completed the requirements in paragraph (a) and (b), but only that the individual has completed the requirements in paragraph (b).

12. Section 35.690 Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.

This section is amended to clarify that authorized users may have work experience under the supervision of authorized users who meet the requirements in § 35.57, may have supervised clinical experience in radiation therapy under authorized users who meet the requirements in § 35.57, and may obtain written attestations signed by preceptor authorized users who meet the requirements in § 35.57. Additionally, a minor administrative change is made for clarification.

Procedural Background

The amendments contained in this rule will become effective on September 28, 2009. However, if the NRC receives a significant adverse comment by August 13, 2009, then the NRC will publish a document that withdraws this action and will address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997 (62 FR 46517), specific requirements within this rule should be adopted by Agreement States for purposes of compatibility or because of health and safety significance. Implementing procedures for the Policy Statement establish specific categories which have been applied to categorize the requirements in 10 CFR parts 32 and 35. A Compatibility Category ''A'' designation means the requirement is a basic radiation protection standard or deals with related definitions, signs, labels, or terms necessary for a common understanding of radiation protection principles. Compatibility Category ''A'' designated Agreement State requirements should be essentially identical to those of the NRC. A Compatibility Category ''B'' designation means the requirement has significant transboundary implications. Compatibility Category ''B'' designated Agreement State requirements should be essentially identical to those of the NRC. A Compatibility Category ''C'' designation means the essential objectives of the requirement should be adopted by the State to avoid conflicts, duplications, or gaps. The manner in which the essential objectives are addressed in the Agreement State requirement need not be the same as NRC provided the essential objectives are met. A Compatibility Category ''D'' designation means the requirement does not have to be adopted by an Agreement State for purposes of compatibility. The Compatibility Category Health & Safety (H&S) identifies program elements that are not required for purposes of compatibility, but have particular health and safety significance. States should adopt the essential objectives of such program elements in order to maintain an adequate program.

SUMMARY OF NRC RULES WITH COMPATIBILITY OR HEALTH AND SAFETY DESIGNATIONS UNDER THE PROPOSED RULE COVERING 10 CFR PART 35

Section	Section title
	Category B
§ 35.50	Training for Radiation Safety Officer.
§ 35.51	Training for an authorized medical physicist.
§ 35.57	Training for experienced Radiation Safety Officer, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist, and authorized nuclear pharmacist.
§ 35.190	Training for uptake, dilution, and excretion studies.
§ 35.290	Training for imaging and localization studies.
§ 35.390	Training for use of unsealed byproduct material for which a written directive is required.
§ 35.392	Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries).

SUMMARY OF NRC RULES WITH COMPATIBILITY OR HEALTH AND SAFETY DESIGNATIONS UNDER THE PROPOSED RULE COVERING 10 CFR PART 35—Continued

Section	Section title
§ 35.394	Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries).
§ 35.396	Training for the parenteral administration of unsealed byproduct material requiring a written directive.
§ 35.490	Training for use of manual brachytherapy sources.
§ 35.491	Training for ophthalmic use of strontium-90.
§ 35.690	Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.

Plain Language

The Presidential Memorandum ''Plain Language in Government Writing'' published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** heading.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC is amending its regulations to clarify that individuals who do not need to comply with the training and experience requirements as described in § 35.57 may serve as preceptors and work experience supervisors for individuals seeking recognition on NRC licenses or permits for the same medical uses of byproduct material. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this direct final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing information collection requirements were approved by the Office of Management and Budget, approval number 3150–0010.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection request unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this direct final rule because this rule is considered a minor non-substantive amendment and it has no economic impact on NRC licensees or the public. This rule does not impose any new requirements. It only clarifies the rule language in several sections in 10 CFR part 35.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The majority of companies that own these facilities do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810). This rule does not impose any new requirements. It only clarifies the rule language in several sections in 10 CFR part 35.

Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 35.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

■ 1. The authority citation for Part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 2. In § 35.50, paragraph (a)(2)(ii)(B) is revised to read as follows:

§ 35.50 Training for Radiation Safety Officer.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(B) In clinical nuclear medicine facilities providing diagnostic and/or therapeutic services under the direction of physicians who meet the requirements for authorized users in §§ 35.57, 35.290, or 35.390;

* * * * *

■ 3. In § 35.51, paragraphs (a)(2)(ii) and (b)(2) are revised to read as follows:

§ 35.51 Training for an authorized medical physicist.

* * * * *

(a) * * *

(2) * * *

(ii) In clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1

million electron volts) and brachytherapy services under the direction of physicians who meet the requirements in § 35.57, 35.490, or 35.690; and

* * * * *

(b) * * *

(2) Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs (c) and (a)(1) and (a)(2), or (b)(1) and (c) of this section, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation must be signed by a preceptor authorized medical physicist who meets the requirements in §§ 35.51, 35.57, or equivalent Agreement State requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

* * * * *

■ 4. In § 35.57, a new paragraph (c) is added to read as follows:

§ 35.57 Training for experienced Radiation Safety Officer, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist, and authorized nuclear pharmacist.

* * * * *

(c) Individuals who need not comply with training requirements as described in this section may serve as preceptors for, and supervisors of, applicants seeking authorization on NRC licenses for the same uses for which these individuals are authorized.

■ 5. In § 35.190, the introductory text of paragraph (c)(1)(ii) and paragraph (c)(2) are revised to read as follows:

§ 35.190 Training for uptake, dilution, and excretion studies.

* * * * *

(c)(1) * * *

(ii) Work experience, under the supervision of an authorized user who meets the requirements in §§ 35.57, 35.190, 35.290, 35.390, or equivalent Agreement State requirements, involving—

* * * * *

(2) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in §§ 35.57, 35.190, 35.290, or 35.390, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraph (a)(1) or (c)(1) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under § 35.100.

■ 6. In § 35.290, the introductory text of paragraph (c)(1)(ii) and paragraph (c)(2) are revised to read as follows:

§ 35.290 Training for imaging and localization studies.

* * * * *

(c)(1) * * *

(ii) Work experience, under the supervision of an authorized user who meets the requirements in §§ 35.57, 35.290, or 35.390 and 35.290(c)(1)(ii)(G), or equivalent Agreement State requirements, involving—

* * * * *

(2) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in §§ 35.57, 35.290, or 35.390 and 35.290(c)(1)(ii)(G), or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraph (a)(1) or (c)(1) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under §§ 35.100 and 35.200.

■ 7. In § 35.390, the introductory text of paragraph (b)(1)(ii) and paragraph (b)(2) are revised to read as follows:

§ 35.390 Training for use of unsealed byproduct material for which a written directive is required.

* * * * *

(b)(1) * * *

(ii) Work experience, under the supervision of an authorized user who meets the requirements in §§ 35.57, 35.390, or equivalent Agreement State requirements. A supervising authorized user, who meets the requirements in § 35.390(b), must also have experience in administering dosages in the same dosage category or categories (*i.e.*, § 35.390(b)(1)(ii)(G)) as the individual requesting authorized user status. The work experience must involve—

* * * * *

(2) Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs (a)(1) and (b)(1)(ii)(G) or (b)(1) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under § 35.300. The written attestation must be signed by a preceptor authorized user who meets the requirements in §§ 35.57, 35.390, or equivalent Agreement State requirements. The preceptor authorized user, who meets the requirements in § 35.390(b) must have experience in administering dosages in the same dosage category or categories (*i.e.*, § 35.390(b)(1)(ii)(G)) as the individual requesting authorized user status.

■ 8. In § 35.392, the introductory text of paragraph (c)(2) and paragraph (c)(3) are revised to read as follows:

§ 35.392 Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries).

* * * * *

(c) * * *

(2) Has work experience, under the supervision of an authorized user who meets the requirements in §§ 35.57, 35.390, 35.392, 35.394, or equivalent Agreement State requirements. A supervising authorized user who meets the requirements in § 35.390(b) must also have experience in administering dosages as specified in §§ 35.390(b)(1)(ii)(G)(1) or 35.390(b)(1)(ii)(G)(2). The work experience must involve—

* * * * *

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs (c)(1) and (c)(2) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under § 35.300. The written attestation must be signed by a preceptor authorized user who meets the requirements in §§ 35.57, 35.390, 35.392, 35.394, or equivalent Agreement State requirements. A preceptor authorized user, who meets the requirement in § 35.390(b), must also have experience in administering dosages as specified in §§ 35.390(b)(1)(ii)(G)(1) or 35.390(b)(1)(ii)(G)(*2*).

■ 9. In § 35.394, the introductory text of paragraph (c)(2) and paragraph (c)(3) are revised to read as follows:

§ 35.394 Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries).

* * * * *

(c) * * *

(2) Has work experience, under the supervision of an authorized user who meets the requirements in §§ 35.57, 35.390, 35.394, or equivalent Agreement State requirements. A supervising authorized user, who meets the requirements in § 35.390(b), must also have experience in administering dosages as specified in § 35.390(b)(1)(ii)(G)(2). The work experience must involve—

* * * * *

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs (c)(1) and (c)(2) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under § 35.300. The written attestation must be signed by a preceptor authorized user who meets the requirements in §§ 35.57, 35.390, 35.394, or equivalent Agreement State requirements. A preceptor authorized user, who meets the requirements in § 35.390(b), must also have experience in administering dosages as specified in § 35.390(b)(1)(ii)(G)(*2*).

■ 10. In § 35.396, the introductory text of paragraph (d)(2) and paragraph (d)(3) are revised to read as follows:

§ 35.396 Training for the parenteral administration of unsealed byproduct material requiring a written directive.

* * * * *

(d) * * *

(2) Has work experience, under the supervision of an authorized user who meets the requirements in §§ 35.57, 35.390, 35.396, or equivalent Agreement State requirements, in the parenteral administration, for which a written directive is required, of any beta emitter, or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. A supervising authorized user who meets the requirements in § 35.390 must have experience in administering dosages as specified in §§ 35.390(b)(1)(ii)(G)(3) and/or 35.390(b)(1)(ii)(G)(4). The work experience must involve—

* * * * *

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraph (b) or (c) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed byproduct material requiring a written directive. The written attestation must be signed by a preceptor authorized user who meets the requirements in §§ 35.57, 35.390, 35.396, or equivalent Agreement State requirements. A preceptor authorized user, who meets the requirements in § 35.390, must have experience in administering dosages as specified in §§ 35.390(b)(1)(ii)(G)(3) and/or 35.390(b)(1)(ii)(G)(*4*).

■ 11. In § 35.490, the introductory text of paragraph (b)(1)(ii) and paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 35.490 Training for use of manual brachytherapy sources.

* * * * *

(b)(1) * * *

(ii) 500 hours of work experience, under the supervision of an authorized user who meets the requirements in §§ 35.57, 35.490, or equivalent Agreement State requirements at a medical institution, involving—

* * * * *

(2) Has completed 3 years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in §§ 35.57, 35.490, or equivalent Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by paragraph (b)(1)(ii) of this section; and

(3) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in §§ 35.57, 35.490, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraph (a)(1), or paragraphs (b)(1) and (b)(2), of this section and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized under § 35.400.

■ 12. In § 35.491, paragraph (b)(3) is revised to read as follows:

§ 35.491 Training for ophthalmic use of strontium-90.

* * * * *

(b) * * *

(3) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in §§ 35.57, 35.490, 35.491, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraph (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

■ 13. In § 35.690, the introductory text of paragraph (b)(1)(ii) and paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 35.690 Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.

* * * * *

(b)(1) * * *

(ii) 500 hours of work experience, under the supervision of an authorized user who meets the requirements in §§ 35.57, 35.690, or equivalent Agreement State requirements at a medical institution, involving—

* * * * *

(2) Has completed 3 years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements in §§ 35.57, 35.690, or equivalent Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by paragraph (b)(1)(ii) of this section; and

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraph (a)(1) or paragraphs (b)(1) and (b)(2), and paragraph (c), of this section, and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation must be signed by a preceptor authorized user who meets the requirements in §§ 35.57, 35.690, or equivalent Agreement State requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

* * * * *

Dated at Rockville, Maryland, this 26th day of June 2009.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. E9–16658 Filed 7–13–09; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 913

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1204

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1702

RIN 2590–AA07

Privacy Act Implementation

AGENCIES: Federal Housing Finance Board; Federal Housing Finance Agency; Office of Federal Housing Enterprise Oversight.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a final regulation to provide the procedures and guidelines under which it will implement the Privacy Act of 1974, as amended. The regulation provides the policies and procedures whereby individuals may obtain notification of whether an FHFA system of records contains information about the individual and, if so, how to access or amend a record under the Privacy Act. Upon adoption of this regulation the Privacy Act regulations of the Federal Housing Finance Board and the Office of Federal Housing Enterprise Oversight, will be removed.

DATES: The effective date of this regulation is: July 14, 2009.

FOR FURTHER INFORMATION CONTACT: David A. Lee, Senior Agency Official for Privacy, telephone (202) 408–2514 (not a toll free number), Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Privacy Act

The Privacy Act of 1974 serves to balance the Federal Government's need to maintain information about individuals while protecting individuals against unwarranted invasions of privacy stemming from Federal agencies' collection, maintenance, use, security, and disclosure of personal information about them that is contained in systems of records.

The Privacy Act requires each Federal agency to publish rules describing its Privacy Act procedures and any system of records it exempts from provisions of the Privacy Act, including the reasons for the exemption.

Pursuant to the Privacy Act, FHFA will inform the public of each system of records it maintains by separately publishing notices of each system of records in the **Federal Register** and also on the FHFA Web site at *http://www.fhfa.gov*. The notices will describe the standards for FHFA employees, regarding collection, use, maintenance, or disclosure of records in the system and identify whether information in the system is exempt from provisions of the Privacy Act. The system manager responsible for the system will also be identified and any other contact information will be included. Moreover, notices will inform individuals with detailed information regarding the exercise of their rights, such as what procedures to take to determine whether a system contains a record pertaining to them, how to access those records pertaining to them, how to seek to amend or correct information in a record about them, or, how to contest adverse determinations with respect to such a record.

B. Establishment of the Federal Housing Finance Agency

The Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110–289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) (12 U.S.C. 4501 *et seq.*) and the Federal Home Loan Bank Act (12 U.S.C. 1421–1449) to establish FHFA as an independent agency of the Federal Government [1] to ensure that the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), and the Federal Home Loan Banks (Banks) (collectively, the regulated entities) are capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; operate in a safe and sound manner; comply with the Safety and Soundness Act and rules, regulations, guidelines and orders issued under the Act, and the respective authorizing statutes of the regulated entities; and carry out their missions through activities authorized and consistent with the Safety and Soundness Act and their authorizing statutes; and, that the activities and operations of the regulated entities are consistent with the public interest.

The Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB) will be abolished one year after enactment of HERA. However, the regulated entities continue to operate under regulations promulgated by OFHEO and FHFB; and such regulations are enforceable by the Director of FHFA until such regulations are modified, terminated, set aside, or superseded by the Director.[2]

Section 1201 of HERA requires the Director, prior to promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises.[3] The Director considered the differences between the Banks and the Enterprises as they relate to the above factors and determined that pending the publication of consolidated Systems of Records Notices, FHFA will maintain the Systems of Records established by FHFB and OFHEO, respectively.

C. Proposed Rulemaking

The FHFA published a proposed Privacy Act Implementation regulation for public comment in the **Federal Register**, 74 FR 22842 (May 15, 2009). No comments were received. Accordingly, the proposed regulation is adopted as a final regulation with only minor editorial changes.

II. Section-by-Section Analysis

Section 1204.1 Why Did FHFA Issue This Part?

This section describes the purpose of the regulation, which is to implement the Privacy Act, and explains FHFA general policies and procedures for individuals requesting access to records, amending or correcting records, and requesting an accounting of disclosures of records.

Section 1204.2 What Do the Terms in this Part Mean?

This section sets forth definitions of some terms in this part.

Section 1204.3 How Do I Make a Privacy Act Request?

This section explains what an individual must do to submit a valid request to FHFA for access to records or information to amend or correct records or for an accounting of disclosures of records. It also describes the information an individual is to provide,

[1] *See* Division A, titled the ''Federal Housing Finance Regulatory Reform Act of 2008,'' Title I, § 1101 of HERA.

[2] *See* §§ 1302 and 1312 of HERA (12 U.S.C. 4511 note).

[3] *See* § 1313 of the Safety and Soundness Act (12 U.S.C. 4513), as amended.

allowing FHFA to identify the records sought and determine whether the request can be granted.

Section 1204.4 How Will FHFA Respond to my Privacy Act Request?

This section describes the period of time within which FHFA will respond to requests. It also explains that FHFA will grant or deny requests in writing, provide reasons if a request is denied in whole or in part, and explain the right of appeal.

Section 1204.5 What if I am Dissatisfied With the FHFA Response to my Privacy Act Request?

This section describes when and how an individual may appeal FHFA determination on a Privacy Act request and how and within what period of time FHFA will make determinations on an appeal.

Section 1204.6 What Does It Cost to Get Records Under the Privacy Act?

This section explains that requesters are expected to pay fees for the duplication of records that they requested.

Section 1204.7 Are There Any Exemptions From the Privacy Act?

This section explains that some exemptions from the Privacy Act exist, how they are made effective, what the effect of an exemption is, and how to identify if an exemption applies.

Section 1204.8 How Are Records Secured?

This section explains how FHFA generally protects records under the Privacy Act.

Section 1204.9 Does FHFA Collect and Use Social Security Numbers?

This section explains that FHFA collects Social Security numbers only when authorized and describes the conditions under which they may be collected.

Section 1204.10 What Are FHFA Employee Responsibilities Under the Privacy Act?

This section lists the responsibilities of FHFA employees under the Privacy Act.

Regulatory Impacts

Paperwork Reduction Act

The final regulation does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the regulation under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable to the internal operations and legal obligations of FHFA.

List of Subjects

12 CFR Part 913

Administrative practice and procedure, Archives and records, Freedom of information, Privacy.

12 CFR Part 1204

Accounting, Amendment, Appeals, Correction, Disclosure, Exemptions, Fees, Records, Requests, Privacy Act, Social Security numbers.

12 CFR Part 1702

Privacy.

Authority and Issuance

■ Accordingly, for the reasons stated in the preamble, under 12 U.S.C. 4526, FHFA amends Title 12 CFR Chapters IX, XII and XVII as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

PART 913—[REMOVED]

■ 1. Remove part 913.

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

■ 2. Add part 1204 to subchapter A as set forth below.

PART 1204—PRIVACY ACT IMPLEMENTATION

Sec.

Authority: 5 U.S.C. 552a.

§ 1204.1 Why did FHFA issue this part?

FHFA issued this part to:

(a) Implement the Privacy Act of 1974, 5 U.S.C. 552a, as amended (Privacy Act), a Federal law that helps protect private information about individuals that Federal agencies collect or maintain. You should read this part together with the Privacy Act, which provides additional information about records maintained on individuals;

(b) Establish rules that apply to all FHFA maintained systems of records retrieved by an individual's name or other personal identifier;

(c) Describe procedures through which you may request access to records, request amendment or correction of those records, and request an accounting of disclosures of those records by FHFA;

(d) Inform you, that when it is appropriate to do so, FHFA automatically processes a Privacy Act request for access to records under both the Privacy Act and the FOIA, following the rules contained in this part and part 1202 of this subchapter so you will receive the maximum amount of information available to you by law; and

(e) Notify you that this regulation does not entitle you to any service or to the disclosure of any record to which you are not entitled under the Privacy Act. It also does not, and may not be relied upon to create any substantive or procedural right or benefit enforceable against FHFA.

§ 1204.2 What do the terms in this part mean?

The following definitions apply to the terms used in this part—

Access means making a record available to a subject individual.

Amendment means any correction of, addition to, or deletion from a record.

Court means any entity conducting a legal proceeding.

FHFA means the Federal Housing Finance Agency.

FHFB means the Federal Housing Finance Board.

FOIA means the Freedom of Information Act, as amended (5 U.S.C. 552).

Individual means a natural person who is either a citizen ofhe United States of America or an alien lawfully admitted for permanent residence.

Maintain includes collect, use, disseminate, or control.

OFHEO means the Office of Federal Housing Enterprise Oversight.

Privacy Act means the Privacy Act of 1974, as amended (5 U.S.C. 552a).

Privacy Act Appeals Officer means the FHFA employee who has been delegated the authority to determine Privacy Act appeals.

Privacy Act Officer means the FHFA employee who has primary responsibility for privacy and data protection policy and is authorized to determine Privacy Act requests.

Record means any item, collection, or grouping of information about an individual that FHFA maintains within a system of records, including, but not limited to, the individual's name, an identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph.

Routine use means the purposes for which records and information contained in a system of records may be disclosed by FHFA without the consent of the subject of the record. Routine uses for records are identified in each System of Records Notice. Routine use does not include disclosure that subsection (b) of the Privacy Act (5 U.S.C. 552a(b)) otherwise permits.

Senior Agency Official for Privacy means the FHFA employee delegated the authority and responsibility to oversee and supervise the FHFA privacy program and implementation of the Privacy Act.

System of records means a group of records FHFA maintains or controls from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Single records or groups of records that are not retrieved by a personal identifier are not part of a system of records.

§ 1204.3 How do I make a Privacy Act request?

(a) *What is a valid request?* In general, a Privacy Act request can be made on your own behalf for records or information about you. You can make a Privacy Act request on behalf of another individual as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent. You also may request access to another individual's record or information if you have that individual's written consent, unless other conditions of disclosure apply (5 U.S.C. 552a(b)(1) through (12)).

(b) *How and where do I make a request?* Your request must be in writing. You may appear in person to submit your written request to the Privacy Act Officer, or send your written request to the Privacy Act Officer by electronic mail, regular mail, or fax. The electronic mail address is: *privacy@fhfa.gov.* The regular mail address is: Privacy Act Officer, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006. The fax number is: (202) 408–2530. For the quickest possible handling, you should mark your electronic mail, letter, or fax and the subject line, envelope, or fax cover sheet ''Privacy Act Request.''

(c) *What must the request include?* You must describe the record that you want in enough detail to enable the Privacy Act Officer to locate the system of records containing it with a reasonable amount of effort. Your request should include specific information about each record sought, such as the time period in which you believe it was compiled, the name or identifying number of each system of records in which you believe it is kept, and the date, title or name, author, recipient, and subject matter of the record. As a general rule, the more specific you are about the record that you want, the more likely FHFA will be able to locate it in response to your request.

(d) *How do I request amendment or correction of a record?* If you are requesting an amendment or correction of any FHFA record, you should identify each particular record in question and the systems of records in which the record is located, describe the amendment or correction that you want, and state why you believe that the record is not accurate, relevant, timely, or complete. You may submit any documentation that you think would be helpful, including an annotated copy of the record.

(e) *How do I request for an accounting of disclosures?* If you are requesting an accounting of disclosures by FHFA of a record to another person, organization, or Federal agency, you should identify each particular record in question. An accounting generally includes the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or Federal agency to which the disclosure was made.

(f) *Must I verify my identity?* When making requests under the Privacy Act, your request must verify your identity to protect your privacy or the privacy of the individual on whose behalf you are acting. If you make a Privacy Act request and you do not follow these identity verification procedures, FHFA cannot process your request.

(1) *How do I verify my identity?* To verify your identity, you must state your full name, current address, and date and place of birth. In order to help identify and locate the records you request, you also may, at your option, include your Social Security number. If you make your request in person and your identity is not known to the Privacy Act Officer, you must provide either two forms of identification with photographs, or one form of identification with a photograph and a properly authenticated birth certificate. If you make your request by mail, your signature either must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. You may fulfill this requirement by having your signature on your request letter witnessed by a notary or by including the following statement just before the signature on your request letter: ''I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].''

(2) *How do I verify parentage or guardianship?* If you make a Privacy Act request as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent, with respect to records or information about that individual, you must establish:

(i) The identity of the individual who is the subject of the record, by stating the individual's name, current address, date and place of birth, and, at your option, the Social Security number of the individual;

(ii) Your own identity, as required in paragraph (f)(1) of this section;

(iii) That you are the parent or guardian of the individual, which you may prove by providing a properly authenticated copy of the individual's birth certificate showing your parentage or a properly authenticated court order establishing your guardianship; and

(iv) That you are acting on behalf of the individual in making the request.

§ 1204.4 How will FHFA respond to my Privacy Act request?

(a) *How will FHFA locate the requested records?* FHFA will search to determine if requested records exist in the systems of records it owns or controls. You can find descriptions of FHFA systems of records on its Web site at *http://www.fhfa.gov,* or by linking to *http://www.ofheo.gov* and *http://www.fhfb.gov*, as appropriate. You can also find descriptions of OFHEO and FHFB systems of records that have not been superseded on the FHFA Web site. A description of the systems of records also is available in the ''Privacy Act

Issuances'' compilation published by the Office of the Federal Register of the National Archives and Records Administration. You can access the ''Privacy Act Issuances'' compilation in most large reference and university libraries or electronically at the Government Printing Office Web site at: *http://www.gpoaccess.gov/privacyact/index.html.* You also can request a copy of FHFA systems of records from the Privacy Act Officer.

(b) *How long does FHFA have to respond?* The Privacy Act Officer generally will respond to your request in writing within 20 business days after receiving it, if it meets the requirements of § 1204.3. FHFA may extend the response time in unusual circumstances, such as when consultation is needed with another Federal agency (if that agency is subject to the Privacy Act) about a record or to retrieve a record shipped offsite for storage. If you submit your written request in person, the Privacy Act Officer may disclose records or information to you directly with a written record made of the grant of the request. If you are to be accompanied by another person when accessing your record or any information pertaining to you, FHFA may require your written authorization before permitting access or discussing the record in the presence of the other person.

(c) *What will the FHFA response include?* The written response will include a determination to grant or deny your request in whole or in part, a brief explanation of the reasons for the determination, and the amount of the fee charged, if any, under § 1204.6. If you are granted a request to access a record, FHFA will make the record available to you. If you are granted a request to amend or correct a record, the response will describe any amendments or corrections made and advise you of your right to obtain a copy of the amended or corrected record.

(d) *What is an adverse determination?* An adverse determination is a determination on a Privacy Act request that:

(1) Withholds any requested record in whole or in part;

(2) Denies a request for an amendment or correction of a record in whole or in part;

(3) Declines to provide a requested accounting of disclosures;

(4) Advises that a requested record does not exist or cannot be located;

(5) Finds what has been requested is not a record subject to the Privacy Act; or

(6) Addresses any disputed fee matter.

(e) *What will be stated in a response that includes an adverse determination?* If the Privacy Act Officer makes an adverse determination with respect to your request, the written response under this section will state that the Privacy Act Officer is the person responsible for the adverse determination, that the adverse determination is not a final action of FHFA, and that you may appeal the adverse determination under § 1204.5.

§ 1204.5 What if I am dissatisfied with the FHFA response to my Privacy Act request?

(a) *May I appeal the response?* You may appeal any adverse determination made by the Privacy Act Officer in response to your Privacy Act request. If you wish to seek review by a court of any adverse determination or denial of a request, you first must appeal it under this section.

(b) *How do I appeal the response?* (1) You may appeal by submitting a written appeal stating the reasons you believe the adverse determination should be overturned. FHFA must receive your written appeal within 30 business days of the date of the Privacy Act Officer's determination under § 1204.4. Your written appeal may include as much or as little related information as you wish, as long as it clearly identifies the determination (including the request number, if known) that you are appealing.

(2) You should transmit your written appeal addressed to the Privacy Act Appeals Officer by electronic mail, regular mail, or fax. The electronic mail address is: *privacy@fhfa.gov.* The regular mail address is: Privacy Act Appeals Officer, Federal Housing Finance Agency, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. The fax number is: (202) 414–6504. For the quickest possible handling, you should mark your electronic mail, letter, or fax and the subject line, envelope, or fax cover sheet ''Privacy Act Appeal.'' FHFA ordinarily will not act on an appeal if the Privacy Act request becomes a matter of Privacy Act litigation.

(c) *Who has the authority to grant or deny appeals?* The Privacy Act Appeals Officer is authorized to act on behalf of the Director on all appeals under this section.

(d) *When will FHFA respond to my appeal?* FHFA generally will respond to you in writing within 30 business days of receipt of an appeal that meets the requirements of paragraph (b) of this section, unless for good cause shown, the Director extends the response time.

(e) *What will the FHFA response include?* The written response will include the determination of the Privacy Act Appeals Officer; whether to grant or deny your appeal in whole or in part, a brief explanation of the reasons for the determination, and information about the Privacy Act provisions for court review of the determination.

(1) If your appeal concerns a request for access to records or information and the appeal determination grants your access, the records or information, if any, will be made available to you.

(2)(i) If your appeal concerns an amendment or correction of a record and the appeal determination grants your request for an amendment or correction, the response will describe any amendment or correction made to the record and advise you of your right to obtain a copy of the amended or corrected record under this part. FHFA will notify all persons, organizations, or Federal agencies to which it previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. Whenever the record is subsequently disclosed, the record will be disclosed as amended or corrected.

(ii) If the response to your appeal denies your request for an amendment or correction to a record, the response will advise you of your right to file a Statement of Disagreement under paragraph (f) of this section.

(f) *What is a Statement of Disagreement?* (1) A Statement of Disagreement is a concise written statement in which you clearly identify each part of any record that you dispute and explain your reason(s) for disagreeing with the Privacy Act Appeals Officer's denial in whole or in part of your appeal requesting amendment or correction. Your Statement of Disagreement must be received by the Privacy Act Officer within 30 business days of the Privacy Act Appeals Officer's denial in whole or in part of your appeal concerning amendment or correction of a record. FHFA will place your Statement of Disagreement in the system(s) of records in which the disputed record is maintained. FHFA also may append a concise statement of its reason(s) for denying the request for an amendment or correction of the record.

(2) FHFA will notify all persons, organizations, or Federal agencies to which it previously disclosed the disputed record, if an accounting of that disclosure was made, that the record is disputed and provide your Statement of Disagreement and the FHFA concise statement, if any. Whenever the disputed record is subsequently disclosed, a copy of your Statement of

Disagreement and the FHFA concise statement, if any, will also be disclosed.

§ 1204.6 What does it cost to get records under the Privacy Act?

(a) *Must I agree to pay fees?* Your Privacy Act request is your agreement to pay all applicable fees, unless you specify a limit on the amount of fees you agree to pay. FHFA will not exceed the specified limit without your written agreement.

(b) *How does FHFA calculate fees?* FHFA will charge a fee for duplication of a record under the Privacy Act in the same way it charges for duplication of records under FOIA (5 U.S.C. 552) in 12 CFR 1202.11. There are no fees to search for or review records.

§ 1204.7 Are there any exemptions from the Privacy Act?

(a) *What is a Privacy Act exemption?* The Privacy Act allows the Director to exempt records or information in a system of records from some of the Privacy Act requirements, if the Director determines that the exemption is necessary.

(b) *How do I know if the records or information I want are exempt?* (1) Each notice of a system of records will advise you if the Director has determined records or information in records are exempt from Privacy Act requirements. If the Director has claimed an exemption for a system of records, the System of Records Notice will identify the exemption and the provisions of the Privacy Act from which the system is exempt.

(2) Until superseded by FHFA Systems of Records, the following OFHEO and FHFB Systems of Records are, under 5 U.S.C. 552a(k)(2) or (k)(5), exempt from the Privacy Act requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f):

(i) OFHEO–11 Litigation and Enforcement Information System;

(ii) FHFB–5 Agency Personnel Investigative Records; and

(iii) FHFB–6 Office of Inspector General Audit and Investigative Records.

§ 1204.8 How are records secured?

(a) *What controls must FHFA have in place?* Each FHFA office must establish administrative and physical controls to prevent unauthorized access to its systems of records, unauthorized or inadvertent disclosure of records, and physical damage to or destruction of records. The stringency of these controls should correspond to the sensitivity of the records that the controls protect. At a minimum, the administrative and physical controls must ensure that:

(1) Records are protected from public view;

(2) The area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to them;

(3) Records are inaccessible to unauthorized persons outside of business hours; and

(4) Records are not disclosed to unauthorized persons or under unauthorized circumstances in either oral or written form.

(b) *Is access to records restricted?* Access to records is restricted only to authorized employees who require access in order to perform their official duties.

§ 1204.9 Does FHFA collect and use Social Security numbers?

FHFA collects Social Security numbers only when it is necessary and authorized. At least annually, the Privacy Act Officer or the Senior Agency Official for Privacy will inform employees who are authorized to collect information that:

(a) Individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their Social Security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975; and

(b) They must inform individuals who are asked to provide their Social Security numbers:

(1) If providing a Social Security number is mandatory or voluntary;

(2) If any statutory or regulatory authority authorizes collection of a Social Security number; and

(3) The uses that will be made of the Social Security number.

§ 1204.10 What are FHFA employee responsibilities under the Privacy Act?

At least annually, the Privacy Act Officer or the Senior Agency Official for Privacy will inform employees about the provisions of the Privacy Act, including the Privacy Act's civil liability and criminal penalty provisions. Unless otherwise permitted by law, an authorized FHFA employee shall:

(a) Collect from individuals only information that is relevant and necessary to discharge FHFA responsibilities;

(b) Collect information about an individual directly from that individual whenever practicable;

(c) Inform each individual from whom information is collected of:

(1) The legal authority to collect the information and whether providing it is mandatory or voluntary;

(2) The principal purpose for which FHFA intends to use the information;

(3) The routine uses FHFA may make of the information; and

(4) The effects on the individual, if any, of not providing the information.

(d) Ensure that the employee's office does not maintain a system of records without public notice and notify appropriate officials of the existence or development of any system of records that is not the subject of a current or planned public notice.

(e) Maintain all records that are used in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination.

(f) Except for disclosures made under the FOIA, make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete.

(g) When required by the Privacy Act, maintain an accounting in the specified form of all disclosures of records by FHFA to persons, organizations, or Federal agencies.

(h) Maintain and use records with care to prevent the unauthorized or inadvertent disclosure of a record to anyone.

(i) Notify the appropriate official of any record that contains information that the Privacy Act does not permit FHFA to maintain.

CHAPTER XVII—OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 1702—[REMOVED]

■ 3. Remove part 1702.

Dated: July 9, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9–16678 Filed 7–13–09; 8:45 am]

BILLING CODE 8070–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245–AF92

Small Business Investment Companies—Leverage Eligibility and Portfolio Diversification Requirements

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements certain provisions of the American Recovery and Reinvestment Act of 2009 affecting small business

investment companies (SBICs). These provisions increase the maximum amount of SBA leverage available to an SBIC, change the calculation of the maximum investment size that an SBIC is permitted to make, and simplify the requirement for an SBIC to devote a portion of its investment activity to smaller enterprises. SBA is publishing this rule as an interim final rule in light of the urgent need to help small businesses sustain and survive during this economic downturn.

DATES: *Effective Date:* This rule is effective July 14, 2009.

Comment Date: Comments must be received on or before September 14, 2009.

ADDRESSES: You may submit comments, identified by RIN: 3245–AF92 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Harry Haskins, Acting Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Harry Haskins, Acting Associate Administrator for Investment, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Harry Haskins, 409 Third Street, SW, Washington, DC 20416, or send an e-mail to *sbic@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, Investment Division, Office of Capital Access, (202) 205–7559 or *sbic@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

The American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–05 was enacted on February 17, 2009, to among other things, promote economic recovery by preserving and creating jobs, and assisting those most impacted by the severe economic conditions facing the nation. The U.S. Small Business Administration is one of several agencies that are intended to play a role in achieving these goals. The SBA received funding and authority through the Recovery Act to modify existing loan programs or establish new loan programs to help re-invigorate small business lending.

The specific permanent changes to the Small Business Investment Company (SBIC) program made by the Recovery Act increase the maximum amount of SBA leverage that an SBIC may have outstanding, change the limit on the maximum amount that an SBIC can invest in a single company and its affiliates, and simplify the requirement for SBICs to invest in smaller enterprises.

II. Section by Section Analysis

Section 107.700—Compliance with size standards in part 121 of this chapter as a condition of Assistance. The order of two cross-references in this section has been corrected, so that the reader is referred to § 121.301(c)(2) for the SBIC program financial size standards and to § 121.301(c)(1) for the industry size standards.

Section 107.710—Requirement to finance Smaller Enterprises. Revised paragraph (b) of this section incorporates the Smaller Enterprise financing requirement established by the Recovery Act. As a condition of receiving leverage, an SBIC must now certify that at least 25 percent of its aggregate financing dollars will be provided to Smaller Enterprises, as defined in § 107.710(a). This provision is a simplification of the previous two-part requirement, which set a general minimum of 20 percent but also required 100 percent of any leverage above $90 million to be invested in Smaller Enterprises.

In this rule, the Smaller Enterprise financing requirements must be satisfied not only when an SBIC applies for a leverage draw, but also at the close of each fiscal year; this year-end requirement applies to all SBICs, including those with no leverage. The Smaller Enterprise financing requirement has applied to both leveraged and non-leveraged SBICs since it was first added to the regulations in 1997. The financial size standards applicable to the SBIC program are considerably higher than those used in other SBA programs, and SBA considers it important for all SBICs to focus a portion of their investment activity on businesses at the lower end of the permitted size range.

Any SBIC licensed after the Recovery Act date of enactment (February 17, 2009), whether leveraged or non-leveraged, must satisfy the 25 percent requirement in revised § 107.710(b)(1). An SBIC licensed before the date of enactment must satisfy either revised § 107.710(b)(2) or (b)(3). The applicable paragraph depends on whether or not the SBIC has received a leverage commitment from SBA after the date of enactment. For an SBIC that has not received a leverage commitment after February 17, 2009, paragraph (b)(2) provides that the SBIC must have at least 20 percent of its aggregate financing dollars (plus 100 percent for leverage over $90 million) invested in Smaller Enterprises. For an SBIC that has received a new SBA leverage commitment after February 17, 2009, paragraph (b)(3) provides that the SBIC may divide its investments into two segments; the SBIC must meet the old 20 percent requirement (plus 100 percent for leverage over $90 million), for investments made before the date of the first leverage commitment issued after February 17, 2009, but must meet the new 25 percent requirement for investments made on or after such date.

For a non-leveraged SBIC licensed before February 17, 2009, the applicable paragraph would be § 107.710(b)(2).

This rule will eliminate the phase-in requirement under which an SBIC must provide at least 10 percent of its investment dollars to Smaller Enterprises by the end of its first fiscal year, and at least 20 percent by the end of each subsequent year. SBA is making this change for several reasons. SBA's review of the financing data submitted by SBICs indicated that the vast majority of SBICs have satisfied the Smaller Enterprise financing requirements with considerable room to spare, suggesting that the phase-in period is unnecessary. In addition, the Recovery Act does not provide for a phase-in.

Former paragraph § 107.710(d), dealing with requirements related to leverage in excess of $90 million, is incorporated into revised § 107.710(b)(2) and (b)(3), as explained above.

Revised paragraph § 107.710(e) contains updated cross-references to § 107.1120, but no other changes.

Section 107.740—Portfolio diversification (''overline'' limit). SBICs that intend to use SBA leverage are required to diversify their portfolios as a way of managing program risk. Diversification is accomplished by limiting the maximum amount that an SBIC can invest in a single company or group of affiliated companies; SBA regulations refer to this maximum investment amount as an SBIC's ''overline'' limit. The Recovery Act changed the calculation of the overline limit from 20 percent of an SBIC's private capital to 10 percent of the sum of private capital and ''the total amount

of leverage projected by [the SBIC] in [its] business plan that was approved by [SBA] at the time of the grant of the company's license.'' Since most SBICs project the use of two tiers of leverage (*i.e.*, leverage equal to two times their private capital), this calculation is generally equivalent to raising the overline limit to 30 percent of private capital. However, for the small number of SBICs that are approved for less than two tiers of leverage, the revised overline calculation may provide a smaller increase, or no increase, in the overline limit.

In revised § 107.740, paragraph (a) provides, as a general rule, that an SBIC's overline limit will be 30 percent of its Regulatory Capital, incorporating the assumption that most SBICs will be approved to issue two tiers of leverage. Paragraphs (a)(1) through (a)(3) retain the same adjustments to Regulatory Capital that are present in the current regulations; the purpose of these adjustments is to avoid penalizing an SBIC that realizes proceeds on one or more of its investments and begins to return capital to its investors.

Paragraph (b) provides the overline limit for an SBIC that is approved for less than two tiers of leverage, either 20 percent of Regulatory Capital for one tier or 25 percent of Regulatory Capital for 1.5 tiers (the rule does not specify percentages for other amounts of projected leverage because they are rarely requested, but they can be calculated by interpolation if necessary). Under this rule, no existing SBIC will have an overline limit below the level permitted by current regulations.

Paragraphs (a) and (b) do not include the language from former § 107.740 that permitted an SBIC to exceed its prescribed overline limit with SBA's prior written approval. The Recovery Act does allow SBA to approve overline exceptions, and it is not SBA's intent to eliminate this possibility. However, SBA believes that the vast majority of the overline exceptions it has approved in the past would fall within the new overline formula established by the Recovery Act. SBA expects that exceptions for investments above the new limit will be rare. In keeping with that view, if an SBIC seeks to make an investment in excess of the amount permitted by revised § 107.740, it must request a regulatory exemption under § 107.1920. To obtain a regulatory exemption, an SBIC must show that its request is not contrary to the purposes of the Small Business Investment Act; that the proposed action is fair and equitable; and that the exemption is reasonably calculated to advance the best interests of the SBIC program. An exemption must be approved in writing by the Associate Administrator for Investment.

Section 107.740 will no longer provide a separate overline limit for specialized SBICs, which were licensed until 1996 under section 301(d) of the Small Business Investment Act. These companies had an overline limit of 30 percent of Regulatory Capital under existing regulations and will retain that limit under the general rule in revised § 107.740(a)(1).

This section also removes an optional method for an SBIC to increase its overline limit by adding net unrealized gains on publicly traded and marketable securities to its Regulatory Capital (former § 107.740(c)). This provision has been unattractive to SBICs, and in fact SBA has strongly advised companies not to use it, because the consequences for an SBIC in the event that the publicly traded securities drop in value are likely to be extremely serious. SBA is not aware of any SBIC that is currently making use of this provision.

Section 107.800—Financing in the form of Equity Securities. The only change in this section is the addition of a cross-reference in paragraph (b). The purpose of this revision is to make clear that the reference to ''Equity Securities'' in new § 107.1150(c)(1) encompasses only those securities that satisfy the requirements concerning redemption of Equity Securities in § 107.850.

Section 107.1120—General eligibility requirements for Leverage. Revised paragraph (d) of this section provides for a new certification by SBICs under common control seeking to increase their aggregate outstanding leverage above $150 million. As explained further in the discussion of changes to § 107.1150, the Recovery Act changes now permit SBICs under common control to have aggregate outstanding leverage of up to $225 million, but only if none of the SBICs has a condition of capital impairment. Former § 107.1120(d) contained a certification regarding Smaller Enterprise financing with the proceeds of leverage over $90 million, which is no longer needed based on the changes made in § 107.710.

New paragraphs (e) and (f) provide for certifications by SBICs licensed on or after October 1, 2009, seeking leverage in excess of the general limits of $150 million for a single SBIC and $225 million for two or more SBICs under common control, pursuant to § 107.1150(c)(2). As a condition of eligibility for this additional leverage, which can be as much as $25 million, the Recovery Act requires SBICs to certify that at least 50 percent of their total Financing dollars will be invested in companies located in low-income geographic areas. For any leverage request that would result in a group of SBICs under common control having aggregate outstanding leverage of more than $225 million, the certification requirement applies to each SBIC in the group, even those that are not themselves requesting additional leverage.

Section 107.1150—Maximum amount of Leverage for a Section 301(c) Licensee. The Recovery Act increased the maximum permitted amount of outstanding leverage for a single SBIC and for two or more SBICs under common control. Revised § 107.1150(a) incorporates the new formula for an individual SBIC, which is the lesser of 300 percent of Leverageable Capital or $150 million. In accordance with the Recovery Act changes, the three leverage brackets and the annual inflation adjustment of the leverage ceiling have been eliminated.

Revised § 107.1150(b) provides the new aggregate leverage ceiling of $225 million for two or more SBICs under common control. As a condition of eligibility for the $225 million, the Recovery Act requires the SBICs under common control to be ''not under capital impairment''. In this rule, for any leverage draw that would result in a group of SBICs under common control having aggregate outstanding leverage of more than $150 million, each SBIC is required to certify that it does not have a condition of capital impairment. This provision affects only the ability to draw new leverage; it does not affect any SBIC's ability to receive a leverage commitment, nor would SBA deem an SBIC with leverage already outstanding to be in default solely because one of its affiliates becomes impaired.

Although paragraphs (a) and (b) will provide SBICs with access to increased leverage, all leverage commitment and draw approvals remain subject to SBA's current credit policies as defined in its standard operating procedures. One important aspect of those policies, regarding access to a third tier of leverage, is addressed in new introductory text that has been added to revised § 107.1150. The major points of this paragraph are that an SBIC seeking a third tier must first demonstrate consistently profitable financial performance while adhering to a relatively low-risk investment strategy; the third tier of leverage must be used to continue the SBIC's successful investment strategy rather than beginning a new investment strategy; and there must be a high degree of certainty regarding the SBIC's ability to repay all of its obligations to SBA.

This section eliminates former § 107.1150(b)(2), which contained special rules for certain SBICs with leverage issued before March 31, 1993. As all of the subject leverage has matured, this provision is no longer needed.

New paragraph (c) implements two provisions, one included in the Recovery Act and another that was previously enacted, that may provide additional leverage eligibility to SBICs that make investments in low-income geographic areas. The definition of ''low-income geographic area'' was developed in connection with SBA's New Markets Venture Capital (NMVC) program and can be found in the NMVC regulations, § 108.50.

Paragraph (c)(1) adjusts the leverage eligibility formula in § 107.1150(a) by subtracting from an SBIC's outstanding leverage the cost basis of investments that the SBIC has made in the Equity Securities (as defined in § 107.800(b)) of Smaller Enterprises. The amount that can be subtracted is limited to 50 percent of the SBIC's Leverageable Capital.

Paragraph (c)(2) implements a provision of the Recovery Act that will be available only to new SBICs licensed on or after October 1, 2009. Paragraph (c)(2) makes a maximum of $175 million available to an individual SBIC and $250 million available to a group of SBICs under common control, compared with the respective general ceilings of $150 million and $225 million. To be eligible for the additional Leverage, an individual SBIC must show, at the time of its draw request, that at least half of the total dollar amount it has invested to date was provided to Small Businesses in low-income geographic areas; furthermore, it must certify that at least half of the total dollar amount it will invest in the future will be provided to Small Businesses in low-income geographic areas. If the SBIC making the leverage request is under common control with any other SBICs, and the requested draw would result in the group having aggregate outstanding leverage above $225 million, then each SBIC in the group must meet the same two requirements.

An SBIC licensed on or after October 1, 2009 can seek leverage under either paragraph (c)(1) or (c)(2), but the Small Business Investment Act does not provide for the two paragraphs to be used together. The SBIC can obtain additional leverage under paragraph (c)(1) as an exception to paragraph (a), but not to paragraph (b) or paragraph (c)(2). Alternatively, additional Leverage can be obtained under paragraph (c)(2) by an individual SBIC as an exception to paragraph (a), or by a group of SBICs under common control as an exception to paragraph (b), but in neither case as an exception to paragraph (c)(1).

Section 107.1160—Maximum amount of Leverage for a Section 301(d) Licensee. The only change in this section is an updated cross-reference in § 107.1160(b), reflecting the revisions to § 107.1150 made by this rule.

Section 107.1810—Events of default and SBA's remedies for Licensee's noncompliance with terms of Debentures. Revised § 107.1810(f)(9) deletes a cross-reference to former § 107.1150(b)(2), which has been removed by this rule.

III. Justification for Publication as Interim Final Rule

In general, before issuing a final rule, SBA publishes the rule for public comment in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 553. The APA provides an exception from the general rule where the agency finds good cause to omit public participation. 5 U.S.C. 553(c)(3)(B). The good cause requirement is satisfied when prior public participation can be shown to be impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations arise where an agency must issue a rule without public participation. The current turmoil in the financial markets is having a negative impact on the availability of financing for small businesses. There is an urgent need to assist viable small businesses that are experiencing financial hardships due to the current economic environment. Many SBICs have reported to SBA that cash flow lending by banks has been sharply reduced and that they are experiencing a surge in demand for assistance from small businesses that are unable to obtain financing from other sources. Without SBIC financing, these businesses must curtail expansion plans, postpone acquisitions or transfers of ownership, or forgo modernization of plant and equipment, thereby reducing their ability to contribute to the nation's economic recovery.

SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need to help small businesses sustain and survive during this economic downturn. Advance solicitation of comments for this rulemaking would be impracticable, contrary to the public interest, and would harm those small businesses that need immediate access to capital.

Although this rule is being published as an interim final rule, comments are solicited from interested members of the public. These comments must be submitted on or before September 14, 2009. The SBA will consider these comments and the need for making any amendments as a result of these comments.

IV. Justification for Immediate Effective Date

The APA requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3).

The purpose of this provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. In the case of this rulemaking, however, there should be no need for any member of the public, including any SBIC, to make any changes in order to prepare for the rule taking effect. This rule implements changes to the SBIC program in order to enable SBICs to continue to finance small businesses at a crucial time. In light of the current economic downturn and the sharp reduction in commercial lending, a delay in providing SBIC financing will, in many cases, have a direct impact on the survivability of many small businesses, making it necessary to implement this rule immediately.

SBA finds that that there is good cause for making this rule effective immediately instead of observing the 30-day period between publication and effective date. Delaying implementation of the rule would have a serious adverse impact on the nation's small businesses.

Compliance With Executive Orders 12866, 12988, 13175 and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule constitutes a significant regulatory action for purposes of Executive Order 12866.

Executive Order 12988

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

burden. The action does not have preemptive effect and portions of this rule are effective February 17, 2009 to coincide with the effective date of the Recovery Act.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It 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, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The SBA has determined that this interim final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Regulatory Flexibility Act

Because this rule is an interim final rule, there is no requirement for SBA to prepare a Regulatory Flexibility Act (RFA) analysis. The RFA requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA requires such analysis only where notice and comment rulemaking is required.

List of Subjects in 13 CFR Part 107

Investment companies, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, SBA amends 13 CFR part 107 as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

■ 1. The authority citation for part 107 is revised to read as follows:

Authority: 15 U.S.C. 681 *et seq.*, 683, 687(c), 687b, 687d, 687g, 687m, and Pub. L. 106–554, 114 Stat. 2763; and Pub. L. 111–5, 123 Stat. 115.

■ 2. Revise the second sentence of § 107.700 to read as follows:

§ 107.700 Compliance with size standards in part 121 of this chapter as a condition of Assistance.

* * * To determine whether an applicant is a Small Business, you may use either the financial size standards in § 121.301(c)(2) of this chapter or the industry standard covering the industry in which the applicant is primarily engaged, as set forth in § 121.301(c)(1) of this chapter.

■ 3. Amend § 107.710 by revising paragraph (b), removing paragraph (d), redesignating paragraphs (e) and (f) as (d) and (e), and revising the second sentence of redesignated paragraph (e) to read as follows:

§ 107.710 Requirement to finance Smaller Enterprises.

* * * * *

(b) *Smaller Enterprise Financings.* At the close or each of your fiscal years, and at the time of any application to draw Leverage, you must satisfy the Smaller Enterprise financing requirement in this paragraph (b) that applies to you.

(1) If you were licensed after February 17, 2009, at least 25 percent (in dollars) of your Financings must have been invested in Smaller Enterprises.

(2) If you were licensed on or before February 17, 2009, and you have received no SBA Leverage commitment issued after February 17, 2009, at least 20 percent (in dollars) of your Financings, excluding Financings made in whole or in part with Leverage in excess of $90 million, must have been invested in Smaller Enterprises. In addition, 100 percent of all Financings made in whole or in part with Leverage in excess of $90 million (including aggregate Leverage over $90 million issued by two or more Licensees under Common Control) must have been invested in Smaller Enterprises.

(3) If you were licensed on or before February 17, 2009, and you have received an SBA Leverage commitment after February 17, 2009:

(i) For all Financings made after the date of the first Leverage commitment issued after February 17, 2009, at least 25 percent (in dollars) of your Financings must have been invested in Smaller Enterprises, and

(ii) For all Financings made before February 17, 2009, at least 20 percent (in dollars) of your Financings, excluding Financings made in whole or in part with Leverage in excess of $90 million, must have been invested in Smaller Enterprises. In addition, 100 percent of all Financings made in whole or in part with Leverage in excess of $90 million (including aggregate Leverage over $90 million issued by two or more Licensees under Common Control) must have been invested in Smaller Enterprises.

* * * * *

(e) *Non-compliance with this section.* * * * However, you will not be eligible for additional Leverage until you reach the required percentage (*see* § 107.1120(c) and (g)).

■ 4. Revise § 107.740 to read as follows:

§ 107.740 Portfolio diversification (''overline'' limitation).

(a) *General rule.* This § 107.740 applies if you have outstanding Leverage or intend to issue Leverage in the future. Unless SBA approved your license application based upon a plan to issue less than two tiers of Leverage, you may provide Financing or a Commitment to a Small Business if the resulting amount of your aggregate Financings and Commitments to such Small Business and its Affiliates does not exceed 30 percent of the sum of:

(1) Your Regulatory Capital as of the date of the Financing or Commitment; plus

(2) Any Distribution(s) you made under § 107.1570(b), during the five years preceding the date of the Financing or Commitment, which reduced your Regulatory Capital; plus

(3) Any Distribution(s) you made under § 107.585, during the five years preceding the date of the Financing or Commitment, which reduced your Regulatory Capital by no more than two percent or which SBA approves for inclusion in the sum determined in this paragraph (a).

(b) *Lower overline limit.* If SBA approved your license application based upon a plan to issue less than two tiers of Leverage, the applicable percentage of the amount computed in paragraphs (a)(1) though (a)(3) of this section will be:

(1) 20 percent if the plan contemplates one tier of Leverage.

(2) 25 percent if the plan contemplates 1.5 tiers of Leverage.

(c) Outstanding Financings. For the purposes of paragraphs (a) and (b) of this section, you must measure each outstanding Financing at its original cost (including any amount of the Financing that was previously written off).

■ 5. Amend § 107.800 by revising the second sentence of paragraph (b) to read as follows:

§ 107.800 Financings in the form of Equity Securities.

* * * * *

(b) *Definition.* * * * If the Financing agreement contains debt-type acceleration provisions or includes redemption provisions, other than those permitted under § 107.850, the security will be considered a Debt Security for

purposes of § 107.855 and § 107.1150(c)(1).

■ 6. Amend § 107.1120 by revising paragraph (d), redesignating paragraphs (e) through (h) as (g) through (j), and adding new paragraphs (e) and (f), to read as follows:

§ 107.1120 General eligibility requirements for Leverage.

* * * * *

(d) For any Leverage draw that would cause you and any other Licensees under Common Control to have aggregate outstanding Leverage in excess of $150 million, certify that none of the Licensees has a condition of Capital Impairment. *See* also § 107.1150(b).

(e) For any Leverage request pursuant to § 107.1150(c)(2)(i), certify that at least 50 percent (in dollars) of your Financings made on or after the date of such request will be invested in Small Businesses located in low-income geographic areas.

(f) For any Leverage request pursuant to § 107.1150(c)(2)(ii), certify at least 50 percent (in dollars) of the Financings made by each Licensee under Common Control on or after the date of such request will be invested in Small Businesses located in low-income geographic areas.

* * * * *

■ 7. Revise § 107.1150 to read as follows:

§ 107.1150 Maximum amount of Leverage for a Section 301(c) Licensee.

A Section 301(c) Licensee may have maximum outstanding Leverage as set forth in paragraphs (a) through (c) of this section. In general, SBA will approve Leverage commitment requests in excess of 200 percent of Regulatory Capital and draw requests in excess of 200 percent of Leverageable Capital only after a Licensee has demonstrated consistent, sustainable profitability based on a conservative investment strategy that limits downside risk. Any such Leverage request must be supported by an up-to-date business plan that reflects continuation of the Licensee's successful investment strategy and demonstrates the Licensee's ability to pay all SBA obligations in accordance with their terms.

(a) *Individual Licensee.* Subject to SBA's credit policies, if you are a Section 301(c) Licensee, the maximum amount of Leverage you may have outstanding at any time is the lesser of:

(1) 300 percent of your Leverageable Capital, or

(2) $150 million.

(b) *Multiple Licensees under Common Control.* Subject to SBA's credit policies, two or more Licenses under Common Control may have maximum aggregate outstanding Leverage of $225 million. However, for any Leverage draw(s) by one or more such Licensees that would cause the aggregate outstanding Leverage to exceed $150 million, each of the Licensees under Common Control must certify that it does not have a condition of Capital Impairment. *See* also § 107.1120(d).

(c) *Additional Leverage based on investment in low-income geographic areas.* Subject to SBA's credit policies, you may have outstanding Leverage in excess of the amounts permitted by paragraphs (a) and (b) of this section in accordance with this paragraph (c). If you were licensed before October 1, 2009, you may seek additional Leverage under paragraph (c)(1) only. If you were licensed on or after October 1, 2009, you may seek additional Leverage under paragraph (c)(1) or paragraph (c)(2), but not both. In this paragraph (c), ''low-income geographic areas'' are as defined in § 108.50 of this chapter.

(1) *Investment in Smaller Enterprises located in low-income geographic areas.* To determine whether you may request a draw that would cause you to have outstanding Leverage in excess of the amount determined under paragraph (a) of this section:

(i) Determine the cost basis, as reported on your most recent filing of SBA Form 468, of any investments in the Equity Securities of a Smaller Enterprise located in a low-income geographic area.

(ii) Calculate the amount that equals 50 percent of your Leverageable Capital.

(iii) Subtract from your outstanding Leverage the lesser of (c)(1)(i) or (c)(1)(ii).

(iv) If the amount calculated in paragraph (c)(1)(iii) is less than the maximum leverage determined under paragraph (a) of this section, the difference between the two amounts equals your additional Leverage availability.

(2) *Investment in Small Businesses located in low-income geographic areas.* This paragraph (c)(2) applies only to Licensees licensed on or after October 1, 2009. You may substitute a maximum Leverage amount of $175,000,000 for the $150,000,000 set forth in paragraph (a)(2) of this section, and a maximum Leverage amount of $250,000,000 for the $225,000,000 set forth in paragraph (b) of this section, if you satisfy the following conditions:

(i) At least 50 percent (in dollars) of your Financings preceding the date of such request must have been invested in Small Businesses located in low-income geographic areas. In addition, you must certify that at least 50 percent (in dollars) of your Financings on or after the date of such request will be invested in Small Businesses located in low-income geographic areas.

(ii) If you are requesting a draw that would cause you and any other Licensees under Common Control to have aggregate outstanding Leverage in excess of $225,000,000, at least 50 percent (in dollars) of the Financings made by each Licensee under Common Control preceding the date of such request must have been invested in Small Businesses located in low-income geographic areas. In addition, each such Licensee must certify that at least 50 percent (in dollars) of its Financings on or after the date of such request will be invested in Small Businesses located in low-income geographic areas.

■ 8. Amend § 107.1160 by revising the first sentence of paragraph (b) to read as follows:

§ 107.1160 Maximum amount of Leverage for a Section 301(d) Licensee.

* * * * *

(b) *Maximum amount of total Leverage.* Use § 107.1150 to determine your maximum amount of Leverage as if you were a Section 301(c) Licensee.

* * *

* * * * *

■ 9. Amend § 107.1810 by revising the first sentence of paragraph (f)(9) to read as follows:

§ 107.1810 Events of default and SBA's remedies for Licensee's noncompliance with terms of Debenture.

* * * * *

(f) *Events of default with opportunity to cure.* * * *

(9) *Failure to maintain investment ratios.* You fail to maintain the investment ratio for Leverage in excess of 300 percent of Leverageable Capital (see § 107.1160(c)), if applicable to you, as of the end of each fiscal year. * * *

* * * * *

Dated: July 8, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–16554 Filed 7–9–09; 11:15 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30675; Amdt. No. 3329]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 14, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 14, 2009.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. 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.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (*Mail Address:* P.O. Box 25082 Oklahoma City, OK 73125) *telephone:* (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on June 26, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
06/12/09	NE	Wayne	Wayne Muni	9/3234	NDB Rwy 35, Orig.
06/12/09	NE	Wayne	Wayne Muni	9/3237	NDB Rwy 22, Orig.
06/12/09	NE	Wayne	Wayne Muni	9/3239	NDB Rwy 17, Orig.
06/12/09	NE	Wayne	Wayne Muni	9/3240	RNAV (GPS) Rwy 22, Orig.
06/16/09	MD	College Park	College Park	9/3349	RNAV (GPS) Rwy 15, Orig-C.
06/15/09	IN	Indianapolis	Mount Comfort	9/3624	VOR Rwy 34, Amdt 2.
06/15/09	IN	Indianapolis	Mount Comfort	9/3625	RNAV (GPS) Rwy 16, Orig.
06/15/09	IN	Indianapolis	Mount Comfort	9/3626	RNAV (GPS) Rwy 34, Orig.
06/15/09	IN	Indianapolis	Mount Comfort	9/3627	ILS OR LOC Rwy 25, Amdt 2B.

[FR Doc. E9–16135 Filed 7–13–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30674; Amdt. No. 3328]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 14, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 14, 2009.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. 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.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (*Mail Address:* P.O. Box 25082, Oklahoma City, OK 73125); *Telephone:* (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and

Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule '' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on June 26, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of The Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 30 Jul 2009

Merced, CA, Merced Rgnl/Macready Field, RNAV (GPS) RWY 30, Orig-B
Merced, CA, Merced Rgnl/Macready Field, VOR RWY 30, Orig-B
Pueblo, CO, Pueblo Memorial, RNAV (GPS) RWY 8L, Orig-A
Leonardtown, MD, St. Mary's County Rgnl, RNAV (GPS) RWY 29, Orig
Manville, NJ, Central Jersey Rgnl, VOR-A, Amdt 7
Readington, NJ, Solberg-Hunterdon, RNAV (GPS) RWY 22, Orig
Readington, NJ, Solberg-Hunterdon, Takeoff Minimums and Obstacle DP, Amdt 1
Readington, NJ, Solberg-Hunterdon, VOR-A, Amdt 9
Fulton, NY, Oswego County, ILS OR LOC RWY 33, Orig-A
Fulton, NY, Oswego County, RNAV (GPS) RWY 24, Amdt 1
Fulton, NY, Oswego County, VOR RWY 33, Amdt 5A
Mountain City, TN, Johnson County, Takeoff Minimums and Obstacle DP, Orig

Effective 27 Aug 2009

Klawock, AK, Klawock, Takeoff Minimums and Obstacle DP, Amdt 2
Mountain Village, AK, Mountain Village, Takeoff Minimums and Obstacle DP, Amdt 1
Scammon Bay, AK, Scammon Bay, GPS RWY 10, Orig-B, CANCELLED
Scammon Bay, AK, Scammon Bay, GPS RWY 28, Orig-A, CANCELLED
Scammon Bay, AK, Scammon Bay, RNAV (GPS) RWY 10, Orig
Scammon Bay, AK, Scammon Bay, RNAV (GPS) RWY 28, Orig
Scammon Bay, AK, Scammon Bay, RNAV (GPS)-B, Orig
Unalaska, AK, Unalaska, Takeoff Minimums and Obstacle DP, Amdt 3
Eagle, CO, Eagle County Rgnl, GYPSUM FOUR Graphic Obstacle DP
Eagle, CO, Eagle County Rgnl, Takeoff Minimum and Obstacle DP, Amdt 7
Gunnison, CO, Gunnison-Crested Butte Rgnl, RNAV (RNP) RWY 6, Orig
La Junta, CO, La Junta Muni, RNAV (GPS) RWY 8, Amdt 1
La Junta, CO, La Junta Muni, RNAV (GPS) RWY 26, Amdt 1
Tinian Island, CQ, Tinian Intl, RNAV (GPS) RWY 8, Amdt 1
Tinian Island, CQ, Tinian Intl, RNAV (GPS) RWY 26, Amdt 1
Tinian Island, CQ, Tinian Intl, Takeoff Minimums and Obstacle DP, Amdt 1
Fort Myers, FL, Page Field, Takeoff Minimums and Obstacle DP, Amdt 5
Titusville, FL, Space Coast Rgnl, GPS RWY 9, Orig-C, CANCELLED
Titusville, FL, Space Coast Rgnl, NDB OR GPS RWY 18, Amdt 12A, CANCELLED
Titusville, FL, Space Coast Rgnl, RNAV (GPS) Y RWY 9, Orig
Titusville, FL, Space Coast Rgnl, RNAV (GPS) RWY 18, Orig
Titusville, FL, Space Coast Rgnl, RNAV (GPS) Z RWY 18, Orig
New Orleans, LA, Lakefront, RNAV (GPS) RWY 36L, Orig
New Orleans, LA, Lakefront, VOR/DME RWY 36L, Amdt 9
Bangor, ME, Bangor Intl, Takeoff Minimums and Obstacle DP, Amdt 2
Flint, MI, Bishop Intl, RNAV (GPS) RWY 9, Amdt 1
Flint, MI, Bishop Intl, RNAV (GPS) RWY 18, Amdt 1
Flint, MI, Bishop Intl, RNAV (GPS) RWY 36, Amdt 1
Menominee, MI, Menominee-Marinette Twin County, NDB RWY 3, Amdt 3
Menominee, MI, Menominee-Marinette Twin County, RNAV (GPS) RWY 3, Orig
Menominee, MI, Menominee-Marinette Twin County, RNAV (GPS) RWY 21, Orig
Menominee, MI, Menominee-Marinette Twin County, Takeoff Minimums and Obstacle DP, Amdt 3
Menominee, MI, Menominee-Marinette Twin County, VOR-A, Amdt 3
Menominee, MI, Menominee-Marinette Twin County, VOR/DME RNAV OR GPS RWY 21, Amdt 1B, CANCELLED
Mount Pleasant, MI, Mount Pleasant Muni, RNAV (GPS) RWY 9, Orig
Mount Pleasant, MI, Mount Pleasant Muni, RNAV (GPS) RWY 27, Orig
Mount Pleasant, MI, Mount Pleasant Muni, Takeoff Minimums and Obstacle DP, Amdt 5
Mount Pleasant, MI, Mount Pleasant Muni, VOR RWY 27, Amdt 1
St Cloud, MN, St Cloud Rgnl, ILS OR LOC/DME RWY 13, Amdt 1
St Cloud, MN, St Cloud Rgnl, RNAV (GPS) RWY 13, Amdt 1
St Cloud, MN, St Cloud Rgnl, RNAV (GPS) RWY 31, Amdt 1
St Cloud, MN, St Cloud Rgnl, Takeoff Minimums and Obstacle DP, Orig
Fairmont, NE, Fairmont State Airfield, RNAV (GPS) RWY 17, Amdt 1
Fairmont, NE, Fairmont State Airfield, RNAV (GPS) RWY 35, Amdt 1
Fairmont, NE, Fairmont State Airfield, Takeoff Minimums and Obstacle DP, Orig
York, NE, York Muni, RNAV (GPS) RWY 17, Amdt 2
York, NE, York Muni, RNAV (GPS) RWY 35, Amdt 1
York, NE, York Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Eugene, OR, Mahlon Sweet Field, RNAV (GPS) RWY 34R, Orig-A
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) Y RWY 9L, Amdt 1A
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) Y RWY 9R, Amdt 2A
Philadelphia, PA, Philadelphia Intl, RNAV (RNP) Z RWY 9L, Orig
Philadelphia, PA, Philadelphia Intl, RNAV (RNP) Z RWY 9R, Orig
Charleston, SC, Charleston Executive, RNAV (GPS) RWY 4, Orig

Hartsville, SC, Hartsville Regional, GPS RWY 3, Orig-A, CANCELLED
Hartsville, SC, Hartsville Regional, GPS RWY 21, Orig-A, CANCELLED
Hartsville, SC, Hartsville Regional, NDB RWY 3, Amdt 1
Hartsville, SC, Hartsville Regional, NDB RWY 21, Amdt 1
Hartsville, SC, Hartsville Regional, RNAV (GPS) RWY 3, Orig
Hartsville, SC, Hartsville Regional, RNAV (GPS) RWY 21, Orig
Vermillion, SD, Harold Davidson Field, NDB OR GPS RWY 30, Amdt 1A, CANCELLED
Vermillion, SD, Harold Davidson Field, RNAV (GPS) RWY 30, Orig
Vermillion, SD, Harold Davidson Field, Takeoff Minimums and Obstacle DP, Amdt 1
Watertown, SD, Watertown Rgnl, NDB RWY 35, Amdt 9
Watertown, SD, Watertown Rgnl, RNAV (GPS) RWY 30, Amdt 1
Watertown, SD, Watertown Rgnl, RNAV (GPS) RWY 35, Orig
Provo, UT, Provo Muni, ILS OR LOC/DME RWY 13, Amdt 1
Provo, UT, Provo Muni, PROVO FOUR Graphic Obstacle DP
Provo, UT, Provo Muni, RNAV (GPS) RWY 13, Amdt 1
Provo, UT, Provo Muni, VOR RWY 13, Amdt 3A, CANCELLED
Provo, UT, Provo Muni, VOR/DME RWY 13, Amdt 2
Staunton/Waynesboro/Harrisonburg, VA, Shenandoah Valley Rgnl, GPS RWY 23, Orig, CANCELLED
Staunton/Waynesboro/Harrisonburg, VA, Shenandoah Valley Rgnl, ILS OR LOC RWY 5, Amdt 9
Staunton/Waynesboro/Harrisonburg, VA, Shenandoah Valley Rgnl, NDB RWY 5, Amdt 10
Staunton/Waynesboro/Harrisonburg, VA, Shenandoah Valley Rgnl, RNAV (GPS) RWY 5, Orig
Staunton/Waynesboro/Harrisonburg, VA, Shenandoah Valley Rgnl, RNAV (GPS) RWY 23, Orig
Staunton/Waynesboro/Harrisonburg, VA, Shenandoah Valley Rgnl, SHENANDOAH ONE Graphic Obstacle DP
Staunton/Waynesboro/Harrisonburg, VA, Shenandoah Valley Rgnl, Takeoff Minimums and Obstacle DP, Amdt 6
Kenosha, WI, Kenosha Rgnl, ILS OR LOC RWY 7L, Amdt 3
Kenosha, WI, Kenosha Rgnl, NDB OR GPS RWY 6L, Amdt 1C, CANCELLED
Kenosha, WI, Kenosha Rgnl, RNAV (GPS) RWY 7L, Orig
Kenosha, WI, Kenosha Rgnl, RNAV (GPS) RWY 15, Orig
Kenosha, WI, Kenosha Rgnl, RNAV (GPS) RWY 25R, Orig
Kenosha, WI, Kenosha Rgnl, RNAV (GPS) RWY 33, Orig
Kenosha, WI, Kenosha Rgnl, Takeoff Minimums and Obstacle DP, Orig
Kenosha, WI, Kenosha Rgnl, VOR RWY 15, Amdt 1
Kenosha, WI, Kenosha Rgnl, VOR RWY 25R, Amdt 1
Lewisburg, WV, Greenbrier Valley, GPS RWY 4, Amdt 1A, CANCELLED
Lewisburg, WV, Greenbrier Valley, GPS RWY 22, Amdt 1A, CANCELLED
Lewisburg, WV, Greenbrier Valley, ILS OR LOC RWY 4, Amdt 10
Lewisburg, WV, Greenbrier Valley, RNAV (GPS) RWY 4, Orig
Lewisburg, WV, Greenbrier Valley, RNAV (GPS) RWY 22, Orig
Lewisburg, WV, Greenbrier Valley, Takeoff Minimums and Obstacle DP, Amdt 4
Lewisburg, WV, Greenbrier Valley, VOR RWY 4, Amdt 1
Lewisburg, WV, Greenbrier Valley, VOR RWY 22, Amdt 1

[FR Doc. E9–16139 Filed 7–13–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 149

[Docket Number USCBP–2007–0077]

RIN 1651–AA70

Importer Security Filing and Additional Carrier Requirements; Correction

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Correcting amendments.

SUMMARY: This document contains correcting amendments to the interim final rule entitled ''Importer Security Filing and Additional Carrier Requirements'' published in the **Federal Register** on November 25, 2008. The interim final rule's regulatory text was inadvertently silent regarding the time frame for transmitting an Importer Security Filing for shipments intended to be transported in-bond for immediate exportation or for transportation and exportation. This document also corrects two CBP Responses to two comments in the preamble text to align them with the regulatory text. One correction involves when a carrier's obligation to transmit container status messages ends and the other concerns when an Importer Security Filing must be updated.

DATES: This correction is effective on July 14, 2009. The compliance dates for the regulations are set forth in 19 CFR 4.7c(d), 4.7d(f), and 149.2(g).

FOR FURTHER INFORMATION CONTACT: Richard Di Nucci, Office of Field Operations, (202) 344–2513.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2008, Customs and Border Protection (CBP) published an interim final rule entitled ''Importer Security Filing and Additional Carrier Requirements'' in the **Federal Register** (73 FR 71730). Pursuant to that interim final rule, an Importer Security Filing (ISF) must be submitted for cargo arriving within the limits of a port in the United States by vessel prior to arrival of the cargo. Generally, with certain exceptions, the Importer Security Filing must be filed no later than 24 hours before the cargo to which the information relates is laden aboard a vessel at a foreign port.

The interim rule added a new § 149.3 to title 19 of the Code of Federal Regulations (CFR) specifying the required ISF data elements. Paragraph (a) specifies the ten required data elements for shipments intended to be entered into the United States and shipments intended to be delivered to a foreign trade zone: (1) Seller; (2) buyer; (3) Importer of record number/Foreign trade zone application identification number; (4) Consignee numbers(s); (5) Manufacturer (or supplier); (6) Ship to party; (7) Country of origin; (8) Commodity HTSUS number; (9) Container stuffing location; and (10) Consolidator (stuffer). Paragraph (b) specifies the five required data elements for shipments consisting entirely of foreign cargo remaining on board (FROB) and shipments intended to be transported in-bond as an immediate exportation (IE) or transportation and exportation (T&E): (1) Booking party; (2) Foreign port of unlading; (3) Place of delivery; (4) Ship to party; and (5) Commodity HTSUS number.

The interim final rule also added a new § 149.2, which requires the Importer Security Filing and specifies the timing for such filing by data element. Paragraphs (b)(1), (2) and (3) specify the timing requirements for the ten ISF data elements required under § 149.3(a) for shipments intended to be entered into the United States and for shipments intended to be delivered to a foreign trade zone. Except for two of the data elements for which flexibility regarding timing is provided (container stuffing location and consolidator) these data elements are required no later than 24 hours before the cargo is laden aboard the vessel at the foreign port.[1]

Correction to Regulatory Text

Paragraph (b) of § 149.2 provides the timing requirements for submitting the

[1] As provided in § 149.2(b)(3), the ISF Importer must submit the container stuffing location and consolidator as early as possible and in any event no later than 24 hours prior to arrival in a U.S. port (or upon lading at the foreign port if that is later than 24 hours prior to arrival in a U.S. port). This flexibility regarding timing is explained on page 71734 of the interim final rule.

Importer Security Filing. Paragraph (b)(4) specifies the timing requirements for the five ISF data elements required under § 149.3(b) for foreign cargo remaining on board (FROB). This data must be provided prior to lading aboard the vessel at the foreign port. Paragraph (b) is silent as to when an ISF must be transmitted for the five ISF data elements required under § 149.3(b) for shipments intended to be transported in-bond for immediate exportation (IE) or for transportation and exportation (T&E). As explained below, this omission in the regulatory text was inadvertent. CBP's intention that these data elements would be required no later than 24 hours before the cargo is laden aboard the vessel at the foreign port was set forth in the ISF notice of proposed rulemaking (NPRM), which was published in the **Federal Register** (73 FR 90) on January 2, 2008, and is consistent with what CBP set forth in the **SUPPLEMENTARY INFORMATION** section of the interim rule.

In the proposed regulatory text contained in the NPRM published in the **Federal Register** on January 2, 2008, section 149.2(b) clearly states that ''with the exception of any break bulk cargo pursuant to section 149.4(b) of this part and foreign cargo remaining on board (FROB), CBP must receive the Importer Security filing no later than 24 hours before the cargo is laden aboard the vessel at the foreign port. For FROB, CBP must receive the Importer Security Filing prior to lading aboard the vessel at the foreign port.'' This clearly includes IE and T&E shipments. In the interim final rule, in an effort to accommodate concerns of the trade regarding the time of transmission for certain data elements, namely, container stuffing location and consolidator (stuffer) name and address, § 149.2(b) was changed to distinguish between the data elements that must be filed 24 hours prior to lading and the two data elements that can be filed as early as possible, but not later than 24 hours prior to arrival in a United States port, *i.e.*, container stuffing location and consolidator. When this change was made in the interim final rule, during the redrafting process, the timing requirement for filing the Importer Security Filing for IE and T&E shipments, *i.e.*, 24 hours before the cargo is laden aboard the vessel at the foreign port, was inadvertently omitted from the regulatory text.

The **SUPPLEMENTARY INFORMATION** section of the interim final rule is consistent with CBP's intention regarding the timing requirements for filing the ISF for IE and T&E shipments. The timing requirements for ISFs are described in the **SUPPLEMENTARY INFORMATION** section of the interim rule on page 71733: ''This interim final rule requires Importer Security Filing (ISF) Importers, as defined in these regulations, or their agents, to transmit an Importer Security Filing to CBP, for cargo other than foreign cargo remaining on board (FROB), no later than 24 hours before cargo is laden aboard a vessel destined to the United States. *See* the 'Structured Review and Flexible Enforcement Period' section of this document for flexibilities related to timing for certain Importer Security Filing elements. Because FROB is frequently laden based on a last-minute decision by the carrier, the Importer Security Filing for FROB is required any time prior to lading.''

Although there is no specific discussion in the **SUPPLEMENTARY INFORMATION** section or elsewhere in the interim final rule about the timing requirements for transmitting ISF data elements for IE and T&E shipments, the above statement makes it clear that CBP intended that all ISF data elements would be required no later than 24 hours before cargo is laden aboard a vessel destined to the United States except for the data elements covered by the flexibilities for timing (container stuffing location and consolidator) [2] and for FROB.[3]

Accordingly, this document corrects the inadvertent omission in the regulatory text by adding a new paragraph (b)(5) to § 149.2 to clarify, consistent with the NPRM and the preamble language of the IFR, that Importer Security Filings for shipments intended to be transported in-bond as IEs and T&Es must be transmitted no later than 24 hours before the cargo is laden aboard a vessel destined to the United States.

Other Corrections

This document also corrects CBP Responses to two comments to align the responses to the regulatory text. On page 71741, in response to a comment about the carrier's responsibilities regarding the transmission of container status messages (CSMs), CBP stated in pertinent part that ''the carrier's obligation to transmit CSMs ends upon discharge of the cargo in the United States * * *.'' This statement is incorrect. Paragraph (b) of the new § 4.7d lists the events that must be reported if the carrier creates or collects a CSM in its equipment tracking system. Each of the listed events applies when a container is destined to arrive within the limits of a port in the United States. Therefore, CSMs are only required for events that occur prior to first arrival of the goods at a United States port. Accordingly, this document modifies the response in the preamble text to clarify, consistent with the regulatory text, that CSMs are required for events that occur prior to first arrival of goods at a United States port.

On page 71753, in response to a comment about the obligation to amend the ISF, CBP stated that ''for goods which will be unladen in the United States, the Importer Security Filing must be updated if there is a change before the goods enter the port of discharge''. This statement is inconsistent with the new § 149.2 which provides in pertinent part that: ''the party who submitted the Importer Security Filing * * * must update the filing if, after the filing and before the goods enter the limits of a port in the United States, any of the information submitted changes or more accurate information becomes available.'' Accordingly, this document modifies the response to clarify, consistent with the regulatory text, that the Importer Security Filing must be updated if there is a change before the goods enter the limits of the first port of arrival in the United States and to clarify that amendments to the ISF will be accepted at any time after the goods arrive in a port of the United States.

II. Corrections

In FR Doc. E8–27048 appearing on page 71730 in the **Federal Register** on Tuesday, November 25, 2008, the following corrections are made:

D. Public Comments: Container Status Messages [Corrected]

1. On page 71741, the first CBP Response in the second column, correct the CBP Response to read as follows:

''Vessel operating carriers are required to submit CSMs. If a carrier currently does not create or collect CSMs in an equipment tracking system, the carrier is not required to submit CSMs to CBP. If a carrier does create or collect CSMs, the carrier is obligated to transmit CSMs for events that occur prior to the first arrival of the cargo at a port in the United States. However, a carrier may transmit other CSMs in addition to those required by these regulations. By transmitting additional CSMs, the carrier authorizes CBP to access and use those data. In order to minimize the cost to carriers whose volume of business does not justify the creation of CSMs, CBP is declining to impose an

[2] Neither of these two data elements pertain to IE and T&E shipments. (Container stuffing location and consolidator are not required data elements for shipments of goods intended to be transported in-bond as an IE or T&E).

[3] Unlike FROB, IE and T&E shipments are not frequently laden based on a last-minute decision by the carrier so it is not necessary to exclude IE and T&E shipments from the 24 hours prior to lading requirement.

obligation upon carriers to create or collect any CSM data pursuant to this rule.''

H. Public Comments: Update and Withdrawal of Importer Security Filing [Corrected]

2. On page 71753, the third CBP Response in the first column, correct the CBP Response to read as follows:

''The Importer Security Filing must be amended if there is a change before the goods enter the limits of a port in the United States. ''Port'' refers to the first port of arrival in the United States. However, amendments to the Importer Security Filing will be accepted at any time after the goods arrive in a port in the United States.''

List of Subjects in 19 CFR Part 149

Arrival, Declarations, Customs duties and inspection, Freight, Importers, Imports, Merchandise, Reporting and recordkeeping requirements, Shipping, Vessels.

■ In addition, the Bureau of Customs and Border Protection makes the following correcting amendment to 19 CFR part 149:

PART 149—IMPORTER SECURITY FILING

■ 1. The authority citation for part 149 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 943; 19 U.S.C. 66, 1624, 2071 note.

■ 2. In § 149.2, a new paragraph (b)(5) is added to read as follows:

§ 149.2 Importer security filing—requirement, time of transmission, verification of information, update, withdrawal, compliance date.

* * * * *

(b) * * *

(5) The data elements required under § 149.3(b) of this part for shipments intended to be transported in-bond as an immediate exportation (IE) or transportation and exportation (T&E), no later than 24 hours before cargo is laden aboard the vessel at the foreign port.

* * * * *

Dated: July 8, 2009.

Jayson P. Ahern,

Acting Commissioner.

[FR Doc. E9–16539 Filed 7–13–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0597]

Safety Zones: Annual Events Requiring Safety Zones in the Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce certain safety zones for annual fireworks displays in the Captain of the Port Buffalo Zone. This action is necessary for the safety of life and property on navigable waters during these events. During the enforcement period, no person or vessel may enter the safety zones without the permission of the Captain of the Port Buffalo.

DATES: The regulations in 33 CFR 165.939(a)(1) through (4), (6) through (9), (11), (13), and (14) will be enforced from July 3, 2009 through July 26, 2009.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail LT Brian Sadler, Waterways Management Division Chief, Coast Guard Sector Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203; telephone 716–843–9573, e-mail *Brian.L.Sadler@USCG.Mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the following safety zones described in 33 CFR 165.939:

1. Boldt Castle 4th of July Fireworks on the St. Lawrence River, Heart Island, NY in 33 CFR 165.939(a)(1) on July 5, 2009 from 9 p.m. to 10 p.m.

2. Clayton Chamber of Commerce Fireworks on the St. Lawrence River, Clayton, NY in 33 CFR 165.939(a)(2) on July 3, 2009 from 10 p.m. to 11 p.m.

3. French Festival Fireworks on the St. Lawrence River, Cape Vincent, NY in 33 CFR 165.939(a)(3) on July 11, 2009 from 9:30 p.m. to 10:30 p.m.

4. Brewerton Fireworks on Oneida River near Lake Ontario, Brewerton, NY in 33 CFR 165.939(a)(4) on July 3, 2009 from 9:30 p.m. to 10 p.m.

5. Island Festival Fireworks Display on the Seneca River, Baldwinsville, NY in 33 CFR 165.939(a)(6) on July 4, 2009 from 9:45 p.m. to 10:30 p.m.

6. Seneca River Days on the Seneca River, Baldwinsville, NY in 33 CFR 165.939(a)(7) on July 10, 2009 from 9:30 p.m. to 10:30 p.m.

7. Oswego Harborfest on Lake Ontario, Oswego, NY in 33 CFR 165.939(a)(8) on July 25, 2009 from 9 p.m. to 10 p.m.

8. Village Fireworks on Sodus Bay, Sodus Point, NY in 33 CFR 165.939(a)(9) on July 3, 2009 from 10 p.m. to 11 p.m.

9. Tom Graves Memorial Fireworks on Port Bay, Wolcott, NY in 33 CFR 165.939(a)(11) on July 3, 2009 from 10 p.m. to 10:30 p.m.

10. North Tonawanda Fireworks Display on the East Niagara River, North Tonawanda, NY in 33 CFR 165.939(a)(13) on July 4, 2009 from 9:15 p.m. to 9:45 p.m.

11. Tonawanda's Canal Fest Fireworks on the East Niagara River, Tonawanda, NY in 33 CFR 165.939(a)(14) on July 26, 2009 from 9:30 p.m. to 10 p.m.

These regulations can also be found in the May 19, 2008 issue of the **Federal Register** (73 FR 28704).

Under the provisions of 33 CFR 165.23, entry into, transiting, or anchoring within these safety zones is prohibited unless authorized by the Captain of the Port Buffalo or his designated representative. Vessels that wish to transit through the any of these safety zones may request permission from the Captain of the Port Buffalo. Requests must be made in advance and approved by the Captain of Port before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port may be contacted via U.S. Coast Guard Sector Buffalo on channel 16, VHF–FM. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

This notice is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552(a). If the District Commander, Captain of the Port, or other official authorized to do so, determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone.

Dated: July 2, 2009.

R.S. Burchell,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. E9–16682 Filed 7–13–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 265

[Docket No. FRA–2008–0117, Notice No. 1]

RIN 2130–AB98

Nondiscrimination in Federally Assisted Railroad Programs; Removal

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is removing 49 CFR part 265 because the relevant statutory authority for the regulation found in the Railroad Revitalization and Regulatory Reform Act of 1976 has expired. FRA expects that removal of part 265 will reduce the administrative burden to government and industry, reduce government printing costs, and provide a more concise and useful Title 49, Code of Federal Regulations.

DATES: The rule becomes effective August 13, 2009.

FOR FURTHER INFORMATION CONTACT: Linda Martin, Attorney Advisor, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Mail Stop 10, Washington, DC 20590; telephone: (202) 493–6062); e-mail: *Linda.Martin@dot.gov*, or Calvin Gibson, Director, Office of Civil Rights, FRA, 1200 New Jersey Avenue, SE., 3rd Floor West, Washington, DC 20590; *telephone*: (202) 493–6010); *e-mail*: *Calvin.Gibson@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

49 CFR part 265 effectuated sections 905 and 906 of the Railroad Revitalization and Regulatory Reform Act of 1976 (''Act''), Public Law 94–210, 90 Stat. 31, 148–150 (February 5, 1976), which set forth the nondiscrimination and minority business enterprise provisions of that Act. However, Congress repealed sections 905 and 906 in the re-enactment of the Department of Transportation Act, Public Law 97–449, Sec. 7(b), 96 Stat. 2443 (January 12, 1983). Since Congress has not acted to renew or extend a minority business enterprise program at FRA and since the authorizing sections have been repealed, FRA has determined that Part 265 can and should be removed from Title 49.

DOT's current nondiscrimination provisions that recipients of FRA funding are still subject to are at 49 CFR parts 21 and 27 and 49 U.S.C. 306, which prohibit discrimination in several railroad financial assistance programs implemented by the FRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. FRA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because the actions taken in this final rule represent technical corrections to the regulations and do not involve substantive Agency action.

II. Regulatory Impact and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FRA has determined that this rulemaking action is not significant within the meaning of Executive Order 12866 or the U.S. Department of Transportation's regulatory policies and procedures. It simply repeals an outdated regulation that does not have a statutory foundation.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, Public Law 96–354, 5 U.S.C. 601–612, requires a review of rules to assess their impact on small entities. FRA certifies that the repeal of 49 CFR part 265 will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains no reporting requirements that are subject to OMB approval under 5 CFR part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Federalism Implications

FRA has analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132, issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. *See* 64 FR 43255. This rule mandating the removal of 49 CFR part 265 will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. This rule will not have federalism implications that impose any direct compliance costs on State and local governments. In fact, this rule removes a regulation based a long ago repealed statute, which may have had, but no longer has federalism implications because of its repeal.

Environmental Impact

FRA has evaluated this regulation in accordance with its ''Procedures for Considering Environmental Impacts'' (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that the removal of this regulation is not a major FRA action, and it will have no environmental impact.

Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' This final rule would not result in the expenditure of any funds, thus preparation of such a statement is not required.

List of Subjects in 49 CFR part 265

Civil rights, Railroads, Sex discrimination.

III. The Final Rule

■ Under the Department of Transportation Act, Public Law 97–449, Sec. 7(b), 96 Stat. 2443 (January 12, 1983), and as discussed in the preamble, amend 49 CFR, subtitle B, chapter II by removing part 265.

Issued in Washington, DC, on July 8, 2009.

Joseph C. Szabo,

Administrator.

[FR Doc. E9–16540 Filed 7–13–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344–9056–02]

RIN 0648–XQ25

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2009 total allowable catch (TAC) of northern rockfish in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 9, 2009, through 2400 hrs, A.l.t., December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Patty Britza, 907–586–7376.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 TAC of northern rockfish in the Western Regulatory Area of the GOA is 2,054 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2009 TAC of northern rockfish in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,034 mt, and is setting aside the remaining 20 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

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 requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of northern rockfish in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 8, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 9, 2009.

Alan D. Risenhoover

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

[FR Doc. E9–16643 Filed 7–9–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 133
Tuesday, July 14, 2009

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[NRC–2009–0098]

RIN 3150–AI59

Medical Use of Byproduct Material—Authorized User Clarification

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to clarify that individuals who do not need to comply with the training and experience requirements as described in the applicable regulations for the medical use of byproduct material (*i.e.*, are ''grandfathered'') may serve as preceptors and work experience supervisors for individuals seeking recognition on NRC licenses for the same medical uses of byproduct material. The regulations that govern the medical use of byproduct material were amended in their entirety in 2002 and again in 2005. Currently, individuals who were identified on an NRC or Agreement State license or permit before the regulations were amended do not need to requalify by meeting the training and experience requirements of the applicable regulations. When the regulations were revised, the NRC intended that those authorized individuals would also be able to serve as preceptors and work experience supervisors. However, the regulations as they are currently written do not specifically state that grandfathered individuals can be work experience supervisors and preceptors.

This proposed rule would amend the regulations to clarify that all individuals grandfathered under the applicable regulations may serve as preceptors and work experience supervisors for individuals seeking recognition on an NRC license for the same uses. Additionally, several minor administrative changes are included in this proposed rulemaking.

DATES: Comments on the proposed rule must be received on or before August 13, 2009.

ADDRESSES: Please include the number RIN 3150–AI59 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC's Web site in the Agencywide Documents Access and Management System (ADAMS) and at *http://www.regulations.gov*. Personal information, such as your name, address, telephone number, e-mail address, etc., will not be removed from your submission. You may submit comments by any one of the following methods:

Federal e-Rulemaking portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0098 and follow instructions for submitting comments. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *Rulemaking.Comments@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301–415–1677).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including any comments, may be viewed and downloaded via the e-Rulemaking Portal at *http://www.regulations.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Edward M. Lohr, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–0253, e-mail, *Edward.Lohr@nrc.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the Direct Final Rule published in the final rules section of this **Federal Register**.

Procedural Background

Because NRC considers this action noncontroversial and routine, we are publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on September 28, 2009. However, if the NRC receives a significant adverse comment on the proposed rule by August 13, 2009, then the NRC will publish a document to withdraw the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action if the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive

response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

List of Subjects in 10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 35.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

1. The authority citation for part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

2. In § 35.50, paragraph (a)(2)(ii)(B) is revised to read as follows:

§ 35.50 Training for Radiation Safety Officer.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(B) In clinical nuclear medicine facilities providing diagnostic and/or therapeutic services under the direction of physicians who meet the requirements for authorized users in §§ 35.57, 35.290, or 35.390;

* * * * *

3. In § 35.51, paragraphs (a)(2)(ii) and (b)(2) are revised to read as follows:

§ 35.51 Training for an authorized medical physicist.

* * * * *

(a) * * *

(2) * * *

(ii) In clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services under the direction of physicians who meet the requirements in §§ 35.57, 35.490, or 35.690; and

* * * * *

(b) * * *

(2) Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs (c) and (a)(1) and (a)(2), or (b)(1) and (c) of this section, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation must be signed by a preceptor authorized medical physicist who meets the requirements in §§ 35.51, 35.57, or equivalent Agreement State requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

* * * * *

4. In § 35.57, a new paragraph (c) is added to read as follows:

§ 35.57 Training for experienced Radiation Safety Officer, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist, and authorized nuclear pharmacist.

* * * * *

(c) Individuals who need not comply with training requirements as described in this section may serve as preceptors for, and supervisors of, applicants seeking authorization on NRC licenses for the same uses for which these individuals are authorized.

5. In § 35.190, the introductory text of paragraph (c)(1)(ii) and paragraph (c)(2) are revised to read as follows:

§ 35.190 Training for uptake, dilution, and excretion studies.

* * * * *

(c)(1) * * *

(ii) Work experience, under the supervision of an authorized user who meets the requirements in §§ 35.57, 35.190, 35.290, 35.390, or equivalent Agreement State requirements, involving—

* * * * *

(2) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in §§ 35.57, 35.190, 35.290, or 35.390, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraph (a)(1) or (c)(1) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under § 35.100.

6. In § 35.290, the introductory text of paragraph (c)(1)(ii) and paragraph (c)(2) are revised to read as follows:

§ 35.290 Training for imaging and localization studies.

* * * * *

(c)(1) * * *

(ii) Work experience, under the supervision of an authorized user who meets the requirements in §§ 35.57, 35.290, or 35.390 and 35.290(c)(1)(ii)(G), or equivalent Agreement State requirements, involving—

* * * * *

(2) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in §§ 35.57, 35.290, or 35.390 and 35.290(c)(1)(ii)(G), or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraph (a)(1) or (c)(1) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under §§ 35.100 and 35.200.

7. In § 35.390, the introductory text of paragraph (b)(1)(ii) and paragraph (b)(2) are revised to read as follows:

§ 35.390 Training for use of unsealed byproduct material for which a written directive is required.

* * * * *

(b)(1) * * *

(ii) Work experience, under the supervision of an authorized user who meets the requirements in §§ 35.57, 35.390, or equivalent Agreement State requirements. A supervising authorized user, who meets the requirements in § 35.390(b), must also have experience in administering dosages in the same dosage category or categories (*i.e.*, § 35.390(b)(1)(ii)(G)) as the individual requesting authorized user status. The work experience must involve—

* * * * *

(2) Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs (a)(1) and (b)(1)(ii)(G) or (b)(1) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under § 35.300. The written attestation must be signed by a preceptor authorized user who meets the requirements in §§ 35.57, 35.390, or equivalent Agreement State requirements. The preceptor authorized user, who meets the requirements in § 35.390(b) must have experience in

administering dosages in the same dosage category or categories (*i.e.*, § 35.390(b)(1)(ii)(G)) as the individual requesting authorized user status.

8. In § 35.392, the introductory text of paragraph (c)(2) and paragraph (c)(3) are revised to read as follows:

§ 35.392 Training for the oral administration of sodium iodide I–131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries).

* * * * *

(c) * * *

(2) Has work experience, under the supervision of an authorized user who meets the requirements in §§ 35.57, 35.390, 35.392, 35.394, or equivalent Agreement State requirements. A supervising authorized user who meets the requirements in § 35.390(b) must also have experience in administering dosages as specified in §§ 35.390(b)(1)(ii)(G)(1) or 35.390(b)(1)(ii)(G)(2). The work experience must involve—

* * * * *

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs (c)(1) and (c)(2) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under § 35.300. The written attestation must be signed by a preceptor authorized user who meets the requirements in §§ 35.57, 35.390, 35.392, 35.394, or equivalent Agreement State requirements. A preceptor authorized user, who meets the requirement in § 35.390(b), must also have experience in administering dosages as specified in §§ 35.390(b)(1)(ii)(G)(*1*) or 35.390(b)(1)(ii)(G)(*2*).

9. In § 35.394, the introductory text of paragraph (c)(2) and paragraph (c)(3) are revised to read as follows:

§ 35.394 Training for the oral administration of sodium iodide I–131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries).

* * * * *

(c) * * *

(2) Has work experience, under the supervision of an authorized user who meets the requirements in §§ 35.57, 35.390, 35.394, or equivalent Agreement State requirements. A supervising authorized user, who meets the requirements in § 35.390(b), must also have experience in administering dosages as specified in § 35.390(b)(1)(ii)(G)(*2*). The work experience must involve—

* * * * *

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs (c)(1) and (c)(2) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under § 35.300. The written attestation must be signed by a preceptor authorized user who meets the requirements in §§ 35.57, 35.390, 35.394, or equivalent Agreement State requirements. A preceptor authorized user, who meets the requirements in § 35.390(b), must also have experience in administering dosages as specified in § 35.390(b)(1)(ii)(G)(*2*).

10. In § 35.396, the introductory text of paragraph (d)(2) and paragraph (d)(3) are revised to read as follows:

§ 35.396 Training for the parenteral administration of unsealed byproduct material requiring a written directive.

* * * * *

(d) * * *

(2) Has work experience, under the supervision of an authorized user who meets the requirements in §§ 35.57, 35.390, 35.396, or equivalent Agreement State requirements, in the parenteral administration, for which a written directive is required, of any beta emitter, or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. A supervising authorized user who meets the requirements in § 35.390 must have experience in administering dosages as specified in §§ 35.390(b)(1)(ii)(G)(*3*) and/or 35.390(b)(1)(ii)(G)(*4*). The work experience must involve—

* * * * *

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraph (b) or (c) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed byproduct material requiring a written directive. The written attestation must be signed by a preceptor authorized user who meets the requirements in §§ 35.57, 35.390, 35.396, or equivalent Agreement State requirements. A preceptor authorized user, who meets the requirements in § 35.390, must have experience in administering dosages as specified in §§ 35.390(b)(1)(ii)(G)(*3*) and/or 35.390(b)(1)(ii)(G)(*4*).

11. In § 35.490, the introductory text of paragraph (b)(1)(ii) and paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 35.490 Training for use of manual brachytherapy sources.

* * * * *

(b)(1) * * *

(ii) 500 hours of work experience, under the supervision of an authorized user who meets the requirements in §§ 35.57, 35.490, or equivalent Agreement State requirements at a medical institution, involving—

* * * * *

(2) Has completed 3 years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in §§ 35.57, 35.490, or equivalent Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by paragraph (b)(1)(ii) of this section; and

(3) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in §§ 35.57, 35.490, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraph (a)(1), or paragraphs (b)(1) and (b)(2), of this section and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized under § 35.400.

12. In § 35.491, paragraph (b)(3) is revised to read as follows:

§ 35.491 Training for ophthalmic use of strontium-90.

* * * * *

(b) * * *

(3) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in §§ 35.57, 35.490, 35.491, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraph (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

13. In § 35.690, the introductory text of paragraph (b)(1)(ii) and paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 35.690 Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.

* * * * *

(b)(1) * * *

(ii) 500 hours of work experience, under the supervision of an authorized user who meets the requirements in §§ 35.57, 35.690, or equivalent Agreement State requirements at a medical institution, involving—

* * * * *

(2) Has completed 3 years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements in §§ 35.57, 35.690, or equivalent Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by paragraph (b)(1)(ii) of this section; and

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraph (a)(1) or paragraphs (b)(1) and (b)(2), and paragraph (c), of this section, and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation must be signed by a preceptor authorized user who meets the requirements in §§ 35.57, 35.690, or equivalent Agreement State requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

* * * * *

Dated at Rockville, Maryland, this 26th day of June 2009.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. E9–16656 Filed 7–13–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0636; Directorate Identifier 2009–NM–031–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100B SUD, –200B, –300, –400, and –400D Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 747–100B SUD, –200B, –300, –400, and –400D series airplanes. The existing AD currently requires repetitive inspections for cracking in fuselage stringers 8L, 8R, 10L, and 10R at body stations 460, 480, and 500 frame locations; and repair if necessary. This proposed AD would revise the applicability to include an additional airplane, and reduce compliance times for the initial inspection and repetitive intervals for Model 747–400 series airplanes that have been converted to the large cargo freighter configuration. This proposed AD results from findings of cracking in fuselage stringers 8L, 8R, 10L, and 10R at body stations 460, 480, and 500 frame locations. We are proposing this AD to detect and correct fatigue cracking in certain fuselage stringers, which, if left undetected, could result in fuselage skin cracking that reduces the structural integrity of the skin panel, and consequent rapid depressurization of the airplane.

DATES: We must receive comments on this proposed AD by August 28, 2009.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; 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–2009–0636; Directorate Identifier 2009–NM–031–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

On July 13, 2005, we issued AD 2005–15–08, amendment 39–14197 (70 FR 43020, July 26, 2005), for certain Boeing Model 747–100B SUD, –200B, –300, –400, and –400D series airplanes. That

AD requires repetitive inspections for cracking in fuselage stringers 8L, 8R, 10L, and 10R at body stations 460, 480, and 500 frame locations; and repair if necessary. That AD resulted from findings of cracking in fuselage stringers 8L, 8R, 10L, and 10R at body stations 460, 480, and 500 frame locations. We issued that AD to detect and correct fatigue cracking in certain fuselage stringers, which, if left undetected, could result in fuselage skin cracking that reduces the structural integrity of the skin panel, and consequent rapid depressurization of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2005–15–08, Boeing has revised the service information cited in that AD. AD 2005–15–08 cited Boeing Alert Service Bulletin 747–53A2484, dated June 26, 2003, as the source of service information for the required and optional actions. Revision 1, dated February 12, 2009, adds airplane variable number RS699 to the airplane effectivity; that variable number was inadvertently omitted from Boeing Alert Service Bulletin 747–53A2484, dated June 26, 2003. Also, Model 747–400 series airplanes that have been converted to the large cargo freighter (LCF) configuration (*i.e.*, variable numbers RT631 and RT632) have been moved from Group 3 to a new Group 4 with reduced compliance times for the initial and repetitive inspections, and have revised access instructions due to a different interior configuration. Procedures are otherwise unchanged.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2005–15–08 and would continue to require repetitive inspections for fatigue cracking in fuselage stringers 8L, 8R, 10L, and 10R at body station 460, 480, and 500 frame locations; and repair if necessary. This proposed AD would also revise the applicability to include an additional airplane, and reduce compliance times for initial inspection and repetitive interval for Model 747–400 series airplanes that have been converted to the large cargo freighter configuration.

Change to Existing AD

This proposed AD would retain certain requirements of AD 2005–15–08. Since AD 2005–15–08 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2005–15–08	Corresponding requirement in this proposed AD
paragraph (d)	paragraph (e).
paragraph (e)	paragraph (f).
paragraph (f)	paragraph (g).
paragraph (g)	paragraph (k).
paragraph (h)	paragraph (l).
paragraph (i)	paragraph (m).

Costs of Compliance

There are about 246 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	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection (required by AD 2005–15–08).	3	$80	$240 per inspection cycle ..	69	$16,560 per inspection cycle.
Inspection (proposed)	3	80	$240 per inspection cycle ..	70	$16,800 per inspection cycle.

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, Incorporation by reference, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–14197 (70 FR

43020, July 26, 2005) and adding the following new AD:

Boeing: Docket No. FAA–2009–0636; Directorate Identifier 2009–NM–031–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 28, 2009.

Affected ADs

(b) This AD supersedes AD 2005–15–08.

Applicability

(c) This AD applies to Boeing Model 747–100B SUD, –200B, –300, –400, and –400D series airplanes, certificated in any category; as identified in Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from findings of cracking in fuselage stringers 8L, 8R, 10L, and 10R at body station 460, 480, and 500 frame locations. We are issuing this AD to detect and correct fatigue cracking in the specified fuselage stringers, which, if left undetected, could result in fuselage skin cracking that reduces the structural integrity of the skin panel, and consequent rapid depressurization of the airplane.

Compliance

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

Requirements of AD 2005–15–08

Inspection for Certain Airplanes Subject to AD 2005–15–08 With New Service Bulletin

(g) For airplanes identified in Boeing Alert Service Bulletin 747–53A2484, dated June 26, 2003, except airplanes identified in paragraph (j) of this AD, do a detailed inspection for cracking in fuselage stringers 8L, 8R, 10L, and 10R at body station 460, 480, and 500 frame locations, in accordance with Part 1 of the Accomplishment Instructions in Boeing Alert Service Bulletin 747–53A2484, dated June 26, 2003; or Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009. Do the inspections at the applicable time specified in paragraph (g)(1) or (g)(2) of this AD. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles until the requirements of paragraph (l) of this AD are accomplished. After the effective date of this AD, use only Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009.

(1) For airplanes with 19,000 total flight cycles or less as of August 30, 2005 (the effective date of AD 2005–15–08): Prior to the accumulation of 8,000 total flight cycles, or within 2,000 flight cycles after August 30, 2005, whichever is later, not to exceed 20,000 total flight cycles.

(2) For airplanes with more than 19,000 total flight cycles as of August 30, 2005: Within 1,000 flight cycles after August 30, 2005.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

New Requirements of This Ad

Inspection: Variable Number RS699

(h) For Model 747 airplane variable number RS699, do a detailed inspection for cracking in fuselage stringers 8L, 8R, 10L, and 10R at body station 460, 480, and 500 frame locations, in accordance with Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009, at the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Before the accumulation of 8,000 total flight cycles.

(2) Within 2,000 flight cycles after the effective date of this AD.

(i) For Model 747 airplane variable number RS699, repeat the inspection specified in paragraph (h) of this AD thereafter at intervals not to exceed 3,000 flight cycles until the actions specified in paragraph (k) or (l) of this AD are accomplished.

Inspection: Group 4 Airplanes

(j) For Group 4 airplanes as identified in Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009, do a detailed inspection for cracking in fuselage stringers 8L, 8R, 10L, and 10R at body station 460, 480, and 500 frame locations, within 1,000 flight cycles after the effective date of this AD. Do the actions in accordance with Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009. Repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles until the actions specified in paragraph (k) or (l) of this AD are accomplished.

Repair

(k) If cracking is found during any inspection required by this AD: Before further flight, repair the affected stringer in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2484, dated June 26, 2003; or Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009. After the effective date of this AD, use only Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009. Accomplishment of the repair terminates the repetitive inspections required by this AD for that repaired stringer/frame location only.

Optional Terminating Action

(l) Installing new frame clips and new doublers, and repairing as applicable, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2484, dated June 26, 2003; or Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009; terminates the repetitive inspections required by this AD. After the effective date of this AD, use only Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle 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: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590; or e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(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 principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

(4) AMOCs approved previously in accordance with AD 2005–15–08, amendment 39–14197, are approved as AMOCs for the corresponding provisions of this AD.

Issued in Renton, Washington, on July 2, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–16575 Filed 7–13–09; 8:45 am]

BILLING CODE 4910–13–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 202

[Docket No. 2009–4]

Electronic Registration for Deposit Account Holders

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office is proposing to amend its regulations to require that applications for registration paid for by deposit account debits be submitted electronically using the

electronic Copyright Office (eCO) registration system (eService). The Copyright Office is also requesting comment as to whether deposit accounts offer sufficient efficiencies to continue offering this service.

DATES: Written comments must be received in the Office of the General Counsel of the Copyright Office no later than August 28, 2009.

ADDRESSES: If hand delivered by a private party, an original and five copies of a comment or reply comment should be brought to the Library of Congress, U.S. Copyright Office, Room LM–401, James Madison Building, 101 Independence Ave., SE, Washington, DC 20559, between 8:30 a.m. and 5 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office.

If delivered by a commercial courier, an original and five copies of a comment or reply comment must be delivered to the Congressional Courier Acceptance Site (''CCAS'') located at 2nd and D Streets, NE, Washington, DC between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, LM–403, James Madison Building, 101 Independence Avenue, SE, Washington, DC 20559. Please note that CCAS will not accept delivery by means of overnight delivery services such as Federal Express, United Parcel Service or DHL. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment or reply comment should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Tanya Sandros, Deputy General Counsel or, Chris Weston, Attorney Advisor. Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Deposit Account Background

The Copyright Office maintains a system of deposit accounts for those who frequently use its services. An individual or entity may establish a deposit account, make advance deposits into that account, and charge copyright fees against the balance instead of sending separate payments with applications and other requests for services. This process has been more efficient and less expensive for both the Office and the applicant than sending separate payments to the Copyright Office for each application for registration or for other services.

Proposed Change to Deposit Account Regulations

Historically, there have been no restrictions on registration practices connected with using deposit accounts. However, the Copyright Office is now proposing to amend its rules to require that, when an application for registration is paid for by a deposit account debit, the application form be submitted electronically, using the electronic Copyright Office (eCO) registration system, known as eService. The proposed change would ensure that basic applications for registration will be processed more efficiently and Copyright Office administrative costs will be reduced. The Office requests comments from the public on this proposal.

Under current practice, when there are insufficient funds in the deposit account being used for payment of a paper application, the Copyright Office suspends processing of the application to notify the account holder that replenishment of the account is needed, and places the pending application and associated deposit copies in temporary storage. The suspended applications, which may number 3000 or more at any one time must be reviewed regularly by Office staff to locate those that are newly funded and reprocess them. Thus, insufficient deposit account funding at a minimum effectively doubles the time Office staff must spend examining and processing an application, time that would otherwise be more profitably spent on the current backlog of unprocessed paper applications.

On average, three to four percent of paper applications for registration are suspended each year due to lack of sufficient funds in deposit accounts. In fiscal 2007, between 16,000 and 22,000 applications were put on hold for this reason, and the Office expended a substantial amount of resources managing the suspended applications and deposits. While the Office assesses additional fees for deposit account overdrafts and dishonored deposit account replenishment checks, *see* 37 CFR 201.3(d), these penalties do not recover the costs or solve the fundamental problems associated with the additional handling and the delay in processing. Consequently, the Office is proposing to require deposit account holders to file applications for registration via eService [including applications that require the submission of physical copies of the deposit in order to meet the Best Edition requirement, *see* 37 CFR 202.20(b)(1)], to ensure that the Office can collect the fee at the time of filing.

eService, which was released on July 1, 2008, allows applications for copyright registration to be filed electronically and is available through the Copyright Office website at www.copyright.gov. An application for registration made via eService cannot be completed until the method of payment is verified by, for example, ensuring that sufficient funds are present in the deposit account and payment has been made. In contrast, paper applications must be received by the Copyright Office, opened and processed before the validity of the proffered method of payment can be ascertained.

Thus, the proposed change to require that all applications for registration paid for by deposit account debits be submitted via eService will produce significant efficiencies for the Office.

By guaranteeing payment at the time of application, the proposal will reduce, if not eliminate, the cost and delays ascribable to suspending applications lacking fees, storing suspended applications and associated deposit copies, notifying deposit account holders of the need to replenish their accounts, and retrieving and reprocessing suspended applications after fees are received. In addition, it will eliminate converting data from a paper application to digital information for applications paid for by deposit account debits. Electronic claims have been demonstrated to cost the Office only half as much as paper claims, even those with no payment or other complications. Among the reasons for the lower cost is the avoidance of virtually all work associated with scanning and storing applications, processing payments, converting data from paper to digital form, and verifying the transcribed data prior to issuing a certificate. Moreover, the proposed amendment is consistent with the Office's goal of maximizing use of the electronic registration system through eService. *See, e.g.*, 73 FR 23990 (April 30, 2008) (Notice of proposed rulemaking to require all group registrations to be filed electronically).

From an applicant's perspective, using eService to submit applications for registration would also be more efficient. The effective date of registration is typically established more quickly for electronic applications because, in many cases, the Copyright Office receives all the required elements as mandated by 17 U.S.C. 410(d) – application, fee and deposit copy(ies) – in acceptable form sooner than if sent in physical form. In addition, applications for registration filed through eService

are processed faster than paper applications, in part because processing is not delayed by the deposit account having insufficient funds. Currently, 90% of the applications submitted through eService are processed within six months and a third of these claims are completed within three months.

Another advantage to applying for copyright registration via eService is the financial benefit to the filer. The fee for filing a basic application for registration online is $35 and the current fee for filing a paper application is $45, which will increase to $65 on August 1, 2009. The lower fee applies to an online submission even if the filer must send physical deposits to fulfill the Library of Congress's best edition requirement. Finally, there are features of the online application that make it easier to complete the application. For example, the eService system offers the option of a template feature that speeds the process of completing applications by automatically copying repeated information, such as name and address, from one application to the next.

The key reason, however, for the proposed change is that the eService system notifies an electronic applicant at the point of payment when the deposit account contains insufficient funds to process the application, making it possible for the deposit account holder to replenish the account immediately and avoid any delay in establishing an effective date of registration. If the applicant's deposit account does not have sufficient funds, payment for the application in question or replenishment of the deposit account can be accomplished with a credit card or through Pay.gov. Pay.gov is an Internet system for credit card payments and automatic clearing house debit transactions (electronic checks) managed by the U.S. Treasury Department. Further information concerning the payment options for registering claims may be found on the Copyright Office website at: http://www.copyright.gov/eco/faq.html, under the heading, ''Paying fees in eCO.''

It is also important to note that the proposed change will not require a deposit account holder to open a new account. In order to begin filing electronically, he or she will only need to take the following steps: (1) register with the eService system by creating a user profile, (2) create an organization account in eService, and (3) submit a request to depositaccts@loc.gov to link the existing deposit account to the newly created eService organization account. The email request should include the deposit account number and the name of the eService organization account.

Inquiry Regarding Continued Use of Deposit Accounts

In considering the proposed rule change, questions have arisen about the continued need for deposit accounts. Consequently, the Copyright Office is also seeking public comment on whether it should cease offering the use of deposit accounts altogether. In an era when paper applications and payment via check were the norm, a separate, simplified deposit account system presented attractive efficiencies to frequent applicants and to the Office. However, in an era of electronic registration and payment via corporate or other credit cards, the administrative costs of maintaining a separate deposit account system are no longer clearly offset by its advantages. The Office is thus soliciting the views of current deposit account users as to whether they continue to find value in the deposit account system, and what impact, if any, the elimination of deposit accounts would have on their copyright registration activities in light of the new online payment options.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 202

Preregistration and registration of claims to copyright.

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend parts 201 and 202 of 37 CFR as follows:

PART 201–GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Section 201.6(b) is revised to read as follows:

§ 201.6 Payment and refund of Copyright Office fees.

* * * * *

(b) Persons or firms having a considerable amount of business with the Copyright Office may prepay copyright expenses by establishing a Deposit Account. Pursuant to the requirements of § 202.3(b)(2)(iii) of these regulations, application forms for registration paid for by deposit account debits must be submitted electronically using the electronic Copyright Office (eCO) registration system (eService).

* * * * *

PART 202–REGISTRATION OF CLAIMS TO COPYRIGHT

3. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

4. Amend § 202.3 as follows:

a.In paragraph (b)(2)(ii) introductory text, by removing ''Application'' in the last sentence and adding in its place ''Subject to the mandatory electronic filing requirements for deposit account holders in § 202.3(b)(2)(iii) of these regulations, application'';

b.In paragraph (b)(2)(ii)(A), by removing ''electronically at the Copyright Office website'' and adding in its place ''using the electronic Copyright Office (eCO) registration system (eService) at the official Copyright Office website'';

c.In paragraph (b)(2)(ii)(B), by removing ''electronically at the Copyright Office website'' and adding in its place ''using the electronic Copyright Office (eCO) registration system (eService) at the official Copyright Office website'';

d.In paragraph (b)(2)(ii)(C), by removing ''check, money order, or Copyright Office deposit account charge; or,'' and adding in its place ''check or money order; or,'';

e.In paragraph (b)(2)(ii)(D), by adding ''in check or money order'' after ''the required filing fee''; and

f.Add a new paragraph (b)(2)(iii).

The revisions and additions to § 202.3 read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b)* * *

(2)* * *

(iii) When the fee required by § 201.3 of this section to file a basic application for registration is paid for by a deposit account debit, the application form shall be submitted through the electronic Copyright Office (eCO) registration system (eService) that is available at www.copyright.gov. If an applicant submits a paper application form for basic registration paid for by a deposit account debit, the Copyright Office will have the option – after processing the application – of terminating that applicant's deposit account. Termination will be effective 30 days after notification to the deposit account holder.

* * * * *

Dated: July 8, 2009.

Marybeth Peters,

Register of Copyrights.

[FR Doc. E9–16664 Filed 7–13–09; 8:45 am]

BILLING CODE 1410–30–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2008–0693; FRL–8929–9]

Approval and Promulgation of Implementation Plans: 1-Hour Ozone Extreme Area Plan for San Joaquin Valley, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part and disapprove in part State implementation plan (SIP) revisions submitted by the State of California to meet the Clean Air Act (CAA) requirements applicable to the San Joaquin Valley, California 1-hour ozone nonattainment area (SJV area). These requirements apply to the SJV area following its April 16, 2004 reclassification from severe to extreme for the 1-hour ozone national ambient air quality standard (NAAQS). EPA is proposing to approve the SIP revisions for the SJV area as meeting applicable CAA requirements for the attainment demonstration, rate-of-progress demonstration and related contingency measures, and other control measures. EPA is also proposing to disapprove the contingency measures for failure to attain. In addition, EPA is proposing to approve the SJV Air Pollution Control District's Rule 9310, ''School Bus Fleets.'' Finally, EPA is withdrawing its previous proposal (73 FR 61381; October 16, 2008) to fully approve the SJV SIP revisions.

DATES: Comments must be submitted by August 13, 2009.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2008–0693, by one of the following methods:

1. *Agency Web site: http://www.regulations.gov.* EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.

2. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

3. *E-mail: wicher.frances@epa.gov.*

4. *Mail or deliver:* Ms. Marty Robin, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal, or e-mail. The agency Web site and eRulemaking portal are anonymous access systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for Clarifications, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, U.S. EPA Region 9, 415–972–3957, *wicher.frances@epa.gov* or *31http://www.epa.gov/region09/air/actions.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' mean U.S. EPA.

Table of Contents

I. The History of San Joaquin Valley 1-Hour Ozone Nonattainment Area and its Extreme Area Ozone Plan

A. The San Joaquin Valley 1-Hour Ozone Nonattainment Area

Eight counties comprise the San Joaquin Valley ozone nonattainment area (SJV area). From north to south, these counties are San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and the valley portion of Kern. 40 CFR 81.305. The local air district is the San Joaquin Valley Air Pollution Control District (SJVAPCD or District).

The SJV area was initially classified under the CAA, as amended in 1990, as a serious area for the 1-hour ozone standard. 56 FR 56694 (November 6, 1991). Under the amended CAA, the attainment deadline for serious 1-hour ozone areas was no later than November 15, 1999. CAA section 181(a)(1).

In 2001, we found that the SJV area had failed to attain the 1-hour ozone standard by the required deadline. 66 FR 56476 (November 8, 2001). As a result of this finding, the area was reclassified by operation of law to severe with a new attainment deadline of no later than November 15, 2005. CAA section 181(a)(1). After determining that sufficient controls could not be implemented in time for the area to attain by the severe area deadline, California requested a voluntary reclassification of the area to extreme as allowed under CAA section 181(a)(5). See SJVAPCD Resolution 03–12–10 ''Requesting the [EPA] to Classify the [SJV] Air Basin as Extreme Nonattainment for the Federal 1-Hr Ozone [] Standards,'' December 18, 2003. We granted California's request in 2004. 69 FR 20550 (April 16, 2004). As a result, the SJV area is currently classified as an extreme area for the 1-hour ozone standard with an attainment date of as expeditiously as practicable but no later than November 15, 2010. CAA section 181(a)(1).

B. 2004 SIP, SJV Portion of 2003 State Strategy and 2008 Clarifications

The SJVAPCD adopted its ''Extreme Ozone Attainment Demonstration Plan'' on October 8, 2004 and amended it on October 20, 2005 to, among other things, substitute a new ''Chapter 4: Control Strategy.'' The State submitted the plan

(with the exception of Chapter 8 [1]) and amendment on November 15, 2004 and March 6, 2006, respectively. See letters from Catherine Witherspoon, California Air Resources Board (ARB), to Wayne Nastri, EPA, November 15, 2004 and March 6, 2006. The plan and amendment, collectively, will be referred to as the ''2004 SIP'' in this proposed rule. The 2004 SIP addresses CAA requirements for extreme 1-hour ozone areas including control measures, rate-of-progress (ROP) and attainment demonstrations, and contingency measures.

For the reductions needed to demonstrate attainment and ROP, the 2004 SIP relies in part on the ''2003 State and Federal Strategy for the California State Implementation Plan.'' This strategy document identifies ARB's regulatory agenda to reduce ozone and particulate matter in California and includes defined statewide control measures that were to be reflected in future SIPs and provisions specific to air quality plans for the San Joaquin Valley. On October 23, 2003, ARB adopted the ''2003 State and Federal Strategy for the California State Implementation Plan,'' which consists of two elements: (1) the Proposed 2003 State and Federal Strategy for the California State Implementation Plan (released August 25, 2003); and (2) ARB Board Resolution 03–22 which approves the Proposed 2003 State and Federal Strategy with the revisions to that Strategy set forth in Attachment A. On January 9, 2004, ARB submitted to EPA the ''2003 State and Federal Strategy for the California State Implementation Plan.'' Letter from Catherine Witherspoon, ARB, to Wayne Nastri, EPA, January 9, 2004.[2]

In this proposed rule we refer to the two documents comprising the ''Final State and Federal Strategy for the California State Implementation Plan'' as the ''2003 State Strategy'' or individually as the ''State Strategy'' and ''ARB Resolution 03–22,'' respectively.

On August 21, 2008, the SJVAPCD adopted ''Clarifications Regarding the 2004 Extreme Ozone Attainment Demonstration Plan'' (2008 Clarifications). The State submitted the 2008 Clarifications on September 5, 2008. Letter from James N. Goldstene, ARB, to Wayne Nastri, EPA, with enclosures, September 5, 2008. The 2008 Clarifications provide updates to the 2004 SIP related to reasonably available control technology (RACT) measures adopted by the SJVAPCD, the ROP demonstration, and contingency measures.

CAA section 110(k)(1) requires EPA to determine whether a SIP submission is complete within 60 days of receipt. This section also provides that any plan that has not been affirmatively determined to be complete or incomplete shall become complete within 6 months by operation of law. EPA's completeness criteria are found in 40 CFR part 51, subpart V.

The 2004 SIP, comprised of the original November 15, 2004 plan and May 6, 2006 amendment, was deemed complete by operation of law on May 15, 2005 and September 6, 2006. On February 18, 2004, we determined the Final 2003 State Strategy to be complete. Letter from Deborah Jordan, EPA, to Catherine Witherspoon, ARB, February 18, 2004. We found the 2008 Clarifications complete on September 23, 2008. Letter from Deborah Jordan, EPA, to James N. Goldstene, ARB, September 23, 2008.

C. EPA's 2008 Proposed Approval of the 2004 SIP, SJV Portion of the 2003 State Strategy and the 2008 Clarifications

This is the second time we have proposed action on the 2004 SIP, the SJV portion of the 2003 State Strategy and the 2008 Clarifications. On October 16, 2008, we proposed full approval of these SIP submittals and received three comment letters during the public comment period.[3] 73 FR 61381. After considering these comments, we are withdrawing our October 16, 2008 proposed rule and reproposing action on these SIP submittals. As a result, we are not responding to the comments we received on that proposed action at this time. Commenters wishing to again raise issues raised in comments on that proposal should resubmit applicable comments to the docket for this rulemaking.

II. Revocation of the 1-Hour Ozone Standard and Anti-Backsliding Requirements

In 1979, we set the health-based NAAQS for ozone at 0.12 parts per million (ppm) averaged over one hour. See 44 FR 8220 (February 9, 1979). In 1997, we revised this ozone standard by lowering the level to 0.08 ppm and extending the averaging time to eight hours.[4] See 62 FR 38856 (July 18, 1997).

In 2004, EPA designated and classified most areas of the country under the 8-hour ozone standard. 69 FR 23858 (April 30, 2004). At the same time, we issued the ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1'' (Phase 1 rule or 8-hour implementation rule). 69 FR 23951 (April 30, 2004). Among other matters, the Phase 1 rule revoked the 1-hour ozone standard in the SJV area (as well as in most other areas of the country), effective June 15, 2005. See 40 CFR 50.9(b); 69 FR at 23996 and 70 FR 44470 (August 3, 2005).

The Phase 1 rule also set forth anti-backsliding principles to ensure continued progress toward attainment of the 8-hour ozone standard by identifying which 1-hour ozone standard requirements remain applicable in an area after revocation of that standard. 40 CFR 51.900(f). The Phase 1 rule also identified several CAA requirements, such as contingency measures in CAA sections 172(c)(9) and 182(c)(9), that would not continue to apply after revocation. See § 51.905(e).

The U.S. Court of Appeals for the District of Columbia Circuit subsequently vacated the provisions of the Phase 1 rule that waived the requirements under the revoked 1-hour ozone standard for, among other things, contingency measures for failure to attain or to make reasonable further progress toward attainment of the 1-hour ozone standard. See *South Coast Air Quality Management District, et al.*, v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006), rehearing denied 489 F.3d 1245 (2007) (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review) (collectively referred to below as *South Coast*). On January 16, 2009, EPA proposed to remove the contingency measure exemption in 40 CFR 51.905(e) for these requirements and to list contingency measures as applicable requirements under § 51.900(f). 74 FR 2936.

As a general matter, the planning and control requirements that remain applicable following the revocation of the 1-hour ozone standard derive from CAA sections 110, 172, and 182. CAA sections 110 and 172 contain general planning and control requirements

[1] Chapter 8 ''California Clean Air Act Triennial Progress Report and Plan Review'' was included in the plan to meet a State requirement to report every three years on the area's progress toward meeting California's air quality standards. Nothing in the chapter was intended to address federal Clean Air Act requirements.

[2] On February 13, 2008, ARB withdrew from EPA consideration certain commitments related to the South Coast Air Basin in the ''Final 2003 State and Federal Strategy for the California State Implementation Plan.'' These withdrawals do not change the 2003 Strategy's provisions that apply to the SJV area. Letter from James N. Goldstene, ARB, to Wayne Nastri, EPA, February 13, 2008.

[3] Comment letters were received from Earthjustice; the Center for Race, Poverty and the Environment; and the National Association of Home Builders. These letters can be found in the docket for this proposal.

[4] In 2008 we lowered the 8-hour ozone standard to 0.075 ppm. See 73 FR 16436 (March 27, 2008). The references in this proposed rule to the 8-hour standard are to the 1997 standard as codified at 40 CFR 50.10.

applicable to all nonattainment areas. CAA section 182 contains more specific requirements applicable to ozone nonattainment areas, including requirements in section 182(e) that apply to areas classified as extreme, such as the SJV area.

In 1992, EPA issued a General Preamble describing our preliminary views on how we intended to review 1-hour ozone plans submitted to meet these CAA's requirements. See ''General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990.'' 57 FR 13498 (April 16, 1992). The General Preamble as well as other EPA guidance documents related to 1-hour ozone plans continue to guide our review of the 1-hour ozone requirements that remain applicable following revocation of that standard.

Under the Phase 1 rule, areas remain subject to the 1-hour requirements until they attain the 8-hour ozone standard. Once an area is redesignated to attainment for the 8-hour standard, it may shift the applicable requirements to contingency measures (consistent with the CAA sections 110(l) and 193). See Phase 1 rule at 23955 and 40 CFR 51.905(b).

III. Review of the 2004 SIP, the SJV Portion of the 2003 State Strategy and the 2008 Clarifications

A. Control Measures

1. Requirements for Control Measures

CAA section 172(c)(1) requires nonattainment area plans to provide for the implementation of all reasonably available control measures (RACM) including RACT. RACM is not listed separately in 40 CFR 51.900(f) as an applicable requirement following revocation of the 1-hour ozone standard; however, EPA interprets the RACM requirement to be a component of an area's attainment demonstration. See General Preamble at 13560.

EPA has previously provided guidance interpreting the RACM requirement in the General Preamble at 13560 and a memorandum entitled ''Guidance on the Reasonably Available Control Measure Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' John Seitz, Director, OAQPS to Regional Air Directors, November 30, 1999 (Seitz memo). In summary, EPA guidance provides that States, in addressing the RACM requirement, should consider all potential measures for source categories in the nonattainment area to determine whether they are reasonably available for implementation in that area and whether they would advance the area's attainment date by one or more years.

Under the CAA, RACT is required for major sources of volatile organic compounds (VOC) and for all VOC source categories for which EPA has issued Control Techniques Guideline (CTG) documents. In addition, EPA has issued Alternative Control Techniques (ACT) documents to help States in making RACT determinations. CAA sections 172(c)(1), 182(a)(2)(A), 182(b)(2), and 183(a) and (b). CAA section 182(f) requires that RACT also apply to major stationary sources of nitrogen oxides (NO_X). In extreme areas, a major source is a stationary source that emits or has the potential to emit 10 tons of VOC or NO_X per year. CAA section 182(e). The RACT requirement in 182(b)(2), the major source threshold in section 182(e) as it applies to RACT, and the application of RACT to major sources of NO_X are all applicable requirements under the Phase 1 rule. 40 CFR 51.905(a)(1)(i) and 51.900(f)(1), (3) and (12).

The CAA also requires that SIPs ''shall include enforceable emission limitations, and such other control measures, means or techniques * * * as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment * * * by the applicable attainment date.* * *'' CAA section 172(c)(6). CAA section 110(a)(2)(A) contains almost identical language.

2. Control Measures in the 2004 SIP and 2003 State Strategy

a. RACM Demonstration

To determine which measures would be feasible for the SJV area, the District looked at measures implemented in other areas (including the South Coast Air Basin, the San Francisco Bay Area, and the Houston-Galveston area), documents produced by ARB, as well as measures suggested by the public at local workshops. The District then screened the identified measures and rejected those that affected few or no sources in the SJV area, had already been adopted as rules, or were in the process of being adopted. The remaining measures were evaluated using baseline inventories, available control technologies, and potential emission reductions as well as whether the measure could be implemented on a schedule that would expedite attainment of the 1-hour ozone standard. 2004 SIP, section 4.2.1.

Based on this evaluation, the District developed an expeditious rule adoption schedule listing 21 measures involving adoption of eight new rules and revisions to over 20 existing rules. 2004 SIP, Table 4–1. Since submittal of the SIP in 2004, the District has completed action on these rules and submitted them to EPA for approval. Table 1 in the 2008 Clarifications and Table 2 below.

In addition to the District's efforts, the eight San Joaquin Valley Regional Transportation Planning Agencies (RTPAs) conducted a RACM evaluation for transportation sources. This evaluation, described in section 4.6.3. of the 2004 SIP, resulted in extensive local government commitments to implement programs to reduce auto travel and improve traffic flow. 2004 SIP, section 4.6 and Appendix C. The local governments also provide reasoned justifications for any measures that they did not adopt. See 2004 SIP, Appendix C.

Finally, the 2004 SIP relies on the 2003 State Strategy to address mobile and area source categories not under the District's jurisdiction. 2004 SIP, section 4.7. Table I–1 in the 2003 State Strategy shows the impressive list of both mobile and area source measures that have been adopted by California between 1994 and 2003, along with the mobile source rules that have been adopted by EPA during this period. Table I–2 in the 2003 State Strategy lists proposed new State measures, most of which have already been adopted.[5] This list of new State measures was developed through a public process intended to identify and refine new emission reductions strategies for California. 2003 State Strategy, page ES–5.

b. RACT Demonstration

The 2004 SIP includes a brief section 4.2.5 discussing the RACT obligation and specific source categories where further analysis and potential future controls would need to be adopted in order to ensure that RACT levels of control are applied to sources down to the 10 tons per year (tpy) level. The State subsequently formally withdrew the RACT portion of the 2004 SIP, specifically section 4.2.5. See 2008 Clarifications, page 3. On January 21, 2009, we made a finding that California failed to submit the required RACT demonstration for the 1-hour ozone standard and initiated sanction and Federal implementation plan (FIP) clocks under CAA sections 179(a) and 110(c). 74 FR 3442.

During the last several years, the District has also adopted and revised its

[5] See chapter 3 (page 38) of the ''Air Resources Board's Proposed State Strategy for California's 2007 State Implementation Plan,'' Revised Draft (Release date: April 26, 2007) (2007 State Strategy) and ''Status Report on the State Strategy for California's 2007 State Implementation Plan (SIP) and Proposed Revision to the SIP Reflecting Implementation of the 2007 State Strategy,'' ARB, April 24, 2009.

RACT demonstration plan for the 8-hour ozone standard. On January 31, 2007, California submitted the District's initial RACT plan for the 8-hour ozone standard to EPA. The District adopted a revised 8-hour ozone standard RACT plan on April 16, 2009 and the State submitted the revised plan on June 17, 2009. In addition to addressing comments on the initial plan, The District intends this revised plan to address the failure to submit finding for the 1-hour ozone RACT demonstration and to assure that its rules cover sources in the SJV area down to the extreme area major source threshold of 10 tpy. See letter from Andrew Steckel, EPA, to George Heinen, SJVAPCD, May 6, 2008. We are currently reviewing the revised RACT plan for future action.

c. Enforceable Limitations and Other Control Measures

The 2004 SIP's modeling analysis, discussed further below, determined that attainment of the 1-hour ozone standard required reducing 2000 baseyear emissions from 556.8 tons per day (tpd) NO_X and 443.5 tpd VOC to 343.5 tpd NO_X and 314.4 tpd VOC. 2004 SIP at 3–7 through 3–11 and 5–9 through 5–12 and ''Proposed 2004 State Implementation Plan for Ozone in the San Joaquin Valley,'' September 28, 2004, Air Resources Board Staff Report (ARB Staff Report) at Table III–6.

As shown in Table 1 below, we have divided the control measures in the 2004 SIP's attainment demonstration among three categories: Baseline measures, interim measures, and control strategy measures. As the term is used here and in the ARB Staff Report, baseline measures are rules and regulations adopted prior to September, 2002 (*i.e.*, prior to 2004 SIP's development) that provide continuing reductions through and after 2010. We have defined interim measures as those rules adopted between September, 2002 and the 2004 SIP's adoption date in October, 2004. See Table III–7 in the ARB Staff Report. Finally, control strategy measures are the new rules, rule revisions, and commitments included in the 2004 SIP and 2003 State Strategy that will ensure that the additional increment of emission reductions needed beyond the baseline and interim measures is achieved in time to demonstrate attainment by November 2010. See Tables III–6 and III–8 in the ARB Staff Report.

TABLE 1—SUMMARY OF EMISSION REDUCTIONS IN THE 2004 SIP

[Tons per summer day]

	VOC	NO_X
2000 baseyear emissions	443.5	556.8
2010 baseline emissions ..	365.1	396.8
2010 Attainment emissions target	314.4	343.5
Reductions needed for attainment	129.1	213.3
Baseline Measures:		
SJVAPCD	[6] −8.5	18.9
State	79.3	97.2
Federal	7.6	43.9
Total	78.4	160
Percent from Baseline Measures	61%	75%
Interim Measures:		
SJVAPCD adopted rules	2.4	12.2
Percent from Interim Measures	2%	6%
Control Strategy Measures:		
SJVAPCD (includes long-term measures)	33.3	21.1
State	15	20
Total	48.3	41.1
Percent from Control Strategy Measures	38%	19%

ARB Staff Report, table III–6.
Percentage may not sum to 100% because of rounding.

i. Baseline and Interim Measures

As shown in Table 1, the majority of the emission reductions needed to demonstrate attainment by November 2010 come from baseline and interim measures. These reductions come from a combination of Federal, State, and District measures.

A. SJVAPCD Measures—SJVAPCD currently has adopted more than 50 prohibitory rules that limit emissions of either VOC or NO_X. These rules include controls for boilers, oil field and refinery equipment, a variety of surface coatings operations, and open burning. We have provided a list of SJVAPCD NO_X and VOC rules together with information on their SIP approval status in the technical support document (TSD) for this proposal.

B. State measures—California has adopted standards for many categories of on- and off-road vehicles and engines, gasoline and diesel fuels, and numerous categories of consumer products. The State's baseline measures fall within two categories: measures for which the State has obtained or has applied to obtain a waiver of Federal pre-emption under CAA section 209 (section 209 waiver measures or waiver measures) and those for which the State is not required to obtain a waiver (non-waiver measures).

Section 209 waiver measures. A waiver under section 209 is, in general, required for most on- and non-road vehicle or engine standards. Examples of State waiver measures are: low emission vehicle program, heavy duty bus standards, and small off-road engines. A list of California's waiver measures can be found in the TSD. We discuss in more detail the CAA section 209 waiver provisions and how we intend to treat reductions from these measures in attainment and ROP demonstrations in section C.3.b. below.

Non-waiver measures. These measures include: improvements to California's inspection and maintenance (I/M) program, SmogCheck; cleaner burning gasoline and diesel regulations; and limits on the VOC content and reactivity of consumer products.[7] A list of these non-waiver measures can be found in the TSD.

Federal measures. These measures include EPA's national emission standards for heavy duty diesel trucks,[8] certain new construction and farm equipment,[9] and locomotives.[10] States are allowed to rely on reductions from Federal measures in attainment and ROP demonstrations.

ii. Control Strategy Measures

A. *SJVAPCD's commitments and rule adoption.* In the 2004 SIP, the District committed to adopt specific rules or rule revisions by specified dates, to submit the rules within one month of adoption to ARB for submittal to EPA, and to achieve from each measure specified reductions by 2010. 2004 SIP at Table 4–1 and SJVAPCD Resolution No. 5–10–12 (October 20, 2005), p. 4, item 9. This information is updated in

[6] The negative number here indicates that emissions increased in the source categories under the District's authority to control. The increase is mainly from growth in livestock operations. ARB Staff report, table III–6.

[7] California's Department of Pesticide Regulations (DPR) limits total pesticide emissions in the San Joaquin Valley. However, the attainment demonstration in the 2004 SIP does not assume any DPR regulatory limits on pesticide emissions. See 2003 State Strategy, p. III–C–3.

[8] 66 FR 5001 (January 18, 2001). ARB estimates that interstate trucks registered outside of California represent over 50 percent of the heavy duty trucks in California. See Table III–1 in ''Staff Report: Initial Statement of Reason for Proposed Rulemaking, Proposed Regulation for In-Use, On-road Diesel Vehicles,'' California Air Resources Board (October 2008).

[9] Tier 2 and 3 non-road engines standards, 63 FR 56968 (October, 23, 1998); Tier 4 diesel non-road engine standard, 69 FR 38958 (June 29, 2004).

[10] 63 FR 18978 (May 16, 1998) and 73 FR 37045 (June 30, 2008).

Table 1 of the 2008 Clarifications which shows not only the original commitment in the 2004 SIP but also the date on which the District adopted the rule associated with each commitment and the actual emissions reductions achieved by each rule. A summary of the information found in Table 1 in the 2008 Clarifications is presented in our Table 2 below. Table 2 also gives the date and cite for EPA's approval or proposed approval of the rule or the date of signature on the proposed approval.

TABLE 2—SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT 2004 PLAN SPECIFIC RULE COMMITMENTS

Rule No., description and commitment ID from 2004 SIP	2004 SIP commitment (2010-tpd)	Achieved emission reductions (2010-tpd)	Local adoption	Approval cite/date or proposed approval cite/date
NO_X Control Measures				
9310 Fleet School buses (C)	0.1	0.6[11]	9/21/06	NPR signed 6/30/09.
9510 Indirect Source Mitigation (D)	4.0	.....	12/15/05	See note below.
4307 Small Boilers (2–5 MMBTU) (E)	1.0	5.1	4/20/06	72 FR 29887 (5/30/07).
4352 Solid fuel boilers (G)	0.0	0.0	5/18/06	Proposed 72 FR 29901 (5/30/07).
4702 Stat. IC engines (H)	8.0	16.8	1/18/07	73 FR 1819 (1/10/08).
4309 Commercial Dryers (I)	1.0	0.7	12/15/05	72 FR 29887 (5/30/07).
4308 Water Heaters 0.075 (N)	0.2	0.8	10/20/05	72 FR 29887 (5/30/07).
4103 Open Burning (Q)	1.1	1.7	5/17/07	Proposed 74 FR 30485 (6/26/09).
4703 Sta. Gas Turbines (S)	0.6	1.9	8/17/06	NPR signed 6/22/07.
Long-term measures	5.0	.....	.....	See discussion below.
NO_X Total	21.1	27.6		
Rule No. and description	2004 SIP commitment (2010-tpd)	Achieved emission reductions (2010-tpd)	Local adoption	Submittal date or approval cite/date
VOC Control Measures				
4409 Oil & Gas Fug. (A)	4.7	5.1	4/20/05	71 FR 14653 (3/23/06).
4455 Ref. & Chem. Fug. (B)	0.2	0.3	4/20/05	71 FR 14653 (3/23/06).
4694 Wineries (F)	0.7	.....	12/15/05	See note below.
4565 Composting/Biosolids (J)	0.1	.....	3/15/07	See note below.
4612 Automotive Coating (incorporates Rule 4602)(K)	0.1	1.0	9/20/07	Proposed 74 FR 28467 (6/16/09).
4570 CAFO Rule (L)	15.8	17.7	6/15/06	NPR signed 6/30/09.
4662 Org. Solvent Degreasing (M)	.....	.....	.....	Proposed 74 FR 27084 (June 8, 2009).
4663 Org. Sol. Cleaning (M)	1.3	3.1	9/20/07	Proposed 74 FR 27084 (June 8, 2009).
4603 Metal Parts/Products (M)	.....	.....	.....	Proposed 74 FR 28467 (June 16, 2009).
4604 Can and Coil Coating (M)	.....	.....	.....	Proposed 74 FR 28467 (6/16/09).
4605 Aerospace Coating (M)	.....	.....	.....	NPR signed 6/30/09.
4606 Wood Products Coating (M)	.....	.....	.....	NPR signed 6/26/09.
4607 Graphic Arts (M)	.....	.....	.....	NPR signed 6/26/09.
4612 Automotive Coating (M)	.....	.....	.....	Proposed 74 FR 28467 (6/16/09).
4653 Adhesives (M)	.....	.....	.....	NPR signed 6/26/09.
4684 Polyester Resin Operation (M)	.....	.....	.....	NPR signed 6/30/09.
4401 Steam-Enhanced Oil-well (O)	1.4	0.3	12/14/06	NPR signed 6/30/09.
4651 Soil Decontamination (P)	< 0.05	0.0	9/20/07	NPR signed 6/22/09.
4103 Open Burning (Q)	2.9	3.9	5/17/07	Proposed 74 FR 30485 (6/26/09).
4682 Polymeric Foam Mfg. (R)	0.1	.....	9/20/07	See note below.
4621 & 4624 Gasoline storage & trans. (T & U)	0.9	1.9	12/20/07	NPRs signed 6/22/09 and 6/26/09.
Long-term measures	5	.....	.....	See discussion below.
VOC total	33.3	33.3		

Note: This rule has been adopted and submitted. EPA is currently reviewing the rule for SIP action. Numbers may not add to totals because of rounding.

As can be seen from Table 2, the District also committed to achieve an additional 5 tpd NO_X and 5 tpd of VOC reductions from unidentified long-term measures. The status of this aggregate commitment is discussed further below. In total, the District committed to reductions of 33.3 tpd of VOC and 21.1 tpd of NO_X by 2010. See Table 1 above.

B. State commitments and rule adoption. The 2003 State Strategy, adopted prior to the 2004 SIP, includes a commitment to reduce NO_X emissions in the SJV area by 10 tpd by 2010.[12] 2003 State Strategy, I–24 through I–26. Possible measures to achieve these reductions are described and listed in the 2003 State Strategy at I–14 through I–26 and ARB Resolution 03–22, Attachment A. The 2003 State Strategy also states that beyond its emission reduction commitment, new commitments to achieve further VOC[13] and NO_X reductions would be needed for the future SJV 1-hour ozone plan (which the SJVAPCD and ARB subsequently adopted as the 2004 SIP) and would be considered as part of that plan. 2003 State Strategy, I–26. To that end, the 2004 SIP incorporates the 2003 State Strategy as it applies to the area and includes an additional commitment by the State to achieve by the beginning of the 2010 ozone season emissions reductions of 10 tpd NO_X and 15 tpd VOC.

Although the 2003 State Strategy identifies possible control measures that could deliver these reductions, the State's commitment is only to achieve these NO_X and VOC emission reductions in the aggregate by the beginning of the 2010 ozone season. Thus the State's total enforceable commitments in the 2004 SIP are to achieve 20 tpd NO_X and 15 tpd VOC emission reductions in the aggregate by 2010. See 2003 State Strategy, pages I–7 through I–9 and I–26; ARB Board Resolution 04–29, October 28, 2004; ARB Staff Report, pages 29–30; 2004 SIP at section 4.7 (including Table 4–3 which duplicates Table I–2 in the 2003 State Strategy).[14]

[11] Table 1 in the 2008 Clarifications erroneously gives this reduction as 1.6 tpd. See e-mail, Jessi Hafer, SJVAPCD, to Frances Wicher, EPA, February 18, 2009, ''Reductions from 1-hour SIP clarifications.''

[12] The 2003 State Strategy makes clear that this commitment was intended for immediate inclusion in the 2003 PM–10 plan for the SJV area and for later inclusion in the 1-hour ozone plan for the SJV area. State Strategy, I–23 and I–26.

[13] The State uses the term ''reactive organic gases'' (ROG) in its documents. For the purposes of this proposed rule, VOC and ROG are interchangeable.

[14] In these documents the State's commitment is sometimes referred to as 20 tpd NO_X and sometimes as 10 tpd NO_X. The 20 tpd reference is to ARB's commitment for 10 tpd NO_X in the Statewide Strategy and ARB's additional commitment for 10 tpd NO_X in the 2004 SIP at section 4.7 and ARB Board Resolution 04–29. See also ARB Staff Report for the 2004 SIP at 29. The 10 tpd reference is to ARB's additional commitment for 10 tpd NO_X in the 2004 SIP at section 4.7 and ARB Resolution 04–29.

3. EPA's Evaluation of the Control Measures in the SIP Submittals

a. RACM/RACT Demonstration

As described above, with respect to the RACM requirement, the District evaluated a range of potentially available measures for inclusion in its 2004 SIP and committed to adopt those it found to be feasible for attaining the 1-hour ozone standard. The process and the criteria the District used to select certain measures and reject others are consistent with EPA's RACM guidance. We also describe above the measure evaluation process undertaken by the State, the SJV RTPAs and the SJV local jurisdictions. This process is also consistent with EPA's RACM guidance. See General Preamble at 13560 and Seitz memo.

Based on our review of the results of these RACM analyses, the 2003 State Strategy and the District's and California's adopted rules and commitments to adopt and implement controls, we propose to find that there are, at this time, no additional reasonably available measures that would advance attainment of the 1-hour ozone standard in the SJV area. We estimate that it would take an additional reduction of from 3.7 to 6.2 tpd VOC and 13.7 to 17.0 tpd NO_X to advance attainment by one year in the San Joaquin Valley. See TSD, Section V. No reasonably available unadopted measures identified in the 2004 SIP, 2003 State Strategy, and revised 8-hour ozone RACT demonstration plan, either individually or collectively, could deliver this level of emission reductions. See TSD, Section V for more details.

Therefore, we propose to find that the 2004 SIP, together with the 2003 State Strategy, provides for the implementation of RACM as required by CAA section 172(c)(1). This proposed finding does not affect the District's continuing obligation under the CAA to implement RACT pursuant to CAA section 182(b)(2) and 40 CFR 51.905(a)(1)(ii).

b. Enforceable Limitations and Other Control Measures

i. SJVAPCD Measures

Every District baseline and interim rule has been either approved into the SIP or replaced by a SIP-approved revision to that rule. See Table 8 in the TSD. Emission reductions from these rules are fully creditable in attainment and ROP demonstrations and may be used to meet other CAA requirements, such as contingency measures.

As shown above and discussed further below, the 2008 Clarifications and Table 2 above demonstrate that the District has fulfilled its control strategy commitments in the 2004 SIP to adopt specific rules. The reductions from these adopted rules have exceeded the District's total emission reduction commitments, including its commitments for reductions from long-term measures. We have either approved or proposed to approve all measures relied upon to achieve these emission reductions; therefore, the reductions from these measures are or will be, when finally approved, fully creditable in attainment and ROP demonstrations and may be used to meet other CAA requirements.

To the extent such measures are not credited for attainment or ROP, they may also be used as contingency measures that would be triggered by a failure to attain or to make reasonable further progress.

ii. State Measures and Commitments

A. Section 209 Waiver Measures. California's motor vehicle emissions control program predates the first Federal statute regulating motor vehicle emissions, the Motor Vehicle Air Pollution Control Act of 1965 (which amended the CAA of 1963). In further CAA amendments, referred to as the Air Quality Act of 1967 (Pub. L. 90–148), Congress allowed the State of California, and only California, a waiver of the Air Quality Act's pre-emption of State emissions standards for new motor vehicles or new motor vehicle engines because of California's pioneering efforts and unique problems. This was not changed when the statute was amended in 1970. The 1977 amendments to the CAA expanded the flexibility granted to California in order ''to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.'' (H.R. Rep. No. 294, 95th Congr., 1st Sess. 301–2 (1977). So long as California determines that its motor vehicle standards are ''in the aggregate'' at least as protective of public health and welfare as applicable Federal standards, title II of the CAA requires EPA, unless it makes certain findings, to waive the Act's general prohibition on State adoption and enforcement of standards relating to the control of emissions from new motor vehicles or new motor

vehicle engines. See CAA section 209(a) and (b).

In the Agency's review of the California SIP and its many revisions, EPA has historically allowed emission reduction credit for the motor vehicle emissions standards that are subject to a section 209(b) waiver without requiring California to submit the standards themselves to EPA for approval as part of the California SIP. In this respect EPA treated these rules similarly to the Federal motor vehicle control requirements, which EPA has always allowed States to credit in their SIPs without submitting the program as a SIP revision. CAA section 193, enacted as part of the 1990 Amendments to the CAA, is a general savings clause that provides for, among other things, EPA statutory interpretations that predate those amendments to remain in effect so long as not inconsistent with the Act. At the time it enacted section 193, Congress did not insert any language into the statute rendering EPA's treatment of California's motor vehicle standards inconsistent with the Act. Thus, in section 193, Congress effectively ratified EPA's longstanding pre-1990 practice of allowing emission reduction credit for California standards subject to the waiver process notwithstanding the absence of the standards in the SIP itself.

As part of the 1990 Amendments to the CAA, Congress enacted subsection (e) of section 209. In nearly identical language to subsections (a) and (b) of section 209, subsection (e) sets forth the Federal pre-emption of State emissions standards for nonroad vehicles or engines but allows the State of California, and only California, a waiver of pre-emption (with certain exceptions) under criteria that mirror the section 209(b) waiver provisions for motor vehicles. Since 1990, EPA has treated such nonroad standards in the same manner as California motor vehicle standards, i.e., allowing credit for standards subject to the waiver process without requiring submittal of the standards as part of the SIP. Congress is presumed to be aware of agency interpretations and its subsequent revision of the statute to add subsection (e) without overruling EPA's interpretation with respect to motor vehicle standards is further compelling evidence that the Agency correctly interpreted congressional intent with respect to crediting California requirements subject to a section 209 waiver without requiring California to submit the standards themselves to EPA for approval as part of the California SIP.

B. Non-waiver measures. In separate proposed rules, we have proposed to approve the latest revisions to the gasoline and diesel fuel standards (proposed rule signed June 30, 2009 and will be published in early July, 2009 [15]) and consumer products rules (74 FR 30481 (June 26, 2009)). We also will be proposing action soon on the State's I/M program. The reductions from these measures will be, if finally approved into the SIP, fully creditable in attainment and ROP demonstrations. To the extent such measures are not credited for attainment or ROP, they may also be used as contingency measures that would be triggered by a failure to attain or to make reasonable further progress.

C. *State commitments.* As stated above, measures already adopted by the District and State (both prior to and pursuant to the 2004 SIP) provide the majority of emission reductions needed to demonstrate attainment. The balance of the needed reductions is in the form of enforceable commitments by ARB. EPA believes, consistent with past practice, that the CAA allows approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.[16] Once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA considers three factors in determining whether to approve the enforceable commitment: (a) does the commitment address a limited portion of the statutorily-required program; (b) is the State capable of fulfilling its commitment; and (c) is the commitment for a reasonable and appropriate period of time.[17]

We believe that, in acting on the 2004 SIP and 2003 State Strategy, circumstances warrant the consideration of enforceable commitments. As shown in Table 1 and discussed below in section III.D., the majority of emission reductions needed to demonstrate attainment and all of the emission reductions needed to demonstrate ROP come from rules and regulations that were adopted prior to the plan's submittal in November 2004, i.e., they come from the baseline and interim measures. All of these rules and regulations have been approved, proposed for approval, granted a waiver, or promulgated by EPA.

As a result of these State and District efforts, most sources in the SJV area were already subject to stringent rules prior to the plan's development, leaving fewer opportunities to reduce emissions. In the 2004 SIP and the 2003 State Strategy, SJVAPCD and ARB identified potential control measures that could achieve the additional emission reductions needed for attainment (see 2004 SIP, sections 4.2.4 and 4.3 and 2003 State Strategy, sections II-IV.). However, the timeline needed to develop, adopt, and implement these measures went well beyond the November 15, 2004 deadline to submit the SJV's extreme area plan.[18]

Given these circumstances, we believe that the reliance in the 2004 SIP on enforceable commitments was warranted. As noted before, SJVAPCD has now fully satisfied its 2004 SIP commitments, leaving just ARB's commitment remaining. We now consider the three factors to determine whether ARB's commitment is approvable.

First, we look to see if the commitment addresses a limited portion of a statutory requirement. Only the

[15] These fuel regulations do not include the Low Carbon Fuel Standards adopted by ARB on April 24, 2009.

[16] Commitments approved by EPA under section 110(k)(3) of the CAA are enforceable by EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments: See, e.g., *American Lung Ass'n of N.J.* v. *Kean*, 670 F. Supp. 1285 (D.N.J. 1987), aff'd, 871 F.2d 319 (3rd Cir. 1989); *NRDC, Inc.* v. *N.Y. State Dept. of Env. Cons.*, 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Env't v. Deukmejian*, 731 F. Supp. 1448, recon. granted in par, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air* v. *South Coast Air Quality Mgt. Dist.*, No. CV 97–6916–HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under CAA Section 179(a), which starts an 18-month period for the State to correct the non-implementation before mandatory sanctions are imposed.

CAA section 110(a)(2)(A) provides that each SIP ''shall include enforceable emission limitations and other control measures, means or techniques * * * as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirement of the Act.'' Section 172(c)(6) of the Act, which applies to nonattainment SIPs, is virtually identical to section 110(a)(2)(A). The language in these sections of the CAA is quite broad, allowing a SIP to contain any ''means or techniques'' that EPA determines are ''necessary or appropriate'' to meet CAA requirements, such that the area will attain as expeditiously as practicable but no later than the designated date. Furthermore, the express allowance for ''schedules and timetables'' demonstrates that Congress understood that all required controls might not have to be in place before a SIP could be fully approved.

[17] The U.S. Court of Appeals for the Fifth Circuit upheld EPA's interpretation of CAA sections 110(a)(2)(A) and 172(c)(6) and the Agency's use and application of the three factor test in approving enforceable commitments in the Houston-Galveston ozone SIP. *BCCA Appeal Group et al.* v. *EPA et al.*, 355 F.3d 817 (5th Cir. 2003).

[18] This deadline was set pursuant to CAA section 182(i), when the SJV was reclassified to extreme on April 16, 2004 at 69 FR 20550.

attainment demonstration in the 2004 SIP relies on ARB's aggregate commitment to achieve reductions of 20 tpd NO_X and 15 tpd VOC in the SJV area by 2010. Because the District's rules are now anticipated to achieve more emission reductions than anticipated in the 2004 SIP (see Table 2 above), we expect that not all of the reductions committed to by ARB will be needed to demonstrate attainment. Table 3 below shows that the remaining reductions from commitments needed to attain the 1-hour ozone standard will be 13.5 tpd NO_X or 6.3% and 15 tpd VOC or 11.6 percent or 8.3 percent of the combined NO_X and VOC needed for attainment.

TABLE 3—REMAINING COMMITMENT PORTION OF THE 2004 SIP REDUCTIONS IN TONS PER DAY FOR 2010

	NO_X	VOC
Reductions needed to attain	213.3	129.1
Reductions from baseline measures adopted by 9/02 and interim measures	172.2	80.8
Reductions needed from commitments in 2004 SIP	41.1	48.7
Reductions achieved from SJVAPCD rules that are approved or proposed for approval	27.6	33.3
Reductions needed to attain from commitments	13.5	15
Percent of reductions needed to attain from commitments	6.3	11.6

Sources: ARB Staff Report for the 2004 SIP, Table III–6; 2008 Clarifications, Table 1.

Given the State's efforts to date, we believe this relatively small portion of reductions from enforceable commitments in the 2004 SIP is acceptable.

Second, we look to see if the State is capable of fulfilling its commitment. ARB has recently submitted information on its efforts to fulfill its commitment in the 2004 SIP and 2003 State Strategy. See Letter, James Goldstene, ARB, to Laura Yoshii, EPA, June 29, 2009. Overall, ARB adopted rules between July 2003 and October 2007 that are expected to achieve 14.1 tpd NO_X and 3.3 tpd VOC. Attached to this letter is a list of these measures which includes tighter diesel fuel standards and tighter consumer product limits which we have proposed to approve, and a number of waiver measures. These measures represent the most stringent regulations yet enacted in the country.

The list, however, does not include a number of State programs that may reduce emissions between now and the 2010 attainment deadline (e.g., California's greenhouse gas motor vehicle standards and limits on pesticide emissions in the SJV area adopted by DPR). Moreover, in 2007, ARB adopted a revised State Strategy that continues its program of identifying, evaluating, developing and adopting new or tighter controls on sources within its jurisdiction.[19] See 2007 State Strategy as revised and updated on April 24, 2009.

Given the evidence of the State's efforts to date and its continuing program to adopt controls, we believe that the State will be able to meet its enforceable commitments to achieve 20 tpd NO_X and 15 tpd VOC by 2010. We, therefore, conclude that the second factor is satisfied.

Finally, we look to see if the commitment is for a reasonable and appropriate period of time. In order to meet the commitment to achieve reductions of 15 tpd VOC and 20 tpd NO_X by the beginning of the 2010 ozone season, the State projected an ambitious rule development, adoption, and implementation schedule in the 2003 State Strategy. This projected schedule reasonably anticipated sufficient time to achieve the committed reductions by 2010. See 2003 State Strategy, Tables I–7 and I–10. Most projected adoption dates for measures that could fulfill the commitment were in 2006 or earlier, with implementation in 2006 to 2008. These dates were all well before the SJV area's required attainment deadline of November 15, 2010. They are also reasonable given the type of measures that were contemplated (*e.g.*, retrofit controls for existing heavy-duty off-road diesel equipment), measures that require significant lead times to achieve reductions. Therefore, the State's schedule was reasonable and appropriate for achieving its commitment, and we conclude that the third factor is satisfied.

For the above reasons, we believe that the three factors EPA considers in determining whether to approve enforceable commitments are satisfactorily addressed with respect to the State's commitment. We are therefore proposing to approve the State's commitment in the 2004 SIP, ARB Board Resolution 04–29 and Final 2003 State Strategy to achieve 20 tpd NO_X and 15 tpd VOC reductions by 2010. Final approval of this commitment would make the commitment enforceable by EPA and by citizens.

B. Emission Inventories

We have evaluated the emission inventories in the 2004 SIP to determine if they are consistent with EPA guidance (General Preamble at 13502) and adequate to support that plan's ROP and attainment demonstrations. Chapter 3 of the 2004 SIP presents the baseline and projected emission inventories relied on for the attainment and ROP demonstrations. This chapter also discusses the methodology used to determine 1999 emissions and identifies the growth and control factors used to project emissions for the 2000 baseline inventory and the 2008 (ROP milestone) and 2010 (attainment) projected year inventories. The plan includes weekday summer inventories for the base year of 2000 and projected baseline inventories for 2008 and 2010 for all major source categories. Emissions are calculated for the two major ozone precursors—NO_X and VOC—as well as for the less significant precursor, carbon monoxide (CO). 2004 SIP at Table 3–1. Motor vehicle emissions were based on estimates of vehicle miles traveled (VMT) provided by the regional transportation planning agencies and the California Department of Transportation. The plan uses ARB's EMission FACtor (EMFAC) 2002, version 2.2, to calculate the emission factors for cars, trucks and buses. At the time the 2004 SIP was developed, EMFAC 2002 was the mobile source model approved for use in California's SIPs 68 FR 15720 (April 1, 2003).

We have determined that the 2000 baseyear emission inventory in the 2004 SIP was comprehensive, accurate, and current at the time it was submitted on November 15, 2004 and that this inventory as well as the 2008 and 2010 projected inventories were prepared consistent with EPA guidance. Accordingly, we propose to find that these inventories provide an appropriate basis for the ROP and attainment demonstrations in the 2004 SIP.

[19] The State's current rulemaking agenda for 2009 can be found at: *http://www.arb.ca.gov/regact/2009rulemakingcalendar.pdf.*

C. Rate of Progress Demonstrations

1. Requirements for Rate of Progress Demonstrations

CAA section 172(c) requires nonattainment area plans to provide for reasonable further progress (RFP) which is defined in section 171(1) as such annual incremental reductions in emissions as are required in part D or may reasonably be required by the Administrator in order to ensure attainment of the relevant ambient standard by the applicable date.

CAA sections 182(c)(2) and (e) require that serious and above area SIPs include ROP quantitative milestones that are to be achieved every 3 years after 1996 until attainment. For ozone areas classified as serious and above, section 182(c)(2) requires that the SIP must provide for reductions in ozone-season, weekday VOC emissions of at least 3 percent per year net of growth averaged over each consecutive 3-year period. This is in addition to the 15 percent reduction over the first 6-year period required by CAA section 182(b)(1) for areas classified as moderate and above. The CAA requires that these milestones be calculated from the 1990 inventory after excluding, among other things, emission reductions from ''[a]ny measure related to motor vehicle exhaust or evaporative emissions promulgated by the Administrator by January 1, 1990'' and emission reductions from certain Federal gasoline volatility requirements. CAA section 182(b)(1)(B)–(D). EPA has issued guidance on meeting 1-hour ozone ROP requirements. See General Preamble at 13516 and ''Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration,'' EPA–452/R–93–015, OAQPS, EPA, February 18, 1994 (corrected).

CAA section 182(c)(2)(C) allows for NO_X reductions that occur after 1990 to be used to meet the post-1996 ROP emission reduction requirements, provided that such NO_X reductions meet the criteria outlined in the CAA and EPA guidance. The criteria require that: (1) the sum of all creditable VOC and NO_X reductions must meet the 3 percent per year ROP requirement; (2) the substitution is on a percent-for-percent of adjusted base year emissions for the relevant pollutant; and (3) the sum of all substituted NO_X reductions cannot be greater than the cumulative NO_X reductions required by the modeled attainment demonstration. See General Preamble at 13517 and ''NO_X Substitution Guidance,'' OAQPS, EPA, December 1993.

Our guidance in the General Preamble states that by meeting the specific ROP milestones discussed above, the general RFP requirements in CAA section 172(c)(2) will also be satisfied. General Preamble at 13518.

Rate of progress reductions as well as the NO_X requirements of CAA section 182(f) remain applicable requirements under the 8-hour ozone implementation rule for areas that are nonattainment for both the 1-hour and 8-hour ozone standards. See § 51.905(a)(1)(i) and § 51.900(f)(4) and (12).

2. Rate of Progress Demonstrations in the 2004 SIP and the 2008 Clarifications

Chapter 7 of the 2004 SIP, updated by Table 2 in the 2008 Clarifications, provides a demonstration that the SJV area meets both the 2008 and 2010 ROP milestones. We have summarized this ROP demonstration in Table 4.

TABLE 4—SAN JOAQUIN RATE OF PROGRESS DEMONSTRATIONS

[Summer planning tons per day]

	Base-year	Milestone year	
	1990	2008	2010
VOC Calculations			
A. 1990 Baseline VOC	633.2	633.2	633.2
B. CA Pre-1990 MV standards adjustment	.....	120.1	123.8
C. Adjusted 1990 baseline VOC in the milestone year (Line A–Line B)	.....	513.1	509.4
D. Cumulative VOC reductions needed to meet milestone	.....	261.7	209.4
E. Target level of VOC needed to meet ROP requirement (Line C–Line D)	.....	251.4	219.0
F. Projected level (baseline) of VOC in milestone year with adopted controls only		369.4	362.7
G. VOC ROP shortfall (Line F–Line E)	.....	118.0	143.7
H. VOC ROP shortfall (% of adjusted baseline)	.....	23.0%	28.2%
NO_X Calculations			
A. 1990 Baseline NO_X	805.1	805.1	805.1
B. CA Pre-1990 MV standards adjustment	.....	114.0	116.6
C. Adjusted 1990 baseline NO_X in the milestone year (Line A–Line B)	.....	691.1	688.5
D. Projected level (baseline) of NO_X in milestone year with adopted controls only		411.0	384.5
E. Change in NO_X since 1990 (Line C–Line D)	.....	280.1	304.0
F. Change in NO_X since 1990 (% of adjusted baseline)	.....	40.5%	44.2%
G. VOC ROP shortfall	.....	23.0%	28.2%
H. % Surplus NO_X reductions after offsetting VOC ROP shortfall available for contingency measures (Line F–Line G)	.....	17.5%	16.0%

[20] The ROP demonstration relies on ''the emission control program as it existed when the Valley's 2004 SIP was submitted * * *'' 2008 Clarification at 6. As discussed in section III.C.2.c.i. above, all baseline measures are either federal, SIP-approved, proposed for approval, or otherwise creditable in ROP demonstrations.

Because there are insufficient VOC reductions to meet the milestones, the ROP demonstration relies on NO_X substitution, consistent with EPA's guidance, to show that the area meets the emission reduction requirements for 2008 and 2010. The demonstration does not depend on reductions from any measures that are not either Federal, SIP-approved, proposed for approval or State waiver measures or on reductions from any measures that are not creditable under the terms of section 182(b)(1).[20]

3. EPA's Evaluation of the Rate of Progress Demonstrations in the SIP Submittals

The 2008 Clarifications follow EPA's guidance on addressing the pre-1990 motor vehicle program adjustments, using the pre-1990 California motor vehicle exhaust and evaporative standards in lieu of the national motor vehicle control program.[21] Because the 2004 SIP and the 2008 Clarifications demonstrate that sufficient emission reductions have or will be achieved to meet the 2008 and 2010 ROP milestones, we propose to approve the ROP provisions in these documents as meeting the requirements of CAA section 182(c)(2). As stated above, if the ROP milestones are met, we deem the general RFP requirements of CAA section 172(c)(2) to also have been met. Therefore, we also propose to approve the ROP provisions as meeting the requirements of CAA sections 172(c)(2).

D. Attainment Demonstration

1. Requirements for Attainment Demonstrations

One-hour ozone nonattainment areas classified as extreme under CAA section 181(b)(3) must demonstrate attainment ''as expeditiously as practicable'' but not later than the date specified in CAA section 181(a), November 15, 2010. CAA Section 182(c)(2)(A) requires serious, severe and extreme areas to use photochemical grid air quality modeling or an analytical method EPA determines to be as effective.

For areas such as the SJV area that did not have a fully approved attainment demonstration for the 1-hour ozone standard at the time they were designated nonattainment for the 8-hour ozone standard, the Phase 1 rule required the submission of the 1-hour ozone attainment demonstration or, alternatively, the early submission of an 8-hour attainment demonstration or an early increment of progress toward attainment of the 8-hour standard. See 40 CFR 51.905(a)(1)(ii). For the SJV area, California submitted an attainment demonstration for the 1-hour ozone standard.

2. Air Quality Modeling in the 2004 SIP

For purposes of demonstrating attainment, CAA section 182(c)(2)(A) requires extreme areas to use photochemical grid modeling or an analytical method EPA determines to be as effective. EPA guidance identifies the features of a modeling analysis that are essential to obtain credible results.[22] The photochemical grid modeling analysis is performed for days when the meteorological conditions are conducive to the formation of ozone. For purposes of developing the information to put into the model, the State must select days in the past with elevated ozone levels that are representative of the ozone pollution problem in the nonattainment area and a modeling domain that encompasses the nonattainment area. The State must then develop both meteorological data describing atmospheric conditions for the selected days and an emission inventory to evaluate the model's ability to reproduce the monitored air quality values. Finally, the State needs to verify that the model is properly simulating the chemistry and atmospheric conditions through diagnostic analyses and model performance tests. Once these steps are satisfactorily completed, the model can be used to generate future year air quality estimates to support an attainment demonstration. A future-year emissions inventory, which includes growth and controls through the attainment year, is developed for input to the model to predict air quality in the attainment year.

For the 1-hour ozone standard, the modeled attainment test compares model-predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the standard. For the 1-hour ozone standard, a predicted concentration above 0.124 parts per million (ppm) indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to attain the standard.

Attainment is demonstrated when all predicted concentrations inside the modeling domain are at or below the standard or at an acceptable upper limit above the NAAQS permitted under certain conditions by EPA's guidance. When the predicted concentrations are above the standard, a weight of evidence determination, which incorporates other analyses such as air quality and emissions trends, may be used to address the uncertainty inherent in the application of photochemical grid models.

EPA recommended that States use the Urban Airshed Model (UAM) version IV as the ozone model of choice for the grid-point modeling required by the CAA for 1-hour ozone attainment demonstrations.[23] Other models are allowed if the State shows that they are scientifically valid and they perform as well as (i.e., are just as reliable), or better than, UAM IV. California selected the Comprehensive Air Quality Model with Extensions (CAMx) based on slightly better performance for the SJV area than the other tested models. Details on the model and its selection can be found in Appendix D to the 2004 SIP. The meteorological modeling was based on a hybrid approach, using the Meso-scale Model 5 (MM5) and Calmet models, because of the ability of this modeling system to reproduce the measured design value near the Fresno monitoring site.

Information on how the CAMX modeling meets EPA guidance is summarized here and detailed in the State's submittals. 2004 SIP at Chapter 5 and Appendix D. The air quality modeling domain extends from the Oregon border in the north to Los Angeles County in the south, and from the Pacific Ocean in the west to Nevada in the east.

EPA's Guideline on the use of photochemical grid models recommends that areas model three or

[20] The ROP demonstration relies on ''the emission control program as it existed when the Valley's 2004 SIP was submitted * * *'' 2008 Clarification at 6. As discussed in section III.C.2.c.i. above, all baseline measures are either federal, SIP-approved, proposed for approval, or otherwise creditable in ROP demonstrations.

[21] See ''How to calculate non-creditable reductions for motor vehicle programs in California as required for reasonable further progress (RFP) SIPs,'' EPA, Office of Transportation and Air Quality, Transportation and Regional Program Division, September 6, 2007.

[22] EPA has issued the following guidance regarding air quality modeling used to demonstrate attainment of the 1-hour ozone NAAQS: ''Guideline for Regulatory Application of the Urban Airshed Model,'' EPA–450/4–91–013 (July 1991); ''Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS,'' EPA–454/B–95–007 (June 1996); ''Guidance for the 1-hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstrations, Mid-Course Review Guidance'' (March 28, 2002); and ''Guidance for Improving Weight-of-Evidence Through Identification of Additional Emission Reduction Not Modeled'' (Nov 99). Copies of these documents may be found on EPA's Web site at *http://www.epa.gov/ttn/scram* and in the docket for this proposed rule.

[23] EPA has not recommended a model for attainment demonstrations for the 8-hour ozone standard.

more episodes, including the types of weather conditions most conducive to ozone formation. The final photochemical grid modeling submitted by California focused on the CAMx modeling for one several day episode, July 27 to August 2, 2000. This episode represents high measured ozone, with a peak measured concentration of 151 parts per billion (ppb) at Bakersfield on August 2, 2000. The episode was typical of the worst case meteorology (i.e., the highest potential for ozone formation) of episodes in the San Joaquin Valley.

The CAMx model was run using the MM5/CALMET meteorological processor with State emission inventories for the 2000 base year and with projected emissions representing grown and controlled emissions for the attainment year. The projected 2010 emissions inventory was developed for modeling simulations and included the effects of projected growth and control measures adopted prior to September 2002, as discussed in section II.C. below.

The CAMx simulation for July 30, with the emission inventory for the year 2010, was used to develop targets for reduction of VOC and NO_X in the attainment year.

EPA has established the following guidelines for model performance: unpaired peak ratio 0.80–1.2, normalized bias +/−15 percent, and gross error less than 35 percent. The model performance is presented in Appendix D to the 2004 SIP for the Fresno and Bakersfield areas, representing areas of highest 1-hour ozone levels in the SJV area and shows that the CAMx model predicts ozone within the quality limits recommended in EPA guidance on most days for most subregions of the modeling domain. On those days for which a subregion had peak measured ozone concentrations above 125 ppb, the model performance meets the EPA recommended criteria.

We conclude that the modeling is consistent with the CAA and EPA modeling guidance; therefore, we propose to find that the modeling analysis is adequate to support the attainment demonstration in the 2004 SIP. For more information on EPA's review of the modeling, see the TSD, section II.

3. The Attainment Demonstration in the 2004 SIP

The 2004 SIP's air quality modeling identified the SJV area's 2010 attainment target as 343.5 tpd NO_X and 314.4 tpd VOC or a reduction of 213.3 tpd of NO_X and 129.1 tpd of VOC from the 2000 projected baseline emissions. 2004 SIP, section 5.6; ARB Staff Report, section III.C. See also Table 1 above.

The 2004 SIP shows that Federal rules, rules approved or proposed for approval by EPA, the State's waiver measures, and the State's commitment for the SJV area in the 2003 State Strategy reduce the 2000 projected baseline emissions by 219.8 tpd of NO_X and 129.5 tpd of VOC by the beginning of the 2010 ozone season. These levels represent a decrease in emissions from the 2000 baseline of 38 percent NO_X and 29 percent VOC and are in excess of the reductions needed for attainment in the SJV area. Table 5 provides a summary of the 2004 SIP's attainment demonstration.

TABLE 5—2004 SIP ATTAINMENT DEMONSTRATION SUMMARY AS UPDATED BY 2008 CLARIFICATIONS

	NO_X (tpd)	VOC (tpd)
2000 baseline	556.8	443.5
2010 attainment target	343.5	314.4
Total reductions needed to attain in 2010	213.3	129.1
Reductions from creditable baseline measures and interim measures	172.2	80.8
Reductions from SIP-approved (or proposed for approval) rules	27.6	33.3
Reductions from enforceable State commitment	20	15
Total reductions from Federal rules, measures approved or proposed for approval, waiver measures, and enforceable commitments	219.8	129.1

The reductions needed for attainment of the 1-hour ozone standard in the SJV area derive from ambitious State and District rule development projects to adopt or amend new regulations to tighten controls expeditiously on existing sources and to regulate a few previously uncontrolled sources.[24] Moreover, both agencies set tight compliance schedules for their amended and newly adopted rules, requiring full compliance in most cases within one year or less. Attainment reductions also come from the benefits of mobile source fleet turnover to meet increasingly stringent Federal and State emission standards. Finally, as discussed previously, no other reasonably available control measure or set of RACMs have been identified that can advance attainment of the 1-hour ozone standard in the SJV area.

Based on our evaluation of the State's submittals, we propose to approve the 2004 SIP's demonstration of attainment as meeting the requirements of CAA sections 172 and 181 and 40 CFR 51.905(a)(1)(ii) that areas classified as extreme demonstrate attainment as expeditiously as practicable but no later than November 15, 2010.

E. Contingency Measures

1. Requirements for Contingency Measures

Sections 172(c)(9) and 182(c)(9) of the CAA require that SIPs contain contingency measures that will take effect without further action by the State or EPA if an area fails to attain the ozone standard by the applicable date (section 172(c)(9)) or fails to meet a ROP milestone (section 182(c)(9)).

The Act does not specify how many contingency measures are needed or the magnitude of emission reductions that must be provided by these measures. However, EPA provided initial guidance interpreting the contingency measure requirements in the General Preamble at 13510. Our interpretation is based upon the language in sections 172(c)(9) and 182(c)(9) in conjunction with the control measure requirements of sections 172(c), 182(b) and 182(c)(2)(B), the reclassification and failure to attain provisions of section 181(b) and other provisions. In the General Preamble, EPA indicated that states with moderate and above ozone nonattainment areas should include sufficient contingency

[24] We note that the majority of emission reductions needed to demonstrate attainment (63% of the VOC and 81% of the NO_X) come from baseline or interim measures, *i.e.*, from measures adopted prior to October, 2004. See Table 2 above.

measures so that, upon implementation of such measures, additional emission reductions of 3 percent of the emissions in the adjusted base year inventory (or such lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure is identified. The States must show that the contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions.

In subsequent guidance, EPA stated that contingency measures could be implemented early, i.e., prior to the milestone or attainment date.[25] Under this policy, States are allowed to use excess reductions from already adopted measures to meet the CAA sections 172(c)(9) and 182(c)(9) contingency measures requirement. The key is that the CAA requires extra reductions that are not relied on for ROP or attainment and that will provide a cushion while the plan is being revised to fully address the failure. Nothing in the CAA precludes a State from implementing such measures before they are triggered. This approach has been approved by EPA in numerous SIPs. See 62 FR 15844 (April 3, 1997); 62 FR 66279 (December 18, 1997); 66 FR 30811 (June 8, 2001); 66 FR 586 and 66 FR 634 (January 3, 2001). A recent court ruling upheld this approach. See *LEAN* v. *EPA*, 382 F.3d 575 (5th Cir. 2004). 70 FR 71611, 71651.

As discussed in section II above, EPA initially determined that contingency measures for the 1-hour ozone standard would not be required once the standard was revoked. See 70 FR 30592 (May 26, 2005). However, the D.C. Circuit in *South Coast* vacated the provision of the Phase 1 rule that waived the 1-hour contingency measure requirements. Consequently, States subject to the anti-backsliding requirements must continue to meet the CAA sections 172(c)(9) and 182(c)(9) requirements. We have recently proposed to revise § 51.900(f) in order to remove the vacated provision and to add language consistent with the Court's holding that contingency measures for failure to attain or to make reasonable further progress toward attaining the 1-hour standard continue to apply in such areas. See 74 FR 2936 (January 16, 2009).

2. Contingency Measures in the 2004 SIP and 2008 Clarifications

Table 2 in the 2008 Clarifications provides an updated ROP demonstration that shows that, after meeting the VOC ROP milestones for 2008 and 2010 with NO_X substitution, there are still creditable NO_X reductions of 17.5 percent of the adjusted baseline for the 2008 milestone and 16 percent for the 2010 milestones. See also Table 4 in this proposed rule. The reductions shown in Table 2 in the 2008 Clarifications come from creditable measures adopted prior to September 2002 and not from any interim or control strategy measures. 2008 Clarifications, page 6.

In addition, Table 3 in the 2008 Clarifications, which is reproduced as Table 6 below, shows that on-road fleet turnover will continue to deliver substantial reductions in 2011 from adopted and creditable measures, i.e., an additional 10 tpd NO_X and 5 tpd VOC beyond the reductions shown in Tables 1 and 2 in the 2008 Clarifications. These reductions are available to serve as additional contingency reductions in 2011.

3. EPA's Evaluation of the Contingency Measures in the SIP Submittals

Table 2 of the 2008 Clarifications and Table 4 above show that there are significant additional NO_X reductions beyond the levels needed to meet the 2008 and 2010 ROP milestones in the SJV area. These reductions are more than the 3 percent excess reductions suggested by EPA's policy for contingency measures and come from fully adopted and creditable measures and occur in or prior to the milestone year. We therefore propose to approve the ROP contingency measures provisions in the SJV extreme area plan as meeting CAA section 182(c)(9).

For the attainment year, 2010, the requirement is to show that there are fully adopted contingency measures that will achieve emission reductions in excess of the levels needed for attainment and sufficient to provide continued ROP in the year after the attainment date, i.e., 3 percent reductions from the pre-1990 adjusted baseline, if triggered by a failure to attain. Consistent with the ROP demonstration, an additional 3 percent equates to approximately 15.3 tpd of VOC or 20.7 tpd of NO_X with NO_X substitution.[26]

Table 4 above shows that there are no excess reductions from adopted measures in the 2004 SIP's attainment demonstration and that, in addition to the adopted measures that make significant reductions toward attainment, the plan relies on commitments to adopt measures to achieve the additional reductions needed to demonstrate attainment. Table 6 below shows that there are 10 tpd NO_X and 5 tpd VOC in reductions in 2011 from adopted on-road mobile source measures that could serve to fulfill a portion of the attainment contingency measure requirement. However, these amounts collectively provide just a 2.4 percent rate of progress in 2011, short of the suggested 3 percent.

Based on our analysis and the information currently available to EPA, there are not enough excess reductions to satisfy the contingency measure requirement for the attainment demonstration. We therefore propose to disapprove the attainment contingency measures provision in the San Joaquin Valley extreme area plan as not meeting the requirements of CAA section 172(c)(9). The State may remedy this failure by submitting either new contingency measures or a demonstration that existing creditable measures provide, consistent with the guidance cited above, sufficient emission reductions in 2011.

F. Proposed Findings on Other Requirements for Extreme Nonattainment Areas

1. TCMs To Offset Growth in Motor Vehicle Emissions Under CAA Section 182(d)(1)

CAA section 182(d)(1)(A) requires that extreme areas submit transportation control measures (TCMs) sufficient to offset any growth in emissions from growth in VMT or the number of vehicle trips, and to provide (along with other measures) the reductions needed to meet ROP. This VMT offset requirement is a continuing applicable requirement for 1-hour ozone nonattainment areas under EPA's 8-hour ozone implementation rule. See 40 CFR 51.900(f)(11). EPA interprets this CAA provision to allow areas to meet the requirement by demonstrating that emissions from motor vehicles decline each year through the attainment year. General Preamble at 13522.

Information in the 2008 Clarifications and reproduced in Table 6 below shows that on-road mobile source emissions of VOC and NO_X decline steadily from 2000 to 2011. This decline in emissions is due to EPA's and California's on-road mobile source programs. As discussed above, these programs are fully creditable in attainment and ROP demonstrations and therefore can also be used to demonstrate compliance with CAA section 182(d)(1). Because

[25] See Memorandum from G.T. Helms, EPA, to EPA Air Branch Chiefs, Regions I–X, entitled ''Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' August 13, 1993.

[26] States may use a combination of NO_X and VOC reductions to meet the 3 percent contingency requirement. See General Preamble at 13520, footnote 6.

emissions decline each year for both VOC and NO_X, the plan need not include additional TCMs to offset growth; therefore, we propose to find that the 2004 SIP as amended by the 2008 Clarifications meets this CAA requirement.

TABLE 6—BASELINE MOTOR VEHICLE EMISSIONS 2000–2011

[San Joaquin Valley, Summer Planning, in tons per day]

Year	00	01	02	03	04	05	06	07	08	09	10	11
VOC	115	107	100	93	88	82	77	72	67	63	59	54
NO_X	223	218	211	201	192	184	176	166	157	148	137	127

The emission levels in Table 6 are derived from the inventory used in the modeling analysis for the 2004 SIP and are calculated using EMFAC2002, version 2.2, and the same transportation activity projections used in the 2004 SIP.

2. Clean Technology and/or Fuels for Boilers

CAA section 182(e)(3) provides that SIPs for extreme areas must require each new, modified, and existing electric utility and industrial and commercial boiler that emits more than 25 tpy of NO_X to burn as its primary fuel natural gas, methanol, or ethanol (or a comparably low polluting fuel), or use advanced control technology (such as catalytic control technology or other comparably effective control methods). This requirement is a continuing applicable requirement for 1-hour ozone nonattainment areas under EPA's Phase 1 rule. See 40 CFR 51.905(a)(1)(i) and 51.900(f)(7).

Further guidance on this requirement is provided in the General Preamble at 13523. According to the General Preamble, boilers should generally be considered as any combustion equipment used to produce steam and would generally not include a process heater that transfers heat from combustion gases to process streams. General Preamble at 13523. In addition, boilers with rated heat inputs less that 15 million Btu (MMBtu) per hour which are oil or gas fired may generally be considered not subject to these requirements since it is unlikely that they will exceed the 25 tpy NO_X emission limit. General Preamble at 13524.

The 2004 SIP, which addresses the CAA section 182(e)(3) requirements on page 4–37, states that District Rules 4305, 4306, and 4352 address NO_X from affected boilers and that these rules meet the requirements of the CAA. Since submittal of the 2004 SIP, Rule 4305 has been superseded by Rules 4306, 4307, and 4308.

Rule 4306 ''Boilers, Steam Generators, and Process Heaters—Phase 3'' as revised on September 18, 2003, applies to any gaseous fuel or liquid fuel fired boiler, steam generator, or process heater with a total rated heat input greater than 5 million Btu per hour. The emission limits in the rule, which range from 5 ppm to 30 ppm for gaseous fuels and is 40 ppm for liquid fuels, cannot be achieved without the use of advance control technologies. See ''Alternative Control Techniques Document—NO_X Emissions from Industrial/Commercial/Institutional (ICI) Boilers,'' Emissions Standards Division, EPA, March 1994. We approved Rule 4306 as a SIP revision on May 18, 2004 at 69 FR 28061.

Rule 4307 ''Boilers, Steam Generators, and Process Heaters—2.0 MMBtu/hr to 5.0 MMBtu/hr,'' as revised on April 20, 2006, applies to any gaseous fuel or liquid fuel fired boiler, steam generator, or process heater with a total rated heat input greater than 2.0 MMBtu per hour but less than 5.0 MMBtu per hour. Rule 4308 ''Boilers, Steam Generators, and Process Heaters—0.075 MMBtu/hr to 2.0 MMBtu/hr,'' as revised on October 20, 2005, applies to any gaseous fuel or liquid fuel fired boiler, steam generator, or process heater with a total rated heat input greater than 0.075 MMBtu per hour but less than 2.0 MMBtu per hour. The limits in these rules, which are 30 ppm for gaseous fuels and for 40 ppm for liquid fuels for units between 2 and 5 MM Btu/hour and between 30 ppm and 77 ppm for units between 0.75 and 5 MM Btu/ hour, could not be met without the use of advance control technologies. We approved both rules as SIP revisions on May 30, 2007 at 72 FR 29887.

Rule 4352 ''Solid Fuel Fired Boilers, Steam Generators And Process Heaters,'' as revised May 18, 2006, applies to any boiler, steam generator or process heater fired on solid fuel at a source that has a potential to emit more than 10 tons per year of NO_X or VOC. In order to meet the emission limitations in this rule, which are between 115 and 200 ppm, sources use advance NO_X control technologies. See ''Reasonably Available Control Technology (RACT) Demonstration and Negative Declaration for Two Source Categories Covered By EPA Control Techniques Guidelines, SJVAPCD, April 2009, p. 4–67. We proposed to approve Rule 4352 on May 30, 2007 at 72 FR 29901.[27]

Based on our review of the emission limitations in SJVAPCD's rules, we propose to find that the SJV area meets the clean fuel/clean technology for boilers requirement in CAA section 182(e)(3).

3. Adequate Resources and Enforcement Authority

CAA Section 110(a)(2)(E)(i) requires that implementation plans provide necessary assurances that the State (or the general purpose local government) will have adequate personnel, funding and authority under State law to carry out the submitted plan. Under this section, a State needs to provide assurances of adequate personnel, funding and authority for its submitted implementation plan. These requirements are further defined in EPA's regulations at 40 CFR part 51, subpart L (authority) and §§ 51.280 (resources). States and responsible local agencies must demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine compliance. SIPs must also describe the resources that are available or will be available to the State and local agencies to carry out the plan, both at the time of submittal and during the 5-year period following submittal.

The 2004 SIP and 2003 State Strategy do not directly address the resources requirement in EPA regulations. However, as submitted, the 2004 SIP and 2003 State Strategy consist of a description of the result of technical work already completed by ARB and the District to develop emission inventories, perform air quality modeling, analyze potential controls, and to evaluate the effect of those controls on attainment and ROP in the SJV nonattainment area. The 2004 SIP contains commitments by the District to adopt certain rules or rule

[27] Concurrent with the May 30, 2007 proposal, we also approved Rule 4352 in a direct final action. See 72 FR 29887. Because we received adverse comments on this direct final action, we withdrew it on July 30, 2007 (72 FR 41450). This withdrawal, however, left the proposed action in place.

revisions and commitments by the District and ARB to achieve certain emission reductions. At this point in time, the District has adopted all the rules it committed to adopt. See Table 2 of this proposal. California has also made substantial progress in adopting rules to fulfill its commitment and has an ambitious rulemaking schedule for 2009 and 2010. See section III.C.1.c. of this proposal. By carrying out their commitments in these plans, which were submitted in November 2004 (almost 5 years ago), both the District and ARB have demonstrated that they have adequate resources.

The District's and State's authorities to adopt and enforce plans, rules and regulations to achieve and maintain Federal air quality standards are listed in the resolutions of adoption that accompany the plans' submittals. See ARB Resolutions 04–29, October 28, 2004 (adopting the SJV 1-hour ozone plan) and 03–22 (October 23, 2003) (adopting the 2003 State Strategy). These authorities are found in California's Health and Safety Code (HSC) at sections 40000, 40002, 40701, 40702, and 41650 for the District and 39002, 39500, 39602, 40469, 41650, and part 5 for ARB. These authorities are sufficient to meet CAA and EPA requirements.

EPA regulations at 40 CFR 51.111 also require that plans describe procedures for monitoring compliance, procedures for handling violations, and designation of the agency responsible for enforcement.

The District has primary responsibility under California law to adopt and enforce rules controlling air pollution from nonvehicular source rules. CA HSC 40001. See also ARB Resolution 04–29, October 28, 2004. ARB has primary responsibility under California law to adopt and enforce rules controlling air pollution form vehicular (including fuels) and consumer products. CA HSC 39002, 39500, part 5, and 41712.

The 2004 SIP and 2003 State Strategy do not describe procedures for monitoring compliance and for handling violations; however, this information is readily available on the Internet. The District's source monitoring and enforcement programs, including its procedures for handling violations, are described on its Web site at *http://www.valleyair.org* under ''Compliance Assistance.'' ARB's source monitoring and enforcement programs including its procedures for handling violations, are described at *http://www.arb.ca.gov/enf/enf.htm*. Specific compliance monitoring procedures (such as test methods, recordkeeping and/or continuous monitoring) are evaluated as part of EPA's action on individual rules. See, for example, proposed action on several SJVAPCD surface coating rules at 74 FR 28467 (June 15, 2009).

IV. SJVAPCD Rule 9310 School Bus Fleets

On September 21, 2006, SJVAPCD adopted Rule 9310, ''School Bus Fleets,'' to regulated NO_X, PM, and diesel toxic air contaminants from in-use school bus fleets. The rule was submitted to EPA by the State on December 29, 2006. See letter, Michael S. Scheible, ARB, to Wayne Nastri, EPA, December 29, 2006. We found the submittal complete on February 13, 2007. See Letter, Deborah Jordan, EPA to Catherine Weatherspoon, ARB. A copy of the adopted rule and the material submitted with it can be found in the docket for this proposed action. Estimated reductions from the rule for 2010 are listed in Table 2 above.

Rule 9310 applies to all school bus fleet operators with one or more buses, including both public and private operators and any contractors who provide school bus services. Under provisions of the rule, fleet operators must replace by no later than January 1, 2016 any diesel school buses in their fleet manufactured before January 1, 1978 with buses that meet the applicable ARB or EPA emission standards for the year the bus is delivered to the operator. For diesel buses manufactured after January 1, 1978, fleet operators have the option to replace them with buses that meet the applicable ARB and EPA emission standards for the delivery year, retrofit them with an Approved Diesel Emission Control Strategy (i.e., ARB level 3 verified technologies to reduce PM and or other precursor emissions by at least 85%), or repower them with an engine meeting the ARB or EPA emissions standards that are applicable to engines produced on and after October 1, 2002. Rule 9310, section 5.1.1.

The rule also requires existing alternative or gasoline-fueled school buses and any diesel school buses manufactured after October 1, 2002 to operate per manufacturers' specification and, if replaced, the operator must replace with a school bus that meets all applicable emissions standards for the delivery year. Rule 9310, section 5.1.2. New school buses and additions to school bus fleets must meet all ARB and EPA applicable emissions standards for the delivery year. See Rule 9310, section 5.2.

Administrative requirements in Rule 9310 require each operator to provide the District with a list identifying existing school bus fleets by January 1, 2007 and to include information specific to each affected bus and an explanation of how each school bus will comply with the requirements of Rule 9310. See Rule 9310, section 6.1

Rule 9310 requires operators to maintain records for a minimum of five years of each school bus annual mileage, amount of fuel purchased by fuel type, and travel records beginning on and after September 21, 2006. These records must be made available for inspection by the District's Air Pollution Control Officer (APCO) upon request. Rule 9130, section 6.4.

Rule 9310 is enforced by the APCO under the authority of the California HSC, Sections 40001, 40702, 40752, and 40753, and by all officers and employees empowered by Sections 40120 and 41510. Enforceability is mainly tied to school bus fleet operators' reporting requirements.

In reviewing a rule for SIP approval, EPA looks to assure that the rule is enforceable as required by CAA section 110(a)(2)(A), is consistent with all applicable EPA guidance, and does not relax existing SIP requirements as required by sections 110(l) and 193.

We have determined that the recordkeeping and reporting requirements in Rule 9310 are sufficient for enforceability. EPA has not issued any guidance applicable to rules such as Rule 9310. There are no previous versions of Rule 9310 and, as such, its approval would strengthen the SIP. EPA's approval of Rule 9310 would also not interfere with attainment, reasonable further progress or any other requirement of the CAA. We therefore propose to approve SJVAPCD Rule 9130 under CAA section 110(k)(3) as part of California SIP for the SJV area.

V. Proposed Actions

A. Summary

1. EPA is proposing to approve pursuant to CAA section 110(k)(3), the following elements of the 2004 SIP and the 2008 Clarifications:

a. The rate of progress demonstration as meeting the requirements of CAA sections 172(c)(2) and 182(c)(2);

b. The rate-of-progress contingency measures as meeting the requirements of CAA section 182(c)(9); and

c. The attainment demonstration as meeting the requirements of 182(c)(2)(A) and 181(a).[28]

[28] The 2004 SIP also included motor vehicle emission budgets (MVEB) for NO_X and VOC for the milestone year of 2008 and attainment year of 2010. We do not address these budgets in this proposal because they are no longer required for the 1-hour ozone standard. Furthermore, the budgets in the

The proposed approval of the attainment demonstration is predicated in part on emission reductions from a number of State and District rules that we have proposed to approve in separate actions. These proposed-for-approval rules, combined with previously approved rules and other creditable measures, provide more than the minimum reductions needed for attainment of the 1-hour standard in the SJV area. See Table 5 above. Should we be unable to finalize approval of one or more of these rules and, as a result, there is a shortfall in the needed emission reductions, we will not be able to finalize our proposed approval of the attainment demonstration.

2. EPA is proposing to find pursuant to CAA section 110(k)(3) that the 2004 SIP and the 2008 Clarifications meet the requirements of:

a. CAA section 182(e)(3) for clean fuel/clean technology for boilers; and

b. CAA section 182(d)(1)(A) for TCMs sufficient to offset any growth in emissions from growth in VMT or the number of vehicle trips.

3. EPA is proposing to approve pursuant to CAA section 110(k)(3) section 4.7 in the 2004 SIP and the provisions of the 2003 State Strategy and ARB Board Resolution 04–29 that relate to aggregate emission reductions in the San Joaquin Valley Air Basin as meeting the requirements of CAA sections 110(a)(2)(A) and 172(c)(6).

4. EPA is proposing to approve pursuant to CAA section 110(k)(3), the 2004 SIP, the 2003 State Strategy and the 2008 Clarifications as meeting the RACM (exclusive of RACT) requirements of CAA section 172(c).

5. EPA is proposing to approve pursuant to CAA section 110(k)(3), SJVAPCD Rule 9310 School Bus Fleets (adopted September 21, 2006) into the San Joaquin Valley portion of the California SIP.

6. EPA is proposing to disapprove pursuant to CAA section 110(k)(3) the attainment contingency measures in the 2004 SIP and the 2008 Clarifications as failing to meet the requirements of CAA section 172(c)(9).

B. Effect of Finalizing the Proposed Disapproval Actions

If we should finalize our disapproval of the attainment contingency measures, the offset sanction in CAA section 179(b)(2) will be applied in the SJV 1-hour ozone nonattainment area 18 months after the effective date of the final disapproval. The highway funding sanctions in CAA section 179(b)(1) will apply in the area 6 months after the offset sanction is imposed. Neither sanction will be imposed if California submits and we approve prior to the implementation of the sanctions replacement attainment contingency measures.

In addition to the sanctions, CAA section 110(c)(1) provides that EPA must promulgate a Federal implementation plan addressing the 1-hour ozone contingency measures in the SJV area, two years after the effective date of a disapproval should we not be able to approve replace attainment contingency measures adopted and submitted by the State.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to either review by the Office of Management and Budget or to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

This action merely proposes to approve in part and disapprove in part a State-adopted attainment plan and to approve a State-adopted rule for the San Joaquin Valley Air Basin and does not impose any additional requirements. Accordingly, the Administrator certifies that this proposed action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed action does not impose any additional enforceable duties, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the plan is not approved to apply in Indian country located in the State. It will not impose substantial direct costs on tribal governments or preempt tribal law.

This proposed action also does not have Federalism implications because it does 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed action merely proposes to approve in part and disapprove in part a State-adopted plan and to approve a State-adopted rule and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency actions by directing agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations. Today's action involves a proposed approval in disapproval in part of a State-adopted plan and proposed approval of a State-adopted rule. It will not have disproportionately high and adverse effects on any communities in the area, including minority and low-income communities.

This proposed action also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 30, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E9–16492 Filed 7–13–09; 8:45 am]

BILLING CODE 6560–50–P

2004 SIP have been replaced by budgets in the SJV plan for the 1997 8-hour ozone standard.

As discussed in section II. of this proposal, EPA has revoked the 1-hour ozone standard. As a result, transportation conformity determinations and thus budgets are no longer required for that standard. Under our transportation conformity regulations, 8-hour ozone MVEBs replace existing 1-hour ozone MVEBs once the 8-hour ozone MVEBs are found adequate or are approved. See 40 CFR 93.109(e)(1) and (2). Although the MVEB budgets from the 2004 SIP have been used in the initial conformity determinations in the SJV area for the 1997 8-hour ozone standard, these budgets have now been replaced by budgets in the SJV 8-hour ozone plan which were found adequate on January 8, 2009. See Letter, Deborah Jordan, EPA to James Goldstene, ARB, ''Adequacy Status of San Joaquin Valley 8-Hour Ozone Rate of Progress and Attainment Plan Motor Vehicle Emissions Budgets'' and 74 FR 4032 (January 22, 2009). Thus, because the 1-hour ozone budgets will have no further utility, we are not proposing action on them here.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0492; FRL–8930–5]

Revisions to the California State Implementation Plan, San Joaquin Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the San Joaquin Valley Air Pollution Control District (SJVAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from confined animal facilities (CAFs) such as dairies, cattle feedlots, poultry and swine farms. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by *August 13, 2009.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0492, by one of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415) 947–4115, *Steckel.Andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Agency	Rule	Rule title	Adopted	Submitted
SJVAPCD	4570	Confined Animal Facilities	06/18/09	06/26/09

This rule submittal meets the completeness criteria in 40 CFR Part 51 Appendix V.

B. Are there other versions of this rule?

There are no previous versions of Rule 4570 in the SIP. The rule was submitted to EPA on October 5, 2006, but we have not acted on this submittal. Subsequent decisions in California state court [1] concerning the rule resulted in readoption and resubmittal of the rule as shown above.

C. What is the purpose of the submitted rule?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. Rule 4570 is designed to decrease VOC emissions from dairies, beef feedlots, poultry and swine houses, and other CAFs. The rule's requirements apply to large facilities defined in Table 1 of the rule; for example, dairies with more than 1000 milk cows, beef feedlots with more than 3000 cattle, and poultry facilities with more than 650,000 chickens. These CAFs must obtain a permit from the SJVAPCD codifying the VOC mitigation measures the owner/operator chooses to implement from the relevant menus in Tables 2–6 of the rule. Sections 6–8 of the rule describe additional facility requirements concerning permitting, recordkeeping, compliance testing and monitoring.

EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA evaluating the rule?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and (b)(2)), and must not relax existing requirements (see sections 110(l) and 193). The SJVAPCD regulates an ozone nonattainment area (see 40 CFR part 81) and has CAFs large enough to be major sources of VOC emissions, so Rule 4570 must fulfill RACT.

[1] *See Association of Irritated Residents* v. *San Joaquin Valley Unified Air Polution Control Dist.,* 168 Cal. Ap. 4th 535 (Cal. App. 5 Dist. 2008).

Guidance and policy documents that we use to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

Our TSD lists additional references used in our review.

B. Does the rule meet the evaluation criteria?

Rule 4570 improves the SIP by establishing requirements that reduce VOC emissions from CAFs. Since no other version of these requirements is in the SIP, the rule fulfills our criteria regarding SIP relaxations. In addition, Rule 4570 requirements are sufficiently clear, and contain adequate monitoring, recordkeeping and other provisions to determine compliance; so, the rule fulfills our criteria regarding enforceability.

We are postponing a decision on whether the SIP submittal demonstrates that Rule 4570 implements RACT for dairies, beef feedlots and other cattle facilities. The $14.8 million National Air Emission Monitoring Study will be completed by May 2010 and VOC emission estimating methods for CAFs will be completed by November 2011. Because we expect this information is likely to help clarify RACT, we believe that a delay in evaluating SJVAPCD's RACT demonstration for various cattle operations is appropriate. However, we also believe that we have sufficient information to conclude that SJVAPCD has not demonstrated that Rule 4570 fulfills RACT for poultry and swine operations. The specific deficiencies are identified below. Our TSD provides additional information on our conclusions regarding RACT for both dairies and feedlots, and poultry and swine.

C. What are the rule's deficiencies?

These elements of the rule submittal conflict with section 182 of the Act and prevent full approval of the SIP revision.

1. Rule 4570 exempts poultry operations between 400,000 and 650,000 chickens (*see* section 4.1 of the rule); these operations should be subject to the rule as major sources of VOC emissions.

2. The rule submittal did not provide adequate analysis to demonstrate that the rule's control measure menus implement RACT for poultry and swine facilities. Such analysis should review the availability and effectiveness of controls, and may necessitate rule revisions to ensure that the rule does not allow implementation of relatively ineffective control measures when more effective measures are reasonably available to a class of operations. *Please see* our TSD for a few examples of the type of concerns that should be addressed by this analysis.

D. EPA Recommendations to Further Improve the Rule

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the SJVAPCD modifies the rule.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of Rule 4570 to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of Rule 4570 under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the SJVAPCD, and EPA's final limited disapproval would not prevent the district from enforcing the rule.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a) (2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing

requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications(is defined in the Executive Order to include regulations that have (substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This 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, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a state rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 30, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E9–16644 Filed 7–13–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0024; FRL–8930–4]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the San Joaquin Valley Unified Air Pollution Control District portion of the California State Implementation Plan. These revisions concern a local fee rule that applies to major sources of volatile organic compound and nitrogen oxide emissions within the San Joaquin Valley ozone nonattainment area. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by *August 13, 2009.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0024, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://*

www.regulations.gov is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rule Did the State Submit?

The San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) adopted Rule 3170, Federally Mandated Ozone Nonattainment Fee, on May 16, 2002. This rule was submitted by the California Air Resources Board (CARB) on August 6, 2002, for incorporation into the California State Implementation Plan (SIP). On August 30, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. What Is the Purpose of the Submitted Rule?

SJVUAPCD Rule 3170 requires major stationary sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) in the San Joaquin Valley ozone nonattainment area to pay a fee to the SJVUAPCD if the area fails to attain the 1-hour national ambient air quality standard (NAAQS) for ozone by its Federally established attainment year. The fee must be paid beginning in the second year after the attainment year, and in each calendar year thereafter, until the area is redesignated to attainment of the 1-hour ozone standard.

C. Why Was This Rule Submitted?

Under sections 182(d)(3), (e), and 185 of the Clean Air Act as amended in 1990 (CAA or the Act), States are required to adopt an excess emissions fee regulation for ozone nonattainment areas classified as severe or extreme. The 1-hour ozone NAAQS classification for the San Joaquin Valley area is extreme (*see* 69 FR 20550, April 16, 2004). The fee regulation specified by the Act requires major stationary sources of VOCs in the nonattainment area to pay a fee to the State if the area fails to attain the standard by the attainment date set forth in the Act. Section 182(f) of the Act requires States to apply the same requirements to major stationary sources of NO_X as are applied to major stationary sources of VOCs. Emissions of VOCs and NO_X play a role in producing ground-level ozone and smog, which harm human health and the environment. SJVUAPCD Rule 3170 applies to major sources of both NO_X and VOCs. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), and must not relax existing requirements (*see* sections 110(l) and 193). Due to the limited national guidance available relevant to these sorts of nonattainment fee rules, Rule 3170 was primarily evaluated for compliance with the requirements in CAA section 185. The rule was also evaluated for consistency with the CAA and EPA's general SIP policies, as well as a March 21, 2008, memorandum from William Harnett, Director of the Air Quality Policy Division, to the Regional Air Division Directors, entitled, ''Guidance on Establishing Emissions Baselines under Section 185 of the Clean Air Act (CAA) for Severe and Extreme Ozone Nonattainment Areas that Fail to Attain the 1-hour Ozone NAAQS by their Attainment Date.'' Guidance and policy documents that we use to help evaluate specific enforceability requirements typically include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.

B. Does the Rule Meet the Evaluation Criteria?

Rule 3170 improves the SIP by establishing an excess emissions fee regulation as required by the CAA. The rule is largely consistent with the CAA, as well as relevant policy and guidance regarding enforceability and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What Are the Rule Deficiencies?

The following provisions conflict with section 185 of the Act and prevent full approval of the SIP revision:

Section 4.2 exempts units that begin operation after the attainment year. CAA Section 185 does not provide for such an exemption, so this exemption does not fully comply with the CAA.

Section 4.3 exempts any ''clean emission unit'' from the requirements of the rule. Section 3.6 defines a clean emission unit as a unit that is equipped with an emissions control technology that either has a minimum 95% control efficiency (or 85% for lean-burn internal combustion engines), or meets the requirements for achieved-in-practice Best Achievable Control Technology as accepted by the APCO during the 5 years immediately prior to the end of the attainment year. The District's staff report for Rule 3170 states that the exemption is intended to address ''the difficulty of reducing emissions from units with recently installed BACT.'' Although EPA understands the District's intended purpose for including the exemption, the exemption does not comply with CAA section 185.

Section 3.2.1 defines the baseline period as two consecutive years consisting of the attainment year and the year immediately prior to the attainment year. CAA Section 185(b)(2) provides the option for calculating baseline emissions over a period of more than one calendar year if a

source's emissions are irregular, cyclical, or otherwise vary significantly from year to year. Since Section 3.2.2 allows an alternative baseline, then Section 3.2.1 should describe the normal baseline calculation which should be based only on the attainment year emissions.

Section 3.2.2 allows averaging over 2–5 years to establish baseline emissions. CAA Section 185(b)(2) states that EPA may issue guidance authorizing such an alternative method of calculating baseline emissions if a source's emissions are irregular, cyclical, or otherwise vary significantly from year to year. EPA issued guidance on alternative methods for calculating baseline emissions in the form of the memorandum from William Harnett, mentioned above. The averaging period allowed in Section 3.2.2 of Rule 3170 appears consistent with the March 21, 2008, guidance. However, the language in Section 3.2.2 allows such averaging ''if those years are determined by the APCO as more representative of normal source operation.'' This language is considered less stringent than the CAA criteria. The rule should be amended to specify use of the expanded averaging period only if a source's emissions are irregular, cyclical, or otherwise vary significantly from year to year.

D. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the Federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the SJVUAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

However, the limited approval of Rule 3170 does not override specific CAA mandates. If the area fails to attain by its 2010 attainment date, fees will accrue beginning in 2011 for emissions above 80% of source baselines for clean units and new units which are exempted from fee collection under the State rule. The State must adopt and submit a rule to collect fees for 2011 and future years from those units or, consistent with the Administrator's obligation under § 185(d), EPA will collect those fees. In addition, all sources are liable for fees calculated in accordance with the baseline definition in § 185(b)(2) and EPA guidance issued pursuant to that provision. The State must adopt and submit a rule that ensures fees are collected for 2011 and all future applicable years based on the statutory baseline requirement. If the State fails to do so, EPA will collect any additional fees owed pursuant to a Federal program under § 185(d).

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or Tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not

required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This 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, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' This proposed rule does not have Tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from Tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 30, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E9–16642 Filed 7–13–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 17, 22, 36, and 52

[FAR Case 2009–005; Docket 2009–0024; Sequence 1]

RIN 9000–AL31

Federal Acquisition Regulation; FAR Case 2009–005, Use of Project Labor Agreements for Federal Construction Projects

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13502, Use of Project Labor Agreements for Federal Construction Projects. The new E.O. encourages Federal departments and agencies to consider requiring the use of project labor agreements for Federal construction projects where the total cost to the Government is more than $25 million in order to promote economy and efficiency in Federal procurement.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before August 13, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2009–005 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2009–005'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2009–005. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FAR Case 2009–005'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2009–005 in all

correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR case 2009–005.

SUPPLEMENTARY INFORMATION:

A. Background

On February 6, 2009, the President issued E.O. 13502 which encourages executive agencies to consider requiring the use of project labor agreements in connection with large scale construction projects in order to promote economy and efficiency in Federal procurement. The E.O. encourages executive departments and agencies to consider the use of project labor agreements for construction projects where the total cost to the Government is valued at $25 million or more and permits agencies on a project-by-project basis to require the use of a project labor agreement where certain criteria would be met.

The term ''project labor agreement'' means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

The E.O. describes how project labor agreements may help agencies manage workforce challenges that arise in connection with large-scale construction projects. For example, large-scale construction projects typically involve multiple employers at a single location.

The E.O. explains that a ''lack of coordination among various employers, or uncertainties about the terms and conditions of employment of various groups of workers, can create friction and disputes in the absence of an agreed-upon resolution and mechanism''. The use of project labor agreements may ''prevent these problems from developing by providing structure and stability to large-scale construction projects thereby promoting the efficient and expeditious completion of Federal construction contracts.'' A project labor agreement may help an agency manage these problems by providing an agreed-upon resolution mechanism that promotes the efficient and expeditious completion of Federal construction projects.

In accordance with E.O. 13502, this proposed rule amends the FAR to—

- Provide a new FAR Subpart 22.5, Use of Project Labor Agreements for Federal Construction Projects.
- Add a new provision at 52.222–XX, Notice of Requirement for Project Labor Agreement, to be included in solicitations where the agency has exercised its discretion to require a project labor agreement as prescribed at FAR 22.505(a).
- Add a new clause 52.222–YY, Project Labor Agreement, to be included in contracts in accordance with FAR 22.505(b).

The Councils invite comment on the process, in which the solicitation incorporates the provision providing for submission of the project labor agreement prior to the contract award (*i.e.*, should agencies require this from each offeror as part of its bid or only from an apparent successful offeror).

The Councils are also considering factors for the contracting officer to consider, on a project-by-project basis, in determining whether use of a project labor agreement will be in the best interest of the Government. The Councils welcome public comment on the factors that should be considered, such as the difficulty of coordinating multiple contracts in the absence of a project labor agreement, the importance of timely project completion, etc.

The Director of the Office of Management and Budget (OMB) is working with the Secretary of Labor and other officials, to provide recommendations to the President on whether to broaden the application of project labor agreements on both construction projects awarded under Federal contracts and construction projects receiving Federal financial assistance, to promote the economical, efficient, and timely completion of such projects.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rationale for this determination is based on the discretionary nature of the regulation being promulgated and the fact that the application of the rule is only in connection with large scale construction projects over $25 million (those that would likely impact large businesses). Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 17, 22, 36, and 52, in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.*; (FAR case 2009–005), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) addresses the collection of information by the Federal government from individuals, small businesses and state and local governments and seeks to minimize the burdens such information collection requirements might impose. A collection of information includes providing answers to identical questions posed to, or identical reporting or record-keeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States. In accordance with the requirements of the Paperwork Reduction Act, agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number or the number appears in the Code of Federal Regulations (see FAR 1.106).

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat will submit a request for approval of a new information collection requirement concerning FAR Case 2009–005 to the OMB under 44 U.S.C. Chapter 35, *et seq.*

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Councils solicit comments concerning: whether these information collection requirements are necessary for the Government to properly perform its functions, including whether the information has practical utility; the accuracy of the estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collecting information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

The rule will apply to large-scale construction projects where the cost to the Government is $25 million or more and where agencies have determined that use of a project labor agreement, in accordance with requirements prescribed by this rule, will advance the

Government's interest in achieving economy and efficiency in the resulting procurement. Most prime contractors for such projects are large business concerns. We estimate the annual total burden hours as follows:

Based on Fiscal Year 2008 data regarding the types of contracts to which this information collection applies, it is estimated that there are approximately 300 large-scale construction contracts (including Architectural and Engineering contracts) exceeding $25 million that could be subject to an agency determination for use of project labor agreements. Based on advice of labor advisors, approximately 10 percent of these types of projects may be deemed appropriate for a project labor agreement. Therefore, it is estimated the information collection requirement would apply to approximately 30 large-scale construction contracts per year. Each contract would require one project labor agreement submission prior to or after award; therefore, the estimated number of annual respondents is 30. Project labor agreements are often negotiated in advance of the solicitation phase for a procurement, as the large-scale projects are defined. The estimated time for reporting of this information is 1 hour to cover copying and submitting the agreement to the Government.

We estimate the total annual public cost burden for these elements to be $900, based on the following:

Respondents	30
Responses/respondent	× 1
Responses	30
Hours per response	× 1
Total hours	30
Cost per hour	× $30
Total annual cost to public	$900

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than August 13, 2009 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, Washington, DC 20405.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and 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.

Requester may obtain a copy of the justification from the General Services Administration, Regulatory Secretariat (VPR), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–00XX, Use of Project Labor Agreements for Federal Construction Projects, in all correspondence.

List of Subjects in 48 CFR Parts 2, 17, 22, 36, and 52

Government procurement.

Dated: July 9, 2009.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, the Councils propose amending 48 CFR parts 2, 17, 22, 36, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 17, 22, 36, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

2. Amend section 2.101(b)(2) in the third sentence in the definition ''Construction'' by removing the words ''personal property'' and adding ''personal property (except that for use in Subpart 22.5, see the definition at 22.502).''

PART 17—SPECIAL CONTRACTING METHODS

3. In section 17.603 revise paragraph (c) to read as follows:

17.603 Limitations.

* * * * *

(c) For use of project labor agreements, see Subpart 22.5.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

4. In section 22.101–1 revise paragraph (b)(2) to read as follows:

* * * * *

(b)(1) * * * *

(2) For use of project labor agreements, see Subpart 22.5.

5. Add Subpart 22.5 to Part 22 to read as follows:

Subpart 22.5 Use of Project Labor Agreements for Federal Construction Projects.

Sec.

This subpart prescribes policies and procedures to implement Executive Order 13502, February 6, 2009.

22.502 Definitions.

As used in this subpart—

Construction means construction, rehabilitation, alteration, conversion, extension, repair, or improvement of buildings, highways, or other real property.

Labor organization means a labor organization as defined in 29 U.S.C. 152(5).

Large-scale construction project means a construction project, including all contracts associated with the project, where the total cost to the Federal Government is $25 million or more.

Project labor agreement means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

22.503 Policy.

Project labor agreements are a tool that agencies may use to promote economy and efficiency in Federal procurement. Pursuant to Executive Order 13502, agencies are encouraged to consider requiring the use of project labor agreements in connection with large-scale construction projects.

22.504 General requirements for project labor agreements.

(a)(1) Agencies may require the use of project labor agreements where use of such agreements will—

(i) Advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters; and,

(ii) Be consistent with law.

(2) If an agency determines that use of a project labor agreement will meet the standards set forth in paragraphs (a)(1)(i) and (ii) of this section, the agency has complete discretion—

(i) To require that every contractor and subcontractor on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more appropriate labor organizations; or

(ii) To decide not to require the use of a project labor agreement.

(b) Project labor agreements established under this subpart shall—

(1) Bind all contractors and subcontractors on the construction project to comply with the project labor agreement;

(2) Allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(3) Contain guarantees against strikes, lockouts, and similar job disruptions;

(4) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;

(5) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and

(6) Fully conform to all statutes, regulations, and Executive orders.

22.505 Solicitation provision and contract clause.

(a)(1) For acquisition of large-scale construction projects, if the agency makes a determination pursuant to this subpart that a project labor agreement will be required, the contracting officer shall insert the provision at 52.222–XX, Notice of Requirement for Project Labor Agreement, in all solicitations associated with the project.

(2) If an agency allows submission of the project labor agreement after contract award, the contracting officer shall use the provision with its Alternate I in accordance with agency procedures.

(b)(1) For acquisition of large-scale construction projects, if the agency makes a determination pursuant to this subpart that a project labor agreement will be required, the contracting officer shall insert the clause at 52.222–YY, Project Labor Agreement in all contracts associated with the project.

(2) If an agency allows submission of the project labor agreement after contract award, the contracting officer shall use the clause with its Alternate I in accordance with agency procedures.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

6. In section 36.202 revise paragraph (d) to read as follows:

36.202 Specifications.

* * * * *

(d) For requirements on the use of project labor agreements for Federal construction projects, see part 22, Subpart 22.5 of this chapter.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Add section 52.222–XX to read as follows:

52.222–XX Notice of Requirement for Project Labor Agreement.

As prescribed in 22.505(a)(1), insert the following provision:

NOTICE OF REQUIREMENT FOR PROJECT LABOR AGREEMENT (DATE)

(a) *Definitions. Labor organization and project labor agreement*, as used in this provision, are defined in the clause of this solicitation entitled Project Labor Agreement.

(b) Consistent with applicable law, the apparent successful offeror will be required to execute a project labor agreement with one or more appropriate labor organizations for the term of the resulting construction contract.

(c) Any project labor agreement reached pursuant to this provision shall—

(1) Bind the offeror and all subcontractors on the construction project to comply with the project labor agreement;

(2) Allow the offeror and all subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(3) Contain guarantees against strikes, lockouts, and similar job disruptions;

(4) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the project labor agreement;

(5) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and

(6) Fully conform to all statutes, regulations, and Executive orders.

(d) Any project labor agreement reached pursuant to this provision does not change the terms of this contract or provide for any price adjustment by the Government.

(e) The Government will not participate in the negotiations of any project labor agreement.

(f) The apparent successful offeror shall submit to the Contracting Officer a copy of the project labor agreement—reached pursuant to this provision prior to contract award.

(End of Provision)

Alternate I (DATE) As prescribed in 22.505(a)(2), substitute the following paragraph (b) in lieu of paragraphs (b) through (f) of the basic clause:

(b) Consistent with applicable law, the contractor agrees to bargain in good faith to a project labor agreement with one or more appropriate labor organizations for the term of the resulting construction contract.

8. Add section 52.222–YY to read as follows:

52.222–YY Project Labor Agreement.

As prescribed in 22.505(b)(1), insert the following clause:

PROJECT LABOR AGREEMENT (DATE)

(a) *Definitions.* As used in this clause—

Labor organization means a labor organization as defined in 29 U.S.C. 152(5).

Project labor agreement means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

(b) The Contractor shall maintain in a current status throughout the life of the contract the project labor agreement entered into prior to the award of this contract in accordance with solicitation provision 52.222–XX, Notice of Requirement for Project Labor Agreement.

(c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts.

(End of Clause)

Alternate I (Date). As prescribed in 22.505(b)(2), substitute the following paragraphs (b) through (g) for paragraphs (b) and (c) of the basic clause:

(b) Consistent with applicable law, the contractor agrees to bargain in good faith to a project labor agreement with one or more appropriate labor organizations for the term of this construction contract. The contractor shall submit an executed copy of the project labor agreement to the Contracting Officer.

(c) Any project labor agreement reached pursuant to this clause shall—

(1) Bind the Contractor and all subcontractors on the construction project to comply with the project labor agreement;

(2) Allow the Contractor and all subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(3) Contain guarantees against strikes, lockouts, and similar job disruptions;

(4) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the project labor agreement;

(5) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and

(6) Fully conform to all statutes, regulations, and Executive orders.

(d) Any project labor agreement reached pursuant to this provision does not change the terms of this contract or provide for any price adjustment by the Government.

(e) The Government will not participate in the negotiations of any project labor agreement.

(f) The Contractor shall maintain in a current status throughout the life of the contract the project labor agreement entered into pursuant to this clause.

(g) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (g), in all subcontracts.

(End of Provision)

[FR Doc. E9–16619 Filed 7–10–09; 11:15 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R9-IA-2009-0016; 96100-1671-9FLS-B6]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List 14 Parrot Species as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90–day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90–day finding on a petition to list as threatened or endangered under the Endangered Species Act of 1973, as amended (Act), the following 14 parrot species: Blue-throated macaw (*Ara glaucogularis*), blue-headed macaw (*Primolius couloni*), crimson shining parrot (*Prosopeia splendens*), great green macaw (*Ara ambiguus*), grey-cheeked parakeet (*Brotogeris pyrrhoptera*), hyacinth macaw (*Anodorhynchus hyacinthinus*), military macaw (*Ara militaris*), Philippine cockatoo (*Cacatua haematuropygia*), red-crowned parrot (*Amazona viridigenalis*), scarlet macaw (*Ara macao*), thick-billed parrot *(Rhynchopsitta pachyrhyncha*), white cockatoo (*Cacatua alba*), yellow-billed parrot (*Amazona collaria*), and yellow-crested cockatoo (*Cacatua sulphurea*). The thick-billed parrot is listed as an endangered species under the Act throughout its range. As such, we will not be addressing it further as part of this petition. We have also previously determined that the blue-throated macaw warrants listing in response to a 1991 petition and has been a candidate species since. Because we have recently re-evaluated the status of this species as part of our 2008 Annual Notice of Review, we will not address it further as part of this petition. We find that the petition presents substantial scientific or commercial information indicating that listing the remaining 12 species of parrots may be warranted. Therefore, with the publication of this notice, we are initiating a status review of these 12 species of parrots to determine if listing is warranted. To ensure that the status reviews are comprehensive, we are soliciting scientific and commercial data regarding these 12 species. Additionally, we are seeking any recent information concerning the blue-throated macaw so that it can be taken into consideration in our evaluation of its status when we do our re-evaluation as part of the 2009 Annual Notice of Review.

DATES: We made the finding announced in this document on July 14, 2009. To allow us adequate time to conduct the 12–month status review, we request that we receive information on or before September 14, 2009.

ADDRESSES: You may submit information by one of the following methods:

- Federal rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R9-IA-2009-0016; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more information).

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, Chief, Branch of Listing, Endangered Species, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203; telephone 703-358-2105. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that substantial information is presented to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the following 12 parrot species: Blue-headed macaw (*Primolius couloni*), crimson shining parrot (*Prosopeia splendens*), great green macaw (*Ara ambiguus*), grey-cheeked parakeet (*Brotogeris pyrrhoptera*), hyacinth macaw (*Anodorhynchus hyacinthinus*), military macaw (*Ara militaris*), Philippine cockatoo (*Cacatua haematuropygia*), red-crowned parrot (*Amazona viridigenalis*), scarlet macaw (*Ara macao*), white cockatoo (*Cacatua alba*), yellow-billed parrot (*Amazona collaria*), and yellow-crested cockatoo (*Cacatua sulphurea*). We request scientific and commercial information from the public, concerned governmental agencies, the scientific community, industry, or any other interested parties on the status of the 12 parrot species that will be addressed as part of this petition, as well as the blue-throated macaw (*Ara glaucogularis*), throughout their range, including but not limited to:

(1) Information on taxonomy, distribution, habitat selection and trends (especially breeding and foraging habitats), diet, and population abundance and trends (especially current recruitment data) of these species.

(2) Information on the effects of habitat loss and changing land uses on the distribution and abundance of these species and their principal prey species over the short and long term.

(3) Information on the effects of other potential threat factors, including live capture and hunting, domestic and international trade, predation by other animals, and diseases of these species or their principal prey over the short and long term.

(4) Information on management programs for parrot conservation, including mitigation measures related to conservation programs, and any other private, tribal, or governmental conservation programs that benefit these species.

(5) Information relevant to whether any populations of these species may qualify as distinct population segments.

(6) Information on captive populations and captive breeding and domestic trade of these species in the United States.

We will base our 12–month finding on a review of the best scientific and commercial information available, including all information received during the public comment period. Please note that comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be part of the basis of this determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is a threatened or endangered species shall be made ''solely on the basis of the best scientific

and commercial data available.'' At the conclusion of the status review, we will issue the 12–month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your comments and materials concerning this status review by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the website. If you submit hardcopy information that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and materials we receive, as well as supporting documentation we used in preparing this 90–day finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Branch of Listing (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

The Service's regulations implementing the 90–day petition finding provisions of the Act define ''substantial scientific or commercial information'' as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

We base this finding on information provided by the petitioner that we determined to be reliable after reviewing sources referenced in the petition. We evaluated that information in accordance with 50 CFR 424.14(b). Our process for making this 90–day finding under section 4(b)(3)(A) of the Act and 50 CFR 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold.

On January 31, 2008, the Service received a petition dated January 29, 2008, from Friends of Animals, as represented by the Environmental Law Clinic, University of Denver Sturm College of Law, requesting we list 14 parrot species under the Act. The petition clearly identified itself as a petition and included the requisite identification information required at 50 CFR 424.14(a).

One of the 14 species included in the petition received from Friends of Animals, the thick-billed parrot (*Rhynchopsitta pachyrhyncha*), is already listed as ''Endangered'' in its entirety under the Act, despite the appearance from the Code of Federal Regulations (CFR) that only a distinct population segment (DPS) of the species outside of the United States is listed. In an April 30, 2009, memorandum addressed to the Service's Director, entitled, ''Status of the thick-billed parrot, wood bison, margay, and northern swift fox under the Endangered Species Act,'' the U.S. Department of the Interior's Assistant Solicitor for Fish and Wildlife provided an explanation for why this species is currently protected in its entirety and is not listed as a distinct population segment under the Act. A summary of this explanation is provided below.

The thick-billed parrot was initially provided protection under the Endangered Species Conservation Act (ESCA) – the statute that immediately preceded the current Endangered Species Act – by its inclusion on the list of Endangered Foreign Fish and Wildlife, June 2, 1970 (see 35 FR 8491). The list included a column labeled, ''Where found,'' which indicated, ''Mexico, United States'' for the thick-billed parrot. The introduction to the list explained that species were not included on the list unless they were endangered throughout all of their range and that ''[t]he 'Where Found' column is a general guide to the native countries or regions where the named animals are found'' (see 35 FR 8491, June 2, 1970; 50 CFR part 17, Appendix A (1971)). Consistent with the direction of the ESCA, the thick-billed parrot was a species that the Secretary found to be ''threatened with worldwide extinction'' (see 35 FR 8491, June 2, 1970). Therefore, this document indicates that the Service's intent was to list the thick-billed parrot in its entirety, with all individuals of the species covered under the applicable provisions of the ESCA.

In 1973, the current Endangered Species Act was passed, and in accordance with its section 4(c)(3), the species lists under the ESCA would be republished as the initial Endangered Species Act list of threatened and endangered wildlife, without public hearing, notice, or an opportunity for public comment. In 1974, the first lists of endangered and threatened species appeared in the CFR and included a ''Where found'' column like the 1970 list; the text explained that the geographic areas in this column were informational only and not a substantive part of the listing: ''[t]he 'where found' column is provided for the convenience of the public, is not exhaustive, is not required to be given by law, and has no legal significance'' (50 CFR section 17.11, 1974). Thus, the intent under the previous ESCA that the thick-billed parrot was listed in its entirety and that all individuals of the species were covered under the law was retained under the new Endangered Species Act list.

In 1979, the Service published a notice in the **Federal Register** that announced a change in the listing status for the thick-billed parrot and 6 other species. The notice stated that these species contained populations within the United States and described ESCA's provision for consultation with the States prior to listing a species (see 44 FR 43705, July 25, 1979). The notice stated that the Service had failed to consult with the governors of the States of the U.S. populations for these species, and therefore, the Service concluded that the U.S. populations were not covered under the Act. The following year, the list of endangered and threatened wildlife in the CFR was amended to indicate that only populations of the seven species outside the United States were listed under the ESA, and for the first time the CFR indicated that the listed entity for each species or subspecies was a DPS. Although the 1979 notice claimed to change the listing status of the thick-billed parrot and the other 6 species, the notice was without legal effect, because the Service did not go through the rule-making procedures required under section 553 of the Administrative Procedure Act (APA) and section 4(b)(4) of the Act. In addition, failure to consult with a State under the ESCA did not invalidate the species' legal status under the Act. In 1973 Congress validated the lists from the prior statutes through its explicit incorporation of them into the Act. The thick-billed parrot, listed in its entirety under the ESCA in 1969, has,

therefore, maintained legal protection under the current Act. Thus, in spite of the 1979 **Federal Register** notice and the current appearance of the CFR, the thick-billed parrot has been listed as ''Endangered'' in its entirety since its first appearance on the endangered-species lists. Since the thick-billed parrot is already listed as an endangered species throughout its range, including the United States population, we believe the action requested in the petition with regards to the thick-billed parrot has previously been taken. Therefore, our statutory obligation to further address this issue is moot.

Further, a second species of the 14 species included in the petition received from Friends of Animals, the blue-throated macaw (*Ara glaucogularis*), was previously petitioned by the International Council for Bird Preservation (ICBP). On May 6, 1991, we received a petition (hereafter referred to as the 1991 petition) from ICBP, to add 53 species of foreign birds to the List of Endangered and Threatened Wildlife, including the blue-throated macaw. In response to the 1991 petition, we published a positive 90–day finding on December 16, 1991 (56 FR 65207), for all 53 species, and announced the initiation of a status review. On March 28, 1994 (59 FR 14496), we published a 12–month finding on the 1991 petition, along with a proposed rule to list 30 African birds under the Act. In that document, we proposed listing 15 of the 53 bird species included in the 1991 petition, and announced our finding that listing the remaining 38 species from the 1991 petition, including the blue-throated macaw, was warranted but precluded by higher priority listing actions. We made subsequent warranted-but-precluded findings for all outstanding foreign species from the 1991 petition, including the blue-throated macaw, as published in our Annual Notice of Review on May 21, 2004 (69 FR 29354), and April 23, 2007 (72 FR 20184).

We have reviewed the listing status of the blue-throated macaw (*Ara glaucogularis*), most recently in our 2008 Annual Notice of Findings on Resubmitted Petitions for Foreign Species (73 FR 44062; July 29, 2008), as required under section 4(b)(3)(C)(i) of the Act. That notice describes our resubmitted petition findings for 50 foreign species for which we had previously found listing to be warranted but precluded. In that notice, we determined that warranted but precluded status remained appropriate for the blue-throated macaw and assigned the species a listing priority number of 8. The results of our next evaluation of the status of this species will be published in the 2009 Annual Notice of Findings on Resubmitted Petitions for Foreign Species. As such, we are seeking any recent information concerning this species that can be used in that evaluation. However, since we have already made a finding that listing is warranted for the blue-throated macaw in response to the 1991 petition and subsequent re-evaluations as part of the Annual Notice of Review, we have determined that we have previously addressed the action requested in the current petition with regards to this species. As such, our statutory obligation to further address this issue is moot.

Therefore, this finding addresses the following 12 species of parrots named in the petition: Blue-headed macaw, crimson shining parrot, great green macaw, grey-cheeked parakeet, hyacinth macaw, military macaw, Philippine cockatoo, red-crowned parrot, scarlet macaw, white cockatoo, yellow-billed parrot, and yellow-crested cockatoo.

Information Presented in the Petition

The blue-headed macaw is found in eastern Peru, extreme western Brazil, and northwestern Bolivia, at the edge of humid lowland evergreen forests, along rivers, and in openings in the forest canopy (International Union for Conservation of Nature and Natural Resources (IUCN) 2008k). The petition notes that the greatest threat to the species is the pet trade as the species is commonly found as caged pets in Brazilian markets. In addition, the petition asserts that the rarity of the species in combination with its low reproductive rate has made the species even more popular with collectors.

The crimson shining parrot is endemic to the islands of Fiji where it is found in forests, on agricultural lands, and around human habitation (IUCN 2008l). The petition claims that the primary threats to the species are the pet trade and habitat destruction. The petition asserts that a decline in the mangrove forest area in the near future will place habitat pressure on the species.

The great green macaw is found in parts of Colombia, Costa Rica, Ecuador, Honduras, Nicaragua, and Panama, and inhabits humid lowlands and foothills mainly below 600 meters (m) (1,969 feet (ft)) (IUCN 2008d). The petition notes that the largest factor affecting the species is the loss of habitat throughout its range as a result of banana plantations, cattle ranching, and logging. Furthermore, the petition states that another major factor impacting the species is the pet trade particularly in the country of Nicaragua.

The grey-cheeked parakeet is found in southwest Ecuador and extreme northwest Peru, and primarily inhabits deciduous forests dominated by *Ceiba trichistandra* (IUCN 2008g). The petition claims that the greatest threat to the survival of the species is trapping for the pet trade. In addition, the petition notes habitat destruction, through logging, agricultural conversion, and grazing, as another threat to the continued existence of the species.

The hyacinth macaw is found primarily in Brazil, with small occurrences in east Bolivia and Paraguay (IUCN 2008c). The species inhabits floodplains and savanna adjacent to tropical forests, shrubland, palm-stands, and palm-savannas (IUCN 2008c). The petition asserts that illegal trapping for the pet trade is the greatest threat to the species, and notes this threat, according to species experts, as the primary reason for the rapid population decline of the species. The petition also states that the species is facing pressure from habitat loss due to cattle ranching and hydroelectric development, as well as local hunting for food and feathers.

The military macaw occupies a highly fragmented range from Mexico to Argentina, inhabiting humid lowland forest and adjacent clearings, wooded foothills, and canyons (IUCN 2008f). The petition claims that habitat loss and the pet trade are the most significant threats to the species.

The Philippine cockatoo is endemic to the Philippines and may be restricted to lowland primary or secondary forests, within or adjacent to riparian or coastal areas with mangroves (IUCN 2008i). The petition states that habitat loss and the pet trade are the greatest threats to the continued survival of the species. The petition asserts that trapping on the islands is very common due to the high price paid for each bird on the international market. The petition also claims that widespread deforestation and destruction of native mangroves have contributed to the population decline of the species.

The red-crowned parrot is native to Mexico and is currently found in northeastern Mexico, inhabiting lush areas in arid lowlands and foothills, particularly gallery forests, deciduous woodlands, and dry, open, pine-oak woodlands on ridges up to 3,281 ft (1,000 m) (IUCN 2008b). The petition claims that the pet trade and habitat destruction are the greatest threats to the continued existence of the species. The petition states that trappers often destroy nests, sometimes even cutting

down the entire tree, in order to collect nestlings, leading to the loss of nest sites and site abandonment. Furthermore, the petition asserts that the remaining habitat of the species has been reduced due to the clearing of many gallery forests for agriculture and pasture land use.

The scarlet macaw is found throughout Central and South America, with an estimated range of approximately 2,586,885 square miles (m^2) (6,700,000 square kilometers (km^2)) (IUCN 2008e). The species prefers humid lowland evergreen forests and gallery woodland savannas, primarily near exposed river banks and clearings with large trees (del Hoyo *et al.* 1997, p. 421). The petition asserts that habitat destruction and captures for the pet trade are the greatest threats to the species. The petition claims that habitat destruction, as a result of forest clearing, settlement, and agriculture, is common throughout the species' range. The petition also states that anti-poaching enforcement is not keeping up with the demand for this species in the pet trade, where one bird can sell for over $1,000 (U.S.).

The white cockatoo is endemic to several islands in North Maluku, Indonesia, and inhabits primary, logged, and secondary forests up to 2,953 ft (900 m) (IUCN 2008h). The species also occurs in mangroves, on plantations, and on agricultural land (IUCN 2008h). The petition claims that the greatest threats to the species are habitat destruction and the pet trade. The petition states that an increase in logging activity has decreased the availability of large trees suitable for nest sites throughout the species' range. In addition, the petition asserts that trapping of this species for the pet trade far exceeds the catch quota issued by the Indonesian government.

The yellow-billed parrot is primarily found in the wet areas of Jamaica, inhabiting wet limestone forests at elevations up to 3,937 ft (1,200 m) (IUCN 2008a). The petition lists two primary threats to the species: habitat destruction and the pet trade. The petition claims that the species' habitat, as well as nest sites, has been reduced due to logging and mining activities, and that trapping of this species for the pet trade is common.

The yellow-crested cockatoo is native to Timor-Leste and Indonesia, and inhabits forest, forest edge, scrub, and agricultural land (IUCN 2008j). The petition asserts that the significant decline in the population of the species is directly attributable to trapping for the pet trade. The petition cites evidence that suggests that the international pet trade has placed the highest pressure on the wild population of the species. In addition, the petition claims that habitat loss, due to logging and agricultural conversion of forested lands, and the persecution of the species as a crop pest, has placed additional pressure on the remaining wild population.

Finding

On the basis of our review, which focused on the threats facing these parrot species, we find that the petition presents substantial scientific or commercial information indicating that listing may be warranted for the following 12 species of parrots: Blue-headed macaw, crimson shining parrot, great green macaw, grey-cheeked parakeet, hyacinth macaw, military macaw, Philippine cockatoo, red-crowned parrot, scarlet macaw, white cockatoo, yellow-billed parrot, and yellow-crested cockatoo. Therefore, we are initiating a status review to determine if listing any of these 12 species under the Act is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding these 12 species. Under section 4(b)(3)(B) of the Act, within 12 months after receiving a petition that is found to present substantial information indicating that the petitioned action may be warranted, we are required to make a finding as to whether listing the species is warranted, not warranted, or warranted but precluded by other pending listing proposals.

References Cited

A complete list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service, Branch of Listing (see **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary authors of this notice are staff members of the Division of Scientific Authority, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 16, 2009.

Marvin E. Moriarty,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–16354 Filed 7–13– 09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

RIN 0648–AX86

Taking of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Training Operations Conducted Within the Gulf of Mexico Range Complex

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received requests from the U.S. Navy (Navy) for authorizations for the take of marine mammals incidental to training and operational activities conducted by the Navy's Atlantic Fleet within the Gulf of Mexico (GOMEX) Range Complex for the period beginning December 3, 2009 and ending December 2, 2014. Pursuant to the implementing regulations of the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take and requesting information, suggestions, and comments on these proposed regulations.

DATES: Comments and information must be received no later than August 13, 2009.

ADDRESSES: You may submit comments, identified by 0648–AX86, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Hand delivery or mailing of paper, disk, or CD–ROM comments should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter NA in the required

fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext. 137.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the Navy's application may be obtained by writing to the address specified above (See **ADDRESSES**), telephoning the contact listed above (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. The Navy's Draft Environmental Impact Statement (DEIS) for the GOMEX Range Complex was published in November 2008, and may be viewed at *http://www.gomexrangecomplexeis.com/*. NMFS participated in the development of the Navy's DEIS as a cooperating agency under the National Environmental Policy Act (NEPA).

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> An impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

With respect to military readiness activities, the MMPA defines ''harassment'' as:

> (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On October 2, 2008, NMFS received an application from the Navy requesting an authorization for the take of marine mammal species/stocks incidental to the proposed training operations within the GOMEX Range Complex over the course of 5 years. These training activities are classified as military readiness activities. The Navy states that these training activities may cause various impacts to marine mammal species in the proposed GOMEX Range Complex Study Area. The Navy requests an authorization to take 8 species of cetaceans annually by Level B harassment, and 1 individual each of pantropical spotted dolphin and spinner dolphin by Level A harassment (injury). Please refer to the take table on page 6–17 of the LOA application for detailed information of the potential exposures from explosive ordnance (per year) for marine mammals in the GOMEX Range Complex. However, due to the implementation of the proposed mitigation and monitoring measures, NMFS believes that the actual take would be less than estimated.

Description of the Specified Activities

The GOMEX Study Area encompasses areas at sea, undersea, and Special Use Airspace (SUA) in the northern Gulf of Mexico off the coast of the U.S. (Figures 1 and 2 of the LOA application). The portions of the GOMEX Study Area to be considered for the proposed action consist of the BOMBEX Hotbox (surface and subsurface waters) located within the Pensacola Operation Area (OPAREA), SUA warning areas W–151A/B/C and W–155A/B (surface waters), and underwater detonation (UNDET) Area E3 (surface and subsurface waters), located within the territorial waters off Padre Island, Texas, near Corpus Christi NAS. The portions of the GOMEX Study Area addressed in the Navy's LOA application encompass:

- 1,496 nm^2 (5,131 km^2) of sea space (BOMBEX Hotbox, where high explosives occur, and UNDET Area E3 where underwater detonations occur); and
- 11,714 nm^2 (40,178 km^2) of SUA warning areas (vessel movements only)

The BOMBEX Hotbox is an in-water operating and maneuvers area with defined air, ocean surface, and subsurface areas. The BOMBEX Hotbox is located in the offshore waters of the northeastern Gulf of Mexico (GOM) adjacent to Florida and Alabama. The northernmost boundary of the BOMBEX Hotbox is located 23 nm (42.6 km) from the coast of the Florida panhandle at latitude 30 °N, the eastern boundary is approximately 200 nm (370.4 km) from the coast of the Florida peninsula at longitude 86°48′ W.

The SUA warning areas, W–151A/B/C and W–155A/B, are in-water operating and maneuver areas with defined air and ocean surface. W–151A/B/C and W–155A/B are located in and above the offshore waters of the northeastern GOM adjacent to Florida and Alabama.

The UNDET Area E3 is a defined surface and subsurface area located in the waters south of Corpus Christi NAS and offshore of Padre Island, Texas. The westernmost boundary is located 7.5 nm (13.9 km) from the coast of Padre Island at 97°9′33″ W and 27°24′26″ N at the Western most corner. It lies entirely within the territorial waters (0 to 12 nm, or 0 to 22.2 km) of the U.S. and the majority of it lies within Texas state waters (0 to 9 nm, or 0 to 16.7 km). It is a very shallow water training area with depths ranging from 20 to 26 m.

In the application submitted to NMFS, the Navy requests an authorization to take marine mammals incidental to conducting training operations within the GOMEX Range Complex. These training activities consist of surface warfare. Although vessel movement is also a component of the proposed GOMEX Range Complex training activities, the Navy concludes that it is unlikely marine mammals would be taken by vessel movement with the implementation of mitigation and monitoring measures described in the Mitigation Measures and Monitoring Measures sections.

Surface Warfare

Surface Warfare (SUW) supports defense of a geographical area (*e.g.*, a zone or barrier) in cooperation with surface, subsurface, and air forces. SUW operations detect, localize, and track surface targets, primarily ships. Detected ships are monitored visually and with radar. Operations include identifying surface contacts, engaging with weapons, disengaging, evasion, and avoiding attack, including implementation of radio silence and deceptive measures. For the proposed GOMEX Range Complex training operations, SUW events involving the use of explosive ordnance include air-to-surface Bombing Exercises [BOMEX (A–S)] and small arms training (involving explosive hand grenades) that occur at sea.

(A) Bombing Exercise (Air-to-Surface) [BOMEX (A–S)]

Strike fighter aircraft, such as F/A–18s, deliver explosive bombs against at-sea surface targets with the goal of destroying the target. BOMBEX (A–S) training in the GOMEX Study Area occurs only during daylight hours in the BOMBEX Hotbox area.

For the proposed BOMBEX (A–S), two aircraft will approach an at-sea target from an altitude of between 15,000 ft (4,572 m) to less than 3,000 ft (914.4 m) and release a high explosive (HE) 1,000-pound (lb) bomb on the target. MK–83 bombs would be used. MK–83 bombs have a net explosive weight (NEW) of 415.8 lbs. The typical bomb release altitude is below 3,000 ft (914.4 m) and the target is usually a flare. The time in between bomb drops is approximately 3 minutes.

(B) Small Arms Training (Explosive Hand Grenades)

Small arms training is a part of quarterly reservist training and operational activities for the Mobile Expeditionary Security Group (MESG) that operates out of Corpus Christi Naval Air Station (NAS). The MESG trains with MK3A2 (0.5-lb NEW) anti-swimmer concussion grenades. The MK3A2 grenades are small and contain high explosives in an inert metal or plastic shell. They detonate at about 3 m under the water's surface within 4 to 5 seconds of being deployed. The detonation depth may be shallower depending upon the speed of the boat at the time the grenade is deployed.

A number of different types of boats will be used depending on the unit using the boat and their mission. Boats are mostly used by naval special warfare (NSW) teams and Navy Expeditionary Combat Command (NECC) units (Naval Coastal Warfare, Inshore Boat Units, Mobile Security Detachments, Explosive Ordnance Disposal, and Riverine Forces). These units are used to protect ships in harbors and high value units, such as aircraft carriers, nuclear submarines, liquid natural gas tankers, etc., while entering and leaving ports, as well as to conduct riverine operations, insertion and extractions, and various NSW operations.

The boats used by these units include: Small Unit River Craft (SURC), Combat Rubber Raiding Craft (CRRC), Rigid Hull Inflatable Boats (RHIB), Patrol Craft, and many other versions of these types of boats. These boats use inboard or outboard, diesel or gasoline engines with either propeller or water jet propulsion.

This exercise is usually a live-fire exercise with M3A2 Anti-swimmer Concussion Grenades, but at times blanks may be used so boat crews can practice their ship-handling skills for the employment of weapons without being concerned with the safety requirements involved with HE weapons. Boat crews may use high or low speeds to approach and engage targets simulating swimmers with anti-swimmer concussion grenades. The purpose of this exercise is to develop marksmanship skills and small boat ship-handling tactics skills required to employ these weapons. Training usually lasts 1–2 hours. Small arms training in the GOMEX Study Area will occur during day or evening hours in the UNDET Area E3.

Table 1 summarizes the level of Surface Warfare training activities planned in the GOMEX Range Complex for the proposed action.

TABLE 1—LEVEL OF SURFACE WARFARE TRAINING ACTIVITIES PLANNED IN THE GOMEX RANGE COMPLEX PER YEAR

Operation	Platform	System/ordnance	Number of events	Training area	Potential time of day	Event duration
Bombing Exercise (BOMBEX) (Air-to-Surface, At-Sea).	F/A–18	MK–831,000-lb High Explosive (HE) bomb] 415.8 lbs NEW.	1 event (4 bombs in succession).	BOMBEX Hotbox	Daytime only.	1 hour.
Small Arms Training ..	Maritime Expeditionary Support Group (Various Small Boats).	MK3A2 anti-swimmer grenades (8-oz HE grenade) 0.5 lb NEW.	6 events* (20 live grenades).	UNDET Area E3	Day or night.	1 hour.

* An individual event can include detonation of up to 10 live grenades, but no more than 20 live grenades will be used per year.

Vessel Movement

Vessel movements are associated with most training and operational activities in the GOMEX Study Area. Currently, the number of Navy vessels operating in the GOMEX Study Area varies based on training schedules and can range from 0 to about 10 vessels at any given time. Vessel sizes range from small boats (<35 ft, or 10.7 m) for a harbor security boat to 1,092 ft (332.8 m) for a CVN (carrier vessel nuclear) and speeds generally range from 10 to 14 knots, but may be considerably faster, for example an aircraft carrier ''making wind'' while launching and recovering aircraft, and for small boat operations. Operations involving vessel movements occur intermittently and are variable in duration, ranging from a few hours up to 2 weeks. These operations are widely dispersed throughout the GOMEX Study Area, which is an area encompassing 11,714 nm^2 (40,178 km^2). Most vessel movements occur in the offshore OPAREAs, but vessel movements associated with MESG training in the UNDET Area E3 and Commander Naval Installations Command (CNIC) harbor security group training in the Panama City OPAREA occur between shore and 12 nm (22.2 km), including the nearshore zone (<3 nm, or 5.6 km). The Navy logs about 180 total vessel days within the GOMEX Study Area during a typical year. Consequently, the density of Navy vessels within the GOMEX Study Area at any given time is low (*i.e.*, less than 0.0113 ships/nm^2 (0.0386 km^2)).

Description of Marine Mammals in the Area of the Specified Activities

Twenty-nine marine mammal species have confirmed or potential occurrence in the GOMEX Study Area. These include 28 cetacean species and 1 sirenian species (DoN, 2007a), which can be found in Table 2. Although it is possible that any of the 29 species of marine mammals may occur in the Study Area, only 21 of those species are expected to occur regularly in the region. Most cetacean species are in the Study Area year-round (*e.g.*, sperm whales and bottlenose dolphins), while a few (*e.g.*, fin whales and killer whales) have accidental or transient occurrence in the area.

TABLE 2—MARINE MAMMAL SPECIES FOUND IN THE GOMEX RANGE COMPLEX

Family and scientific name	Common name	Federal status
Order Cetacea		
Suborder Mysticeti (baleen whales)		
Eubalaena glacialis	North Atlantic right whale	Endangered.
Megaptera novaeangliae	Humpback whale	Endangered.
Balaenoptera acutorostrata	Minke whale.	
B. brydei	Bryde's whale.	
B. borealis	Sei whale	Endangered.
B. physalus	Fin whale	Endangered.
B. musculus	Blue whale	Endangered.
Suborder Odontoceti (toothed whales)		
Physeter macrocephalus	Sperm whale	Endangered.
Kogia breviceps	Pygmy sperm whale.	
K. sima	Dwarf sperm whale.	
Ziphius cavirostris	Cuvier's beaked whale.	
M. europaeus	Gervais' beaked whale.	
M. bidens	Sowerby's beaked whale.	
M. densirostris	Blainville's beaked whale.	
Steno bredanensis	Rough-toothed dolphin.	
Tursiops truncatus	Bottlenose dolphin.	
Stenella attenuata	Pantropical spotted dolphin.	
S. frontalis	Atlantic spotted dolphin.	
S. longirostris	Spinner dolphin.	
S. clymene	Clymene dolphin.	
S. coeruleoalba	Striped dolphin.	
Lagenodephis hosei	Fraser's dolphin.	
Grampus griseus	Risso's dolphin.	
Peponocephala electra	Melon-headed whale.	
Feresa attenuata	Pygmy killer whale.	
Pseudorca crassidens	False killer whale.	
Orcinus orca	Killer whale.	
G. macrorhynchus	Short-finned pilot whale.	
Order Sirenia		
Trichechus manatus	West Indian manatee	Endangered.

The information contained in this section relies heavily on the data gathered in the Marine Resources Assessments (MRAs). The Navy MRA Program was implemented by the Commander, Fleet Forces Command, to initiate collection of data and information concerning the protected and commercial marine resources found in the Navy's OPAREAs. Specifically, the goal of the MRA program is to describe and document the marine resources present in each of the Navy's OPAREAs. The MRA for the GOMEX OPAREA was published in 2007 (DoN, 2007a). The MRA data were used to provide a regional context for each species. The MRA represents a compilation and synthesis of available scientific literature (*e.g.*, journals, periodicals, theses, dissertations, project reports, and other technical reports published by government agencies, private businesses, or consulting firms), and NMFS reports including stock assessment reports (SARs), recovery plans, and survey reports. This information was used to evaluate the potential for occurrence of marine mammal species in the GOMEX Study Area.

The density estimates that were used in previous Navy environmental documents have been recently updated to provide a compilation of the most recent data and information on the occurrence, distribution, and density of marine mammals. The updated density estimates presented in this LOA application are derived from the Navy OPAREA Density Estimates (NODEs) for the GOMEX OPAREA report (DoN, 2007b).

Density estimates for cetaceans were either modeled using available line-transect survey data or derived using cetacean abundance estimates found in the 2006 NOAA stock assessment reports (SARs) (Waring *et al.*, 2007), which can be viewed at *http://www.nmfs.noaa.gov/pr/sars/species.htm*. The abundance estimates in the stock assessment reports are from Mullin and Fulling (2004).

For the model-based approach, density estimates were calculated for each species within areas containing survey effort. A relationship between these density estimates and the associated environmental parameters such as depth, slope, distance from the shelf break, sea surface temperature (SST), and chlorophyll a (chl *a*) concentration was formulated using generalized additive models (GAMs). This relationship was then used to generate a two-dimensional density surface for the region by predicting densities in areas where no survey data exist.

The analyses for cetaceans were based on sighting data collected through shipboard surveys conducted by NMFS SEFSC between 1996 and 2004. Species-specific density estimates derived through spatial modeling were compared with abundance estimates found in the 2006 NOAA SARs to ensure consistency. All spatial models and density estimates were reviewed by and coordinated with NMFS Science

Center technical staff and scientists with the University of St. Andrews, Scotland, Centre for Environmental and Ecological Modeling (CREEM). For a more detailed description of the methods involved in calculating the density estimates provided in this LOA request, please refer to the NODE report for the GOMEX OPAREA (DoN, 2007b). The following lists how density estimates were derived for each species:

Model-Derived Density Estimates—Line Transect Survey Data

Sperm whale, dwarf and pygmy sperm whales, beaked whales, rough-toothed dolphin, bottlenose dolphin (Tursiops truncatus), pantropical spotted dolphin, Atlantic spotted dolphin, striped dolphin, spinner dolphin, and Risso's dolphin.

Stock Assessment Report or Literature-Derived Density Estimates

Bryde's whale, Clymene dolphin, Fraser's dolphin, killer whale, false killer whale, pygmy killer whale, melon-headed whale, short-finned pilot whale.

Potential Impacts to Marine Mammal Species

The Navy considers that explosions associated with BOMBEX (A–S) and small arms training are the activities with the potential to result in Level A or Level B harassment of marine mammals. Vessel strikes were also analyzed for potential effect to marine mammals.

Vessel Strikes

Collisions with commercial and Navy ships can result in serious injury and may occasionally cause fatalities to cetaceans and manatees. Although the most vulnerable marine mammals may be assumed to be slow-moving cetaceans or those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.*, sperm whale), fin whales are actually struck most frequently (Laist *et al.*, 2001). Manatees are also particularly susceptible to vessel interactions and collisions with watercraft constitute the leading cause of mortality (USFWS, 2007). Smaller marine mammals such as bottlenose and Atlantic spotted dolphins move more quickly throughout the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive patterns (NRC, 2003).

After reviewing historical records and computerized stranding databases for evidence of ship strikes involving baleen and sperm whales, Laist *et al.* (2001) found that accounts of large whale ship strikes involving motorized boats in the area date back to at least the late 1800s. Ship collisions remained infrequent until the 1950s, after which point they increased. Laist *et al.* (2001) report that both the number and speed of motorized vessels have increased over time for trans-Atlantic passenger services, which transit through the area. They concluded that most strikes occur over or near the continental shelf, that ship strikes likely have a negligible effect on the status of most whale populations, but that for small populations or segments of populations the impact of ship strikes may be significant.

Although ship strikes may result in the mortality of a limited number of whales within a population or stock, Laist *et al.* (2001) also concluded that, when considered in combination with other human-related mortalities in the area (*e.g.*, entanglement in fishing gear), these ship strikes may present a concern for whale populations.

Of 11 species known to be hit by ships, fin whales are struck most frequently; followed by right whales, humpback whales, sperm whales, and gray whales (Laist *et al.*, 2001). In some areas, one-third of all fin whale and right whale strandings appear to involve ship strikes. Sperm whales spend long periods (typically up to 10 minutes; Jacquet *et al.*, 1996) ''rafting'' at the surface between deep dives. This could make them exceptionally vulnerable to ship strikes. Berzin (1972) noted that there were ''many'' reports of sperm whales of different age classes being struck by vessels, including passenger ships and tug boats. There were also instances in which sperm whales approached vessels too closely and were cut by the propellers (NMFS, 2006).

In the Gulf of Mexico, sperm whales are of particular concern. Sperm whales spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives. In addition, some baleen whales such as the North Atlantic right whale seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.*, 2004a). In comparison with other regions of the U.S., the Gulf of Mexico is the least common area for ship strikes of large whales (Jensen and Silber, 2003). Between 1972 and 1999, eight confirmed or possible large whale ship strikes were recorded in the Gulf of Mexico, including two that collided with Navy vessels; four of these resulted in mortality of the animal (Jensen and Silber, 2003) and one resulted in extensive damage to a Navy vessel (Laist *et al.*, 2001). It is not known whether the shipstrikes involving Navy vessels resulted in the mortality of the animal (Laist *et al.*, 2001; Jensen and Silber, 2003).

Accordingly, the Navy has proposed mitigation measures to reduce the potential for collisions with surfaced marine mammals (for more details refer to Proposed Mitigation Measures below). Based on the implementation of Navy mitigation measures and the relatively low density of Navy ships in the Study Area the likelihood that a vessel collision would occur is very low.

Vessel Movement

There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is large amount of vessel traffic, marine mammals may experience acoustic masking (Hildebrand, 2005) if they are present in the area (*e.g.*, killer whales in Puget Sound; Foote *et al.*, 2004; Holt *et al.*, 2008). In cases where vessels actively approach marine mammals (*e.g.*, whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.*, 2002; Constantine *et al.*, 2003), reduced blow interval (Ritcher *et al.*, 2003), disruption of normal social behaviors (Lusseau, 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.*, 2003; 2004)). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.* (1995). For each of the marine mammals taxonomy groups, Richardson *et al.* (1995) provided the following assessment regarding cetacean reactions to vessel traffic:

Toothed whales: ''In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic.''

Baleen whales: ''When baleen whales receive low-level sounds from distant or

stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and nonaggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. In response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale.''

It is important to recognize that behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, *etc.*), prior experience of the animal, and physical status of the animal. For example, studies have shown that beluga whales reacted differently when exposed to vessel noise and traffic. In some cases, naive beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km away, and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.*, 1990). In other cases, beluga whales were more tolerant of vessels, but differentially responsive by reducing their calling rates, to certain vessels and operating characteristics (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were ''modified by their previous experience and current activity: habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli.'' Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales (*Balaenoptera acutorostrata*) changed from frequent positive (such as approaching vessels) interest to generally uninterested reactions; finback whales (*B. physalus*) changed from mostly negative (such as avoidance) to uninterested reactions; right whales (*Eubalaena glacialis*) apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks (*Megaptera novaeangliae*) dramatically changed from mixed responses that were often negative to often strongly positive reactions. Watkins (1986) summarized that ''whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had P [positive] reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways.''

In the case of the GOMEX Range Complex, naval vessel traffic is expected to be much lower than in areas where there are large shipping lanes and large numbers of fishing vessels and/or recreational vessels. Nevertheless, the proposed action area is well traveled by a variety of commercial and recreational vessels, so marine mammals in the area are expected to be habituated to vessel noise.

As described earlier in this document, operations involving vessel movements occur intermittently and are variable in duration, ranging from a few hours up to 2 weeks. These operations are widely dispersed throughout the GOMEX Range Complex OPAREA, which is a vast area encompassing 11,714 nm^2. The Navy logs about 180 total vessel days within the Study Area during a typical year. Consequently, the density of ships within the Study Area at any given time is extremely low (*i.e.*, less than 0.0113 ships/nm^2).

Moreover, naval vessels transiting the study area or engaging in the training exercises will not actively or intentionally approach a marine mammal or change speed drastically. All vessels transiting to, from, and within the range complexes will be traveling at speeds generally ranging from 10 to 14 knots. In addition, mitigation measures described below require Navy vessels to keep at least 500 yards (460 m) away from any observed whale and at least 200 yards (183 m) from marine mammals other than whales, and avoid approaching animals head-on. Although the radiated sound from the vessels will be audible to marine mammals over a large distance, it is unlikely that animals will respond behaviorally to low-level distant shipping noise as the animals in the area are likely to be habituated to such noises (Nowacek *et al.*, 2004). In light of these facts, NMFS does not expect the Navy's vessel movements to result in Level B harassment.

Assessment of Marine Mammal Response to Anthropogenic Sound

Marine mammals respond to various types of anthropogenic sounds introduced in the ocean environment. Responses are typically subtle and can include shorter surfacings, shorter dives, fewer blows per surfacing, longer intervals between blows (breaths), ceasing or increasing vocalizations, shortening or lengthening vocalizations, and changing frequency or intensity of vocalizations (NRC, 2005). However, it is not known how these responses relate to significant effects (*e.g.*, long-term effects or population consequences). The following is an assessment of marine mammal responses and disturbances when exposed to anthropogenic sound.

I. Physiology

Potential impacts to the auditory system are assessed by considering the characteristics of the received sound (*e.g.*, amplitude, frequency, duration) and the sensitivity of the exposed animals. Some of these assessments can be numerically based (*e.g.*, temporary threshold shift [TTS] of hearing sensitivity, permanent threshold shift [PTS] of hearing sensitivity, perception). Others will be necessarily qualitative, due to a lack of information, or will need to be extrapolated from other species for which information exists.

Potential physiological responses to the sound exposure are ranked in descending order, with the most severe impact (auditory trauma) occurring at the top and the least severe impact occurring at the bottom (the sound is not perceived).

Auditory trauma represents direct mechanical injury to hearing related structures, including tympanic membrane rupture, disarticulation of the middle ear ossicles, and trauma to the inner ear structures such as the organ of Corti and the associated hair cells. Auditory trauma is always injurious that could result in PTS and is always assumed to result in a stress response.

Auditory fatigue refers to a loss of hearing sensitivity after sound stimulation. The loss of sensitivity persists after, sometimes long after, the cessation of the sound. The mechanisms responsible for auditory fatigue differ from auditory trauma and would primarily consist of metabolic exhaustion of the hair cells and cochlear tissues. The features of the exposure (*e.g.*, amplitude, frequency, duration, temporal pattern) and the individual animal's susceptibility would determine the severity of fatigue and whether the

effects were temporary (TTS) or permanent (PTS). Auditory fatigue (PTS or TTS) is always assumed to result in a stress response.

Sounds with sufficient amplitude and duration to be detected among the background ambient noise are considered to be perceived. This category includes sounds from the threshold of audibility through the normal dynamic range of hearing (*i.e.*, not capable of producing fatigue).

To determine whether an animal perceives the sound, the received level, frequency, and duration of the sound are compared to what is known of the species' hearing sensitivity.

Since audible sounds may interfere with an animal's ability to detect other sounds at the same time, perceived sounds have the potential to result in auditory masking. Unlike auditory fatigue, which always results in a stress response because the sensory tissues are being stimulated beyond their normal physiological range, masking may or may not result in a stress response, depending on the degree and duration of the masking effect. Masking may also result in a unique circumstance where an animal's ability to detect other sounds is compromised without the animal's knowledge. This could conceivably result in sensory impairment and subsequent behavior change; in this case, the change in behavior is the lack of a response that would normally be made if sensory impairment did not occur. For this reason, masking also may lead directly to behavior change without first causing a stress response.

The features of perceived sound (*e.g.*, amplitude, duration, temporal pattern) are also used to judge whether the sound exposure is capable of producing a stress response. Factors to consider in this decision include the probability of the animal being naive or experienced with the sound (*i.e.*, what are the known/unknown consequences of the exposure).

If the received level is not of sufficient amplitude, frequency, and duration to be perceptible by the animal, by extension, this does not result in a stress response (not perceived). Potential impacts to tissues other than those related to the auditory system are assessed by considering the characteristics of the sound (*e.g.*, amplitude, frequency, duration) and the known or estimated response characteristics of non-auditory tissues. Some of these assessments can be numerically based (*e.g.*, exposure required for rectified diffusion). Others will be necessarily qualitative, due to lack of information. Each of the potential responses may or may not result in a stress response.

Direct tissue effects—Direct tissue responses to sound stimulation may range from tissue shearing (injury) to mechanical vibration with no resulting injury.

No tissue effects—The received sound is insufficient to cause either direct (mechanical) or indirect effects to tissues. No stress response occurs.

II. The Stress Response

The acoustic source is considered a potential stressor if, by its action on the animal, via auditory or non-auditory means, it may produce a stress response in the animal. The term ''stress'' has taken on an ambiguous meaning in the scientific literature, but with respect to the later discussions of allostasis and allostatic loading, the stress response will refer to an increase in energetic expenditure that results from exposure to the stressor and which is predominantly characterized by either the stimulation of the sympathetic nervous system (SNS) or the hypothalamic-pituitary-adrenal (HPA) axis (Reeder and Kramer, 2005). The SNS response to a stressor is immediate and acute and is characterized by the release of the catecholamine neurohormones norepinephrine and epinephrine (*i.e.*, adrenaline). These hormones produce elevations in the heart and respiration rate, increase awareness, and increase the availability of glucose and lipids for energy. The HPA response is ultimately defined by increases in the secretion of the glucocorticoid steroid hormones, predominantly cortisol in mammals. The amount of increase in circulating glucocorticoids above baseline may be an indicator of the overall severity of a stress response (Hennessy *et al.*, 1979). Each component of the stress response is variable in time; *e.g.*, adrenalines are released nearly immediately and are used or cleared by the system quickly, whereas cortisol levels may take long periods of time to return to baseline.

The presence and magnitude of a stress response in an animal depends on a number of factors. These include the animal's life history stage (*e.g.*, neonate, juvenile, adult), the environmental conditions, reproductive or developmental state, and experience with the stressor. Not only will these factors be subject to individual variation, but they will also vary within an individual over time. In considering potential stress responses of marine mammals to acoustic stressors, each of these should be considered. For example, is the acoustic stressor in an area where animals engage in breeding activity? Are animals in the region resident and likely to have experience with the stressor (*i.e.*, repeated exposures)? Is the region a foraging ground or are the animals passing through as transients? What is the ratio of young (naive) to old (experienced) animals in the population? It is unlikely that all such questions can be answered from empirical data; however, they should be addressed in any qualitative assessment of a potential stress response as based on the available literature.

The stress response may or may not result in a behavioral change, depending on the characteristics of the exposed animal. However, provided a stress response occurs, we assume that some contribution is made to the animal's allostatic load. Allostasis is the ability of an animal to maintain stability through change by adjusting its physiology in response to both predictable and unpredictable events (McEwen and Wingfield, 2003). The same hormones associated with the stress response vary naturally throughout an animal's life, providing support for particular life history events (*e.g.*, pregnancy) and predictable environmental conditions (*e.g.*, seasonal changes). The allostatic load is the cumulative cost of allostasis incurred by an animal and is generally characterized with respect to an animal's energetic expenditure. Perturbations to an animal that may occur with the presence of a stressor, either biological (*e.g.*, predator) or anthropogenic (*e.g.*, construction), can contribute to the allostatic load (Wingfield, 2003). Additional costs are cumulative and additions to the allostatic load over time may contribute to reductions in the probability of achieving ultimate life history functions (*e.g.*, survival, maturation, reproductive effort and success) by producing pathophysiological states (the conditions of disease or injury). The contribution to the allostatic load from a stressor requires estimating the magnitude and duration of the stress response, as well as any secondary contributions that might result from a change in behavior.

If the acoustic source does not produce tissue effects, is not perceived by the animal, or does not produce a stress response by any other means, we assume that the exposure does not contribute to the allostatic load. Additionally, without a stress response or auditory masking, it is assumed that there can be no behavioral change. Conversely, any immediate effect of exposure that produces an injury is assumed to also produce a stress response and contribute to the allostatic load.

III. Behavior

Changes in marine mammal behavior are expected to result from an acute stress response. This expectation is based on the idea that some sort of physiological trigger must exist to change any behavior that is already being performed. The exception to this rule is the case of auditory masking. The presence of a masking sound may not produce a stress response, but may interfere with the animal's ability to detect and discriminate biologically relevant signals. The inability to detect and discriminate biologically relevant signals hinders the potential for normal behavioral responses to auditory cues and is thus considered a behavioral change.

Impulsive sounds from explosions have very short durations as compared to other sounds like sonar or ship noise, which are more likely to produce auditory masking. Additionally the explosive sources analyzed in this document are used infrequently and the training events are typically of short duration. Therefore, the potential for auditory masking is unlikely.

Numerous behavioral changes can occur as a result of stress response. For each potential behavioral change, the magnitude in the change and the severity of the response needs to be estimated. Certain conditions, such as stampeding (*i.e.*, flight response) or a response to a predator, might have a probability of resulting in injury. For example, a flight response, if significant enough, could produce a stranding event. Each disruption to a natural behavioral pattern (*e.g.*, breeding or nursing) may need to be classified as Level B harassment. All behavioral disruptions have the potential to contribute to the allostatic load. This secondary potential is signified by the feedback from the collective behaviors to allostatic loading.

IV. Life Function

IV.1. Proximate Life Functions

Proximate life history functions are the functions that the animal is engaged in at the time of acoustic exposure. The disruption of these functions, and the magnitude of the disruption, is something that must be considered in determining how the ultimate life history functions are affected. Consideration of the magnitude of the effect to each of the proximate life history functions is dependent upon the life stage of the animal. For example, an animal on a breeding ground which is sexually immature will suffer relatively little consequence to disruption of breeding behavior when compared to an actively displaying adult of prime reproductive age.

IV.2. Ultimate Life Functions

The ultimate life functions are those that enable an animal to contribute to the population (or stock, or species, *etc.*). The impact to ultimate life functions will depend on the nature and magnitude of the perturbation to proximate life history functions. Depending on the severity of the response to the stressor, acute perturbations may have nominal to profound impacts on ultimate life functions. For example, unit-level use of sonar by a vessel transiting through an area that is utilized for foraging, but not for breeding, may disrupt feeding by exposed animals for a brief period of time. Because of the brevity of the perturbation, the impact to ultimate life functions may be negligible. By contrast, weekly training over a period of years may have a more substantial impact because the stressor is chronic. Assessment of the magnitude of the stress response from the chronic perturbation would require an understanding of how and whether animals acclimate to a specific, repeated stressor and whether chronic elevations in the stress response (*e.g.*, cortisol levels) produce fitness deficits.

The proximate life functions are loosely ordered in decreasing severity of impact. Mortality (survival) has an immediate effect, in that no future reproductive success is feasible and there is no further addition to the population resulting from reproduction. Severe injuries may also lead to reduced survivorship (longevity) and prolonged alterations in behavior. The latter may further affect an animal's overall reproductive success and reproductive effort. Disruptions of breeding have an immediate impact on reproductive effort and may impact reproductive success. The magnitude of the effect will depend on the duration of the disruption and the type of behavior change that was provoked. Disruptions to feeding and migration can affect all of the ultimate life functions; however, the impacts to reproductive effort and success are not likely to be as severe or immediate as those incurred by mortality and breeding disruptions.

Explosive Ordnance Exposure Analysis

The underwater explosion from a weapon would send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface. The shock wave and blast noise are of most concern to marine animals. The effects of an underwater explosion on a marine mammal depends on many factors, including the size, type, and depth of both the animal and the explosive charge; the depth of the water column; and the standoff distance between the charge and the animal, as well as the sound propagation properties of the environment. Potential impacts can range from brief effects (such as behavioral disturbance), tactile perception, physical discomfort, slight injury of the internal organs and the auditory system, to death of the animal (Yelverton *et al.*, 1973; O'Keeffe and Young, 1984; DoN, 2001). Non-lethal injury includes slight injury to internal organs and the auditory system; however, delayed lethality can be a result of individual or cumulative sublethal injuries (DoN, 2001). Immediate lethal injury would be a result of massive combined trauma to internal organs as a direct result of proximity to the point of detonation (DoN, 2001). Generally, the higher the level of impulse and pressure level exposure, the more severe the impact to an individual.

Injuries resulting from a shock wave take place at boundaries between tissues of different density. Different velocities are imparted to tissues of different densities, and this can lead to their physical disruption. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000). Gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible (Goertner, 1982; Hill, 1978; Yelverton *et al.*, 1973). In addition, gas-containing organs including the nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Intestinal walls can bruise or rupture, with subsequent hemorrhage and escape of gut contents into the body cavity. Less severe gastrointestinal tract injuries include contusions, petechiae (small red or purple spots caused by bleeding in the skin), and slight hemorrhaging (Yelverton *et al.*, 1973).

Because the ears are the most sensitive to pressure, they are the organs most sensitive to injury (Ketten, 2000). Sound-related damage associated with blast noise can be theoretically distinct from injury from the shock wave, particularly farther from the explosion. If an animal is able to hear a noise, at some level it can damage its hearing by causing decreased sensitivity (Ketten, 1995) (See *Assessment of Marine Mammal Response to Anthropogenic Sound* Section above). Sound-related trauma can be lethal or sublethal. Lethal

impacts are those that result in immediate death or serious debilitation in or near an intense source and are not, technically, pure acoustic trauma (Ketten, 1995). Sublethal impacts include hearing loss, which is caused by exposures to perceptible sounds. Severe damage (from the shock wave) to the ears includes tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear. Moderate injury implies partial hearing loss due to tympanic membrane rupture and blood in the middle ear. Permanent hearing loss also can occur when the hair cells are damaged by one very loud event, as well as by prolonged exposure to a loud noise or chronic exposure to noise. The level of impact from blasts depends on both an animal's location and, at outer zones, on its sensitivity to the residual noise (Ketten, 1995).

The exercises that use explosives in this request include BOMBEX (A–S) and GUNEX (S–S). Table 1 summarizes the number of events and specific areas where each occurs for each type of explosive ordnance used. There is no difference in how many events take place between the different seasons. Fractional values are a result of evenly distributing the annual totals over the four seasons. For example, there is one BOXEX event per year that can take place in the BOMBEX Hotbox during any season, so there are 0.25 event modeled for each season.

Definition of Harassment

As mentioned previously, with respect to military readiness activities, Section 3(18)(B) of the MMPA defines ''harassment'' as: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

I. Level B Harassment

Of the potential effects that were described in the *Assessment of Marine Mammal Response to Anthropogenic Sound* and the *Explosive Ordnance Exposure Analysis* sections, the following are the types of effects that fall into the Level B Harassment category:

(A) *Behavioral Harassment*—Behavioral disturbance that rises to the level described in the definition above, when resulting from exposures to underwater detonations, is considered Level B Harassment. Some of the lower level physiological stress responses discussed in the *Assessment of Marine Mammal Response to Anthropogenic Sound* section will also likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. When Level B Harassment is predicted based on estimated behavioral responses, those takes may have a stress-related physiological component as well.

(B) *Acoustic Masking and Communication Impairment*—Acoustic masking is considered Level B Harassment as it can disrupt natural behavioral patterns by interrupting or limiting the marine mammal's receipt or transmittal of important information or environmental cues.

(C) *TTS*—As discussed previously, TTS can affect how an animal behaves in response to the environment, including conspecifics, predators, and prey. The following physiological mechanisms are thought to play a role in inducing auditory fatigue: effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output. Ward (1997) suggested that when these effects result in TTS rather than PTS, they are within the normal bounds of physiological variability and tolerance and do not represent a physical injury. Additionally, Southall *et al.* (2007) indicate that although PTS is a tissue injury, TTS is not because the reduced hearing sensitivity following exposure to intense sound results primarily from fatigue, not loss, of cochlear hair cells and supporting structures and is reversible. Accordingly, NMFS classifies TTS (when resulting from exposure to underwater detonations) as Level B Harassment, not Level A Harassment (injury).

II. Level A Harassment

Of the potential effects that were described in the *Assessment of Marine Mammal Response to Anthropogenic Sound* section, the following are the types of effects that fall into the Level A Harassment category:

(A) *PTS*—PTS is irreversible and considered to be an injury. PTS results from exposure to intense sounds that cause a permanent loss of inner or outer cochlear hair cells or exceed the elastic limits of certain tissues and membranes in the middle and inner ears and result in changes in the chemical composition of the inner ear fluids.

(B) *Physical Disruption of Tissues Resulting from Explosive Shock Wave*—Physical damage of tissues resulting from a shock wave (from an explosive detonation) is classified as an injury. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000) and gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible to damage (Goertner, 1982; Hill 1978; Yelverton *et al.*, 1973). Nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Severe damage (from the shock wave) to the ears can include tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear.

Acoustic Take Criteria

For the purposes of an MMPA incidental take authorization, three types of take are identified: Level B Harassment; Level A Harassment; and mortality (or serious injury leading to mortality). The categories of marine mammal responses (physiological and behavioral) that fall into the two harassment categories were described in the previous section.

Because the physiological and behavioral responses of the majority of the marine mammals exposed to underwater detonations cannot be detected or measured, a method is needed to estimate the number of individuals that will be taken, pursuant to the MMPA, based on the proposed action. To this end, NMFS uses an acoustic criteria that estimate at what received level (when exposed to explosive detonations) Level B Harassment, Level A Harassment, and mortality (for explosives) of marine mammals would occur. The acoustic criteria for Underwater Detonations are discussed.

Thresholds and Criteria for Impulsive Sound

Criteria and thresholds for estimating the exposures from a single explosive activity on marine mammals were established for the Seawolf Submarine Shock Test Final Environmental Impact Statement (FEIS) (''Seawolf'') and subsequently used in the *USS Winston*

S. Churchill (DDG–81) Ship Shock FEIS (''*Churchill*'') (DoN, 1998 and 2001a). NMFS adopted these criteria and thresholds in its final rule on unintentional taking of marine animals occurring incidental to the shock testing (NMFS, 2001a). Since the ship-shock events involve only one large explosive at a time, additional assumptions were made to extend the approach to cover multiple explosions for BOMBEX (A–S). In addition, this section reflects a revised acoustic criterion for small underwater explosions (*i.e.*, 23 pounds per square inch [psi] instead of previous acoustic criteria of 12 psi for peak pressure), which is based on the final rule issued to the Air Force by NMFS (NMFS, 2005b).

I.1. Thresholds and Criteria for Injurious Physiological Impacts

I.1.a. Single Explosion

For injury, NMFS uses dual criteria: eardrum rupture (*i.e.*, tympanic-membrane injury) and onset of slight lung injury. These criteria are considered indicative of the onset of injury. The threshold for tympanic-membrane (TM) rupture corresponds to a 50 percent rate of rupture (*i.e.*, 50 percent of animals exposed to the level are expected to suffer TM rupture). This value is stated in terms of an Energy Flux Density Level (EL) value of 1.17 inch pounds per square inch (in-lb/in ^{2}), approximately 205 dB re 1 microPa ^{2}-sec.

The threshold for onset of slight lung injury is calculated for a small animal (a dolphin calf weighing 26.9 lbs), and is given in terms of the ''Goertner modified positive impulse,'' indexed to 13 psi-msec (DoN, 2001). This threshold is conservative since the positive impulse needed to cause injury is proportional to animal mass, and therefore, larger animals require a higher impulse to cause the onset of injury. This analysis assumed the marine species populations were 100 percent small animals. The criterion with the largest potential impact range (most conservative), either TM rupture (energy threshold) or onset of slight lung injury (peak pressure), will be used in the analysis to determine Level A exposures for single explosive events.

For mortality, NMFS uses the criterion corresponding to the onset of extensive lung injury. This is conservative in that it corresponds to a 1 percent chance of mortal injury, and yet any animal experiencing onset severe lung injury is counted as a lethal exposure. For small animals, the threshold is given in terms of the Goertner modified positive impulse, indexed to 30.5 psi-msec. Since the Goertner approach depends on propagation, source/animal depths, and animal mass in a complex way, the actual impulse value corresponding to the 30.5 psi-msec index is a complicated calculation. To be conservative, the analysis used the mass of a calf dolphin (at 26.9 lbs) for 100 percent of the populations.

I.1.b. Multiple Explosions

For this analysis, the use of multiple explosions only applies to the MK–83 bombs used in BOMBEX. Since BOMBEX events require multiple explosions, the *Churchill* approach had to be extended to cover multiple sound events at the same training site. For multiple exposures, accumulated energy over the entire training time is the natural extension for energy thresholds since energy accumulates with each subsequent shot (explosion); this is consistent with the treatment of multiple arrivals in *Churchill*. For positive impulse, it is consistent with *Churchill* to use the maximum value over all impulses received.

I.2. Thresholds and Criteria for Non-Injurious Physiological Effects

The NMFS' criterion for non-injurious harassment is TTS—a slight, recoverable loss of hearing sensitivity (DoN, 2001). For this assessment, there are dual criteria for TTS, an energy threshold and a peak pressure threshold. The criterion with the largest potential impact range (most conservative) either the energy or peak pressure threshold, will be used in the analysis to determine Level B TTS exposures.

I.2.a. Single Explosion—TTS-Energy Threshold

The first threshold is a 182 dB re 1 microPa ^{2}-sec maximum energy flux density level in any 1/3-octave band at frequencies above 100 Hertz (Hz) for toothed whales and in any 1/3-octave band above 10 Hz for baleen whales. For large explosives, as in the case of the *Churchill* FEIS, frequency range cutoffs at 10 and 100 Hz make a difference in the range estimates. For small explosives (<1,500 lb NEW), as what was modeled for this analysis, the spectrum of the shot arrival is broad, and there is essentially no difference in impact ranges for toothed whales or baleen whales.

The TTS energy threshold for explosives is derived from the Space and Naval Warfare Systems Center (SSC) pure-tone tests for TTS (Schlundt *et al.*, 2000; Finneran and Schlundt, 2004). The pure-tone threshold (192 dB as the lowest value) is modified for explosives by (a) interpreting it as an energy metric, (b) reducing it by 10 dB to account for the time constant of the mammal ear, and (c) measuring the energy in 1/3-octave bands, the natural filter band of the ear. The resulting threshold is 182 dB re 1 microPa ^{2}-sec in any 1/3-octave band. The energy threshold usually dominates and is used in the analysis to determine potential Level B exposures for single explosion ordnance.

I.2.b. Single Explosion—TTS-Peak Pressure Threshold

The second threshold applies to all species and is stated in terms of peak pressure at 23 psi (about 225 dB re 1 microPa). This criterion was adopted for Precision Strike Weapons (PSW) Testing and Training by Eglin Air Force Base in the Gulf of Mexico (NMFS, 2005b). It is important to note that for small shots near the surface (such as in this analysis), the 23-psi peak pressure threshold generally will produce longer impact ranges than the 182-dB energy metric. Furthermore, it is not unusual for the TTS impact range for the 23-psi pressure metric to actually exceed the without-TTS (behavioral change without onset of TTS) impact range for the 177-dB energy metric.

I.2.c. Multiple Explosions—TTS

For multiple explosions, accumulated energy over the entire training time is the natural extension for energy thresholds since energy accumulates with each subsequent shot/detonation. This is consistent with the energy argument in *Churchill*. For peak pressure, it is consistent with *Churchill* to use the maximum value over all impulses received.

I.3. Thresholds and Criteria for Behavioral Effects

I.3.a. Single Explosion

For a single explosion, to be consistent with *Churchill*, TTS is the criterion for Level B harassment. In other words, because behavioral disturbance for a single explosion is likely to be limited to a short-lived startle reaction, use of the TTS criterion is considered sufficient protection and therefore behavioral effects (Level B behavioral harassment without onset of TTS) are not expected for single explosions.

I.3.b. Multiple Explosions—Without TTS

For this analysis, the use of multiple explosions only applies to FIREX (with IMPASS). Because multiple explosions would occur within a discrete time period, a new acoustic criterion—

behavioral disturbance (without TTS)—is used to account for behavioral effects significant enough to be judged as harassment, but occurring at lower noise levels than those that may cause TTS.

The threshold is based on test results published in Schlundt *et al.* (2000), with derivation following the approach of the *Churchill* FEIS for the energy-based TTS threshold. The original Schlundt *et al.* (2000) data and the report of Finneran and Schlundt (2004) are the basis for thresholds for behavioral disturbance (without TTS). As reported by Schlundt *et al.* (2000), instances of altered behavior generally began at lower exposures than those causing TTS; however, there were many instances when subjects exhibited no altered behavior at levels above the onset-TTS levels. Regardless of reactions at higher or lower levels, all instances of altered behavior were included in the statistical summary.

The behavioral disturbance (without TTS) threshold for tones is derived from the SSC tests, and is found to be 5 dB below the threshold for TTS, or 177 dB re: 1 microPa^2-s maximum EL in any ⅓-octave band at frequencies above 100 Hz for toothed whales/sea turtles and in any ⅓-octave band above 10 Hz for baleen whales. As stated previously for TTS, for small explosives (<1500-lb NEW), as what was modeled for this analysis, the spectrum of the shot arrival is broad, and there is essentially no difference in impact ranges for toothed whales/sea turtles or baleen whales. For BOMBEX involving MK–83 bombs, behavioral disturbance (without TTS) (177 dB re: 1 microPa^2-s) is the criterion that dominates in the analysis to determine potential behavioral exposures (MMPA-Level B) due to the use of multiple explosions.

II. Summary of Thresholds and Criteria for Impulsive Sounds

Table 3 summarizes the effects, criteria, and thresholds used in the assessment for impulsive sounds. The criteria for behavioral effects without physiological effects used in this analysis are based on use of multiple explosives that only take place during a BOMBEX event.

TABLE 3—EFFECTS, CRITERIA, AND THRESHOLDS FOR IMPULSIVE SOUNDS

Effect	Criteria	Metric	Threshold	Effect
Mortality	Onset of Extensive Lung Injury	Goertner modified positive impulse.	Indexed to 30.5 psi-msec (assumes 100 percent small animal at 26.9 lbs).	Mortality.
Injurious Physiological.	50% Tympanic Membrane Rupture.	Energy flux density	1.17 in-lb/in^2 (about 205 dB re 1 microPa^2-sec).	Level A.
Injurious Physiological.	Onset Slight Lung Injury	Goertner modified positive impulse.	Indexed to 13 psi-msec (assumes 100 percent small animal at 26.9 lbs).	Level A.
Non-injurious Physiological.	TTS	Greatest energy flux density level in any ⅓-octave band (>100 Hz for toothed whales and >10 Hz for baleen whales)—for total energy over all exposures 1.	82 dB re 1 microPa^2-sec	Level B.
Non-injurious Physiological.	TTS	Peak pressure over all exposures	23 psi	Level B.
Non-injurious Behavioral.	Multiple Explosions Without TTS	Greatest energy flux density level in any ⅓-octave (>100 Hz for toothed whales and > 10Hz for baleen whales)—for total energy over all exposures (multiple explosions only).	177 dB re 1 microPa^2-sec	Level B.

The criteria for mortality, Level A Harassment, and Level B Harassment resulting from explosive detonations were initially developed for the Navy's *Sea Wolf* and *Churchill* ship-shock trials and have not changed since other MMPA authorizations issued for explosive detonations. The criteria, which are applied to cetaceans and pinnipeds are summarized in Table 3. Additional information regarding the derivation of these criteria is available in the Navy's FEIS for the GOMEX Range Complex and in the Navy's *Churchill* FEIS (U.S. Department of the Navy, 2001).

III. Acoustic Environment

Sound propagation (the spreading or attenuation of sound) in the oceans of the world is affected by several environmental factors: water depth, variations in sound speed within the water column, surface roughness, and the geo-acoustic properties of the ocean bottom. These parameters can vary widely with location.

Four types of data are used to define the acoustic environment for each analysis site:

Seasonal Sound Velocity Profiles (SVP)—Plots of propagation speed (velocity) as a function of depth, or SVPs, are a fundamental tool used for predicting how sound will travel. Seasonal SVP averages were obtained for each training area.

Seabed Geo-acoustics—The type of sea floor influences how much sound is absorbed and how much sound is reflected back into the water column.

Wind Speeds—Several environmental inputs, such as wind speed and surface roughness, are necessary to model acoustic propagation in the prospective training areas.

Bathymetry Data—Bathymetry data are necessary to model acoustic propagation and were obtained for each of the training areas.

IV. Acoustic Effects Analysis

The acoustic effects analysis presented in the following sections is summarized for each major type of exercise. A more in-depth effects analysis is in Appendix A of the LOA application and the Addendum.

1. BOMBEX

Modeling was completed for four explosive sources (sequential detonation of four bombs per event) involved in BOMBEX with an assumed detonation depth of 1 m. The NEW used in simulations of the MK83 is 415.8 lbs.

Determining the zone of influence (ZOI) for the thresholds in terms of total EFD, impulse, peak pressure and 1/3-octave bands EFD must treat the sequential explosions differently than the single detonations. For the MK–83, two factors are involved for the sequential explosives that deal with the spatial and temporal distribution of the detonations as well as the effective accumulation of the resultant acoustics. In view of the ZOI determinations, the sequential detonations are modeled as a single point event with only the EFD summed incoherently:

$$Total\ EFD\ db = 10\ \log_{10} \sum_{i=1}^{n} 10^{(EFD_i/10)}$$

The multiple explosion energy criterion was used to determine the ZOI for the Level B without TTS exposure analysis. Table 4 shows the ZOI results of the model estimation. The ZOI, when multiplied by the animal densities and total number of events (Table 1), provides the exposure estimates for that animal species for the given bomb source.

BOMBEX is restricted to one location (BOMBEX Hotbox). In addition to other mitigation measures (see Mitigation Measures section below), aircraft will survey the target area for marine mammals before and during the exercise. Ships will not fire on the target until the area is surveyed and determined to be free of marine mammals. The exercise will be suspended if any marine mammals enter the buffer area (5,100-yard or 4,663-m radius around target). The implementation of mitigation measures like these effectively reduce exposures in the ZOI.

TABLE 4—ESTIMATED ZOIS (KM^2) USED IN EXPOSURE CALCULATIONS FOR BOMBEX USING MK–83 (415.8 LBS NEW) IN THE GOMEX RANGE COMPLEX FOR DIFFERENT SEASONS

Estimated ZOI @ 177 dB re 1 μPa^2-sec (multiple detonations only)				Estimated ZOI @ 182 dB re 1 μPa^2-sec or 23 psi				Estimated ZOI @ 205 dB re 1 μPa^2-sec or 13 psi				Mortality ZOI @ 30.5 psi			
Win	Spr	Sum	Fall	Win	Spr	Sum	Fall	Win	Spr	Sum	Fall	Win	Spr	Sum	Fall
98.93	115.93	161.39	173.27	55.53	76.82	137.33	158.07	4.84	4.84	4.84	4.98	<0.01	<0.01	<0.01	<0.01

Note: ZOIs for the MK–83 bombs are modeled as multiple detonations (4 bombs dropped in succession at same location).

2. Small Arms Training

Modeling was completed for the MK3A2 explosive anti-swimmer grenades, which assumed a 6 ft (1.8 m) detonation depth. The NEW used in simulations of the MK3A2 grenade is 0.5 lb.

Determining the ZOI for the thresholds in terms of total energy flux density (EFD), impulse, peak pressure and 1/3-octave bands EFD must treat the sequential explosions differently than the single detonations. For the MK3A2, two factors are involved for the sequential explosives that deal with the spatial and temporal distribution of the detonations as well as the effective accumulation of the resultant acoustics. In view of the ZOI determinations, the sequential detonations are modeled as a single point event with only the EFD summed incoherently:

$$TotalEFD_{db} = 101\ \log_{10} \sum_{i=1}^{n} 10^{(EFDi/10)}$$

The multiple explosion energy criterion was used to determine the ZOI for the non-injurious behavioral (without TTS) exposure analysis.

Table 5 shows the ZOI results of the model estimation. The ZOI, when multiplied by the animal densities and total number of events, provides the exposure estimates for that animal species. Grenade use is restricted to one location (UNDET Area E3) (see Figure 2 of the Navy's LOA application). In addition to other mitigation measures (see Mitigation Measures section below), lookouts will visually survey the target area for marine mammals. The exercise will not be conducted until the area is clear and will suspend the exercise if any enter the buffer area. Implementation of mitigation measures like these reduce the likelihood of exposure and potential effects in the ZOI.

TABLE 5—ESTIMATED ZOIS (KM^2) USED IN EXPOSURE CALCULATIONS FOR SMALL ARMS TRAINING USING MK3A2 ANTI-SWIMMER GRENADES (0.5 LBS NEW) IN THE GOMEX RANGE COMPLEX FOR DIFFERENT SEASONS

Estimated ZOI @ 177 dB re 1 μPa^2-sec (multiple detonations only)				Estimated ZOI @ 182 dB re 1 μPa^2-sec or 23 psi				Estimated ZOI @ 205 dB re 1 μPa^2-sec or 13 psi				Mortality ZOI @ 30.5 psi			
Win	Spr	Sum	Fall	Win	Spr	Sum	Fall	Win	Spr	Sum	Fall	Win	Spr	Sum	Fall
4.94	5.45	4.71	5.81	1.80	2.18	1.96	3.27	0.09	0.09	0.09	0.10	<0.01	<0.01	<0.01	<0.01

Note: ZOIs for the MK3A2 bombs are modeled as multiple detonations (4 bombs dropped in succession at same location).

3. Summary of Potential Exposures From Explosive Ordnance Use

Explosions that occur in the GOMEX Study Area with the potential to impact marine mammals are associated with training during BOMBEX and small arms training events. Explosive ordnance use is limited to specific training areas. Within the GOMEX Study Area, explosive use associated with BOMBEX events occur in the BOMBEX Hotbox. The use of MK3A2 anti-swimmer grenades is associated with small arms training events, which are limited to the UNDET Area E3 box.

An explosive analysis was conducted to estimate the number of marine mammals that could be exposed to impacts from explosive ordnance use associated with BOMBEX and small arms training. Table 6 provides a summary of the explosive analysis modeling results.

Exposure estimates could not be calculated for several species (blue whale, fin whale, humpback whale, North Atlantic right whale, sei whale, and minke whale) because density data could not be calculated for the GOMEX Study Area due to the limited available data for these species; however, the likelihood of exposure for species not expected to occur in the GOMEX Study Area should be even lower than for the species with occurrence frequent enough for densities to be calculated. In addition to the low likelihood of exposure, the proposed mitigation measures presented below would be implemented prior to release of ordnance. Since the fin, North Atlantic right, humpback, blue, sei, and minke whale are considered rare in the GOMEX Range Complex, no exposures are expected for these species. In addition, the West Indian manatee is not expected to occur where explosive

ordnance is used; therefore no exposures are expected for this species.

Lookouts will monitor the area before ordnance is used. Sperm whales will have high detection rates at the surface because of their large body size and pronounced blows; however, sperm whales are long, deep divers and may be submerged, and thus not visually detectable, for over an hour. It is likely that lookouts would detect Atlantic spotted dolphins, bottlenose dolphins, Clymene dolphins, pantropical spotted dolphins, Risso's dolphins, spinner dolphins and striped dolphins due to their gregarious nature and active surface behavior. Implementation of mitigation measures will reduce the likelihood of exposure and potential effects.

TABLE 6—SUMMARY OF POTENTIAL EXPOSURES FROM EXPLOSIVE ORDNANCE (PER YEAR) FOR MARINE MAMMALS IN THE GOMEX RANGE COMPLEX BY THE NAVY MODELING

Species/training operation	Potential exposures @177 dB re 1 microPa^2-s (multiple detonations only)	Potential exposures @182 dB re 1 microPa^2-s or 23 psi-ms	Potential exposures @205 dB re 1 microPa^2-s or 13 psi-ms	Potential exposures @30.5 psi-ms
Sperm whale:				
BOMBEX training	0	0	0	0
Small Arms training	0	0	0	0
Total Exposures	0	0	0	0
Atlantic spotted dolphin:				
BOMBEX training	1	1	0	0
Small Arms training	0	0	0	0
Total Exposures	1	1	0	0
Beaked whales:				
BOMBEX training	0	0	0	0
Small Arms training	0	0	0	0
Total Exposures	0	0	0	0
Bottlenose dolphin:				
BOMBEX training	6	6	0	0
Small Arms training	4	3	0	0
Total Exposures	10	9	0	0
Bryde's whale:				
BOMBEX training	0	0	0	0
Small Arms training	0	0	0	0
Total Exposures	0	0	0	0
Clymene dolphin:				
BOMBEX training	3	3	0	0
Small Arms training	0	0	0	0
Total Exposures	3	3	0	0
False killer whale:				
BOMBEX training	0	0	0	0
Small Arms training	0	0	0	0
Total Exposures	0	0	0	0
Fraser's dolphin:				
BOMBEX training	0	0	0	0
Small Arms training	0	0	0	0
Total Exposures	0	0	0	0
Killer whale:				
BOMBEX training	0	0	0	0
Small Arms training	0	0	0	0
Total Exposures	0	0	0	0
Kogia spp.:				
BOMBEX training	0	0	0	0
Small Arms training	0	0	0	0
Total Exposures	0	0	0	0

TABLE 6—SUMMARY OF POTENTIAL EXPOSURES FROM EXPLOSIVE ORDNANCE (PER YEAR) FOR MARINE MAMMALS IN THE GOMEX RANGE COMPLEX BY THE NAVY MODELING—Continued

Species/training operation	Potential exposures @177 dB re 1 microPa^2-s (multiple detonations only)	Potential exposures @182 dB re 1 microPa^2-s or 23 psi-ms	Potential exposures @205 dB re 1 microPa^2-s or 13 psi-ms	Potential exposures @30.5 psi-ms
Melon-headed whale:				
BOMBEX training	1	1	0	0
Small Arms training	0	0	0	0
Total Exposures	1	1	0	0
Pantropical spotted dolphin:				
BOMBEX training	14	12	1	0
Small Arms training	0	0	0	0
Total Exposures	14	12	1	0
Pygmy killer whale:				
BOMBEX training	0	0	0	0
Small Arms training	0	0	0	0
Total Exposures	0	0	0	0
Risso's dolphin:				
BOMBEX training	1	1	0	0
Small Arms training	0	0	0	0
Total Exposures	1	1	0	0
Rough-toothed dolphin:				
BOMBEX training	0	0	0	0
Small Arms training	0	0	0	0
Total Exposures	0	0	0	0
Short-finned pilot whale:				
BOMBEX training	0	0	0	0
Small Arms training	0	0	0	0
Total Exposures	0	0	0	0
Spinner dolphin:				
BOMBEX training	14	13	1	0
Small Arms training	0	0	0	0
Total Exposures	14	13	1	0
Striped dolphin				
BOMBEX training	4	4	0	0
Small Arms training	0	0	0	0
Total Exposures	4	4	0	0

Proposed Mitigation Measures

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) of the MMPA, NMFS must prescribe regulations setting forth the ''permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' The NDAA amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' The GOMEX Range Complex training activities described in this document are considered military readiness activities.

NMFS reviewed the Navy's proposed GOMEX Range Complex training activities and the proposed GOMEX Range Complex mitigation measures presented in the Navy's application to determine whether the activities and mitigation measures were capable of achieving the least practicable adverse effect on marine mammals.

Any mitigation measure prescribed by NMFS should be known to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals (2), (3), and (4) may contribute to this goal).

(2) A reduction in the numbers of marine mammals (total number or number at a biologically important time

or location) exposed to underwater detonations or other activities expected to result in the take of marine mammals (this goal may contribute to (1), above, or to reducing harassment takes only).

(3) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to underwater detonations or other activities expected to result in the take of marine mammals (this goal may contribute to (1), above, or to reducing harassment takes only).

(4) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to underwater detonations or other activities expected to result in the take of marine mammals (this goal may contribute to (1), above, or to reducing the severity of harassment takes only).

(5) A reduction in adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation (shut-down zone, *etc.*).

NMFS reviewed the Navy's proposed mitigation measures, which included a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity.'' These mitigation measures are listed below.

General Maritime Measures

The mitigation measures presented below would be taken by Navy personnel on a regular and routine basis. These are routine measures and are considered ''Standard Operating Procedures.''

I. Personnel Training—Lookouts

The use of shipboard lookouts is a critical component of all Navy standard operating procedures. Navy shipboard lookouts (also referred to as ''watchstanders'') are qualified and experienced observers of the marine environment. Their duties require that they report all objects sighted in the water to the Officer of the Deck (OOD) (*e.g.*, trash, a periscope, marine mammals, sea turtles) and all disturbances (*e.g.*, surface disturbance, discoloration) that may be indicative of a threat to the vessel and its crew. There are personnel serving as lookouts on station at all times (day and night) when a ship or surfaced submarine is moving through the water.

For the past few years, the Navy has implemented marine mammal spotter training for its bridge lookout personnel on ships and submarines. This training has been revamped and updated as the Marine Species Awareness Training (MSAT) and is provided to all applicable units. The lookout training program incorporates MSAT, which addresses the lookout's role in environmental protection, laws governing the protection of marine species, Navy stewardship commitments, and general observation information, including more detailed information for spotting marine mammals. MSAT may also be viewed on-line at *https://portal.navfac.navy.mil/go/msat*.

1. All bridge personnel, Commanding Officers, Executive Officers, officers standing watch on the bridge, maritime patrol aircraft aircrews, and Mine Warfare (MIW) helicopter crews will complete MSAT.

2. Navy lookouts would undertake extensive training to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

3. Lookout training will include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts will complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

4. Lookouts will be trained in the most effective means to ensure quick and effective communication within the command structure to facilitate implementation of protective measures if marine species are spotted.

5. Surface lookouts would scan the water from the ship to the horizon and be responsible for all contacts in their sector. In searching the assigned sector, the lookout would always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout would hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout would scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They would search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses would be lowered to allow the eyes to rest for a few seconds, and then the lookout would search back across the sector with the naked eye.

II. Operating Procedures and Collision Avoidance

1. Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order will be issued to further disseminate the personnel training requirement and general marine species mitigation measures.

2. Commanding Officers will make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship according to the proposed mitigation and monitoring measures.

3. While underway, surface vessels will have at least two lookouts with binoculars; surfaced submarines will have at least one lookout with binoculars. Lookouts already posted for safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, lookouts will watch for and report to the OOD the presence of marine mammals.

4. Personnel on lookout will employ visual search procedures employing a scanning method in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

5. After sunset and prior to sunrise, lookouts will employ Night Lookouts Techniques in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

6. While in transit, personnel aboard naval vessels will be alert at all times, use extreme caution, and proceed at a ''safe speed'' (the minimum speed at which mission goals or safety will not be compromised) so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

7. When whales have been sighted in the area, Navy vessels will increase vigilance and shall implement measures to avoid collisions with marine mammals and avoid activities that might result in close interaction of naval assets and marine mammals. Actions shall include changing speed and/or direction and are dictated by environmental and other conditions (*e.g.*, safety, weather).

8. Naval vessels will maneuver to keep at least 500 yds (460 m) away from

any observed whale and avoid approaching whales head-on. This requirement does not apply if a vessel's safety is threatened, such as when change of course will create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver. Restricted maneuverability includes, but is not limited to, situations when vessels are engaged in dredging, submerged operations, launching and recovering aircraft or landing craft, minesweeping operations, replenishment while underway and towing operations that severely restrict a vessel's ability to deviate course. Vessels will take reasonable steps to alert other vessels in the vicinity of the whale.

9. Where feasible and consistent with mission and safety, vessels will avoid closing to within 200-yd (183 m) of marine mammals other than whales (whales addressed above).

10. Floating weeds, algal mats, Sargassum rafts, clusters of seabirds, and jellyfish are good indicators of marine mammal presence. Therefore, increased vigilance in watching for marine mammals will be taken where these conditions exist.

11. Navy aircraft participating in exercises at sea will conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties described in the Navy's LOA application. Marine mammal detections will be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

12. All vessels will maintain logs and records documenting training operations should they be required for event reconstruction purposes. Logs and records will be kept for a period of 30 days following completion of a major training exercise.

Coordination and Reporting Requirements

The Navy will coordinate with the local NMFS Stranding Coordinator for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during training activities or within 24 hours after completion of training activities. Additionally, the Navy will follow internal chain of command reporting procedures as promulgated through Navy instructions and orders.

Proposed Mitigation Measures for Specific At-Sea Training Events

These measures are standard operating procedures that are in place currently and will be used in the future for all activities being analyzed in this LOA request.

I. Small Arms Training—Explosive Hand Grenades (MK3A2 Grenades)

This activity occurs in the UNDET Area E3 of the GOMEX Study Area. The following mitigation measures are proposed by the Navy for the small arms training.

(A) Lookouts visually survey for floating weeds, algal mats, Sargassum rafts, marine mammals.

(B) A 200-yard (182-m) radius buffer zone will be established around the intended target. The exercises will be conducted only if the buffer is clear of sighted marine mammals and sea turtles.

II. Air-to-Surface At-Sea Bombing Exercises (BOMBEX, 500-lb to 2,000-lb Explosive Bombs)

This activity occurs in W–155A/B (hot box) area of the GOMEX Study Area. The location was established to be within 150 nm from shore-based facilities (the established flight distance restriction for F/A–18 jets during unit level training events). The following mitigation measures are proposed by the Navy for the BOMBEX training.

(A) Aircraft would visually survey the target and buffer zone for marine mammals prior to and during the exercise. The survey of the impact area would be made by flying at 1,500 feet altitude or lower, if safe to do so, and at the slowest safe speed. Release of ordnance through cloud cover is prohibited; aircraft must be able to actually see ordnance impact areas. Survey aircraft should employ most effective search tactics and capabilities.

(B) A buffer zone of a 5,100-yard (4,663-m) radius would be established around the intended target zone. The exercises would be conducted only if the buffer zone is clear of sighted marine mammals and sea turtles.

(C) If surface vessels are involved, lookouts would survey for Sargassum rafts, which may be inhabited by immature sea turtles. Ordnance would not be targeted to impact within 5,100 yards (4,663 m) of known or observed Sargassum rafts or coral reefs.

(D) At-sea BOMBEXs using live ordnance will occur during daylight hours only.

Monitoring Measures

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for LOAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(1) An increase in the probability of detecting marine mammals, both within the safety zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the effects analyses.

(2) An increase in our understanding of how many marine mammals are likely to be exposed to levels of underwater detonations or other stimuli that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS.

(3) An increase in our understanding of how marine mammals respond (behaviorally or physiologically) to underwater detonations or other stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival).

(4) An increased knowledge of the affected species.

(5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

(6) A better understanding and record of the manner in which the authorized entity complies with the incidental take authorization.

Proposed Monitoring Plan for the GOMEX Range Complex

The Navy has provided NMFS with a copy of the draft GOMEX Range Complex Monitoring Plan. Additionally, NMFS and the Navy have incorporated a suggestion from the public, which recommended the Navy hold a peer review workshop to discuss the Navy's Monitoring Plans for the multiple range complexes and training exercises in which the Navy would receive ITAs.

The Navy must notify NMFS immediately (or as soon as clearance

procedures allow) if the specified activity is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in this document.

The Navy must conduct all monitoring and/or research required under the Letter of Authorization, if issued.

With input from NMFS, a summary of the monitoring methods required for use during training events in the GOMEX Range Complex are described below. These methods include a combination of individual elements that are designed to allow a comprehensive assessment.

I. Vessel or Aerial Surveys

(A) The Navy shall visually survey a minimum of 1 explosive event per year. If possible, the event surveyed will be one involving multiple detonations. One of the vessel or aerial surveys should involve professionally trained marine mammal observers (MMOs).

(B) When operationally feasible, for specified training events, aerial or vessel surveys shall be used 1–2 days prior to, during (if reasonably safe), and 1–5 days post detonation.

(C) Surveys shall include any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (*i.e.*, the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). For vessel-based surveys a passive acoustic system (hydrophone or towed array) could be used to determine if marine mammals are in the area before and/or after a detonation event.

(D) When conducting a particular survey, the survey team shall collect:

- Location of sighting;
- Species (if not possible, indicate whale, dolphin or pinniped);
- Number of individuals;
- Whether calves were observed;
- Initial detection sensor;
- Length of time observers maintained visual contact with marine mammal;
- Wave height;
- Visibility;
- Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after;
- Distance of marine mammal from actual detonations (or target spot if not yet detonated);
- Observed behavior—Watchstanders will report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming *etc.*), including speed and direction;
- Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long; and
- If observation occurs while explosives are detonating in the water, indicate munitions type in use at time of marine mammal detection (*e.g.*, were the 5-inch guns actually firing when the animals were sighted? Did animals enter an area 2 minutes after a huge explosion went off?).

II. Passive Acoustic Monitoring

The Navy is required to conduct passive acoustic monitoring when operationally feasible.

(A) Any time a towed hydrophone array is employed during shipboard surveys the towed array shall be deployed during daylight hours for each of the days the ship is at sea.

(B) The towed hydrophone array shall be used to supplement the ship-based systematic line-transect surveys (particularly for species such as beaked whales that are rarely seen).

III. Marine Mammal Observers on Navy Platforms

(A) MMOs selected for aerial or vessel surveys shall be placed on a Navy platform during one of the exercises being monitored per year. The remaining designated exercise(s) shall be monitored by the Navy lookouts/watchstanders.

(B) The MMO must possess expertise in species identification of regional marine mammal species and experience collecting behavioral data.

(C) MMOs shall not be placed aboard Navy platforms for every Navy training event or major exercise, but during specifically identified opportunities deemed appropriate for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.

(D) MMOs shall observe from the same height above water as the lookouts.

(E) The MMOs shall not be part of the Navy's formal reporting chain of command during their data collection efforts; Navy lookouts shall continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO shall inform the lookout of the sighting, and the lookout shall take the appropriate action through the chain of command.

(F) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. All MMO sightings shall be conducted according to a standard operating procedure. Information collected by MMOs should be the same as those collected by Navy lookout/watchstanders described above.

The Monitoring Plan for the GOMEX Range Complex has been designed as a collection of focused ''studies'' (described fully in the GOMEX Monitoring Plan) to gather data that will allow the Navy to address the following questions:

(A) What are the behavioral responses of marine mammals that are exposed to explosives?

(B) Is the Navy's suite of mitigation measures effective at avoiding injury and mortality of marine mammals?

Data gathered in these studies will be collected by qualified, professional marine mammal biologists or trained Navy lookouts/watchstanders that are experts in their field. This monitoring plan has been designed to gather data on all species of marine mammals that are observed in the GOMEX Range Complex study area.

Monitoring Workshop

During the public comment period on past proposed rules for Navy actions (such as the Hawaii Range Complex (HRC) and Southern California Range Complex (SOCAL) proposed rules), NMFS received a recommendation that a workshop or panel be convened to solicit input on the monitoring plan from researchers, experts, and other interested parties. The GOMEX Range Complex proposed rule included an adaptive management component and both NMFS and the Navy believe that a workshop would provide a means for Navy and NMFS to consider input from participants in determining whether (and if so, how) to modify monitoring techniques to more effectively accomplish the goals of monitoring set forth earlier in the document. NMFS and the Navy believe that this workshop concept is valuable in relation to all of the Range Complexes and major training exercise rules and LOAs that NMFS is working on with the Navy at this time. Consequently, NMFS has determined that this single Monitoring Workshop will be included as a component of all of the rules and LOAs that NMFS will be processing for the Navy in the next year or so.

The Navy, with guidance and support from NMFS, will convene a Monitoring Workshop, including marine mammal and acoustic experts as well as other interested parties, in 2011. The Monitoring Workshop participants will review the monitoring results from the

previous two years of monitoring pursuant to the GOMEX Range Complex rule as well as monitoring results from other Navy rules and LOAs (*e.g.*, VACAPES, AFAST, SOCAL, HRC, and other rules). The Monitoring Workshop participants would provide their individual recommendations to the Navy and NMFS on the monitoring plan(s) after also considering the current science (including Navy research and development) and working within the framework of available resources and feasibility of implementation. NMFS and the Navy would then analyze the input from the Monitoring Workshop participants and determine the best way forward from a national perspective. Subsequent to the Monitoring Workshop, modifications would be applied to monitoring plans as appropriate.

Integrated Comprehensive Monitoring Program

In addition to the site-specific Monitoring Plan for the GOMEX Range Complex, the Navy will complete the Integrated Comprehensive Monitoring Program (ICMP) Plan by the end of 2009. The ICMP is currently in development by the Navy, with Chief of Naval Operations Environmental Readiness Division (CNO-N45) having the lead. The program does not duplicate the monitoring plans for individual areas (*e.g.*, AFAST, HRC, SOCAL, VACAPES); instead it is intended to provide the overarching coordination that will support compilation of data from both range-specific monitoring plans as well as Navy funded research and development (R&D) studies. The ICMP will coordinate the monitoring programs' progress towards meeting its goals and develop a data management plan. A program review board is also being considered to provide additional guidance. The ICMP will be evaluated annually to provide a matrix for progress and goals for the following year, and will make recommendations on adaptive management for refinement and analysis of the monitoring methods.

The primary objectives of the ICMP are to:

- Monitor and assess the effects of Navy activities on protected species;
- Ensure that data collected at multiple locations is collected in a manner that allows comparison between and among different geographic locations;
- Assess the efficacy and practicality of the monitoring and mitigation techniques;
- Add to the overall knowledge-base of marine species and the effects of Navy activities on marine species.

The ICMP will be used both as: (1) a planning tool to focus Navy monitoring priorities (pursuant to ESA/MMPA requirements) across Navy Range Complexes and Exercises; and (2) an adaptive management tool, through the consolidation and analysis of the Navy's monitoring and watchstander data, as well as new information from other Navy programs (*e.g.*, R&D), and other appropriate newly published information.

In combination with the 2011 Monitoring Workshop and the adaptive management component of the GOMEX Range Complex rule and the other Navy rules (*e.g.* VACAPES Range Complex, Jacksonville Range Complex, *etc.*), the ICMP could potentially provide a framework for restructuring the monitoring plans and allocating monitoring effort based on the value of particular specific monitoring proposals (in terms of the degree to which results would likely contribute to stated monitoring goals, as well the likely technical success of the monitoring based on a review of past monitoring results) that have been developed through the ICMP framework, instead of allocating based on maintaining an equal (or commensurate to effects) distribution of monitoring effort across range complexes. For example, if careful prioritization and planning through the ICMP (which would include a review of both past monitoring results and current scientific developments) were to show that a large, intense monitoring effort in Hawaii would likely provide extensive, robust and much-needed data that could be used to understand the effects of sonar throughout different geographical areas, it may be appropriate to have other range complexes dedicate money, resources, or staff to the specific monitoring proposal identified as ''high priority'' by the Navy and NMFS, in lieu of focusing on smaller, lower priority projects divided throughout their home range complexes.

The ICMP will identify:

- A means by which NMFS and the Navy would jointly consider prior years' monitoring results and advancing science to determine if modifications are needed in mitigation or monitoring measures to better effect the goals laid out in the Mitigation and Monitoring sections of the GOMEX Range Complex rule.
- Guidelines for prioritizing monitoring projects.
- If, as a result of the workshop and similar to the example described in the paragraph above, the Navy and NMFS decide it is appropriate to restructure the monitoring plans for multiple ranges such that they are no longer evenly allocated (by rule), but rather focused on priority monitoring projects that are not necessarily tied to the geographic area addressed in the rule, the ICMP will be modified to include a very clear and unclassified recordkeeping system that will allow NMFS and the public to see how each range complex/project is contributing to all of the ongoing monitoring programs (resources, effort, money, *etc.*).

Adaptive Management

NMFS proposes to include an adaptive management component in the final regulations governing the take of marine mammals incidental to Navy training exercises in the GOMEX Range Complex. The use of adaptive management will give NMFS the ability to consider new data from different sources to determine (in coordination with the Navy) on an annual basis if mitigation or monitoring measures should be modified or added (or deleted) if new data suggests that such modifications are appropriate (or are not appropriate) for subsequent annual LOAs, if issued.

The following are some of the possible sources of applicable data:

- Results from the Navy's monitoring from the previous year (either from GOMEX Range Complex or other locations).
- Findings of the Workshop that the Navy will convene in 2011 to analyze monitoring results to date, review current science, and recommend modifications, as appropriate to the monitoring protocols to increase monitoring effectiveness.
- Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP, which is discussed elsewhere in this document).
- Results from specific stranding investigations (either from GOMEX Range Complex or other locations).
- Results from general marine mammal and sound research (funded by the Navy or otherwise).
- Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

Mitigation measures could be modified or added (or deleted) if new data suggests that such modifications would have (or do not have) a reasonable likelihood of accomplishing the goals of mitigation laid out in this proposed rule and if the measures are practicable. NMFS would also

coordinate with the Navy to modify or add to (or delete) the existing monitoring requirements if the new data suggest that the addition of (or deletion of) a particular measure would more effectively accomplish the goals of monitoring laid out in this proposed rule. The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to consider the data and issue annual LOAs. NMFS and the Navy will meet annually, prior to LOA issuance, to discuss the monitoring reports, Navy R&D developments, and current science and whether mitigation or monitoring modifications are appropriate.

Reporting Measures

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. Effective reporting is critical to ensure compliance with the terms and conditions of a LOA, and to provide NMFS and the Navy with data of the highest quality based on the required monitoring. As NMFS noted in its proposed rule, additional detail has been added to the reporting requirements since they were outlined in the proposed rule. The updated reporting requirements are all included below. A subset of the information provided in the monitoring reports may be classified and not releasable to the public.

NMFS will work with the Navy to develop tables that allow for efficient submission of the information required below.

General Notification of Injured or Dead Marine Mammals

Navy personnel will ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as operational security allows) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing underwater explosive detonations or other activities. The Navy will provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

Annual GOMEX Range Complex Monitoring Plan Report

The Navy shall submit a report annually on November 1 describing the implementation and results (through September 1 of the same year) of the GOMEX Range Complex Monitoring Plan, described above. Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the MMOs collecting marine mammal data pursuant to the GOMEX Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in major range complex training exercises section of the Annual GOMEX Range Complex Exercise Report referenced below.

The GOMEX Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from multiple Range Complexes.

Annual GOMEX Range Complex Exercise Report

The Navy is in the process of improving the methods used to track explosives used to provide increased granularity. The Navy will provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they will provide an annual update on the Navy's explosive tracking methods, including improvements from the previous year.

(i) Total annual number of each type of explosive exercise (of those identified as part of the ''specified activity'' in this final rule) conducted in the GOMEX Range Complex.

(ii) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

GOMEX Range Complex 5-yr Comprehensive Report

The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during the GOMEX Range Complex exercises for which annual reports are required (Annual GOMEX Range Complex Exercise Reports and GOMEX Range Complex Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (March 2014), covering activities that have occurred through September 1, 2013.

Estimated Take of Marine Mammals

With respect to the MMPA, NMFS' effects assessment serves four primary purposes: (1) To prescribe the permissible methods of taking (*i.e.*, Level B Harassment (behavioral harassment), Level A harassment (injury), or mortality, including an identification of the number and types of take that could occur by Level A or B harassment or mortality) and to prescribe other means of affecting the least practicable adverse impact on such species or stock and its habitat (*i.e.*, mitigation); (2) to determine whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities that would be affected in the GOMEX Range Complex, so this determination is inapplicable for this rulemaking); and (4) to prescribe requirements pertaining to monitoring and reporting.

In the *Assessment of Marine Mammal Response to Anthropogenic Sound* section, NMFS' analysis identified the lethal responses, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particular stress responses), and behavioral responses that could potentially result from explosive ordnance exposures. In this section, we will relate the potential effects to marine mammals from underwater detonation of explosives to the MMPA regulatory definitions of Level A and Level B Harassment and attempt to quantify the effects that might occur from the specific training activities that the Navy is proposing in the GOMEX Range Complex.

Take Calculations

In estimating the potential for marine mammals to be exposed to an acoustic source, the Navy completed the following actions:

(1) Evaluated potential effects within the context of existing and current regulations, thresholds, and criteria;

(2) Identified all acoustic sources that will be used during Navy training activities;

(3) Identified the location, season, and duration of the action to determine which marine mammal species are likely to be present;

(4) Determined the estimated number of marine mammals (*i.e.*, density) of each species that will likely be present in the respective OPAREAs during the Navy training activities;

(5) Applied the applicable acoustic threshold criteria to the predicted sound exposures from the proposed activity. The results were then evaluated to

determine whether the predicted sound exposures from the acoustic model might be considered harassment; and

(6) Considered potential harassment within the context of the affected marine mammal population, stock, and species to assess potential population viability. Particular focus on recruitment and survival are provided to analyze whether the effects of the action can be considered to have a negligible impact on marine mammal species or stocks.

Starting with a sound source, the attenuation of an emitted sound due to propagation loss is determined. Uniform animal distribution is overlaid onto the calculated sound fields to assess if animals are physically present at sufficient received sound levels to be considered ''exposed'' to the sound. If the animal is determined to be exposed, two possible scenarios must be considered with respect to the animal's physiology—effects on the auditory system and effects on non-auditory system tissues. These are not independent pathways and both must be considered since the same sound could affect both auditory and non-auditory tissues. Note that the model does not account for any animal response; rather the animals are considered stationary, accumulating energy until the threshold is tripped.

These modeling results do not take into account the mitigation measures (detailed in the Mitigation Measure section above) that lower the potential for exposures to occur given standard range clearance procedures and the likelihood that these species can be readily detected (*e.g.*, small animals move quickly throughout the water column and are often seen riding the bow wave of large ships or in large groups). Nevertheless, based on the modeling results, 2 Atlantic spotted dolphins, 19 bottlenose dolphins, 6 Clymene dolphins, 2 melon-headed whales, 26 pantropical spotted dolphins, 2 Risso's dolphins, 27 spinner dolphins, and 8 striped dolphins would be taken by Level B harassment (sub-TTS and TTS) as a result of the Navy training activities in the GOMEX Range Complex. In addition, 1 individual each of pantropical spotted dolphin and spinner dolphin would be taken by Level A harassment (injury). Please refer to Table 6 for a detailed list of marine mammals that would be taken as a result of the proposed Navy training activities within the GOMEX Range Complex. NMFS does not believe that there would be any mortality of any marine mammal resulting from the proposed training activities due to the sparse training activities and the implementation of mitigation and monitoring measures described above. Therefore, mortality of marine mammals would not be authorized. With the mitigation and monitoring measures implemented, the estimated take could be further reduced.

Effects on Marine Mammal Habitat

Marine mammal habitat and prey species could be affected by the explosive ordnance testing and the sound generated by such activities. Based on the analysis contained in the Navy's DEIS and the information below, NMFS has determined that the GOMEX Range Complex training activities will not have adverse or long-term impacts on marine mammal habitat or prey species.

Unless the sound source or explosive detonation is stationary and/or continuous over a long duration in one area, the effects of underwater detonation and its associated sound are generally considered to have a less severe impact on marine mammal habitat than the physical alteration of the habitat. Marine mammals may be temporarily displaced from areas where Navy training is occurring, but the area will be utilized again after the activities have ceased.

Effects on Food Resources

There are currently no well-established thresholds for estimating effects to fish from explosives other than mortality models. Fish that are located in the water column, in proximity to the source of detonation could be injured, killed, or disturbed by the impulsive sound and could leave the area temporarily. Continental Shelf Inc. (2004) summarized a few studies conducted to determine effects associated with removal of offshore structures (*e.g.*, oil rigs) in the Gulf of Mexico. Their findings revealed that at very close range, underwater explosions are lethal to most fish species regardless of size, shape, or internal anatomy. In most situations, cause of death in fish has been massive organ and tissue damage and internal bleeding. At longer range, species with gas-filled swimbladders (*e.g.*, snapper, cod, and striped bass) are more susceptible than those without swimbladders (*e.g.*, flounders, eels).

Studies also suggest that larger fish are generally less susceptible to death or injury than small fish. Moreover, elongated forms that are round in cross section are less at risk than deep-bodied forms. Orientation of fish relative to the shock wave may also affect the extent of injury. Open water pelagic fish (*e.g.*, mackerel) seem to be less affected than reef fishes. The results of most studies are dependent upon specific biological, environmental, explosive, and data recording factors.

The huge variation in fish populations, including numbers, species, sizes, and orientation and range from the detonation point, makes it very difficult to accurately predict mortalities at any specific site of detonation. A total of 7 hours explosive detonation events, with each event lasting for approximately 1 hour, are widely dispersed in two locations within the large GOMEX study area over the seasons for each year. Most fish species experience a large number of natural mortalities, especially during early life-stages, and any small level of mortality caused by the GOMEX Range Complex training exercises involving explosives will likely be insignificant to the population as a whole.

Therefore, potential impacts to marine mammal food resources within the GOMEX Range Complex are expected to be minimal given both the very geographic and spatially limited scope of most Navy at-sea activities including underwater detonations, and the high biological productivity of these resources. No short or long term effects to marine mammal food resources from Navy activities are anticipated within the GOMEX Range Complex.

Analysis and Negligible Impact Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (*i.e.*, takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of Level B harassment takes alone, is not enough information on which to base an impact determination.

In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration,

etc.), the context of any responses (critical reproductive time or location, migration, *etc.*), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The Navy's specified activities have been described based on best estimates of the planned detonation events the Navy would conduct for the proposed GOMEX Range Complex training activities. The events are generally short in duration, with each of the seven annual events lasting for about 1 hour. Taking the above into account, along with the fact that NMFS anticipates no mortalities (and few injuries) to result from the action, the fact that there are no specific areas of reproductive importance for marine mammals recognized within the GOMEX Range Complex, the sections discussed below, and dependent upon the implementation of the proposed mitigation measures, NMFS has determined that Navy training exercises utilizing underwater detonations will have a negligible impact on the affected marine mammal species and stocks present in the GOMEX Range Complex Study Area.

NMFS' analysis of potential behavioral harassment, temporary threshold shifts, permanent threshold shifts, injury, and mortality to marine mammals as a result of the GOMEX Range Complex training activities was provided earlier in this proposed rule and is analyzed in more detail below.

Behavioral Harassment

The Navy plans a total of 1 BOMBEX training event (with 4 bombs in succession for 1 hour) and 6 small arms training events (with 20 live grenades for each 1-hour event) annually. The total training exercises proposed by the Navy in the GOMEX Range Complex amount to approximately 7 hours per year. These detonation events are widely dispersed in two of the designated sites within the GOMEX Range Complex Study Area. The probability that detonation events will overlap in time and space with marine mammals is low, particularly given the densities of marine mammals in the GOMEX Range Complex Study Area and the implementation of monitoring and mitigation measures. Moreover, NMFS does not expect animals to experience repeat exposures to the same sound source as animals will likely move away from the source after being exposed. In addition, these isolated exposures, when received at distances of Level B behavioral harassment (*i.e.*, 177 dB re 1 microPa ^{2}-sec), are expected to cause brief startle reactions or short-term behavioral modification by the animals. These brief reactions and behavioral changes are expected to disappear when the exposures cease. Therefore, these levels of received impulse noise from detonation are not expected to affect annual rates or recruitment or survival.

TTS

NMFS and the Navy have estimated that individuals of some species of marine mammals may sustain some level of temporarily threshold shift TTS from underwater detonations. TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths. The TTS sustained by an animal is primarily classified by three characteristics:

- Frequency—Available data (of mid-frequency hearing specialists exposed to mid- to high-frequency sounds—Southall *et al.*, 2007) suggest that most TTS occurs in the frequency range of the source up to one octave higher than the source (with the maximum TTS at ½-octave above).
- Degree of the shift (*i.e.*, how many dB is the sensitivity of the hearing reduced by)—generally, both the degree of TTS and the duration of TTS will be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). Since the impulse from detonation is extremely brief, an animal would have to approach very close to the detonation site to increase the received SEL. The threshold for the onset of TTS for detonations is a dual criteria: 182 dB re 1 microPa^2-sec or 23 psi, which might be received at distances from 345–2,863 m from the centers of detonation based on the types of NEW involved to receive the SEL that causes TTS compared to similar source level with longer durations (such as sonar signals).
- Duration of TTS (Recovery time)—Of all TTS laboratory studies, some using exposures of almost an hour in duration or up to 217 SEL, almost all recovered within 1 day (or less, often in minutes), though in one study (Finneran *et al.*, 2007), recovery took 4 days.
- Although the degree of TTS depends on the received noise levels and exposure time, all studies show that TTS is reversible and animals' sensitivity is expected to recover fully in minutes to hours. Therefore, NMFS expects that TTS would not affect annual rates of recruitment or survival.

Acoustic Masking or Communication Impairment

As discussed above, it is also possible that anthropogenic sound could result in masking of marine mammal communication and navigation signals. However, masking only occurs during the time of the signal (and potential secondary arrivals of indirect rays), versus TTS, which occurs continuously for its duration. Impulse sounds from underwater detonation are extremely brief and the majority of most animals' vocalizations would not be masked. Therefore, masking effects from underwater detonation are expected to be minimal and unlikely. If masking or communication impairment were to occur briefly, it would be in the frequency ranges below 100 Hz, which overlaps with some mysticete vocalizations; however, it would likely not mask the entirety of any particular vocalization or communication series because of the short impulse.

PTS, Injury, or Mortality

The Navy's model estimated that 1 pantropical spotted dolphin and 1 spinner dolphin could experience 50-percent tympanic membrane rupture or slight lung injury (Level A harassment) as a result of the training activities utilizing underwater detonation by BOMBEX in the GOMEX Range Complex Study Area. However, these estimates do not take into consideration the proposed mitigation and monitoring measures. For underwater detonations, the animals have to be within an area between certain injury zones of influence (ZOI) to experience Level A harassment. Such injury ZOI varies from 0.09 km^2 to 4.98 km^2 (or at distances between 169 m to 1,259 m from the center of detonation) depending on the types of munition used and the season of the action. Though it is possible that Navy observers could fail to detect an animal at a distance of more than 1 km (an injury ZOI during BOMBEX, which is planned to have 1 event annually), all injury ZOIs from small arms trainings are smaller than 0.1 km^2 (178 m in radius) and NMFS believes it is unlikely that any marine mammal could be detected by lookouts/watchstanders or MMOs. As discussed previously, the Navy plans to utilize aerial or vessel surveys to detect marine mammals for mitigation implementation and indicated that they are capable of effectively monitoring safety zones.

Based on these assessments, NMFS determined that approximately 2 Atlantic spotted dolphins, 19 bottlenose dolphins, 6 Clymene dolphins, 2 melon-headed whales, 26 pantropical spotted dolphins, 2 Risso's dolphins, 27 spinner dolphins, and 8 striped dolphins could be affected by Level B harassment (TTS and sub-TTS) as a result of the proposed GOMEX Range Complex training activities. These numbers represent

approximately 0.01%, 0.51%, 0.09%, 0.09%, 0.08%, 0.13%, 1.36%, and 0.24% of Atlantic spotted dolphins, bottlenose dolphins (Gulf of Mexico oceanic stock), Clymene dolphins, melon-headed whales, pantropical spotted dolphins, Risso's dolphins, spinner dolphins, and striped dolphins, respectively, in the vicinity of the proposed GOMEX Range Complex Study Area (calculation based on NMFS 2007 U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment).

In addition, the Level A takes of 1 pantropical spotted dolphin and 1 spinner dolphin represent 0.0029% and 0.0503% of these species, respectively, in the vicinity of the proposed GOMEX Range Complex Study Area (calculation based on NMFS 2007 U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment). Given these very small percentages, NMFS does not expect there to be any long-term adverse effect on the populations of the aforementioned dolphin species. No marine mammals are expected to be killed as a result of these activities.

Additionally, the aforementioned take estimates do not account for the implementation of mitigation measures. With the implementation of mitigation and monitoring measures, NMFS expects that the takes would be reduced further. Coupled with the fact that these impacts will likely not occur in areas and times critical to reproduction, NMFS has preliminarily determined that the total taking over the 5-year period of the regulations and subsequent LOAs from the Navy's GOMEX Range Complex training activities will have a negligible impact on the marine mammal species and stocks present in the GOMEX Range Complex Study Area.

Subsistence Harvest of Marine Mammals

NMFS has preliminarily determined that the issuance of 5-year regulations and subsequent LOAs (as warranted) for Navy training exercises in the GOMEX Range Complex would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence use since there are no such uses in the specified area.

ESA

There are six ESA-listed marine mammal species that are listed as endangered under the ESA with confirmed or possible occurrence in the GOMEX Range Complex: humpback whale, North Atlantic right whale, fin whale, blue whale, sei whale, and sperm whale. The Navy has begun consultation with NMFS pursuant to section 7 of the ESA, and NMFS will also consult internally on the issuance of an LOA under section 101(a)(5)(A) of the MMPA for training exercises in the GOMEX Range Complex. Consultation will be concluded prior to a determination on the issuance of the final rule and an LOA.

NEPA

The Navy is preparing an Environmental Impact Statement (EIS) for the proposed GOMEX Range Complex training activities. A draft EIS was released in November 2008 and it is available at *http://www.gomexrangecomplexeis.com/*. NMFS is a cooperating agency (as defined by the Council on Environmental Quality (40 CFR 1501.6)) in the preparation of the EIS. NMFS has reviewed the Draft EIS and will be working with the Navy on the Final EIS (FEIS).

NMFS intends to adopt the Navy's FEIS, if adequate and appropriate, and we believe that the Navy's FEIS will allow NMFS to meet its responsibilities under NEPA for the issuance of the 5-year regulation and LOAs for training activities in the GOMEX Range Complex. If the Navy's FEIS is not adequate, NMFS will supplement the existing analysis and documents to ensure that we comply with NEPA prior to the issuance of the final rule or LOA.

Preliminary Determination

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat and dependent upon the implementation of the mitigation measures, NMFS preliminarily finds that the total taking from Navy training exercises utilizing underwater explosives in the GOMEX Range Complex will have a negligible impact on the affected marine mammal species or stocks. NMFS has proposed regulations for these exercises that prescribe the means of affecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking.

Classification

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. Section 605 (b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the entity that will be affected by this rulemaking, not a small governmental jurisdiction, small organization or small business, as defined by the Regulatory Flexibility Act. This rulemaking authorizes the take of marine mammals incidental to a specified activity. The specified activity defined in the proposed rule includes the use of underwater detonations during training activities that are only conducted by the U.S. Navy. Additionally, the proposed regulations are specifically written for ''military readiness'' activities, as defined by the NDAA, which means they cannot apply to small businesses. Consequently, any requirements imposed by a Letter of Authorization issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the Navy. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: July 7, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 218 is proposed to be amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart D is added to part 218 to read as follows:

Subpart D—Taking Marine Mammals Incidental to U.S. Navy Training in the Gulf of Mexico Range Complex (GOMEX Range Complex)

Sec.

Subpart D—Taking Marine Mammals Incidental to U.S. Navy Training in the Gulf of Mexico Range Complex (GOMEX Range Complex)

§ 218.30 Specified activity and specified geographical area.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the GOMEX Range Complex Operation Areas (OPAREAs), which is located along the southern east coast of the U.S. described in Figures 1 and 2 of the LOA application and consist of the BOMBEX Hotbox (surface and subsurface waters) and underwater detonation (UNDET) Area E3 (surface and subsurface waters), located within the territorial waters off Padre Island, Texas, near Corpus Christi NAS.

(1) The northernmost boundary of the BOMBEX Hotbox is located 23 nm (42.6 km) from the coast of the Florida panhandle at latitude 30° N, the eastern boundary is approximately 200 nm (370.4 km) from the coast of the Florida peninsula at longitude 86°48′ W.

(2) The UNDET Area E3 is a defined surface and subsurface area located in the waters south of Corpus Christi NAS and offshore of Padre Island, Texas. The westernmost boundary is located 7.5 nm (13.9 km) from the coast of Padre Island at 97°9′33′ W and 27°24′26″ N at the westernmost corner. It lies entirely within the territorial waters (0 to 12 nm, or 0 to 22.2 km) of the U.S. and the majority of it lies within Texas state waters (0 to 9 nm, or 0 to 16.7 km). It is a very shallow water training area with depths ranging from 20 to 26 m.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The detonation of the underwater explosives indicated in paragraph (c)(1)(i) of this section conducted as part of the training events indicated in paragraph (c)(1)(ii) of this section:

(i) Underwater Explosives:

(A) MK–83 (1,000 lb High Explosive bomb);

(B) MK3A2 anti-swimmer concussion grenades (0.5 lbs NEW).

(ii) Training Events:

(A) BOMBEX (Air-to-Surface)—up to 5 events over the course of 5 years (an average of 1 event per year, with 4 bombs in succession for each event);

(B) Small Arms Training with MK3A2 anti-swimmer concussion grenade—up to 30 events over the course of 5 years (an average 6 events per year, with 20 live grenades used for each event).

(2) [Reserved]

§ 218.31 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to § 216.106 of this chapter and § 218.36, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 218.30(b), provided the activity is in compliance with all terms, conditions, and requirements of this subpart and the appropriate Letter of Authorization.

(b) The activities identified in § 218.30(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 218.30(c) is limited to the following species, by the indicated method of take and the indicated number of times:

(1) Level B Harassment:

(i) Bottlenose dolphin (*Tursiops truncatus*)—95 (an average of 19 annually);

(ii) Pantropical spotted dolphin (*Stenella attenuata*)—130 (an average of 26 annually);

(iii) Clymene dolphin (*S. clymene*)—30 (an average of 6 annually);

(iv) Atlantic spotted dolphin (*S. frontalis*)—10 (an average of 2 annually);

(v) Spinner dolphin (*S. longirostris*)—135 (an average of 27 annually);

(vi) Striped dolphin (*S. coeruleoalba*)—40 (an average of 8 annually);

(vii) Risso's dolphin (*Grampus griseus*)—10 (an average of 2 annually);

(viii) Melon-headed whales (*Peponocephala electra*)—10 (an average of 2 annually);

(2) Level A Harassment (injury):

(i) Pantropical spotted dolphin—5 (an average of 1 annually);

(ii) Spinner dolphin—5 (an average of 1 annually);

§ 218.32 Prohibitions.

Notwithstanding takings contemplated in § 218.31 and authorized by a Letter of Authorization issued under § 216.106 of this chapter and § 218.36, no person in connection with the activities described in § 218.30 may:

(a) Take any marine mammal not specified in § 218.31(c);

(b) Take any marine mammal specified in § 218.31(c) other than by incidental take as specified in § 218.31(c)(1) and (2);

(c) Take a marine mammal specified in § 218.31(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this Subpart or a Letter of Authorization issued under § 216.106 of this chapter and § 218.36.

§ 218.33 Mitigation.

(a) When conducting training activities identified in § 218.30(c), the mitigation measures contained in the Letter of Authorization issued under § 216.106 of this chapter and § 218.36 must be implemented. These mitigation measures include, but are not limited to:

(1) General Maritime Measures:

(i) Personnel Training—Lookouts:

(A) All bridge personnel, Commanding Officers, Executive Officers, officers standing watch on the bridge, maritime patrol aircraft aircrews, and Mine Warfare (MIW) helicopter crews shall complete Marine Species Awareness Training (MSAT).

(B) Navy lookouts shall undertake extensive training to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(C) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

(D) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure to facilitate implementation of protective measures if marine species are spotted.

(E) Surface lookouts shall scan the water from the ship to the horizon and be responsible for all contacts in their sector. In searching the assigned sector, the lookout shall always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout shall hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout shall scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They shall search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses shall be lowered to allow the eyes to rest for a few seconds, and then the lookout shall search back across the sector with the naked eye.

(F) At night, lookouts shall scan the horizon in a series of movements that would allow their eyes to come to periodic rests as they scan the sector. When visually searching at night, they shall look a little to one side and out of the corners of their eyes, paying attention to the things on the outer edges of their field of vision. Lookouts shall also have night vision devices available for use.

(ii) Operating Procedures & Collision Avoidance:

(A) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel training requirement and general marine species mitigation measures.

(B) Commanding Officers shall make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(C) While underway, surface vessels shall have at least two lookouts with binoculars; surfaced submarines shall have at least one lookout with binoculars. Lookouts already posted for safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, lookouts shall watch for and report to the OOD the presence of marine mammals.

(D) Personnel on lookout shall employ visual search procedures employing a scanning method in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(E) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(F) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a ''safe speed'' (the minimum speed at which mission goals or safety will not be compromised) so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

(G) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and implement measures to avoid collisions with marine mammals and avoid activities that might result in close interaction of naval assets and marine mammals. Such measures shall include changing speed and/or course direction and would be dictated by environmental and other conditions (*e.g.*, safety or weather).

(H) Naval vessels shall maneuver to keep at least 500 yds (460 m) away from any observed whale and avoid approaching whales head-on. This requirement does not apply if a vessel's safety is threatened, such as when change of course will create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver. Vessels shall take reasonable steps to alert other vessels in the vicinity of the whale.

(I) Where feasible and consistent with mission and safety, vessels shall avoid closing to within 200-yd (183 m) of marine mammals other than whales (whales addressed above).

(J) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties. Marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(K) All vessels shall maintain logs and records documenting training operations should they be required for event reconstruction purposes. Logs and records shall be kept for a period of 30 days following completion of a major training exercise.

(2) Coordination and Reporting Requirements:

(i) The Navy shall coordinate with the local NMFS Stranding Coordinator for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during or within 24 hours after completion of training activities.

(ii) The Navy shall follow internal chain of command reporting procedures as promulgated through Navy instructions and orders.

(3) Proposed Mitigation Measures for Specific At-sea Training Events—If a marine mammal is injured or killed as a result of the proposed Navy training activities (*e.g.*, instances in which it is clear that munitions explosions caused death), the Navy shall suspend its activities immediately and report such incident to NMFS.

(i) Air-to-Surface At-Sea Bombing Exercises (250-lbs to 2,000-lbs explosive bombs):

(A) This activity shall only occur in W–155A/B (hot box) area of the GOMEX Range Complex OPAREA.

(B) Aircraft shall visually survey the target and buffer zone for marine mammals prior to and during the exercise. The survey of the impact area shall be made by flying at 1,500 ft (457 m) altitude or lower, if safe to do so, and at the slowest safe speed. Release of ordnance through cloud cover is prohibited; aircraft must be able to actually see ordnance impact areas.

(C) A buffer zone of a 5,100-yard (4,663-m) radius shall be established around the intended target zone. The exercises shall be conducted only if the buffer zone is clear of sighted marine mammals.

(D) At-sea BOMBEXs using live ordnance shall occur during daylight hours only.

(ii) Small Arms Training—Explosive hand grenades (such as the MK3A2 grenades):

(A) Lookouts shall visually survey for marine mammals prior to and during exercise.

(B) A 200-yd (182-m) radius buffer zone shall be established around the intended target. The exercises shall be conducted only if the buffer zone is clear of marine mammals.

(b) [Reserved]

§ 218.34 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to § 216.106 of this chapter and § 218.36 for activities described in § 218.30(c) is required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

(b) The Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if

the specified activity identified in § 218.30(c) is thought to have resulted in the mortality or serious injury of any marine mammals, or in any take of marine mammals not identified in § 218.31(c).

(c) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the GOMEX Range Complex Monitoring Plan, which is incorporated herein by reference, and which requires the Navy to implement, at a minimum, the monitoring activities summarized below.

(1) Vessel or aerial surveys.

(i) The Holder of this Authorization shall visually survey a minimum of 1 explosive event per year. One of the vessel or aerial surveys should involve NMFS-approved marine mammal observers (MMOs). If it is impossible to conduct the required surveys due to lack of training exercises, the missed annual survey requirement shall roll into the subsequent year to ensure that the appropriate number of surveys (*i.e.*, total of five) occurs over the 5-year period of effectiveness of this subject.

(ii) When operationally feasible, for specified training events, aerial or vessel surveys shall be used 1–2 days prior to, during (if reasonably safe), and 1–5 days post detonation.

(iii) Surveys shall include any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (*i.e.*, the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). For vessel based surveys a passive acoustic system (hydrophone or towed array) could be used to determine if marine mammals are in the area before and/or after a detonation event.

(iv) When conducting a particular survey, the survey team shall collect:

(A) Location of sighting;

(B) Species (if not possible, indicate whale, dolphin or pinniped);

(C) Number of individuals;

(D) Whether calves were observed;

(E) Initial detection sensor;

(F) Length of time observers maintained visual contact with marine mammal;

(G) Wave height;

(H) Visibility;

(I) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after;

(J) Distance of marine mammal from actual detonations (or target spot if not yet detonated);

(K) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, *etc.*), including speed and direction;

(L) Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long; and

(M) If observation occurs while explosives are detonating in the water, indicate munitions type in use at time of marine mammal detection.

(2) Passive acoustic monitoring—the Navy shall conduct passive acoustic monitoring when operationally feasible.

(i) Any time a towed hydrophone array is employed during shipboard surveys the towed array shall be deployed during daylight hours for each of the days the ship is at sea.

(ii) The towed hydrophone array shall be used to supplement the ship-based systematic line-transect surveys (particularly for species such as beaked whales that are rarely seen).

(iii) The array should have the capability of detecting low frequency vocalizations (<1,000 Hz) for baleen whales and relatively high frequency (up to 30 kHz) for odontocetes. The use of two simultaneously deployed arrays can also allow more accurate localization and determination of diving patterns.

(3) Marine mammal observers on Navy platforms:

(i) As required in § 218.34(c)(1), MMOs who are selected for aerial or vessel surveys shall be placed on a Navy platform during one of the explosive exercises being monitored per year, the other designated exercise shall be monitored by the Navy lookouts/watchstanders.

(ii) The MMO must possess expertise in species identification of regional marine mammal species and experience collecting behavioral data.

(iii) MMOs shall not be placed aboard Navy platforms for every Navy training event or major exercise, but during specifically identified opportunities deemed appropriate for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.

(iv) MMOs shall observe from the same height above water as the lookouts.

(v) The MMOs shall not be part of the Navy's formal reporting chain of command during their data collection efforts; Navy lookouts shall continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO shall inform the lookout of the sighting and the lookout shall take the appropriate action through the chain of command.

(vi) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. Information collected by MMOs should be the same as those collected by Navy lookout/watchstanders described in § 218.34(c)(1)(iv).

(d) The Navy shall complete an Integrated Comprehensive Monitoring Program (ICMP) Plan in 2009. This planning and adaptive management tool shall include:

(1) A method for prioritizing monitoring projects that clearly describes the characteristics of a proposal that factor into its priority.

(2) A method for annually reviewing, with NMFS, monitoring results, Navy R&D, and current science to use for potential modification of mitigation or monitoring methods.

(3) A detailed description of the Monitoring Workshop to be convened in 2011 and how and when Navy/NMFS will subsequently utilize the findings of the Monitoring Workshop to potentially modify subsequent monitoring and mitigation.

(4) An adaptive management plan,

(5) A method for standardizing data collection for GOMEX Range Complex and across range complexes,

(e) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

(f) Annual GOMEX Range Complex Monitoring Plan Report—The Navy shall submit a report annually on November 1 describing the implementation and results (through September 1 of the same year) of the GOMEX Range Complex Monitoring Plan. Data collection methods shall be standardized across range complexes to allow for comparison in different geographic locations. Although

additional information will also be gathered, the MMOs collecting marine mammal data pursuant to the GOMEX Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in the data required in § 218.34(g). The GOMEX Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from GOMEX Range Complex and multiple range complexes.

(g) Annual GOMEX Range Complex Exercise Report—The Navy shall provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they shall provide an annual update on the Navy's explosive tracking methods, including improvements from the previous year.

(1) Total annual number of each type of explosive exercise (of those identified as part of the ''specified activity'' in this final rule) conducted in the GOMEX Range Complex.

(2) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

(h) GOMEX Range Complex 5-yr Comprehensive Report—The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during the GOMEX Range Complex exercises for which annual reports are required (Annual GOMEX Range Complex Exercise Reports and GOMEX Range Complex Monitoring Plan Reports). This report shall be submitted at the end of the fourth year of the rule (March 2014), covering activities that have occurred through September 1, 2013.

(i) The Navy shall respond to NMFS comments and requests for additional information or clarification on the GOMEX Range Complex Comprehensive Report, the Annual GOMEX Range Complex Exercise Report, or the Annual GOMEX Range Complex Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports will be considered final after the Navy has addressed NMFS' comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.

(j) In 2011, the Navy shall convene a Monitoring Workshop in which the Monitoring Workshop participants will be asked to review the Navy's Monitoring Plans and monitoring results and make individual recommendations (to the Navy and NMFS) of ways of improving the Monitoring Plans. The recommendations shall be reviewed by the Navy, in consultation with NMFS, and modifications to the Monitoring Plan shall be made, as appropriate.

§ 218.35 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by § 216.103 of this chapter) conducting the activity identified in § 218.30(a) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with § 218.26 or a renewal under § 218.27.

§ 218.36 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 218.37.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (*i.e.*, mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 218.37 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under §§ 216.106 and 218.36 of this chapter for the activity identified in § 218.30(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.35 shall be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 218.34; and

(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under § 218.33 and the Letter of Authorization issued under §§ 216.106 and 218.36 of this chapter, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under § 216.106 of this chapter and § 218.37 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy's monitoring from the previous year (either from GOMEX Study Area or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§ 218.34(j)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§ 218.34(d)).

(4) Results from specific stranding investigations (either from the GOMEX Range Complex Study Area or other locations).

(5) Results from general marine mammal and sound research (funded by the Navy (described below) or otherwise).

(6) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

§ 218.38 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive

modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 218.36 of this chapter and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 218.37, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 218.30(b), a Letter of Authorization issued pursuant to §§ 216.106 and 218.36 of this chapter may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

[FR Doc. E9–16537 Filed 7–13–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–AY00

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 10

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

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP) (Amendment 10), incorporating the public hearing document and the Initial Regulatory Flexibility Analysis (IRFA), for review by the Secretary of Commerce and is requesting comments from the public.

DATES: Comments must be received on or before September 14, 2009.

ADDRESSES: A final supplemental environmental impact statement (FSEIS) was prepared for Amendment 10 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 10, including the FSEIS, the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The FSEIS/RIR/IRFA is accessible via the Internet at *http://www.nero.nmfs.gov*.

You may submit comments on this notice of availability, identified by ''0648–AY00'', by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal *http://www.regulations.gov*;
- Fax: (978) 281–9135, Attn: Carrie Nordeen;
- Mail to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on MSB Amendment 10.''

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

SUPPLEMENTARY INFORMATION:

Background

In February 2005, NMFS notified the Council that the butterfish stock was overfished, which triggered MSA requirements to implement rebuilding measures for the stock. In response, Amendment 10 to the MSB FMP was initiated by the Council in October 2005. Management measures for rebuilding butterfish are designed to reduce the fishing mortality on butterfish that occurs through discarding, which is the primary source of fishing mortality. Measures that reduce butterfish discards are expected to also reduce the bycatch of other finfish species in MSB fisheries.

The purpose of Amendment 10 is to bring the MSB FMP into compliance with Magnuson-Stevens Fishery Conservation and Management Act (MSA) requirements by: 1) Establishing a rebuilding program that allows the butterfish stock to rebuild and permanently protects the long-term health and stability of the stock; and 2) minimizing bycatch and the fishing mortality of unavoidable bycatch, to the extent practicable, in the MSB fisheries. Amendment 10 would increase the minimum codend mesh requirement for the *Loligo* squid (*Loligo*) fishery; establish a butterfish rebuilding program with a butterfish mortality cap program for the *Loligo* fishery; establish a 72–hr trip notification requirement for the *Loligo* fishery; and require an annual assessment of the butterfish rebuilding program by the Council's Scientific and Statistical Committee (SSC).

Initially, Amendment 9 to the MSB FMP (Amendment 9) was intended to bring the MSB FMP into compliance with MSA bycatch requirements, and contained several management measures intended to address deficiencies in the FMP that relate to discarding, especially as they affect butterfish. Specifically, those management measures would have attempted to reduce finfish discards by MSB small-mesh fisheries through mesh size increases in the directed *Loligo* fishery, removal of mesh size exemptions for the directed Illex squid fishery, and establishment of seasonal Gear Restricted Areas (GRAs). However, those specific management alternatives were developed in 2004, prior to the butterfish stock being declared overfished. On June 13, 2007, the Council recommended that all management measures developed as part of Amendment 9 to correct deficiencies in the FMP related to bycatch of finfish, especially butterfish, be considered in Amendment 10. Accordingly, no action was taken in Amendment 9 (73 FR 37382, July 1, 2008) to address bycatch.

The Council held three public meetings on Amendment 10 during June 2008. Following the public comment period that ended on June 23, 2008, the Council adopted Amendment 10 on October 16, 2008. In Amendment 10, measures recommended by the Council would:

- Establish a minimum mesh increase to 2–1/8 inches (54 mm) (from 1–7/8 inches (48 mm)) for the *Loligo* fishery during Trimesters I (Jan–Apr) and III (Sep–Dec), starting in 2010;
- Establish a butterfish mortality cap program for the *Loligo* fishery, starting in 2011;

• Establish a 72–hr trip notification requirement for the *Loligo* fishery, to facilitate the placement of NMFS observers on *Loligo* trips, starting in 2011; and

• Require an annual assessment of the butterfish mortality cap program by the Council's SSC and, if necessary, implementation of additional butterfish rebuilding measures through the annual specifications process.

Public comments are solicited on Amendment 10 and its incorporated documents through the end of the comment period stated in this notice of availability (NOA). A proposed rule that would implement Amendment 10 may be published in the **Federal Register** for public comment, following NMFS's evaluation of the proposed rule under the procedures of the Magnuson-Stevens Act. Public comments must be received by the end of the comment period provided in this NOA of Amendment 10 to be considered in the approval/disapproval decision on the amendment. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 10. To be considered, comments must be received by close of business on the last day of the comment period provided in this NOA.

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

Dated: July 8, 2009

Kristen C. Koch,

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

[FR Doc. E9–16671 Filed 7–13–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 74, No. 133
Tuesday, July 14, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Advisory Committee on Emerging Markets: Nominations

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.603.

SUMMARY: Notice is hereby given that nominations are being sought for twenty (20) qualified persons to serve on the Advisory Committee on Emerging Markets (the Committee). The role of the Committee is to provide information and advice, based upon knowledge and expertise of the members, useful to the Department of Agriculture (USDA) in implementing the Emerging Markets Program (EMP). The Committee also recommends ways to enhance agricultural exports through the involvement of the U.S. private sector in emerging markets and reviews qualified proposals submitted to the Program for funding technical assistance activities, from a business perspective.

DATES: Written nominations must be received by the Foreign Agricultural Service (FAS) by 5 p.m. on August 13, 2009.

ADDRESSES: All nominating materials should be sent to Mark Slupek, Program Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, *phone:* (202) 720–4327. Forms may also be submitted by fax to (202) 720–9361.

FOR FURTHER INFORMATION CONTACT: Persons interested in serving on the Committee, or in nominating individuals to serve, should contact Ilah Barnes, by telephone (202) 720–4327, by fax (202) 720–9361, or by electronic mail to *emo@fas.usda.gov* and request Form AD–755 and Form SF–181. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD.)

SUPPLEMENTARY INFORMATION: The Committee is authorized by section 1542 of the Food, Agriculture, Conservation and Trade Act of 1990, as amended. The overall purpose of the Committee is to provide USDA with information that may be useful in carrying out the provisions of the EMP. The Committee is composed of representatives of the various sectors of the food and rural business systems of the United States. More information about the purpose and function of the Committee and about the EMP may be found at the FAS/Emerging Markets Program Web site: *http://www.fas.usda.gov/mos/em-markets/em-markets.asp*. Form AD–755 is required and is available on the EMP home page at *http://www.fas.usda.gov/mos/em-markets/Form%20AD–755.doc*. In addition, FAS encourages the submission of the optional form AD–1086 (Applicant Supplemental Sheet), available on the Internet at *http://www.fas.usda.gov/admin/ad1086.pdf*. The members of the Committee are appointed by the Secretary of Agriculture and serve at the discretion of the Secretary. Committee members serve without compensation, but can receive reimbursement for travel expenses to attend committee meetings, if requested, in accordance with USDA travel regulations.

The Committee has a balanced membership of up to 20 members, representing a broad cross-section of the U.S. agricultural and agribusiness industry. All appointments will expire 2 years from the date of appointment. The Secretary may renew an appointment for one or more additional terms.

Most meetings will be held in Washington, DC, though other locations may be selected on an occasional basis. Committee meetings will be open to the public, unless the Secretary of Agriculture determines that the Committee will be discussing issues, the disclosure of which justify closing all or a portion of a meeting, in accordance with 5 U.S.C. 552b(c).

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, disability, marital status, or sexual orientation. To ensure that the work of the Committee takes into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the interest of minorities, women, and persons with disabilities.

Members should have experience, expertise, and knowledge of international agriculture and of trade and development issues as they affect emerging markets. No person, company, producer, farm organization, trade association, or other entity has a right to representation on the Committee. In making selections, every effort will be made to maintain balanced representation of the various broad industries within the United States as well as geographic diversity.

Signed at Washington, DC, on the 1st day of July, 2009.

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. E9–16707 Filed 7–13–09; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek reinstatement of an information collection, the Census of Horticultural Specialties.

DATES: Comments on this notice must be received by September 14, 2009 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0236, 2009 Census of Horticultural Specialties, by any of the following methods:

- *E-mail: omboffICer@nass.usda.gov*. Include docket number and title above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: NASS Clearance Officer, U.S. Department of Agriculture,

Room 5336A, Mail Stop 2024, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.

• *Hand Delivery/Courier: Hand deliver to:* David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336A, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: 2009 Census of Horticultural Specialties.

OMB Control Number: 0535–0236.

Type of Request: Intent to Seek Reinstatement of an Information Collection as mandated by the Census of Agricultural Act of 1997 (Pub. L. 105–113).

Abstract: The National Agricultural Statistics Service (NASS) of the United States Department of Agriculture (USDA) will request approval from the Office of Management and Budget (OMB) for the 2009 Census of Horticultural Specialties survey to be conducted as a follow-on survey from the 2007 Census of Agriculture and is authorized by the Food, Conservation, and Energy Act of 2008 (Title X—Horticulture and Organic Agriculture).

The 2009 Census of Horticultural Specialties will use as a sampling universe; every respondent on the 2007 Census of Agriculture who reported production and sales of $10,000 or more of horticultural specialty crops, and is still in business in 2009. In addition, NASS also plans to contact all new operations that have begun producing horticultural specialty products since the completion of the 2007 Census of Agriculture. Data collection will begin around January 1, 2010 for production and sales data for 2009. A final report will be published around December 2010. Data will be published at both the U.S. and State levels where possible.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 60 minutes per response.

Respondents: Producers of horticultural specialty crops.

Estimated Number of Respondents: 40,000.

Estimated Total Annual Burden on Respondents: 40,000 hours.

The primary objectives of the National Agricultural Statistics Service are to prepare and issue State and national estimates of crop production, livestock production, economic statistics, and environmental statistics related to agriculture and to conduct the Census of Agriculture and its follow on surveys.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995).

Copies of this information collection and related instructions can be obtained without charge from the NASS OMB Clearance Officer, at (202) 720–2248.

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 will have practical utility; (b) 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; (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 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.

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

Signed at Washington, DC, June 17, 2009.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E9–16635 Filed 7–13–09; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Forest Service

Norbeck Wildlife Project; Hell Canyon Ranger District; Black Hills National Forest Custer, SD

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Hell Canyon Ranger District of the Black Hills National Forest (BHNF) is preparing an Environmental Impact Statement (EIS) for a proposal to implement multiple resource management actions within the Norbeck Wildlife Preserve (Norbeck) project area as directed by the Norbeck Organic Act and the Black Hills National Forest Land and Resource Management Plan. Since the original NOl was published, the proposed action has been modified to no longer include prescribed burning within the Black Elk Wilderness, and two additional action alternatives have been developed. The No Action alternative, which is also being considered, would not authorize habitat improvements of any type within the project area. This revised Notice of Intent is being issued to provide updated information on this project, including the proposal, timing, and contact information.

DATES: The original NOI for the Norbeck project was published July 31, 2007 (72 FR 41703). The dates of expected availability of environmental documents have changed since that Notice. The draft environmental impact statement is now expected to be available in September 2009 and the final environmental impact statement is expected to be completed by December 2009.

FOR FURTHER INFORMATION CONTACT: Kelly Honors, Project Leader, Black Hills National Forest, Hell Canyon Ranger District, 330 Mount Rushmore Road, Custer, South Dakota 57730 or by phone at (605) 673–4853.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose for action in the Norbeck project area has not changed, and is to benefit ''game animals and birds'' by improving habitat conditions within the Norbeck Wildlife Preserve, and to reduce the risks and consequences of a wildfire escaping from the wilderness. The EIS will describe current conditions and analyze environmental consequences of proposed actions. This information will assist the decision-maker in selecting management and monitoring strategies to meet desired conditions, such as the goals and objectives outlined for Management Area 5.4A, Norbeck Wildlife Preserve, Management Area 4.2B, Peter Norbeck Scenci Byway and Management Area 1.1A, Black Elk Wilderness.

The Forest Service seeks to provide high quality habitat for ''game animals and birds'' in accordance with the Norbeck Organic Act of June 5, 1920 and the Black Hills National Forest (BHNF) Land and Resource Management Plan (LRMP). A Focus Species List was prepared through coordination between USDA Forest Service personnel and South Dakota

Game, Fish and Parks personnel (Griebel, Bums, Deisch, 2007), and is now an amendment to the BHNF LRMP. The following species are included on this list, and were used to guide habitat management objectives for the Norbeck project: mountain goat, bighorn sheep, elk, white-tailed deer, Merriam's turkey, mountain bluebird, golden-crowned kinglet, brown creeper, ruffed grouse, song sparrow, northern goshawk and black-backed woodpecker.

Proposed Action

The Norbeck project proposed action includes the following management actions:

Managing vegetation on approximately 6,000 acres mechanically and by prescribed burning to improve habitat for game animals and birds within the Norbeck Wildlife Preserve.

Information on Issues and Additional Alternatives

Issues associated with the Norbeck project, as identified through scoping, include: wilderness values, wildlife and wildlife habitat, large trees, mountain pine beetle effects on wildlife habitat and potential for escaped fire. The two additional action alternatives include vegetation treatments to improve wildlife habitat, and also include prescribed burning within the Black Elk Wilderness.

Responsible Official

Mr. Lynn D. Kolund, Hell Canyon District Ranger, Black Hills National Forest, 330 Mount Rushmore Road, Custer, SD 57730.

Nature of Decision To Be Made

After reviewing the environmental analysis and considering public comment, the District Ranger will reach a decision that is in accord with the purpose and need for the project. The decision will include, but not be limited to:

(I) Whether or not to undertake vegetation treatments to improve habitat conditions within Norbeck Wildlife Preserve for game animals and birds, and

(2) What actions are appropriate, and under what conditions would actions take place.

Early Notice about Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement is expected to be available for public review in September 2009. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes that 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 environmental impact statements 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 environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 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 comments and objections are made available to the Forest Service at a time when they can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns, comments on the draft environmental impact statement should be as specific as possible. Please refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement 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)

Dated: July 6, 2009.

David Thom,

Acting Deputy Forest Supervisor Black Hills National Forest.

[FR Doc. E9–16473 Filed 7–13–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Naches Ranger District, Okanogan-Wenatchee National Forest; Minor Pacific Crest National Scenic Trail Relocation

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: A minor relocation (approximately 2,000 feet) will occur on the Pacific Crest National Scenic Trail (PCNST) in 2009. The trail will be re-routed from its current location within the White Pass Ski Area south to the Wilderness boundary on the edge of the expansion area with the purpose of maintaining a quality, uninterrupted backcountry experience for PCNST users and to minimize their views of ski area structures and facilities. All activities were analyzed in the White Pass Expansion Master Development Plan Proposal Final Environmental Impact Statement and documented in the June 2007 Record of Decision. Relocation will begin in July 2009 and is expected to be completed by fall 2009. Trail relocation will be done in conjunction with the Pacific Crest Trail Association.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this trail relocation to Randall Shepard, Naches District Ranger, USDA, Okanogan-Wenatchee National Forest, 10237 US Highway 12, Naches, WA 98937, 509–653–1415.

Dated: July 8, 2009.

Randall D. Shepard,

Naches District Ranger, Okanogan-Wenatchee National Forest.

[FR Doc. E9–16649 Filed 7–13–09; 8:45 am]

BILLING CODE 3410–11–P

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: Advance Monthly Retail Trade Survey.

Form Number(s): SM–44(06)A, SM–44(06)AE, SM–44(06)AS, SM–72(06)A, SM–44(06)FA, SM–44(06)FAE, SM–44(06)FAS, SM–72(06)FA.

OMB Control Number: 0607–0104.

Type of Request: Extension of a currently approved collection.

Burden Hours: 5,000.

Number of Respondents: 5,000.

Average Hours per Response: 5 minutes.

Needs and Uses: The Advance Monthly Retail Trade Survey (MARTS) was developed in response to requests by government, business, and other users to provide an early indication of current retail trade activity in the United States. The MARTS also provides an estimate of monthly sales at food service establishments and drinking places.

Policymakers such as the Federal Reserve Board need to have the timeliest estimates in order to anticipate economic trends and act accordingly. Sales data from this survey provide the earliest possible look at consumer spending and are necessary for the calculation of the personal consumption expenditures component of Gross Domestic Product (GDP). Without the Advance Monthly Retail Trade Survey, the Census Bureau's earliest measure of retail sales is the ''preliminary'' estimate from the full monthly sample released about 40 days after the reference month. Advance estimates are released approximately 12 days after the reference month.

The Council of Economic Advisers, Bureau of Economic Analysis (BEA), Federal Reserve Board, and other government agencies, as well as businesses use sales estimates developed from the Advance Monthly Retail Trade Survey in formulating economic decisions. Data users especially value these estimates because of their timeliness. There would be approximately a one month delay in the availability of these data if this survey were not conducted.

We intend to select a new MARTS sample to be introduced in Fall 2009. We expect the number of respondents to increase from 4,500 to 5,000 as a result of selecting the new sample.

Affected Public: Business or other for-profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

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 7845, 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: July 8, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–16522 Filed 7–13–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–849]

Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut–to-Length Carbon Steel Plate from the People's Republic of China

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

ACTION: Notice of Preliminary Determination of Circumvention of Antidumping Duty Order.

SUMMARY: We preliminarily determine that imports from the People's Republic of China (PRC) of cut–to-length carbon steel plate products with 0.0008 percent or more boron, by weight, produced by Tianjin, regardless of the exporter or the importer of the merchandise, and otherwise meeting the description of in–scope merchandise, are within the class or kind of merchandise subject to the order on certain cut–to-length carbon steel plate from the PRC. We also preliminarily determine that imports from the PRC of cut–to-length carbon steel plate products with 0.0008 percent or more boron, by weight, imported by Toyota Tsusho, regardless of the producer or exporter of the merchandise, and otherwise meeting the description of in–scope merchandise, are within the class or kind of merchandise subject to the order on certain cut–to-length carbon steel plate from the PRC.

EFFECTIVE DATE: July 14, 2009.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–1131.

SUPPLEMENTARY INFORMATION:

Background

In response to a request from Nucor Corporation, SSAB N.A.D., Evraz NA Claymont Steel, Evraz NA Oregon Steel Mills, and Arcelor Mittal USA Inc., domestic interested parties in the above–mentioned proceeding (collectively certain domestic producers), the Department of Commerce (the Department) initiated an antidumping circumvention inquiry pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act). *See Certain Cut–to-Length Carbon Steel Plate from the People's Republic of China: Initiation of Antidumping Circumvention Inquiry*, 73 FR 62250 (October 20, 2008) (*Initiation Notice*). On November 17, 2008, the Department issued questionnaires to Tianjin (Tianjin Questionnaire) and Toyota Tsusho (Toyota Tsusho Questionnaire).

On December 8, 2008, Toyota Tsusho informed the Department that it would not submit a response to the Department's questionnaire. On December 23, 2008, Tianjin submitted a response to the Department's questionnaire (Tianjin Questionnaire Response). On December 31, 2008, SSAB N.A.D., Evraz NA Claymont Steel, and Evraz NA Oregon Steel Mills submitted comments on the Tianjin Questionnaire Response, and on January 13, 2009, Nucor Corporation submitted comments on the Tianjin Questionnaire Response.

On January 23, 2009, the Department requested from U.S. Customs and Border Protection (CBP) documentation pertaining to various entries of steel plate that had been classified under the HTSUS as ''alloy'' steel plate. Such documentation was provided by CBP to the Department on March 9, 2009 (see the March 12, 2009 memorandum from Steve Bezirganian to The File (CBP Entry Documents)).

On February 10, 2009, the Department issued a supplemental questionnaire to Tianjin (Tianjin Supplemental Questionnaire). On March 6, 2009, Tianjin submitted a response to the Tianjin Supplemental Questionnaire, but the Department noted in its letter of March 12, 2009, that Tianjin had failed to follow certain filing requirements and asked Tianjin to re–file its response appropriately. Tianjin re–filed its response on March 16, 2009 (Tianjin Supplemental Questionnaire Response). On March 19, 2009, SSAB N.A.D., Evraz NA Claymont Steel, and Evraz NA Oregon Steel Mills submitted comments on the Tianjin Supplemental Questionnaire Response. On March 27, 2009, Nucor Corporation submitted comments on the Tianjin Supplemental

Questionnaire Response. Subsequent to this submission, no additional submissions were made.[1]

Scope of the Order

The product covered by this order is certain cut–to-length carbon steel plate from the People's Republic of China. Included in this description is hot–rolled iron and non–alloy steel universal mill plates (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 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non–alloy steel flat–rolled products not in coils, of rectangular shape, hot–rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this order are flat–rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'') - for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. Specifically excluded from subject merchandise within the scope of this order is grade X–70 steel plate.

Merchandise Subject to the Minor Alterations Antidumping Circumvention Proceeding

The merchandise subject to this antidumping circumvention inquiry (Inquiry Merchandise) consists of all merchandise produced by Tianjin and/or imported by Toyota Tsusho containing 0.0008 percent or more boron, by weight, and otherwise meeting the requirements of the scope of the antidumping duty order as listed under the ''Scope of the Order'' section above, with the exception of merchandise meeting all of the following requirements: aluminum level of 0.02 percent or greater, by weight; a ratio of 3.4 to 1 or greater, by weight, of titanium to nitrogen; and a hardenability test (*i.e.*, Jominy test) result indicating a boron factor of 1.8 or greater. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7225.40.3050, 7225.99.0090, 7226.91.5000, and 7226.99.0180. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of Inquiry Merchandise is dispositive.

Legal Framework

Section 781(c) of the Act, dealing with minor alterations of merchandise, states: (1) In general. The class or kind of merchandise subject to (A) an investigation under this title, (B) an antidumping duty order issued under section 736, (C) a finding issued under the Antidumping Act, 1921, or (D) a countervailing duty order issued under section 706 or section 303, shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification. (2) Exception. Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

Section 351.225(i) of the Department's regulations states that under section 781(c) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order articles altered in form or appearance in minor respects.

Criteria for Analysis

While the statute is silent regarding what factors to consider in determining whether alterations are properly considered ''minor,'' the legislative history of this provision indicates there are certain factors that should be considered before reaching a circumvention determination. Previous circumvention cases[2] have relied on the factors listed in the Senate Finance Committee report on the Omnibus Trade and Competitiveness Act of 1988 (which amended the Tariff Act of 1930 to include the anti–circumvention provisions contained in section 781), which states:

> {i}n applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article. The Commerce Department should consider such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.[3]

In the case of an allegation of a ''minor alteration'' claim under section 781(c) of the Act, it is the Department's practice to look at the five factors listed in the Senate Finance Committee report to determine if circumvention exists in a particular case. *See, e.g., Canadian Plate*, 65 FR at 64929. Each circumvention case is highly dependent on the facts on the record, and must be analyzed in light of those specific facts. Thus, in circumvention cases we sometimes analyze additional criteria to determine if circumvention of the order is taking place. *Id.* at 64930. These may be case–specific. For example, in Canadian Plate additional factors analyzed included the circumstances under which the products entered the United States, the timing of the entries during the circumvention review period, and the quantity of merchandise entered during the circumvention review period. *Id.* at 64930–31. In a more recent circumvention case, the additional factors analyzed included not only the timing of the entries during the period, but also other factors, such as the input of customers in the design phase. *See Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Folding*

[1] On April 13, 2009, the Department indicated that in a memorandum to the file that the deadline for submission of new information in this proceeding would be April 20, 2009.

[2] *See, e.g., Preliminary Determination of Circumvention of Antidumping Order; Cut-to-Length Carbon Steel Plate from Canada*, 65 FR 64926, 64929 (October 31, 2000) (unchanged in final results, 66 FR 7617, 7618 (January 24, 2001)) (Canadian Plate); *see also Final Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products From Japan*, 68 FR 33676, 33679 (June 5, 2003).

[3] Omnibus Trade Act of 1987, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess., at 100 (1987) (emphasis added).

Metal Tables and Chairs from the People's Republic of China, 73 FR 63684 (October 27, 2008), unchanged in *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China*, 74 FR 20920 (May 6, 2009).

Analysis (Tianjin)

We examined the evidence and argument we received in the questionnaire responses, and in the comments on those questionnaire responses, in the context of the Senate Report Criteria; and an additional factor (the timing of the entries during the period).

Based on our review of the record evidence and our analysis of the comments received, the Department preliminarily determines that imports from the PRC of Inquiry Merchandise produced by Tianjin are within the class or kind of merchandise subject to the order on certain cut–to-length carbon steel plate from the PRC. For a complete discussion of the Department's analysis, see the Preliminary Analysis Memorandum for the Minor Alterations Circumvention Inquiry of the Antidumping Duty Order on Certain Cut–to-Length Carbon Steel Plate from the People's Republic of China (Preliminary Analysis Memorandum), dated concurrently with this notice.

As explained in the Preliminary Analysis Memorandum, we preliminarily determine that the Inquiry Merchandise has the same physical characteristics as products in the scope of the order on certain cut–to-length carbon steel plate from the PRC and the *ITC Final Report* except for the presence of boron in excess of 0.0008 percent, by weight.[4] There is no evidence of significant differences in the expectations of the ultimate users, uses of the merchandise, and channels of marketing between products in the scope of the order and those containing boron in excess of 0.0008 percent, by weight. Tianjin's main claim regarding what distinguishes its Inquiry Merchandise from merchandise covered by the scope is that the presence of boron in the former allows for more stable mechanical properties. However, the Department finds that the information submitted by Tianjin does not support this conclusion. We also determine the cost of modification in this case (*i.e.*, adding trace amounts of boron) is insignificant. Finally, we find that Tianjin's production and export of the Inquiry Merchandise not only followed the imposition of the antidumping duty order on certain cut–to-length carbon steel plate from the PRC, but also occurred as the PRC government was altering export tariff and VAT refund rates in ways that favored PRC exporters' shift to exports of steels classifiable as ''alloy'' steel based solely on customs classification. *See* Preliminary Analysis Memorandum for more details.

As a result of our inquiry, we preliminarily determine that imports from the PRC of Inquiry Merchandise produced by Tianjin, regardless of the exporter or the importer of the merchandise, are within the class or kind of merchandise subject to the order on certain cut–to-length carbon steel plate from the PRC. *See* Section 781(c) of the Act.

Facts Available (Toyota Tsusho)

As noted above, Toyota Tsusho indicated it would not respond to the Department's request for information. The questionnaire the Department issued to this party was designed to elicit information for purposes of conducting both qualitative and quantitative analyses in accordance with the criteria enumerated in section 781(c) of the Act as outlined above. This approach is consistent with our analysis in previous circumvention inquiries. *See, e.g., Petroleum Wax Candles From the People's Republic of China: Partial Termination of Circumvention Inquiry and Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 72 FR 14518 (March 28, 2007), unchanged in *Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 72 FR 31053 (June 5, 2007); *Circumvention and Scope Inquiries on the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry*, 71 FR 38608 (July 7, 2006); and *Hot–Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom; Negative Final Determinations of Circumvention of Antidumping and Countervailing Duty Order*s, 64 FR 40336 (July 26, 1999).

Without this information the Department must use facts available in making its determination pursuant to section 776(a)(2) of the Act. Section 776(a) of the Act requires the Department to resort to facts otherwise available if necessary information is not available on the record or when an interested party or any other person fails to provide (requested) information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782. *See* sections 776(a)(1) and 776(a)(2)(B) of the Act. As provided in section 782(c)(1) of the Act, if an interested party, promptly after receiving a request from the Department for information, notifies the Department that such party is unable to submit the information requested in the requested form and manner, the Department may modify the requirements to avoid imposing an unreasonable burden on that party. However, Toyota Tsusho informed the Department it would not respond to the Department's questionnaire. Consequently, because Toyota Tsusho failed to respond to the Department's questionnaire and, in fact, stated categorically that it would not respond to the Department's questionnaire, with respect to this party, we must base the preliminary determination in this inquiry on the facts otherwise available.

Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Notice of Preliminary Results of Antidumping Duty Administrative Review, Notice of Partial Rescission of Antidumping Duty Administrative Review, Notice of Intent to Revoke in Part: Certain Individually Quick Frozen Red Raspberries from Chile*, 72 FR 44112, 44114 (August 7, 2007) (unchanged in Final--Raspberries from Chile, 72 FR at 70297). Further, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997). *See also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1380–84 (CAFC 2003). Toyota Tsusho provided no indication that it was unable to comply with the Department's request for information. Therefore, in selecting from among the facts available, the Department determined that an adverse inference is warranted, pursuant to section 776(b) of the Act, because this party failed to comply with the Department's requests for information to the best of its ability.

As a result of our inquiry, we preliminarily determine that imports from the PRC of Inquiry Merchandise imported by Toyota Tsusho, regardless of the producer or the exporter of the merchandise, are within the class or kind of merchandise subject to the order on certain cut–to-length carbon steel plate from the PRC. *See* Section 781(c) of the Act.

Conclusion

As noted above, we preliminarily determine that imports from the PRC of Inquiry Merchandise produced by Tianjin, regardless of the exporter or the importer of the merchandise, and otherwise meeting the description of in–scope merchandise, are within the class or kind of merchandise subject to the order on certain cut–to-length carbon steel plate from the PRC. Also as noted above, we preliminarily determine that imports from the PRC of Inquiry Merchandise imported by Toyota Tsusho, regardless of the producer or exporter of the merchandise, and otherwise meeting the description of in–scope merchandise, are within the class or kind of merchandise subject to the order on certain cut–to-length carbon steel plate from the PRC.

Suspension of Liquidation

In accordance with section 351.225(l)(2) of the Department's regulations, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of Inquiry Merchandise entered, or withdrawn from warehouse, for consumption on or after October 20, 2008, the date of the initiation of this inquiry. We will also instruct CBP to require a cash deposit of estimated duties at the applicable rates for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after October 10, 2008, the date of the initiation of this inquiry, in accordance with section 351.225(l)(2) of our regulations.

Public Comment

The parameters for submission of public comment for circumvention inquiry cases are governed by the regulation covering scope rulings. *See* 19 CFR 351.225. Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 20 days of the publication of this notice. *See* 19 CFR 351.225(f)(3). Interested parties may file rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, no later than 10 days after the date on which the case briefs are due. *Id.* Interested parties may request a hearing within 20 days of the publication of this notice. Interested parties will be notified by the Department of the location and time of any hearing, if one is requested.

This preliminary determination of circumvention is in accordance with section 781(c) of the Act and 19 CFR 351.225.

Dated: July 7, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–16646 Filed 7–13–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Certain Circular Welded Non–Alloy Steel Pipe and Tube from Mexico; Extension of Time Limit for Final Results of Antidumping Duty Changed Circumstances Review

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

SUMMARY: The Department of Commerce (the Department) finds that it is not practicable to complete the final results of this changed circumstances review within the original time frame as it would be impossible to consider the parties comments and to complete the final results of this changed circumstances review within the original time frame. Accordingly, the Department is extending the time limit for completion of the final results of this changed circumstances review by 31 days to August 17, 2009.

FOR FURTHER INFORMATION CONTACT: John Drury or Brian Davis, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 2008, the Department published its notice of initiation of antidumping duty changed circumstances review. *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Circular Welded Non–Alloy Steel Pipe and Tube from Mexico*, 73 FR 63682 (October 27, 2008) (*Notice of Initiation*). On June 18, 2009, the Department preliminarily determined that Ternium is the successor–in-interest to Hylsa and should be treated as such for antidumping duty cash deposit purposes. *See Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Circular Welded Non–Alloy Steel Pipe and Tube from Mexico*, 74 FR 28883 (June 18, 2009) (*Preliminary Results*).

Extension of Time Limits for Final Results

The antidumping statute does not provide for a specific time limit for completing a changed circumstances review. However, under 19 CFR 351.216(e), the Department will issue the final results of a changed circumstances review within 270 days after the date on which the Department initiates the changed circumstances review. Currently, the final results of the antidumping duty changed circumstances review, which cover Hylsa, a producer/exporter of certain circular welded non–alloy steel pipe and tube from Mexico, and its successor Ternium, are due by July 17, 2009.

In the *Preliminary Results*, we stated that interested parties could request a hearing and submit case briefs to the Department no later than 30 days after the publication of the *Preliminary Results*, and submit rebuttal briefs, limited to the issues raised in those case briefs, five days subsequent to the case briefs' due date. As comments are currently due no later than July 20, 2009,[1] and the final results are currently due July 17, 2009, it would be impossible to consider the parties comments and to complete the final results of this changed circumstances review within the original time frame. Accordingly, pursuant to 19 CFR 351.302(b), the Department is extending the time limit for completion of the final results of this changed circumstances review by 31 days to August 17, 2009. *See, e.g., Certain Pasta from Italy: Notice of Extension of Final Results of Antidumping Duty Changed Circumstances Review*, 73 FR 46871 (August 12, 2008) and *Polyethylene Terephthalate Film Sheet and Strip from the Republic of Korea: Extension of Time Limit for Final Results of Changed Circumstances Review*, 73 FR 6931 (February 6, 2008).

This notice is issued and published in accordance with sections 751(b) and 777(i) of the Tariff Act of 1930, as amended.

Dated: July 8, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–16651 Filed 7–13–09; 8:45 am]

BILLING CODE 3510–DS–S

[1] Day 30 falls on a Saturday. Therefore, interested parties have until Monday, July 20, 2009, to request a hearing and submit case briefs to the Department.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–571–831]

Fresh Garlic from The People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski, Scott Lindsay, or Summer Avery, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–1395, (202) 482–0780, or (202) 482–4052, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 24, 2008, the Department of Commerce (''Department'') published a notice of initiation of an administrative review of fresh garlic from the People's Republic of Chain covering the period November 1, 2007 through October 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, and Request for Revocation in Part*, 73 FR 79055 (December 24, 2008). The preliminary results of this administrative review are currently due no later than August 2, 2009.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall issue preliminary results in an administrative review of a antidumping duty order within 245 days after the last day of the anniversary month of the order for which the administrative review was requested. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the 245-day period to 365 days.

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we determine that it is not practicable to complete the results of this review within the original time limit. The Department needs additional time to analyze a significant amount of information, which was recently submitted, and to determine whether any additional information is required. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department has decided to extend the time limit for the preliminary results from 245 days to 365 days. The preliminary results will now be due no later than November 30, 2009. Unless extended, the final results continue to be due 120 days after the publication of the preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1) of the Department's regulations.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: July 8, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–16653 Filed 7–13–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–825]

Stainless Steel Bar From Brazil: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On March 9, 2009, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain stainless steel bar from Brazil. The period of review (POR) is February 1, 2007, through January 31, 2008. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and an examination of our calculations, we have made changes for the final results. The final weighted–average dumping margin is listed below in the ''Final Results of the Review'' section of this notice.

EFFECTIVE DATE: July 14, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–5287 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 2009, the Department published *Stainless Steel Bar From Brazil: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 10022 (March 9, 2009), in the **Federal Register** (*Preliminary Results*). The administrative review covers one producer/exporter of the subject merchandise, Villares Metals S.A. (VMSA).

We invited parties to comment on the *Preliminary Results*. On April 20, 2009, we received a case brief from the petitioners (Carpenter Technology Corporation, Valbruna Slater Stainless, Inc., Electralloy Corporation, a Division of G.O. Carlson, Inc., and Universal Stainless). On April 27, 2009, we received a rebuttal brief from the respondent, VMSA. We did not receive a request for a hearing.

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The scope of the order covers stainless steel bar (SSB). The term SSB with respect to the order means articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold–finished SSBs that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process. Except as specified above, the term does not include stainless steel semi–finished products, cut–length flat–rolled products (*i.e.*, cut–length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes and sections. The SSB subject to the order is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs

purposes, the written description of the scope of the order is dispositive.

Verification

As provided in section 782(i) of the Act, we verified sales information VMSA provided (see *Preliminary Results*). Since the publication of the *Preliminary Results*, we have verified cost information provided by VMSA using standard verification procedures, including on–site inspection of the manufacturer's facility, the examination of relevant cost and financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report, dated April 7, 2009, which is on file in the Central Records Unit, room 1117 of the main Commerce building.

Analysis of Comments Received

The issues raised in the case and rebuttal briefs are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from John M. Andersen, Acting Deputy Assistant Secretary, to Ronald K. Lorentzen, Acting Assistant Secretary, dated July 7, 2009, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is in the Decision Memorandum and attached to this notice as an Appendix. The Decision Memorandum, which is a public document, is on file in the Central Records Unit, main Department building, Room 1117, and accessible on the Web at *http://ia.ita.doc.gov/frn/index*. html. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our findings at the cost verification and analysis of the comments received, we have recalculated VMSA's cost of manufacture of the rolled products to include the additional depreciation expense on the new rolling mill for May through October 2007. Consistent with the *Preliminary Results*, we have calculated VMSA's financial–expense ratio using the consolidated audited financial statements of the highest consolidated entity, Voelstalpine A.G., for fiscal year 2008. We have recalculated the cost–of-sales denominator used in the financial–expense ratio to exclude the distribution–center operations costs and, thus, have revised the financial–expense ratio for the final results accordingly. We have also recalculated the ratio for VMSA's general and administrative (G&A) expenses to exclude the revenue recognized from the reversal of contingencies which VMSA had claimed as an offset to G&A expense. See Final Cost Calculation Memorandum from Laurens Van Hauten to Neal Halper, dated, July 7, 2009, and Final Analysis Memorandum, dated July 7, 2009, for detailed information on these changes.

Final Results of Review

As a result of our review, we determine that the weighted–average dumping margin for VMSA is 4.96 percent for the period February 1, 2007, through January 31, 2008.

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer/customer–specific assessment rates for these final results of review. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each reported importer or customer. We will instruct CBP to assess the importer/customer–specific rate uniformly, as appropriate, on all entries of subject merchandise made by the relevant importer or customer during the POR. See 19 CFR 351.212(b).

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 of Antidumping Duties*). This clarification will apply to entries of subject merchandise during the POR produced by VMSA for which VMSA did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries of VMSA–produced merchandise at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Assessment of Antidumping Duties*.

The Department intends to issue liquidation instructions to CBP 15 days after the publication of these final results of review.

Cash–Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of SSB from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash–deposit rate for VMSA will be 4.96 percent; (2) for previously reviewed or investigated companies not listed above, 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, a prior review, or the less–than-fair–value 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; (4) if neither the exporter nor the manufacturer has its own rate, the cash–deposit rate will be the all–others rate for this proceeding, 19.43 percent, as established in the investigation. See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Brazil*, 59 FR 66914 (December 28, 1994). These deposit requirements shall remain in effect until further notice.

Notification to Parties

This notice also serves as a 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: July 7, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix

List of Issues Addressed in the Issues and Decision Memorandum

Comment 1 - Level of Trade
Comment 2 - Depreciation Expenses of Expenses on New Rolling Mill

Comment 3 - Income Offsets to General and Administrative Expenses
Comment 4 - Financial–Expense Ratio

[FR Doc. E9–16655 Filed 7–13–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF22

Marine Mammals; File No. 775–1875

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that NMFS Northeast Fisheries Science Center (NEFSC), Woods Hole, MA, has been issued a major amendment to Permit No. 775–1875 for research on marine mammals.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9300; fax (978)281–9333.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 14, 2009, notice was published in the **Federal Register** (74 FR 17165) that a request for an amendment to Permit No. 775–1875 to conduct research on harbor seals (*Phoca vitulina*) and gray seals (*Halichoerus grypus*) on rookeries and haulouts in the northeastern U.S. had been submitted by the above-named applicant. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The amended permit authorizes an increase in the number of harbor seals and gray seals that may be harassed incidental to scat collection from 5,000 and 2,000 respectively, to 20,000 per species annually. It also authorizes collection of an additional 30 harbor seal pup carcasses per year found during research activities.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment (EA) was prepared analyzing the effects of the permitted activities on the human environment. Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact, signed on July 7, 2009.

Dated: July 8, 2009.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–16673 Filed 7–13–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Partially Closed Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: The Director of the National Institute of Standards and Technology announces that the Information Security and Privacy Advisory Board will meet Wednesday, July 29, 2009 from 8:30 a.m.. until 5 p.m., Thursday, July 30, 2009, from 8:30 a.m. until 5 p.m., and Friday, July 31, 2009 from 8 a.m. until 4 p.m. The portion of the meeting held from 1 p.m. until 4 p.m. on Friday July 31, 2009 will be closed to the public.

DATES: The meeting will be held on July 29, 2009, from 8:30 a.m. until 5 p.m., July 30, 2009, from 8:30 a.m. until 5 p.m. and July 31, 2009, from 8 a.m. until 4 p.m. The portion of the meeting held from 1 p.m. until 4 p.m. on Friday July 31, 2009 will be closed to the public.

ADDRESSES: The meeting will take place at the George Washington University Cafritz Conference Center, 800 21st Street, NW., Room 403, Washington, DC on July 29, 30, & 31, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Pauline Bowen, ISPAB Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–2938.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, July 29, 2009 from 8:30 a.m. until 5 p.m., Thursday, July 30, 2009, from 8:30 a.m. until 5 p.m., and Friday, July 31, 2009 from 8 a.m. until 4 p.m. The portion of the meeting held from 1 p.m. until 4 p.m. on Friday July 31, 2009 will be closed to the public.

The Assistant Secretary for Administration, with the concurrence of the Assistant General Counsel for Administration, formally determined on July 9, 2009, that a portion of the meeting of the Information Security and Privacy Advisory Board that involves discussions regarding classified information about the 60 Day Cybersecurity Report may be closed in accordance with 5 U.S.C. 552b(c)(1). All individuals attending the closed portion of the meeting must provide proof of clearance status before attending the meeting. All other portions of this meeting will be open to the public. The closed portion of the meeting is scheduled to begin at 1 p.m. and to end at 4 p.m. on Friday, July 31, 2009. All other portions of the meeting will be open to the public. The agenda may change to accommodate Board business. The final agenda will be posted on the Web site *http://csrc.nist.gov/groups/SMA/ispab/index.html/*.

The ISPAB was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. Details regarding the ISPAB's activities are available at *http://csrc.nist.gov/groups/SMA/ispab/index.html/*.

Agenda:

—*Data.Gov* Panel.
—Cloud/Social Media Panel.
—CNSS/DOD/NIST Collaborative work (SP 800–53 v3).
—TIC External Connections.
—Metrics.
—Software Assurance and Supply Chain.
—Privacy Report.
—National Protection and Programs Directorate Briefing.
—Information Assurance.
—Board Discussion and Work Plans.
—Discussion of 60 Day Report (closed session).

Note that agenda items may change without notice because of possible unexpected schedule conflicts of

presenters. The final agenda will be posted on the Web site indicated above.

Public Participation: The ISPAB agenda will include a period of time, not to exceed thirty minutes, for oral comments from the public (Thursday, July 30, 2009, at 3 p.m.—3:30 p.m.). Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the ISPAB Secretariat at the telephone number indicated above. In addition, written statements are invited and may be submitted to the ISPAB at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. Approximately 15 seats will be available for the public and media on July 29—31, 2009.

Dated: July 9, 2009.

Patrick Gallagher,

Deputy Director.

[FR Doc. E9–16640 Filed 7–13–09; 8:45 am]

BILLING CODE 3510–13– P

DEPARTMENT OF COMMERCE

International Trade Administration

Sponsoring ''Sustainability and U.S. Competitiveness Summit'' for U.S. Stakeholders; Request for Comments and Interest in Attendance

ACTION: Notice and request for comments and interest in attendance.

SUMMARY: The International Trade Administration's Manufacturing and Services unit will sponsor a ''Sustainability and U.S. Competitiveness Summit'' on October 8, 2009 at the U.S. Department of Commerce. The Summit will be aimed at enhancing public-private interaction in the field of sustainable manufacturing and other related business practices. This notice (1) seeks input from individual U.S. stakeholders on areas of interest for discussion at the proposed ''Summit'' and (2) solicits requests to participate in the Summit from U.S. stakeholders.

DATES: Submit comments and requests to participate no later than 30 days after the date of this notice.

ADDRESSES: Address all comments concerning this notice and requests to participate to Bill McElnea, U.S. Department of Commerce, Room 2213, 1401 Constitution Ave., NW., Washington, DC 20230 (or via the Internet at *susmanuf@mail.doc.gov*).

FOR FURTHER INFORMATION CONTACT: Bill McElnea, 202–482–2831.

SUPPLEMENTARY INFORMATION: The ''Sustainability and U.S. Competitiveness Summit'' is sponsored by the Department of Commerce's Sustainable Manufacturing Initiative (SMI). Commerce's SMI is dedicated to supporting and promoting sustainable manufacturing practices, across all industry sectors, in the United States. The groundwork for the SMI was developed at an initial stakeholders' event in September 2007 on sustainable manufacturing sponsored by Commerce's Manufacturing and Services (MAS) unit. That event focused on two primary questions which remain central to the SMI mission: (1) What are U.S. industry's most pressing sustainable manufacturing-related challenges? and (2) how can the public and private sectors best work together to address these challenges? MAS considered the individual stakeholder input received at that event in the formulation of the SMI's four major project areas: (1) Creating a Subgroup on Sustainable Manufacturing as part of the Interagency Working Group on Manufacturing Competitiveness; (2) developing a comprehensive clearinghouse of USG programs and resources that support sustainable business practices; (3) conducting a series of regional facility tours of sustainable manufacturing leaders across the U.S. (formerly referred to as Sustainable Manufacturing American Regional Tours or SMARTs) and; (4) leading an effort with the Organization for Economic Cooperation and Development to establish sector-specific sustainable manufacturing metrics. For more information about the SMI and its projects, *please see: www.manufacturing.gov/sustainability.*

The ''Sustainability and U.S. Competitiveness Summit'' is being designed with two main objectives in mind: (1) Reporting back to stakeholders on SMI projects completed since the September 2007 event, and (2) obtaining a second round of feedback from individual U.S. stakeholders regarding the present utility of the SMI and how it might evolve to meet the current and future needs of the U.S. manufacturing sector and broader business community.

Regarding the second objective of the Summit, topic areas that could be discussed include, but are not limited to: ''Green supply chain'' challenges, regulatory compliance, the future nexus between U.S. competitiveness and environmental stewardship, how the SMI can support U.S. service providers in their sustainability efforts or incorporate their challenges and needs under the SMI mandate, and identifying U.S. regions where Commerce could conduct future regional facility tours similar to those held in 2008 and the Sustainability 360 event to be held July 13, 2009 in Seattle, Washington.

In preparation for the proposed event, MAS is requesting feedback from individual U.S. stakeholders on the following:

- SMI policies and projects that have worked well and that should be continued;
- Topic areas of interest to U.S. businesses with regard to sustainable manufacturing or other sustainable business issues which the SMI has not yet addressed.

Due to logistical constraints, the Summit will be limited to approximately eighty to eighty-five non-government participants. MAS's goal is that the Summit will present a diverse group of attendees in terms of affiliation, size, geographical base, and particular manufacturing sector. MAS encourages the participation of representatives of trade associations, U.S. businesses, academia, and other relevant U.S. entities that have a strategic interest in sustainable manufacturing as it relates to U.S. industry competitiveness. MAS will consider whether or not the requesting individual is from an association, organization or institution that maintains a substantial U.S. manufacturer member base and is well positioned to represent the views of small, medium and large size U.S. manufacturers in specific industry sectors. Finally, MAS invites the participation of members of the Secretary of Commerce's Manufacturing Council and individuals who participated in or attended a regional facility tour in 2008 or a Sustainability 360 event in 2009.

Persons who express an interest in attending the Summit may, if they wish, provide information on their business or organization and why they believe they could make a useful contribution to this event. MAS's decisions may also be based, in part, on publicly available information about the applicants.

Dated: July 8, 2009.

Bill McElnea,

International Economist, Office of Trade Policy Analysis, Certifying Officer, International Trade Administration, Department of Commerce.

[FR Doc. E9–16592 Filed 7–13–09; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF DEFENSE

Department of the Army; Army Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement/ Environmental Impact Report for the West Sacramento Project, California, General Reevaluation Report

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The action being taken is the preparation of an environmental impact statement/environmental impact report (EIS/EIR) for the West Sacramento Project, California, General Reevaluation Report (GRR). The GRR will re-evaluate the currently authorized plan as well as develop and evaluate opportunities to reduce flood risk, increase recreation, and restore the ecosystem along the Sacramento River in and around the City of West Sacramento.

DATES: A public scoping meeting will be held on July 21, 2009, from 3 p.m. to 5 p.m. and 6:30 p.m. to 8 p.m. at the West Sacramento City Hall, 1110 West Capitol Avenue, West Sacramento, CA. Send written comments by August 21, 2009 to the address below.

ADDRESSES: Send written comments and suggestions concerning this study to Mr. John Suazo, U.S. Army Corps of Engineers, Sacramento District, Attn: Planning Division (CESPK–PD–R), 1325 J Street, Sacramento, CA 95814. Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS/EIR should be addressed to John Suazo at (916) 557–6719, e-mail: *john.suazo@usace.army.mil* or by mail to (*see* **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

1. Proposed Action. The U.S. Army Corps of Engineers is preparing an EIS/EIR to analyze the impacts of a range of alternatives that would lessen the risk of flooding in and around the City of West Sacramento.

2. Alternatives. The EIS/EIR will address an array of flood risk management improvement alternatives along the entire West Sacramento basin. Alternatives analyzed during the investigation will include a combination of one or more flood protection measures. Potential measures include seepage berms, stability berms, setback levees, levee raises, and seepage cutoff walls.

3. Scoping Process. *a.* The Corps has initiated a process to involve concerned individuals, and local, State, and Federal agencies. A public scoping meeting will be held on July 21, 2009 to present information to the public and to receive comments from the public. The Draft EIS/EIR will be completed in conjunction with additional public meetings.

b. Significant issues to be analyzed in depth in the EIS include effects on hydraulic, wetlands and other waters of the U.S., vegetation and wildlife resources, special-status species, cultural resources, land use, fisheries, water quality, air quality, transportation, and socioeconomics; and cumulative effects of related projects in the study area.

c. The Corps is consulting with the State Historic Preservation Officer to comply with the National Historic Preservation Act, and the National Marine Fisheries Service and the U.S. Fish and Wildlife Service to comply with the Endangered Species Act.

d. A 45-day public review period will be provided for individuals and agencies to review and comment on the draft EIS/EIR. All interested parties are encouraged to respond to this notice and provide a current address if they wish to be notified of the draft EIS circulation.

4. Availability. The draft EIS/EIR is scheduled to be available for public review and comment in 2012.

Dated: July 2, 2009.

Thomas C. Chapman,

COL, EN, Commanding.

[FR Doc. E9–16610 Filed 7–13–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7 (a)(I)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. Patent No. 6,579,233 entitled ''System and Method for Evaluating Task Effectiveness Based on Sleep Patterns,'' issued June 17, 2003 to Fatigue Science, Inc. with its principal place of business at 700 Bishop Street, Suite 2000, Honolulu, HI 96813.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, *Attn:* Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (*see* **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–16599 Filed 7–13–09; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 13, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information

Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 8, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: IDEA Part C State Performance Plan (SPP) and Annual Performance Report (APR).

Frequency: SPP—originally submitted in 2005 and updated annually as needed; APR—annual submission.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 110,880.

Abstract: In accordance with 20 U.S.C. 1416(b)(1) and 20 U.S.C. 1442, not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, each lead agency must have in place a performance plan that evaluates the lead agency's efforts to implement the requirements and purposes of Part C and describe how the Lead Agency will improve such implementation. This plan is called the Part C State Performance Plan (Part C—SPP). In accordance with 20 U.S.C. 1416(b)(2)(C)(ii) the lead agency shall report annually to the public on the performance of each early intervention service program located in the State on the targets in the lead agency's performance plan. The lead agency also shall report annually to the Secretary on the performance of the State under the lead agency's performance plan. This report is called the Part C Annual Performance Report (Part C—APR). IC 1820–0578 is being extended so that States will continue to maintain the SPP and annually submit the APR.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4033. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–16672 Filed 7–13–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 13, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 8, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual State Application under Part C of the Individuals with Disabilities Education Act as Amended in 2004.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 560.

Abstract: In order to be eligible for a grant under 20 U.S.C. 1433, a State must provide assurance to the Secretary that the State has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and has in effect a statewide system that meets the requirements of 20 U.S.C. 1435. Some policies, procedures, methods, and descriptions must be submitted to the Secretary.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4032. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue,

SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–16669 Filed 7–13–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 13, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 8, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.
Title: What Works Clearinghouse Registry of Randomized Control Trials.
Frequency: On Occasion.
Affected Public: Businesses or other for-profit; Individuals or household; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 534.
Burden Hours: 181.

Abstract: The What Works Clearinghouse (WWC) Registry of Randomized Controlled Trials (RCTs) allows members of the public to review and submit information relating to Randomized Controlled Trials in the field of education. Primary members of the affected public include individuals or households. Data from the submissions will be used to further populate the Registry of RCTs for the WWC.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4031. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–16662 Filed 7–13–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 13, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or recordkeeping burden. OMB invites public comment.

Dated: July 8, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Communications and Outreach

Type of Review: Revision.

Title: Application for the Presidential Scholars Program.

Frequency: Annually.

Affected Public: Individuals or household; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 2,600.

Burden Hours: 41,600.

Abstract: The United States Presidential Scholars Program is a national recognition program to honor outstanding graduating high school seniors. Candidates are invited to apply based on academic achievements on the SAT or ACT assessments, or on artistic merits based on participation in a national talent search. This program was established by Presidential Executive Orders 11155 and 12158.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3983. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–16667 Filed 7–13–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 13, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or recordkeeping burden. OMB invites public comment.

Dated: July 9, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: New.

Title: State Application for Participation: The Adult Numeracy Instruction Professional Development (ANI-PD) Field-Test Program.

Frequency: Annually.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 45.

Burden Hours: 45.

Abstract: The State Application for Participation in the Adult Numeracy Instruction (ANI) Professional Development will be used to select twenty teachers and ten program administrators from ten adult education programs from each of two states that are selected to participate in a field test of the professional development Institutes. The goals of the institutes are to: Enhance teacher knowledge and use of research-based adult education mathematics standards; increase and deepen mathematics content knowledge among teacher participants; increase the repertoire of instructional skills among teachers working with adults in pre-GED (levels 3 and 4 of six levels) classes; and increase state capacity to support teachers in the area of mathematics instruction.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4021. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–16692 Filed 7–13–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub.

L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, August 6, 2009. 6: p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: David Kozlowski, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–2759, *David.Kozlowski@lex.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

- Call to Order, Introductions, Review of Agenda.
- Approval of June Meeting Minutes.
- Election of Co-chairs for Fiscal Year 2010.
- Public Comments.
- Deputy Designated Federal Officer's Comments.
- Federal Coordinator's Comments.
- Liaisons' Comments.
- Presentations.
- *Administrative Issues:*
- Committee Updates.
- Public Comments.
- Final Comments.
- Adjourn.

Breaks taken as appropriate.

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact David Kozlowski at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Kozlowski at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling David Kozlowski at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.org/publicmeetings.html.*

Issued at Washington, DC, on July 7, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–16638 Filed 7–13–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13471–000]

FFP Project 61, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 7, 2009.

On May 22, 2009, FFP Project 61, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Point Menoir Hydrokinetic Project, to be located on the Mississippi River in West Baton Rouge Parish, Louisiana and East Baton Rouge Parish, Louisiana.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Point Menoir Hydrokinetic Project consists of: (1) 1,647 proposed 40 kilowatt Free Flow generating units having a total installed capacity of 65.88 megawatts; (2) a 1.6-mile-long, 69 kilovolt transmission line; and (3) appurtenant facilities. The proposed Point Menoir Hydrokinetic Project would have an average annual generation of 289 gigawatt-hours.

Applicant Contact: Ramya Swaminathan, Vice President of Development, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930; phone: (978) 226–1531.

FERC Contact: Kim Carter, 202–502–6486.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13471) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16562 Filed 7–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13472–000]

FFP Project 62, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 7, 2009.

On May 22, 2009, FFP Project 62, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Raccourci Island Hydrokinetic Project, to be located on the Mississippi River, in Pointe Coupee Parish, Louisiana and West Feliciana Parish, Louisiana.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Raccourci Island Hydrokinetic Project consists of: (1) 4,435 proposed 40 kilowatt Free Flow generating units having a total installed

capacity of 177.4 megawatts; (2) a 6-mile-long, 69 kilovolt transmission line; and (3) appurtenant facilities. The proposed Raccourci Island Hydrokinetic Project would have an average annual generation of 777 gigawatt-hours.

Applicant Contact: Ramya Swaminathan, Vice President of Development, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930; phone: (978) 226–1531.

FERC Contact: Kim Carter, 202–502–6486.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13472) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16563 Filed 7–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM08–7–003]

North American Electric Reliability Corporation; Notice of Compliance Filing

July 7, 2009.

Take notice that on June 22, 2009, North American Reliability Corporation submitted revisions to Violation Risk Factors for Reliability Standard IRO–006–4, regarding interchange and transmission loading relief, in compliance with Commission Order No. 713–A,[1] issued March 19, 2009, in Docket Nos. RM08–7–000 and RM08–7–001.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 27, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16555 Filed 7–13–09; 8:45 am]

BILLING CODE 6717–01–P

[1] *Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards,* 126 FERC ¶ 61,252 (2009) (Order No. 713–A).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1339–000]

Grand Ridge Energy II LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 7, 2009.

This is a supplemental notice in the above-referenced proceeding of Grand Ridge Energy II LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 27, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16556 Filed 7–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1340–000]

Grand Ridge Energy III LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 7, 2009.

This is a supplemental notice in the above-referenced proceeding of Grand Ridge Energy III LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 27, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16557 Filed 7–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1342–000]

Grand Ridge Energy V LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 7, 2009.

This is a supplemental notice in the above-referenced proceeding of Grand Ridge Energy V LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is July 27, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16559 Filed 7–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1364–000]

Michigan Power Limited Partnership; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 7, 2009.

This is a supplemental notice in the above-referenced proceeding of Michigan Power Limited Partnership's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to

intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 27, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16560 Filed 7–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1341–000]

Grand Ridge Energy IV LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 7, 2009.

This is a supplemental notice in the above-referenced proceeding of Grand Ridge Energy IV LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 27, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16558 Filed 7–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1307–000]

EnergyConnect, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 7, 2009.

This is a supplemental notice in the above-referenced proceeding of EnergyConnect, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 27, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–16564 Filed 7–13–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

July 9, 2009.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 16, 2009, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary. Telephone: (202) 502–8400. For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

950th—Meeting

REGULAR MEETING

[July 16, 2009, 10 a.m.]

Item No.	Docket No.	Company
	ADMINISTRATIVE	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
	ELECTRIC	
E–1	RM07–19–001	Wholesale Competition in Regions with Organized Electric Markets.
E–2	ER09–1246–000	Midwest Independent Transmission System Operator, Inc.
	ER09–1248–000	MidAmerican Energy Company and Midwest Independent Transmission System Operator, Inc.
	ER09–1253–000	Midwest Independent Transmission System Operator, Inc.
E–3	PL09–4–000	Smart Grid Policy.
E–4	OMITTED.	
E–5	OMITTED.	
E–6	OMITTED.	
E–7	RM08–7–002	Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards.
E–8	OMITTED.	
E–9	OMITTED.	
E–10	OMITTED.	
E–11	RR08–6–002	North American Electric Reliability Corporation.
	RR07–14–003	
E–12	OA08–35–001	Xcel Energy Services, Inc.—Public Service Company of Colorado.
	OA08–35–002	
	OA08–35–003	
	ER09–72–000	
	ER09–72–001	
E–13	OA07–110–000	NorthWestern Corporation.
	OA07–110–001	
	OA07–110–002	
E–14	OA09–11–000	Black Hills Power, Inc.
E–15	OA08–30–001	El Paso Electric Company.
	OA08–33–001	Arizona Public Service Company.
	OA08–34–001	Public Service Company of New Mexico.
	OA08–38–002	Sierra Pacific Resources Operating Companies.
	OA08–47–001	Tucson Electric Power Company.
	OA08–48–001	UNS Electric, Inc.
E–16	OA08–23–001	Idaho Power Company.
	OA08–55–004	
	OA08–28–002	Deseret Generation & Transmission Co-operative, Inc.
	OA08–54–004	
	OA08–31–002	NorthWestern Corporation.
	OA08–56–004	

REGULAR MEETING—Continued

[July 16, 2009, 10 a.m.]

Item No.	Docket No.	Company
	OA08–40–001	PacifiCorp.
	OA08–57–004	
	OA08–45–002	Portland General Electric Company.
	OA08–118–001	
	OA08–99–002	Black Hills Power, Inc.
E–17	NJ08–5–001	United States Department of Energy-Bonneville Power Administration.
	OA08–25–001	Avista Corporation.
	OA98–26–001	Puget Sound Energy, Inc.
E–18	ER94–1188–045	LG&E Energy Marketing Inc.
	ER99–1623–014	Louisville Gas & Electric Company.
	R98–4540–014	Kentucky Utilities Company.
	ER98–1279–016	Western Kentucky Energy Corporation.
E–19	ER09–1252–000	Midwest Independent Transmission System Operator, Inc. and MidAmerican Energy Company.
E–20	ER99–2311–010	Carolina Power & Light Company.
	ER97–2846–013	Florida Power Corporation.
E–21	ER99–2311–010	Carolina Power & Light Company.
	ER97–2846–013	Florida Power Corporation.
	ER07–188–005	Duke Energy Carolinas, LLC.
	ER91–569–043	Entergy Services, Inc.
	ER02–862–011	Entergy Power Ventures, LP.
	ER01–666–011	EWO Marketing, LP.
	ER91–569–043	Entergy Power, Inc.
	ER94–1188–045	LG&E Energy Marketing Inc.
	ER99–1623–014	Louisville Gas & Electric Company.
	ER98–4540–014	Kentucky Utilities Company.
	ER98–1279–016	Western Kentucky Energy Corporation.
	ER96–1085–013	South Carolina Electric & Gas Company.
	ER96–780–020	Southern Company Services, Inc. Alabama Power Company. Georgia Power Company. Gulf Power Company. Mississippi Power Company. Southern Power Company.
	ER99–2342–012	Tampa Electric Company.
E–22	ER91–569–038	Entergy Services, Inc.
	ER91–569–039	
	ER91–569–040	
	ER91–569–041	
	ER91–569–042	
	ER91–569–044	
	ER91–569–043	Entergy Power, Inc.
	ER02–862–010	Entergy Power Ventures, LP.
	ER02–862–011	
	ER01–666–010	EWO Marketing, LP.
	ER01–666–011	
	ER01–1804–008	Warren Power, LLC.
E–23	ER99–2342–012	Tampa Electric Company.
E–24	ER07–188–005	Duke Energy Carolinas, LLC.
E–25	ER96–780–014	Southern Company Services, Inc.
	ER96–780–015	Alabama Power Company.
	ER96–780–016	Georgia Power Company.
	ER96–780–018	Gulf Power Company.
	ER96–780–020	Mississippi Power Company.
	ER96–780–021	Southern Power Company.
	ER01–1633–004	Southern Company-Florida, LLC.
	ER01–1633–005.	
	ER01–1633–006.	
	ER01–1633–008.	
	ER00–3240–007	Oleander Power Project, LP.
	ER00–3240–008.	
	ER00–3240–009.	
	ER00–3240–011.	
	ER03–1383–007	DeSoto County Generating Company, LLC.
	ER03–1383–008.	
	ER03–1383–009.	
	ER03–1383–011.	
E–26	ER96–719–025	MidAmerican Energy Company.
	ER97–2801–026	PacifiCorp.
	ER99–2156–018	Cordova Energy Company LLC.
E–27	ER96–1085–013	South Carolina Electric & Gas Company.

REGULAR MEETING—Continued

[July 16, 2009, 10 a.m.]

Item No.	Docket No.	Company
E–28	EF06–2011–000 EF06–2011–001. EF06–2011–002.	United States Department of Energy-Bonneville Power Administration.
E–29	EL08–58–000	*Pepco Energy Services, Inc.* v. *PJM Interconnection, LLC.*
E–30	ER08–1540–001	Virginia Electric and Power Company.
E–31	OMITTED.	
E–32	EL03–54–005	*Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California and City of Vernon, California* v. *California Independent System Operator Corporation.*
E–33	EL09–51–000	*Boralex Ashland LP* v. *ISO New England Inc.*
E–34	ER08–1055–002 ER08–1055–003.	Midwest Independent Transmission System Operator, Inc.
GAS		
G–1	RM09–2–000	Contract Reporting Requirements of Intrastate Natural Gas Companies.
G–2	RM08–2–000	Pipeline Posting Requirements Under Section 23 of the Natural Gas Act.
G–3	RM96–1–030	Standards for Business Practices for Interstate Natural Gas Pipelines.
G–4	RP09–194–000	Tennessee Gas Pipeline Company.
G–5	RP09–447–001 RP09–447–002	Monroe Gas Storage Company, LLC.
HYDRO		
H–1	P–2100–165 EL09–55–000	*County of Butte, California* v. *California Department of Water Resources.*
H–2	P–13053–001	Green Wave Energy Solutions, LLC.
H–3	RM09–6–001	Update of the Federal Energy Regulation Commission's Fees Schedule for Annual Charges for the Use of Government Lands.
H–4	P–2299–065 P–2299–053	Turlock Irrigation District and Modesto Irrigation District.
CERTIFICATES		
C–1	OMITTED.	
C–2	CP09–58–000	Rockies Express Pipeline LLC.
C–3	CP09–60–000 CP09–60–001	Dominion Cove Point LNG, LP.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. E9–16731 Filed 7–13–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects—Rate Order No. WAPA–146

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed power rates.

SUMMARY: The Western Area Power Administration (Western) is proposing revised rates for Loveland Area Projects (LAP) firm electric service. LAP consists of the Fryingpan-Arkansas Project (Fry-Ark) and the Pick-Sloan Missouri Basin Program—Western Division (Pick-Sloan—WD), which were integrated for marketing and rate-making purposes in 1989. Current rates, under Rate Schedule L-F8, extend through December 31, 2013, but are not sufficient to meet LAP revenue requirements. The proposed rates will provide sufficient revenue to pay all annual costs, including interest expense, and repay investments within the allowable periods. Western will prepare and make available a brochure that provides detailed information on the proposed rates. The proposed rates, under Rate Schedule L-F9, would go into effect on January 1, 2010, and would remain in effect through December 31, 2014, or until superseded. Publication of this **Federal Register** notice begins the formal process for the proposed rate adjustment.

DATES: The consultation and comment period begins today and will end October 13, 2009. Western will present a detailed explanation of the proposed rates at a public information forum. The public information forum will be held on August 18, 2009, from 9 a.m. to 10:30 a.m. MDT, in Northglenn, Colorado. Western will accept oral and written

comments at a public comment forum. The public comment forum will be held on August 18, 2009, from 11 a.m. to no later than 12 p.m. MDT, in Northglenn, Colorado. Western will accept written comments any time during the consultation and comment period.

ADDRESSES: Written comments and/or requests to be informed of Federal Energy Regulatory Commission (FERC) actions concerning the rates submitted by Western to FERC for approval should be sent to the Regional Manager, Rocky Mountain Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, or e-mail to *lapfirmadj@wapa.gov*. Western will post information about the rate process on its Web site at *http://www.wapa.gov/rm/ratesRM/2010/default.htm*. Western will post comments received via letter and e-mail to its Web site after the close of the comment period. Written comments must be received by the end of the consultation and comment period to be considered by Western in its decision process. The location of the public information and comment forums is the Ramada Plaza Hotel, 10 East 120th Avenue, Northglenn, Colorado.

FOR FURTHER INFORMATION CONTACT: Ms. Sheila D. Cook, Rates Manager, Rocky Mountain Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, telephone (970) 461–7211, e-mail *lapfirmadj@wapa.gov* or *scook@wapa.gov*.

SUPPLEMENTARY INFORMATION: The proposed rates for LAP firm electric service are designed to recover an annual revenue requirement that includes investment repayment, interest, purchase power, operation and maintenance (O&M), and other expenses. The projected annual revenue requirement for firm electric service is allocated equally between capacity and energy.

The Acting Deputy Secretary of Energy approved existing Rate Schedule L-F8 for firm electric service on an interim basis on January 8, 2009 (74 FR 3015, January 16, 2009), for a 5-year period beginning on February 1, 2009, and ending December 31, 2013, or until superseded. Under Rate Schedule L-F8, the composite rate is 37.24 mills per kilowatthour (mills/kWh), the firm energy rate is 18.62 mills/kWh, and the firm capacity rate is $4.88 per kilowattmonth (kWmonth). This Rate Schedule is formula based, providing for an increase in the Drought Adder rate component of up to 2 mills/kWh without a formal public process.

The current rate, including a 2 mills/kWh increase provided for under the Drought Adder formula rate component, is not sufficient to meet the LAP revenue requirement. As a result, Western is entering into this rate adjustment process. The proposed rate adjustment reflects a rate increase based on the Fry-Ark and Pick-Sloan—WD revenue requirements derived from the Fiscal Year 2008 Power Repayment Studies (PRSs). The PRSs set the LAP annual revenue requirement for 2010 for firm electric service at $84.5 million, which is an 11.2 percent increase (1.6 percent Base and 9.6 percent Drought Adder).

The 1.6 percent increase from the Base rate component is due to a slight increase in O&M costs, as well as the inclusion of additional transmission costs associated with the wheeling of Mt. Elbert generation in the Fry-Ark PRS. Previously, these transmission cost projections were only included through 2010, the expiration date of Western's contract with the transmission provider. In the 2004 rate adjustment process, it was decided that the Fry-Ark PRS would include three additional years of transmission cost projections, through 2013. In the current rate adjustment, Western is proposing to include transmission cost projections through 2024, the end of LAP's Marketing Plan. Transmission service will be needed beyond 2013, so it is appropriate to include those costs at least through the term of the LAP contracts. The additional transmission costs are partially offset by increases in projected ancillary service revenues. The 9.6 percent increase from the Drought Adder rate component is due to increased drought related costs.

Given the need for a Base rate component increase and the size of the Drought Adder rate component increase, Western is required to initiate a formal public process.[1] Western has prepared the proposed rate schedule for firm electric service (LF–9) for consideration and comment during this public process. A comparison of the existing revenue requirement and rates and the proposed revenue requirement and rates under L-F9 is listed in Table 1.

TABLE 1—LAP FIRM ELECTRIC SERVICE REVENUE REQUIREMENT AND RATES

Firm electric service	Existing rates February 1, 2009	Proposed rates January 1, 2010	Percent change
Revenue Requirement	$75.9 million	$84.5 million	11.2
Composite Rate	37.24 mills/kWh	41.42 mills/kWh	11.2
Firm Energy Rate	18.62 mills/kWh	20.71 mills/kWh	11.2
Firm Capacity Rate	$4.88/kWmonth	$5.43/kWmonth	11.2

Under Rate Schedule L–F9, Western is proposing to continue to identify its firm electric service revenue requirement using Base and Drought Adder rate components and provide for an annual increase in the Drought Adder rate component of up to 2 mills/kWh. The Base rate component is a revenue requirement that includes annual operation and maintenance expenses, investment repayment and associated interest, normal timing power purchases, and transmission costs. Western's normal timing power purchases are due to operational constraints (*e.g.*, management of endangered species habitat, water quality, navigation, etc.) and are not associated with the current drought. The Drought Adder rate component is a formula-based revenue requirement that includes costs attributable to drought conditions. The Drought Adder rate component includes costs associated with future non-timing purchases of additional power to meet firm obligations not covered with available system generation due to the drought, previously incurred deficits due to purchased power debt that resulted from non-timing power purchases made during this drought, and the interest associated with the previously incurred

[1] Under the current Rate Schedule, Western had the option of increasing the Drought Adder rate component by up to 2 mills/kWh outside of a formal public process, and only initiating the formal public process for the Base rate component increase and the incremental increase of the Drought Adder rate component above 2 mills/kWh. Instead, Western has opted to initiate the formal public process for the entire rate increase.

and future drought debt. The Drought Adder rate component is designed to repay Western's drought debt within 10 years from the time the debt was incurred, using balloon-payment methodology. For example, the drought debt incurred by Western in 2008 will be repaid by 2018.

The annual revenue requirement calculation will continue to be summarized by the following formula: Annual Revenue Requirement = Base Revenue Requirement + Drought Adder Revenue Requirement. Under this proposal, effective January 1, 2010, the LAP annual revenue requirement equals $84.5 million and is comprised of a Base revenue requirement of $51.2 million plus a Drought Adder revenue requirement of $33.3 million. A comparison of the current and proposed rate components is listed in Table 2.

TABLE 2—SUMMARY OF LAP RATE COMPONENTS

	Existing rates February 1, 2009		Proposed rates January 1, 2010	
	Firm energy	Firm capacity	Firm energy	Firm capacity
Base	12.23 mills/kWh	$3.21/kWmonth	12.54 mills/kWh	$3.29/kWmonth.
Drought Adder	6.39 mills/kWh	$1.67/kWmonth	8.17 mills/kWh	$2.14/kWmonth.
Total LAP	18.62 mills/kWh	$4.88/kWmonth	20.71 mills/kWh	$5.43/kWmonth.

Continuing to identify the firm electric service revenue requirement using Base and Drought Adder rate components will assist Western in the presentation of the impacts of the drought, demonstrate repayment of the drought related costs in the PRSs, and allow Western to be more responsive to changes in drought related expenses. Western will continue to charge and bill its customers firm electric service rates for energy and capacity, which are the sum of the Base and Drought Adder rate components.

Western reviews its firm electric service rates annually. Western will review the Base rate component after the annual PRSs are completed, generally in the first quarter of the calendar year. If an adjustment to the Base rate component is necessary, Western will initiate a public process pursuant to 10 CFR part 903 prior to making an adjustment.

In accordance with the original implementation of the Drought Adder rate component, Western will continue to review the Drought Adder rate component each September to determine if drought costs differ from those projected in the PRSs, and, if so, whether an adjustment, either incremental or decremental, to the Drought Adder rate component is necessary. Western will notify customers by letter in October of the planned incremental or decremental adjustment and implement the adjustment in the January billing cycle. Although decremental adjustments to the Drought Adder rate component will occur as drought costs are repaid, the adjustments cannot result in a negative Drought Adder rate component. To give customers advance notice, Western will conduct a preliminary review of the Drought Adder rate component in early summer and notify customers by letter of the estimated change to the Drought Adder rate component for the following January, with the final Drought Adder component adjustment verified with notification in the October letter to the customers. Implementing the Drought Adder rate component adjustment on January 1 of each year will help keep the drought deficits from escalating as quickly, will lower the interest expense due to drought deficits, will demonstrate responsible deficit management, and will provide prompt drought deficit repayments.

As a part of the current and proposed rate schedules, Western provides for a formula-based adjustment of the Drought Adder rate component of up to 2 mills/kWh. The 2 mills/kWh cap is intended to place a limit on the amount the Drought Adder formula can be adjusted relative to associated drought costs without having to go through a public process to recover costs attributable to the Drought Adder formula rate for any one-year cycle.

Legal Authority

Since the proposed rates constitute a major adjustment as defined by 10 CFR part 903, Western will hold a public information forum and a public comment forum. Western will review all timely public comments and make amendments or adjustments to the proposal as appropriate. Proposed rates will be forwarded to the Deputy Secretary of Energy for approval on an interim basis.

Western is establishing firm electric service rates for LAP under the Department of Energy Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); and other acts that specifically apply to the projects involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing Department of Energy (DOE) procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that Western initiates to develop the proposed rates are available for inspection and copying at the Rocky Mountain Regional Office, located at 5555 East Crossroads Boulevard, Loveland, Colorado. Many of these documents and supporting information are also available on Western's Web site under the ''Rates'' section located at *http://www.wapa.gov/rm/ratesRM/2010/default.htm.*

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347); the Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can

be categorically excluded from those requirements.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: June 29, 2009.

Timothy J. Meeks,

Administrator.

[FR Doc. E9–16689 Filed 7–13–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division—Rate Order No. WAPA–147

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Power Rates.

SUMMARY: The Western Area Power Administration (Western) is proposing revised rates for Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED) firm electric and firm peaking power service. Current rates, under Rate Schedules P–SED–F10 and P–SED–FP10, extend through December 31, 2013, but are not sufficient to meet the P–SMBP—ED revenue requirements. The proposed rates will provide sufficient revenue to pay all annual costs, including interest expense, and repay investments within the allowable periods. Western will prepare and make available a brochure that provides detailed information on the proposed rates. The proposed rates, under Rate Schedules P–SED–F11 and P–SED–FP11, would go into effect on January 1, 2010, and would remain in effect through December 31, 2014, or until superseded. Publication of this **Federal Register** notice begins the formal process for the proposed rate adjustment.

DATES: The consultation and comment period begins today and will end October 13, 2009. Western will present a detailed explanation of the proposed rates at public information forums. Public information forum dates are:

1. August 18, 2009, 9 a.m. to 10:30 a.m. MDT, Northglenn, Colorado.

2. August 19, 2009, 9 a.m. to 10:30 a.m. CDT, Sioux Falls, South Dakota.

Western will accept oral and written comments at public comment forums. Public comment forums will be held on the following dates:

1. August 18, 2009, 11 a.m. to no later than 12 noon MDT, Northglenn, Colorado.

2. August 19, 2009, 11 a.m. to no later than 12 noon CDT, Sioux Falls, South Dakota.

Western will accept written comments any time during the consultation and comment period.

ADDRESSES: Written comments and/or requests to be informed of Federal Energy Regulatory Commission (FERC) actions concerning the rates submitted by Western to FERC for approval should be sent to Mr. Robert J. Harris, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, or e-mail at *ugpfirmrate@wapa.gov*. Western will post information about the rate process on its Web site at *http://www.wapa.gov/ugp/rates/2010firmrateadjust.* Western will post comments received via letter and e-mail to its Web site after the close of the comment period. Written comments must be received by the end of the consultation and comment period to be considered by Western in its decision process.

Public information and comment forum locations are:

1. Northglenn—Ramada Plaza Hotel, 10 East 120th Avenue, Northglenn, Colorado.

2. Sioux Falls—Holiday Inn, 100 West 8th Street, Sioux Falls, South Dakota.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Cady-Hoffman, Rates Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, telephone (406) 247–7439, e-mail *cady@wapa.gov.*

SUPPLEMENTARY INFORMATION: The proposed rates for P-SMBP—ED firm electric and firm peaking service are designed to recover an annual revenue requirement that includes investment repayment, interest, purchase power, operation and maintenance, and other expenses.

The Acting Deputy Secretary of Energy approved existing Rate Schedules P–SED–F10 and P–SED–FP10 for firm electric and firm peaking service on an interim basis on January 8, 2009 (74 FR, 3022, January 16, 2009), for a 5-year period beginning on February 1, 2009, and ending December 31, 2013, or until superseded. FERC confirmed and approved those Rate Schedules on a final basis on April 28, 2009.[1] Under Rate Schedule P–SED–F10 effective February 1, 2009, the composite rate is 29.34 mills per kilowatthour (mills/kWh), the firm energy rate is 16.71 mills/kWh, and the firm capacity rate is $6.80 per kilowattmonth (kWmonth). The projected revenue requirement for firm electric service is allocated equally between capacity and energy. Under Rate Schedule P–SED–FP10 effective February 1, 2009, the firm peaking capacity rate is $6.20/kWmonth. These Rate Schedules are formula-based, providing for an increase in the Drought Adder rate component of up to 2 mills/kWh without a formal public process.

This proposed rate adjustment reflects a rate increase based on the P–SMBP Fiscal Year 2008 Power Repayment Study (PRS). The PRS sets the total annual P–SMBP—ED revenue requirement for 2010 for firm electric and firm peaking power service at $320.2 million, or a 13.1 percent increase for a composite rate of 33.25 mills/kWh. The current rates, including a 2 mills/kWh increase provided for under the Drought Adder formula rate component, are not sufficient to meet the P–SMBP—ED revenue requirements. Given the need for a Base rate component increase and the size of the Drought Adder rate component increase, Western is required to initiate a formal public process.[2] Western has prepared the proposed rate schedules for firm electric service (P–SED–F11) and firm peaking service (P–SED–FP11) for consideration and comment during this public process. A comparison of the existing revenue requirement and rates and the proposed revenue requirement and rates under P–SED–F11 and P–SED–FP11 is listed in Table 1.

[1] FERC confirmed and approved Rate Order No. WAPA–140 on April 28, 2009, in Docket No. EF09–5031–000. *See United States Department of Energy, Western Area Power Administration, Pick-Sloan Missouri Basin Program,* 127 FERC ¶62075 (April 28, 2009).

[2] Under the current Rate Schedules, Western had the option of increasing the Drought Adder rate component by up to 2 mills/kWh outside of a formal public process and only initiating the formal public process for the Base rate component increase and the incremental increase of the Drought Adder rate component above 2 mills/kWh. Instead, Western has opted to initiate the formal public process for this rate increase.

TABLE 1—P–SMBP—ED FIRM ELECTRIC AND FIRM PEAKING POWER SERVICE REVENUE REQUIREMENT AND RATES

Firm electric service	Existing rates as of Feb. 1, 2009	Proposed rates Jan. 1, 2010	Percent change
Firm and Firm Peaking Revenue Requirement	$283.0 million	$320.2 million	13.1
Composite Rate	29.34 mills/kWh	33.25 mills/kWh	13.3
Firm Capacity Rate	$6.80/kWmonth	$7.65/kWmonth	12.5
Firm Energy Rate	16.71 mills/kWh	19.05 mills/kWh	14.0
Firm Peaking Capacity Rate	$6.20/kWmonth	$6.90/kWmonth	11.3
Firm Peaking Energy Rate [1]	16.71 mills/kWh	19.05 mills/kWh	14.0

[1] Firm peaking energy is normally returned. This will be assessed in the event firm peaking energy is not returned.

Under Rate Schedule P–SED–F11, Western is proposing to continue to identify its firm electric service revenue requirement using Base and Drought Adder rate components and provide for an annual increase in the Drought Adder rate component of up to 2 mills/kWh. The Base rate component is a revenue requirement that includes annual operation and maintenance expenses, investment repayment and associated interest, normal timing power purchases, and transmission costs. Western's normal timing power purchases are due to operational constraints (*e.g.*, management of endangered species habitat, water quality, navigation, etc.) and are not associated with the current drought. The Drought Adder rate component is a formula-based revenue requirement that includes costs attributable to the past and present drought conditions. The Drought Adder rate component includes costs associated with future non-timing purchases of additional power to firm obligations not covered with available system generation due to the drought, previously incurred deficits due to purchased power debt that resulted from non-timing power purchases made during this drought, and the interest associated with the previously incurred and future drought debt. The Drought Adder rate component is designed to repay Western's drought debt within 10 years from the time the debt was incurred, using balloon-payment methodology. For example, the drought debt incurred by Western in 2008 will be repaid by 2018.

The annual revenue requirement calculation will continue to be summarized by the following formula: Annual Revenue Requirement = Base Revenue Requirement + Drought Adder Revenue Requirement. Under this proposal, effective January 1, 2010, the P–SMBP—ED annual revenue requirement equals $332.8 million and is comprised of a Base revenue requirement of $166.0 million plus a Drought Adder revenue requirement of $166.8 million. Both the Base and Drought Adder rate components recover portions of the firm power revenue requirement, firm peaking power, and associated 5 percent discount revenue necessary to equal the P–SMBP—ED revenue requirement. A comparison of the current and proposed rate components is listed in Table 2.

TABLE 2—SUMMARY OF P–SMBP—ED RATE COMPONENTS

	Existing rates as of February 1, 2009			Proposed rates January 1, 2010		
	Base rate component	Drought Adder rate component	Total	Base rate component	Drought Adder rate component	Total
Firm Capacity Rate (/kWmonth)	$3.80	$3.00	$6.80	$3.80	$3.85	$7.65
Firm Energy Rate (mills/kWh)	9.27	7.44	16.71	9.53	9.52	19.05
Firm Peaking Capacity Rate (/kWmonth)	$3.40	$2.80	$6.20	$3.45	$3.45	$6.90
Firm Peaking Energy Rate (mills/kWh)[1]	9.27	7.44	16.71	9.53	9.52	19.05

[1]Firm peaking energy is normally returned. This will be assessed in the event firm peaking energy is not returned.

As set forth in Table 2 above, under proposed Rate Schedule P–SED–FP11, the firm peaking capacity rate will increase to $6.90/kWmonth, or an 11.3 percent increase for the proposed January 1, 2010, rate adjustment. Peaking energy is either returned to Western or paid for in accordance with the terms of the contract between Western and the peaking power customer.

Continuing to identify the firm electric service revenue requirement using Base and Drought Adder rate components will assist Western in the presentation of the impacts of the drought within the Pick-Sloan Program, demonstrate repayment of the drought related costs in the PRS, and allow Western to be more responsive to changes in drought related expenses. Western will continue to charge and bill its customers firm electric service rates for energy and capacity, which are the sum of the Base and Drought Adder rate components.

Western reviews its firm electric service rates annually. Western will review the Base rate component after the annual PRS is completed, generally in the first quarter of the calendar year. If an adjustment to the Base rate component is necessary, Western will initiate a public process pursuant to 10 CFR part 903 prior to making an adjustment.

In accordance with the original implementation of the Drought Adder rate component, Western will continue to review the Drought Adder rate component each September to determine if drought costs differ from those projected in the PRS, and, if so, whether an adjustment, either incremental or decremental, to the Drought Adder rate component is necessary. Western will notify customers by letter in October of the planned incremental or decremental adjustment and implement the adjustment in the January billing cycle. Although decremental adjustments to the Drought Adder rate component will occur as drought costs are repaid, the adjustments cannot result in a negative Drought Adder rate component. To give customers advance notice, Western will

conduct a preliminary review of the Drought Adder rate component in early summer and notify customers by letter of the estimated change to the Drought Adder rate component for the following January, with the final Drought Adder rate component adjustment verified with notification in the October letter to the customers. Implementing the Drought Adder rate component adjustment on January 1 of each year will help keep the drought deficits from escalating as quickly, will lower the interest expense due to drought deficits, will demonstrate responsible deficit management, and will provide prompt drought deficit repayments.

As a part of the current and proposed rate schedules, Western provides for a formula-based adjustment of the Drought Adder rate component of up to 2 mills/kWh. The 2 mills/kWh cap is intended to place a limit on the amount the Drought Adder formula can be adjusted relative to associated drought costs without having to go through a public process to recover costs attributable to the Drought Adder formula rate for any 1-year cycle.

Legal Authority

Since the proposed rates constitute a major rate adjustment as defined by 10 CFR part 903, Western will hold public information forums and public comment forums. Western will review all timely public comments and make amendments or adjustments to the proposal as appropriate. Proposed rates will be forwarded to the Deputy Secretary of Energy for approval on an interim basis.

Western is establishing firm electric service and peaking rates for P–SMBP—ED under the Department of Energy Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); and other acts that specifically apply to the projects involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that Western initiates or uses to develop the proposed rates are available for inspection and copying at the Upper Great Plains Regional Office, located at 2900 4th Avenue North, Billings, Montana. Many of these documents and supporting information are also available on Western's Web site under the ''2010 Firm Rate Adjustment'' section located at *http://www.wapa.gov/ugp/rates/2010firmrateadjust.*

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347), Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and DOE NEPA Regulations (10 CFR part 1021), Western is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those requirements.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: June 29, 2009.

Timothy J. Meeks,

Administrator.

[FR Doc. E9–16690 Filed 7–13–09; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

June 30, 2009.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before September 14, 2009. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your comments by e-mail to *PRA@fcc.gov*. Include in the e-mail the OMB control number of the collection. If you are unable to submit your comments by e-mail, contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) or to obtain a copy of the collection, send an e-mail to *PRA@fcc.gov* and include the collection's OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below, or call Leslie F. Smith at (202) 418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0392.

Title: 47 CFR 1 Subpart J—Pole Attachment Complaint Procedures.

Form Number: Not applicable.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit, and State, Local or Tribal Government.

Number of Respondents and Responses: 1,772 respondents; 1,772 responses.

Estimated Time per Response: 0.5 to 100 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Obligation To Respond: Required to obtain or retain benefits (47 U.S.C. 224).

Total Annual Burden: 2,629 hours.

Total Annual Cost: $450,000.

Privacy Act Impact Assessment: No privacy impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR Section 0.459 of the FCC's rules.

Needs and Uses: The rules and regulations contained in 47 CFR part 1 subpart J provide complaint and enforcement procedures to ensure that telecommunications carriers and cable system operators have nondiscriminatory access to utility poles, ducts, conduits, and rights-of-way on rates, terms and conditions that are just and reasonable. The information collected under these rules will be used by FCC to hear and resolve petitions for stay and complaints as mandated by Section 224 of the Communications Act of 1934, as amended. Information filed is used to determine the merits of the petitions and complaints. Additionally, State certifications are used to make public notice of the States' authority to regulate rates, terms and conditions for pole attachments, and to determine the scope of the FCC's jurisdiction.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–16234 Filed 7–13–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2009–14]

Web Site and Internet Communications Improvement Initiative; Correction

AGENCY: Federal Election Commission.

ACTION: Notice of public hearing and request for public comments; correction.

SUMMARY: The Federal Election Commission published in the **Federal Register** on July 1, 2009, a document concerning the improvement of public information disclosure via the Commission's Web site and other Internet communications. The Commission inadvertently entered the signature date on the document as March 25, 2009. This document removes that signature date and inserts the correct date, which is June 25, 2009.

DATES: *Effective Date:* This correction is effective on July 14, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Ms. Cheryl A.F. Hemsley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission published a document in the **Federal Register** on July 1, 2009 (74 FR 31430), which inadvertently included an incorrect issuance date. This correction removes that date and inserts the correct date of issuance by the Commission.

In Notice 2009–10 published on July 1, 2009 (74 FR 31430), make the following correction. On page 31441, in the first column, on the top line, replace the date ''March 25, 2009,'' which appears after the word ''Dated,'' with ''June 25, 2009.''

On behalf of the Commission.

Dated: July 7, 2009.

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–16420 Filed 7–13–09; 8:45 am]

BILLING CODE 6715–01–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 July 27, 2009.

A. Federal Reserve Bank of Kansas City (Todd Offerbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Jean Hummel, Columbus, Ohio; Robert Hummel, II, and Patricia Hummel, both of Leawood, Kansas; Jennifer Ostenson and Eric Ostenson, both of Longmont, Colorado; all as members of the Robert Hummel family group; to retain control of Bank of Choice Holding Company, Greeley, Colorado, and thereby indirectly retain control of Bank of Choice, Greeley, Colorado.

Board of Governors of the Federal Reserve System, July 9, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–16613 Filed 7–13–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. 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 each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 6, 2009.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Sandhills Bancshares, Inc., Iraan, Texas; to become a bank holding by acquiring 100 percent of the voting shares of TransPecos Financial Corporation, San Antonio Texas, and thereby acquire TransPecos Banks-Iraan, Texas.

Board of Governors of the Federal Reserve System, July 9, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–16614 Filed 7–13–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act; Notice of Meeting

TIME AND DATE: 11:30 a.m., Monday, July 20, 2009.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 10, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–16843 Filed 7–10–09; 4:15 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Medical Expenditure Panel Survey (MEPS) Household Component and the MEPS Medical Provider Component through 2012.'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on May 6th 2009 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by August 13, 2009.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (*attention:* AHRQ's desk officer) or by e-mail at *OIRAsubmission@omb.eop.gov* (*attention:* AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Medical Expenditure Panel Survey (MEPS) Household Component and the MEPS Medical Provider Component through 2012''

AHRQ seeks to renew the Medical Expenditure Panel Survey Household Component (MEPS–HC) and the MEPS Medical Provider Component (MEPS–MPC) through the year 2012. For over thirty years, the results of the MEPS and its predecessor surveys (the 1977 National Medical Care Expenditure Survey, the 1980 National Medical Care Utilization and Expenditure Survey and the 1987 National Medical Expenditure Survey) have been used by OMB, DHHS, Congress and a wide number of health services researchers to analyze health care use, expenses and health policy. AHRQ is authorized to conduct the MEPS pursuant to 42 U.S.C. 299b–2.

Major changes continue to take place in the health care delivery system. The MEPS is needed to provide information about the current state of the health care system as well as to track changes over time. The current MEPS design, unlike the previous periodic surveys, permits annual estimates of use of health care and expenditures and sources of payment for that health care. It also permits tracking individual change in employment, income, health insurance and health status over two years. The use of the National Health Interview Survey (NHIS) as a sampling frame expands the surveys' analytic capacity by providing another data point for comparisons over time.

The MEPS–HC and MEPS–MPC are two of three components of the MEPS:

☐ MEPS–HC is a sample of households participating in the National Health Interview Survey (NHIS) in the prior calendar year and are interviewed 5 times over a 2 and 1/2 year period. These 5 interviews yield two years of information on use of and expenditures for health care, sources of payment for that health care, insurance status, employment, health status and health care quality.

☐ MEPS–MPC collects information from medical and financial records maintained by hospitals, physicians, pharmacies, health care institutions, and home health agencies named as sources of care by household respondents.

☐ Insurance Component (MEPS–IC): The MEPS–IC collects information on establishment characteristics, insurance offerings and premiums from employers. The MEPS–IC is conducted by the Census Bureau for AHRQ and is cleared separately.

This request is for the MEPS–HC and MEPS–MPC only.

Method of Collection

The MEPS is designed to meet the need for information to estimate health expenses, insurance coverage, access, use and quality. Households selected for participation in the MEPS are interviewed five times in person. These rounds of interviewing are spaced about 5 months apart. The interview will take place with a family respondent who will report for him/herself and for other family members.

After a preliminary mail contact containing an advance letter, households will be mailed MEPS record keeping materials (a calendar) and a DVD and brochure. After the advance contact, households will be contacted for the first of five in-person interviews. The interviews are conducted as a computer assisted personal interview (CAPI). The CAPT instrument is organized as a core instrument that will repeat unchanged in each of the rounds. Additional sections are asked only once a year and provide greater depth. Dependent interviewing methods in which respondents are asked to confirm or revise data provided in earlier interviews will be used to update information such as employment and health insurance data after the round in which such data are usually collected. The main data collection modules for the MEPS–HC are as follows:

Household Component Core Instrument. The core instrument

collects data about persons in sample households. Topical areas asked in each round of interviewing include condition enumeration, health status, health care utilization including prescribed medicines, expense and payment, employment, and health insurance. Other topical areas that are asked only once a year include access to care, priority conditions, income, assets, satisfaction with health plans and providers, children's health, adult preventive care. While many of the questions are asked about the entire reporting unit (RU), which is typically a family, only one person normally provides this information.

Adult Self-Administered Questionnaire. A brief self-administered questionnaire (SAQ), administered once a year in rounds 2 and 4, will be used to collect self-reported (rather than through household proxy) information on health status, health opinions and satisfaction with health care for adults 18 and older.

Diabetes Care SAQ. A brief self administered questionnaire on the quality of diabetes care is administered once a year in rounds 3 and 5 to persons identified as having diabetes.

Permission forms for the MEPS–MPC. As in previous panels of the MEPS, we will ask respondents for permission to obtain supplemental information from their medical providers (hospitals, physicians, health care institutions, home health agencies and pharmacies).

MEPS–MPC Instruments

The main objective of the MEPS–MPC is a collection of data from medical providers that will serve as an imputation source of medical expenditure and source of payment data reported by household respondents. This data will supplement, replace and verify information provided by household respondents about the charges, payments, and sources of payment associated with specific health care encounters. The questionnaires used in the MEPS–MPC vary according to type of provider. The data collection instruments are as follows:

Home Care for Health Care Providers Questionnaire. This questionnaire is used to collect data from home health care agencies which provide medical care services to household respondents. Information collected includes type of personnel providing care, hours or visits provided per month, and the charges and payments for services received.

Home Care Provider Questionnaire for Non-Health Care Providers. This is used to collect information about services provided in the home by non-health care workers to household respondents because of a medical condition; for example, cleaning or yard work, transportation, shopping, or child care.

Office-based Providers Questionnaire. This questionnaire is for the office-based physician sample, including doctors of medicine (MDs) and osteopathy (DOs), as well as providers practicing under the direction or supervision of an MD or DO (e.g., physician assistants and nurse practitioners working in clinics). Providers of care in private offices as well as staff model HMOs are included.

Separately Billing Doctors Questionnaire. Information from physicians identified by hospitals as providing care to sampled persons during the course of inpatient, outpatient department or emergency room care, but who bill separately from the hospital, is collected in this questionnaire.

Hospitals Questionnaire. This questionnaire is used to collect information about hospital events, including inpatient stays, outpatient department, and emergency room visits. Hospital data are collected not only from the billing department, but from medical records and administrative records departments as well. Medical records departments are contacted to determine the names of all the doctors who treated the patient during a stay or visit. In many cases, the hospital administrative office also has to be contacted to determine whether the doctors identified by medical records billed separately from the hospital itself.

Institutions Questionnaire. This questionnaire is used to collect data from health care institutions providing care to sampled persons and includes nursing homes, assisted living facilities, rehabilitation facilities, as well as any other health care facilities providing health care to a sampled person.

Pharmacies Questionnaire. This questionnaire requests the prescription name, NDC code, date prescription was filled, payments by source, prescription strength, form and quantity, and person for whom the prescription was filled. Most pharmacies have the requested information available in electronic format and respond by providing a computer generated printout of the patient's prescription information. If the computerized form is unavailable, the pharmacy can report their data to a telephone interviewer.

Estimated Annual Respondent Burden

Exhibit I shows the estimated annualized burden hours for the respondents time to participate in the MEPS–HC and MEPS–MPC. The MEPS–HC Core Interview will be completed by 15,000 ''family level'' respondents, also referred to as RU respondents. Since the MEPS–HC consists of 5 rounds of interviewing covering a full two years of data, the annual average number of responses per respondent is 2.5 responses per year. The MEPS–HC core requires an average response time of 1 and 2 hours to administer. The Adult SAQ will be completed once a year by each person in the RU that is 18 years old and older, an estimated 21,000 persons. The Adult SAQ requires an average of 7 minutes to complete. The Diabetes care SAQ will be completed once a year by each person in the RU identified as having diabetes, an estimated 1,800 persons and takes about 3 minutes to complete. Permission forms for the MEPS–MPC will be completed once for each medical provider seen by any RU member. Each of the 15,000 RUs in the MEPS–HC will complete an average of 5.2 forms, which require about 3 minutes each to complete. The total annual burden hours for the MEPS–HC is estimated to be 62,690 hours.

The MEPS–MPC uses 7 different questionnaires; 6 for medical providers and 1 for pharmacies. Each questionnaire is relatively short and requires 3 to 5 minutes to complete.

The total annual burden hours for the MEPS–MPC is estimated to be 20,077 hours. The total annual burden hours for the MEPS–HC and MPC is estimated to be 82,767 hours.

Exhibit 2 shows the estimated annual cost burden associated with the respondents' time to participate in this information collection. The annual cost burden for the MEPS–HC is estimated to be $1,226,216; the annual cost burden for the MEPS–MPC is estimated to be $285,965.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
MEPS–HC				
MEPS–HC Core Interview	15,000	2.5	1.5	56,250
Adult SAQ	21,000	1	7/60	2,450
Diabetes care SAQ	1,800	1	3/60	90
Permission forms for the MEPS–MPC	15,000	5.2	3/60	3,900
Subtotal for the MEPS–HC	52,800	na	na	62,690
MEPS–MPC				
Home care for health care providers questionnaire	441	6.5	5/60	239
Home care for non-health care providers questionnaire	23	6.6	5/60	13
Office-based providers questionnaire	13,665	5.8	5/60	6,605
Separately billing doctors questionnaire	12,450	2	3/60	1,245
Hospitals questionnaire	5,402	6.5	5/60	2,926
Institutions (non-hospital) questionnaire	72	1.5	5/60	9
Pharmacies questionnaire	7,760	23.3	3/60	9,040
Subtotal for the MEPS–MPC	39,813	na	na	20,077
Grand Total	92,613	na	na	82,767

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
MEPS–IIC				
MEPS–HC Core Interview	15,000	56,250	$19.56	$1,100,250
Adult SAQ	21,000	2,450	19.56	47,922
Diabetes care SAQ	1,800	90	19.56	1,760
Permission forms for the MEPS–MPC	15,000	3,900	19.56	76,284
Subtotal for the MEPS–HC	52,800	62,690	na	1,226,216
MEPS–MPC				
Home care for health care providers questionnaire	441	239	14.24	3,403
Home care for non-health care providers questionnaire	23	13	19.56	254
Office-based providers questionnaire	13,665	6,605	14.24	94,055
Separately billing doctors questionnaire	12,450	1,245	14.24	17,729
Hospitals questionnaire	5,402	2,926	14.24	41,666
Institutions (non-hospital) questionnaire	72	9	14.24	128
Pharmacies questionnaire	7,760	9,040	14.24	128,730
Subtotal for the MEPS–MPC	39,813	20,077	na	285,965
Grand Total	92,613	82,767	na	1,512,181

*Based upon the mean of the average wages for Healthcare Support Workers, All Other (319099) and All Occupations (00–0000), Occupational Employment Statistics, May 2007 National Occupational Employment and Wage Estimates United States, U.S. Department of Labor, Bureau of Labor Statistics. *http://www.bls.gov/oes/current/oes_nat.htm#b29–0000*.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the total and annualized cost of this information collection. The cost associated with the design and data collection of the MEPS–HC and MEPS–MPC is estimated to be $47.6 million in each of the next three fiscal years.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost (millions)	Annualized cost (millions)
Sampling Activities	$2.79	$0.93
Interviewer Recruitment and Training	8.52	2.84

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST—Continued

Cost component	Total cost (millions)	Annualized cost (millions)
Data Collection Activities	86.7	28.9
Data Processing	21.39	7.13
Production of Public Use Data Files	19.53	6.51
Project Management	3.93	1.31
Total	142.8	47.6

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: July 1, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–16567 Filed 7–13–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection under the project: ''Evaluation of AHRQ's Effective Health Care Program.'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on April 24th, 2009 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by August 13, 2009.

ADDRESSES: Written comments should be submitted to: AHRQs OMB Desk Officer by fax at (202) 395–6974 (*attention:* AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (*attention:* AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Evaluation of AHRQ's Effective Health Care Program''

AHRQ proposes to perform an evaluation of the Effective Health Care (EHC) programs' governance structure, methods for engaging stakeholders and approaches to setting national research priorities. Pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, the EHC program was established by AHRQ to conduct research, demonstrations, and evaluations designed to improve the quality, effectiveness, and efficiency of Medicare, Medicaid, and the State Children's Health Insurance Program. The EHC program was designed to provide effectiveness and comparative effectiveness evidence of medical treatments, therapeutics, devices and drugs to assist policymakers, health care providers, clinicians, consumers, and other stakeholders in making informed decisions. The EHC program has offered a platform for combining explicit reviews of scientific evidence on the clinical effectiveness of pharmaceuticals and other health care interventions, as well as the translation and dissemination of scientific findings into meaningfui messages for a wide variety of audiences. It serves as an interface between the clinical research entities and health policy making entities. This program also provides a critical step in AHRQ's mission to support informed decision making. In addition to its program staff, the EHC program relies on four centers to generate and disseminate evidence: The Evidence-based Practice Centers (EPCs), the Developing Evidence to Inform Decisions about Effectiveness (DEcIDE) Network Centers, the John M. Eisenberg Clinical Decisions and Communications Science Center, and the Centers for Education & Research on Therapeutics (CERTs). Since the process of developing and disseminating this evidence is a complex undertaking, AHRQ has contracted with IMPAQ International, LLC and Abt Associates, Inc. (henceforth referred to as the ''IMPAQ team'') to perform this evaluation.

Information will be collected to identify strengths and weaknesses in the current EHC program's governance structure, methods for engaging stakeholders, and approaches to setting priorities for the research conducted by the EHC program. The second phase of the evaluation will be to contrast the EHC program with international programs of similar purpose. To implement this evaluation, the IMPAQ team will conduct the following information collections:

(1) Key informant interviews about the governance structure of the EHC program;

(2) An online survey of EHC center staff and EHC program users and stakeholders;

(3) An Appreciative Inquiry workshop with EHC program staff and stakeholders;

(4) A document review (will not impose a burden on research participants) and

(5) Interviews with staff at international organizations of similar purpose (will not impose a burden on U.S. citizens).

The latter two activities do not require OMB approval and are not discussed further in this notice. The information collected will ultimately be used to develop a roadmap, including at least three alternative models of governance and operation, to be submitted to AHRQ that could be used to help guide future programmatic development.

Method of Data Collection

Key Informant Interviews

Semi-structured key informant interviews will be used to understand the EHC program's governance components and structure, from the vantage point of individuals governing the program, governed by the program, contributing to the program in various capacities, or impacted by the program's activities. Thirteen EHC Research Centers Staff, two EHC Stakeholder Group Members, and nineteen EHC Program Users and Stakeholders will be interviewed about the governance structure of the EHC program.

Additional key informant interviews with twenty five EHC Program Users and Stakeholders will be used to collect more detailed information on the success or impact of the EHC program product that results from its governance element or approach, or about a specific, important governance element.

All key informant interviews will be tape recorded to improve data capture, with prior permission from the participants.

Online Survey

A structured, web-based online survey of EHC program Research Centers Staff and EHC program Users and Stakeholders will be used to gather information about the EHC program. The survey will provide a robust view of the EHC governance system by providing feedback from a broad group of individuals whose work is related to the program. Specifically, the survey will collect data about these individuals' engagement and involvement with the EHC program; perceptions of the program's governance; experiences with the development, production, dissemination, and use of EHC products; and their beliefs regarding the quality and nature of the collaborative work, including public-private partnerships, being done within centers, across centers, and between centers and stakeholders.

Appreciative Inquiry Workshop

Small- and large-group discussions as part of an Appreciative Inquiry workshop will be designed to encourage EHC decision-makers (AHRQ staff, EHC program staff, AHRQ project officers for each of the Research Center networks, principal investigators or other representatives from each of the Research Center network) and key program stakeholders or uers to consider anddecide which are the preferred alternative governance models or elements for which roadmaps should be developed. Appreciative Inquiry (AI) approach is an organizational development process that engages individuals within an organization in renewal, change, and focused performance. The AI approach focuses on successes and opportunities to improve things by looking forward, rather than looking back on the problems or issues. The AI workshop is expected to facilitate consensus among decision-makers to contribute to the endorsement of the roadmap(s), and to encourage utilization of the evaluation findings. The workshop will involve a creative thinking process that will build on existing successes, identify and rank preferred alternatives, and ultimately develop a plan to strengthen the EHC program's governance system.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents to participate in this evaluation. Key informant interviews will be conducted about the governance structure of the EHC program and will last about one hour. The online survey will be completed by 95 EHC program Research Centers Staff and 170 EHC Program Users and Stakeholders and will require about 15 minutes to complete. The Appreciative Inquiry workshop will be conducted with 20 participants and will last about 6 hours. The total burden hours are estimated to be 246 hours. Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to participate in the evaluation. The total cost burden is estimated to be $12,297.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Activity name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Key Informant Interviews with EHC Research Centers Staff	13	1	1	13
Online Survey with EHC Research Centers Staff	95	1	15/60	24
Key Informant Interviews with EHC Stakeholder Group Members	2	1	1	2
Key Informant Interviews with EHC Program Users and Stakeholders	19	1	1	19
Online Survey with EHC Program Users and Stakeholders	170	1	15/60	43
Key Informant Interviews with EHC Program Users and Stakeholders to Develop Cases	25	1	1	25
Appreciative Inquiry Workshop	20	1	6	120
Total	344	na	na	246

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Activity name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Key Informant Interviews with EHC Research Centers Staff	13	13	$54.27	$706
Online Survey with EHC Research Centers Staff	95	24	54.27	1,302

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN—Continued

Activity name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Key Informant Interviews with EHC Stakeholder Group Members	2	2	43.52	87
Key Informant Interviews with EHC Program Users and Stakeholders	19	19	46.73	888
Online Survey with EHC Program Users and Stakeholders	170	43	46.73	2,009
Key Informant Interviews with EHC Program Users and Stakeholders to Develop Cases	25	25	46.73	1,168
Appreciative Inquiry Workshop	20	120	51.14	6,137
Total	344	246	na	12,297

*Wage rates were calculated using the following data: (1) For the Governance Interviews and the Online Survey with EHC Research Centers Staff the hourly rate is a weighted average for physicians ($58.76 per hour) and medical and health services managers ($37.82); (2) for the Governance Interviews with EHC Stakeholder Group Members the hourly rate is the rate for average for medical and health services managers ($37.82); (3) for the Governance Interviews and the Online Survey with EHC Program Users and Stakeholders the hourly rate is a weighted average for physicians ($58.76 per hour), general and operations managers ($43.52 per hour), medical and health services managers ($37.82 per hour), and social and community service managers ($24.73 per hour); (4) for the Workshop the hourly rate is a weighted average for physicians ($58.76 per hour) and general and operations managers ($43.52 per hour) from the mean of the average wages, National Compensation Survey: Occupational Wages in the United States 2006, U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated cost of this one year data collection for the evaluation of the EHC program, including the cost of developing the methodology and data collection instruments, collecting and analyzing the data, publishing the results, etc. The work will be carried out by IMPAQ International and Abt Associates under contract to the Agency for Healthcare Research and Quality.

EXHIBIT 3—ESTIMATED ANNUAL COST TO THE FEDERAL GOVERNMENT

Cost component	Total cost
Project Development	$137,901
Data Collection Activities	179,172
Data Processing and Analysis	170,577
Publication of Results	63,686
Project Management	97,236
Total	648,572

*Please note the costs include fully loaded costs (overhead, G&A).

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: July 2, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–16568 Filed 7–13–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0212]

Draft Guidance for Industry on ''Incorporation of Physical-Chemical Identifiers into Solid Oral Dosage Form Drug Products for Anticounterfeiting,'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Incorporation of Physical-Chemical Identifiers into Solid Oral Dosage Form Drug Products for Anticounterfeiting.'' This draft guidance provides recommendations to pharmaceutical manufacturers on design considerations for incorporating physical-chemical identifiers (PCIDs) into solid oral dosage forms (SODFs), supporting documentation to be submitted in new drug applications (NDAs) and abbreviated new drug applications (ANDAs) to address the proposed incorporation of PCIDs in SODFs, supporting documentation to be submitted in postapproval submissions to report or request approval to incorporate PCIDs into SODFs, and procedures for reporting or requesting approval to incorporate PCIDs into SODFs as a postapproval change. This draft guidance also provides our recommendations regarding evaluation of toxicological and other concerns for PCIDs that are incorporated into packaging and labeling and procedures for reporting or requesting approval to add PCIDs to packaging and containers as a postapproval change.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by October 13, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: John L. Smith, Center for Drug Evaluation and Research, Food and Drug Administration, 10993 New Hampshire Ave., Building 21, rm. 2619, Rockville, MD 20857, 301–796–1757.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Incorporation of Physical-Chemical Identifiers into Solid Oral Dosage Form Drug Products for Anticounterfeiting.'' Pharmaceutical manufacturers aiming to thwart drug product counterfeiting have been investigating readily available technologies to make drug products more difficult to duplicate. One approach that pharmaceutical manufacturers appear to be considering involves adding a trace amount of an inactive ingredient(s) to an existing section of the dosage form. A unique physical-chemical characteristic of that ingredient makes it possible to detect and authenticate legitimate dosage forms and identify counterfeits.

This draft guidance provides recommendations to pharmaceutical manufacturers on the following topics: (1) Design considerations for incorporating PCIDS into SODFs, (2) supporting documentation to be submitted with NDAs and ANDAs to address the proposed incorporation of PCIDs in SODFs, (3) supporting documentation to be submitted in postapproval submissions to report or request approval to incorporate PCIDs into SODFs, and (4) procedures for reporting or requesting approval to incorporate PCIDs into SODFs as a postapproval change. This draft guidance also provides our recommendations regarding: (1) Evaluation of toxicological and other concerns for PCIDs that are incorporated into packaging and labeling and (2) procedures for reporting or requesting approval to add PCIDs to packaging and containers as a postapproval change.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on ''Incorporation of Physical-Chemical Identifiers into Solid Oral Dosage Form Drug Products for Anticounterfeiting.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The documentation in premarketing regulatory submissions recommended for applicants incorporating PCIDs into SODFs would be covered under 21 CFR 314.50 and 314.94, and the documentation in postapproval regulatory submissions would be covered under 21 CFR 314.70. This information collection is approved by OMB under OMB control number 0910–0001.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.regulations.gov*.

Dated: July 6, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–16612 Filed 7–13–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0313]

Dual Antiplatelet Therapy Trial: Research Project Grant (R01)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of the Office of Critical Path Programs (OCPP). The goal of the Dual Antiplatelet Therapy (DAPT) Trial is to solicit a sole source grant application from Harvard Clinical Research Institute (HCRI) that proposes to provide funding in support of a dual antiplatelet therapy clinical trial being conducted by HCRI.

DATES: Important dates are as follows:

1. The application due date is August 12, 2009.
2. The anticipated start date is in September 2009.
3. The opening date is July 14, 2009.
4. The expiration date is in May 2010.

FOR FURTHER INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT:

Nancy Stanisic, Office of Critical Path Programs (HF–18), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1660.

Vieda Hubbard, Office of Acquisitions and Grants Services, (HFA–500), Food and Drug Administration, 5630 Fishers Lane, Rockville, MD 20857, 301–827–7177.

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *http://www.fda.gov/oc/initiatives/criticalpath/*.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Request for Applications (RFA) Number: RFA–FD–09–016
Catalog of Federal Domestic Assistance Number: 93.103

A. Background

OCPP is soliciting a sole source grant application from HCRI that proposes to provide funding in support of a dual antiplatelet therapy clinical trial being conducted by HCRI.

Given the lack of randomized data, there is considerable uncertainty in the medical community about the optimal duration of dual antiplatelet therapy following Percutaneous Cardiac Intervention. It is unclear as to whether the duration of dual antiplatelet therapy in patients receiving Drug Eluting Stents (DES) should be 3 to 6 months (as was prescribed in the pivotal DES randomized trials conducted for premarket approval), 12 months (as per the American College of Cardiology/American Heart Association/Society for Cardiac Angiography and Interventions guidelines), or even longer. It is also unknown whether the presumed benefit of extended dual antiplatelet therapy is specific to DES or whether non-Acute Coronary Syndrome patients treated with BMS (e.g. stable angina) may also benefit from extended dual antiplatelet therapy. With these considerations in

mind, it is imperative that the risks and benefits of continued clopidogrel use be evaluated to determine, with greater precision, the optimal duration of dual anti-platelet therapy. This trial will be conducted with the unprecedented cooperation of four device manufacturers and two drug manufacturers under the direction of HCRI.

B. Research Objectives

The Research Project Grant (R01) is an award to support a discrete, specified, circumscribed project to be performed by HCRI in areas representing the investigators' specific interests and competencies based on the mission of FDA. The development of the DAPT trial represents an important and critical new paradigm for FDA and the medical product development community —having identified a critical public health issue in a combination product that impacts hundreds of thousands of American patients, the device and drug industries are collaborating together to address this question with a single trial. The advantages of this concerted effort are obvious—obtaining an answer more quickly and with fewer resources expended. The study is unprecedented in the level of cooperation, both internal and external, that is required.

FDA awards R01 grants to institutions/organizations of all types. This mechanism allows the program directors/principal investigators (PDs/PIs) to define the scientific focus or objective of the research based on particular areas of interest and competence. Although the PDs/PIs write the grant application and are responsible for conducting and supervising the research, the actual applicant is the research institution/organization.

One of OCPP's mandates is to identify and promote the development of collaborative partnerships and support mechanisms of innovative trial design. Innovative clinical trial design may make it possible to develop accepted protocols for smaller but smarter trials or trials that can be conducted with collaboration of multiple device and drug manufacturers. The development of the DAPT trial represents an important and critical new paradigm for FDA. When a critical public health issue is identified in a combination product that impacts thousands of American patients, the concerted effort of multiple parts of the agency can bring the members of the regulated industry and clinical community to develop a clinical trial that will provide the answers needed by practicing physicians.

C. Eligibility Information

This award will be made to HCRI.

II. Award Information/Funds Available

A. Award Amount

The total amount of funding that the agency expects to award through this announcement is $1.5 million. There will be one award.

B. Length of Support

The total project period for the application submitted in response to this funding opportunity may not exceed 2 years.

III. How to Submit a Paper Application

To submit a paper application in response to this FOA, applicants should first review the full announcement located at *http://www.fda.gov/oc/initiatives/criticalpath/*. Persons interested in applying for a grant may obtain an application form at *http://grants.nih.gov/grants/forms.htm*. For all paper submissions, the following steps are required:

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number
- Step 2: Register With Central Contractor Registration
- Step 3: Register With Electronic Research Administration (eRA) Commons

Steps 1 and 2, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp*. Step 3, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp*. After you have followed these steps, submit paper applications to: Vieda Hubbard (see **FOR FURTHER INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT**).

Dated: July 8, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–16695 Filed 7–13–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0434 (Formerly Docket No. 2007D–0386)]

Guidance for Industry on Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application.'' This document provides guidance to industry on postmarketing serious adverse event reporting for nonprescription (over-the-counter (OTC)) human drugs marketed without an approved application. It gives guidance on the minimum data elements that should be included in a serious adverse event report, the label that should be included with the report, reporting formats for paper and electronic submissions, and how and where to submit the reports. Separate guidance, issued by FDA's Center for Food Safety and Applied Nutrition on adverse event reporting for dietary supplements, is announced elsewhere in this issue of the **Federal Register**.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Kathleen Frost, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4312, Silver Spring, MD 20993–0002, 301–796–2380.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application.'' Public Law 109–462, the Dietary Supplement and Nonprescription Drug Consumer Protection Act, enacted on December 22, 2006, required FDA to issue guidance on the minimum data elements that should be included in a serious adverse

event report (section 2(e)(3)). The guidance document provides information on the following topics: (1) The minimum data elements that should be included in a serious adverse event report, (2) the label that should be included with the report, (3) reporting formats for paper and electronic submissions, and (4) how and where to submit the reports.

Public Law 109–462 amends the Federal Food, Drug, and Cosmetic Act (the act) to add safety reporting requirements for nonprescription drug products that are marketed without an approved application. In accordance with section 760(b) of the act (21 U.S.C. 379aa), the manufacturer, packer, or distributor whose name appears on the label of a nonprescription drug marketed in the United States without an approved application (referred to as the ''responsible person'') must submit to FDA any report of a serious adverse event associated with such drug when used in the United States, accompanied by a copy of the label on or within the retail package of such drug. In addition, the responsible person must submit followup reports of new medical information related to a submitted serious adverse event report that is received within 1 year of the initial report (section 760(c)(2) of the act). Public Law 109–462 also requires certain postmarketing safety report!s for dietary supplements.

In the **Federal Register** of October 15, 2007 (72 FR 58316), FDA announced the availability of a draft guidance of the same title. FDA received several comments on the draft guidance and considered those comments when finalizing the guidance. The guidance announced in this notice finalizes the draft guidance dated October 2007.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on postmarketing adverse event reporting for nonprescription human drug products marketed without an approved application. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance have been approved under OMB Control No. 0910–0636.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: July 8, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–16738 Filed 7–13–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0372] (Formerly Docket No. 2007D–0388)

Guidance for Industry: Questions and Answers Regarding Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled ''Questions and Answers Regarding Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.'' The document provides guidance to the dietary supplement industry for complying with the serious adverse event reporting and recordkeeping requirements prescribed for dietary supplement manufacturers, packers, and distributors by the Dietary Supplement and Nonprescription Drug Consumer Protection Act (the DSNDCPA). Separate guidance, issued by FDA's Center for Drug Evaluation and Research, on reporting for nonprescription (over-the-counter (OTC)) human drugs marketed without an approved application, is announced elsewhere in this issue of the **Federal Register**.

DATES: Submit written or electronic comments on the guidance at any time.

ADDRESSES: Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written requests for single copies of the guidance to the Office of Nutrition, Labeling, and Dietary Supplements (HFS–800), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20750. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Vasilios Frankos,Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration,5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2375.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 15, 2007 (72 FR 58313), FDA announced the availability of a draft guidance entitled ''Questions and Answers Regarding Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act'' and gave interested parties an opportunity to submit comments by December 14, 2007. The agency reviewed and evaluated these comments and has modified the guidance where appropriate.

The guidance contains questions and answers relating to the new requirements under the DSNDCPA, concerning the mandatory reporting to FDA of serious adverse events associated with dietary supplements, the minimum data elements to be submitted in such reports, and records of serious and non-serious adverse events reported to a dietary supplement manufacturer, packer, or distributor.

FDA is issuing this guidance as level 1 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the

agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in this guidance was approved under OMB control no. 0910–0635.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov*.

Dated: July 8, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–16702 Filed 7–13–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0312]

Guidance for Institutional Review Boards, Frequently Asked Questions—Institutional Review Board Registration; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Guidance for Institutional Review Boards (IRBs), Frequently Asked Questions — IRB Registration.'' This guidance is intended to assist IRBs in complying with the new requirement for IRB registration. This new rule requires each IRB in the United States that reviews FDA-regulated research to register using an Internet-based registration system that is maintained by the Department of Health and Human Services (HHS). This registration system is a modification of the one currently used by the Office for Human Research Protections (OHRP) for registration of IRBs that are designated by institutions under Federalwide Assurances (FWAs). OHRP has issued a similar rule requiring IRBs designated by institutions under FWAs to register or update their registration information using this modified system.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written comments on this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jean Toth-Allen, Office of Science and Health Coordination/Good Clinical Practice Program (HF–34), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1585.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document for IRBs entitled, ''Guidance for Institutional Review Boards (IRBs), Frequently Asked Questions — IRB Registration.'' This guidance is intended to assist IRBs in complying with the new requirement for IRB registration under amended 21 CFR 56.106, which is effective July 14, 2009. Registration will be accomplished through a modified version of the Internet-based registration system used by OHRP for registration of IRBs that are designated by institutions under FWAs. This guidance document addresses basic information, such as why FDA issued the new rule, which IRBs are subject to the new regulation, the type of information to be provided when registering, and implications of non-compliance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance is being issued as a level 1 guidance for immediate implementation in accordance with 21 CFR 10.115(g). Prior public participation is not feasible and FDA believes the guidance is necessary to help IRBs better understand their responsibilities under the new registration rule, which will go into effect on July 14, 2009.

II. The Paperwork Reduction Act of 1995

This guidance refers to a previously approved collection of information required by the FDA new final rule on registration requirements. This collection of information is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in 21 CFR 56.106(b) has been approved under 0990–0279.

III. Comments

Interested persons may submit written or electronic comments regarding this document to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/oc/gcp/draft.html* or *http://www.fda.gov/ohrms/dockets/default.htm*

Dated: July 9, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–16703 Filed 7–13–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following 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 General Medical Sciences Special Emphasis Panel Minority Biomedical Research Support.

Date: July 23, 2009.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN18, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Margaret J. Weidman, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18B, Bethesda, MD 20892. 301–594–3663. *weidmanma@nigms.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.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel ZGM1–BRT–0–CO.

Date: August 3, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN18, 45 Center Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Margaret J. Weidman, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18B, Bethesda, MD 20892. 301–594–3663. *weidmanmanigms.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel ARRA Funds—ZGM1–GDB–7–CR.

Date: August 7, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN12, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lisa A. Dunbar, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892. 301–594–2849. *dunbarl©mail.nih.gov*.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Trauma/Burn Program Projects.

Date: August 11, 2009.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AS13, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Meredith D. Temple-O'Connor, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892. 301–594–2772. *templeocm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 7, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16569 Filed 7–13–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): RFA–DP09–101SUPP09: Health Promotion and Disease Prevention Research Centers: Special Interest Project Competitive Supplements (SIPS) (U48 Panels A–M)

This meeting is for the initial review of applications.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Dates and Times:

July 29, 2009, 9 a.m.–5 p.m. Closed.
July 30, 2009, 9 a.m.–5 p.m. Closed.
July 31, 2009, 10 a.m.–4 p.m. Closed.
August 3, 2009, 9 a.m.–5 p.m. Closed.
August 4, 2009, 9 a.m.–5 p.m. Closed.

Place: W Hotel, 3377 Peachtree Road, NE., Atlanta, GA 30326, 770–488–3024 and teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of the application received in response to ''RFA–DP09–101SUPP09: Health Promotion ans Disease Prevention ResearchCenters: Special Interest Project Competitive Supplements (SIPS) (U48Panels A–M).''

For More Information Contact: Brenda Colley Gilbert, PhD, Director, Extramural Research Program Office, CCHP, 4770 Buford Highway, M/S K–92, Atlanta, GA 30341; 770–488–6295.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 8, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–16647 Filed 7–13–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Digestive Diseases and Nutrition Mentored Applications Review.

Date: July 31, 2009.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 7, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16590 Filed 7–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 20, 2009, 8 a.m. to July 21, 2009, 5 p.m., Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037 which was published in the **Federal Register** on June 15, 2009, 74 FR 28260–28262.

The meeting will be held at the Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: July 7, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16571 Filed 7–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following 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 Neurological Disorders and Stroke Special Emphasis Panel; GO Applications.

Date: July 31, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/ Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635, *rc218u@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; GO Applications.

Date: July 31, 2009.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3204, MSC 9529, Bethesda, MD 20892, (301) 496–0660, *benzingw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: July 7, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16573 Filed 7–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Clinical Trail Reviews.

Date: July 27, 2009.

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: Michael L. Bloom, Scientific Review Officer, Scientific Review Branch, NIH–NIAMS, One Democracy Plaza, Room 820, MSC 4872, 6701 Democracy Blvd., Bethesda, MD 20892–487. 301–594–4953, *bloomm2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 7, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16570 Filed 7–13–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2009–0560]

Information Collection Request to Office of Management and Budget; OMB Control Numbers: 1625–0080

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) and Analysis to the Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625–0080, Customer Satisfaction Surveys. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before September 14, 2009.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2009–0560], please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

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

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

(4) *Fax:* 202–493–2251.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov*. A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov*. Additionally, a copy is available from: Commandant (CG–611), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St., SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION: Contact Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

The Coast Guard invites comments on whether this ICR should be granted based on the collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of the collections on respondents, including the use of automated collection techniques or other forms of information technology.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov*. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2009–0560], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8–1/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this Notice as being available in the docket. Enter the docket number for this Notice [USCG–2009–0560] in the Search box, and click ''Go >>.'' You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Information Collection Request

Title: Customer Satisfaction Surveys.

OMB Control Number: 1625–0080.

Summary: Executive Order 12862 authorizes the Coast Guard to survey customers to determine the kind and quality of services they want, and their level of satisfaction with existing services.

Need: Putting people first means ensuring that the Federal Government provides the highest-quality of service possible to the American people. Executive Order 12862 requires that all executive departments and agencies providing significant services directly to the public seek to meet established standards of customer service will (1) identify the customers who are, or should be, served by the agency and (2) survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

Forms: None.

Respondents: Recreational boaters, commercial mariners, industry groups, and State and local governments.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 15,516 hours to 22,990 hours a year.

Dated: July 7, 2009.

M.B. Lytle,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E9–16685 Filed 7–13–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–N–28]

Notice of Availability: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 2009 Hispanic-Serving Institutions Assisting Communities (HSIAC) Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its Web site of the application information, submission deadlines, funding criteria, and other requirements for the FY2009 Hispanic-Serving Institutions Assisting Communities (HSIAC) Program NOFA. Approximately $6 million is made available through this NOFA, by the Department of Housing and Urban Development Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009), to assist Hispanic-Serving Institutions (HSI) expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development, principally for persons of low- and moderate-income, consistent with the purposes of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) as amended. The notice providing information regarding the application process, funding criteria and eligibility requirements is available

on the Grants.gov Web site at *http://apply07.grants.gov/apply/forms_apps_idx.html.* A link to Grants.gov is also available on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* The Catalogue of Federal Domestic Assistance (CFDA) number for the Hispanic-Serving Institutions Assisting Communities (HSIAC) Program is 14.514. Applications must be submitted electronically through Grants.gov.

FOR FURTHER INFORMATION CONTACT: For information concerning the Hispanic-Serving Institutions Assisting Communities (HSIAC) Program, contact Susan Brunson, Office of University Partnerships, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8226, Washington DC 20410; telephone 202–402–3852 (this is not a toll-free number). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service during working hours at 800–877–8339.

Dated: June 15, 2009.

Jean Lin Pao,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. E9–16708 Filed 7–10–09; 11:15 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–N–26]

Notice of Availability: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 2009 Doctoral Dissertation Research Grant Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its Web site of the application information, submission deadlines, funding criteria, and other requirements for the FY2009 Doctoral Dissertation Research Grant NOFA for FY(2009). Approximately $200,000 is made available through this NOFA, by the Department of Housing and Urban Development Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009), to enable doctoral candidates enrolled at institutions of higher education accredited by a national or regional accrediting agency recognized by the U.S. Department of Education to complete their dissertations on policy-relevant housing and urban development issues. The notice providing information regarding the application process, funding criteria and eligibility requirements is available on the Grants.gov Web site at *http://apply07.grants.gov/apply/forms_apps_idx.html.* A link to Grants.gov is also available on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* The Catalogue of Federal Domestic Assistance (CFDA) number for the Doctoral Dissertation Research Grant Program is 14.516. Applications must be submitted electronically through Grants.gov.

FOR FURTHER INFORMATION CONTACT: For information concerning the Doctoral Dissertation Research Grant program, contact Susan Brunson, Office of University Partnerships, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8226, Washington DC 20410; telephone 202–402–3852 (this is not a toll-free number). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service during working hours at 800–877–8339.

Dated: June 15, 2009.

Jean Lin Pao,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. E9–16709 Filed 7–10–09; 11:15 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–N–23]

Notice of Availability: Notice of Funding Availability (NOFA) for HUD's Fiscal Year (FY) 2009 HOPE VI Revitalization Grants Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its Web site of the applicant information, submission deadlines, funding criteria and other requirements for HUD's HOPE VI Revitalization Program NOFA for FY 2009. Approximately $113 million is made available through this NOFA, to remain available until September 30, 2010, by the Department of Housing and Urban Development Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009) for HUD's HOPE VI Revitalization Program. The notice providing information regarding the application process, funding criteria and eligibility requirements is available on the *Grants.gov* Web site at *https://apply07.grants.gov/apply/forms_apps_idx.html.* A link to *Grants.gov* is also available on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* The Catalogue of Federal Domestic Assistance (CFDA) number for the HOPE VI Revitalization Program is 14.866. Applications must be submitted electronically through *Grants.gov.*

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in the program NOFA. Questions regarding the 2009 General section should be directed to the Office of Departmental Grants Management and Oversight at 202–708–0667 (this is not a toll-free number) or the NOFA Information Center at 1–800–HUD–8929 (toll-free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

Dated: July 2, 2009.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. E9–16742 Filed 7–13–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO250000.L12200000.PM0000; OMB Control Number 1004–0165]

Information Collection; Cave Management: Cave Nominations and Confidential Information

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an Information Collection Request to the Office of Management and Budget (OMB) for a 3-year extension of OMB Control Number 1004–0165 under the Paperwork Reduction Act. The information covered in this request is necessary to implement two provisions of the Federal Cave Resources Protection Act (FCRPA)—one which requires Federal agencies to consult with interested parties to develop a listing of significant caves, and another under which Federal and State

governmental agencies and bona fide educational and research institutions may request confidential information regarding significant caves.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before August 13, 2009.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0165), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov*.

Please mail a copy of your comments to: BLM Information Collection Clearance Officer (WO–630), Department of the Interior, 1849 C Street, NW., Mail Stop 401 LS, Washington, DC 20240.

You may also send a copy of your comments by electronic mail to *jean_sonneman@blm.gov*.

FOR FURTHER INFORMATION CONTACT: James Goodbar, Senior Cave and Karst Resources Specialist, at 505–234–5929 (Commercial or FTS). You may also contact Mr. Goodbar to obtain, at no cost, a copy of the information collection request.

SUPPLEMENTARY INFORMATION:

Title: Cave Management: Cave Nominations and Confidential Information (43 CFR part 37).

OMB Number: 1004–0165.

Form Numbers: None.

Abstract: The information covered in this Information Collection Request applies to caves on Federal lands administered by the Bureau of Land Management (BLM), National Park Service, U.S. Fish and Wildlife Service, and Bureau of Reclamation. The BLM collects information from appropriate private sector interests, including ''cavers,'' in order to update a list of significant caves that are under the jurisdiction of the agencies listed above. The BLM also processes requests for confidential information regarding significant caves. The information collected enables the BLM to comply with the Federal Cave Resources Protection Act (16 U.S.C. 4301–4310).

60-Day Notice: On November 20, 2008, the BLM published a 60-day notice (73 FR 70364) requesting comments on the proposed information collection. The comment period ended January 20, 2009. No comments were received.

Current Action: This proposal is being submitted to extend the expiration date of July 31, 2009.

Type of Review: 3-year extension.

Affected Public: Individuals and households.

Obligation to Respond: Voluntary.

Estimated Number of Annual Responses: 90 cave nominations; 10 requests for confidential information.

Estimated Time per Response: 12 hours for cave nominations; 1 hour for requests for confidential information.

Estimated Total Annual Burden Hours: 1,090 hours.

The BLM may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection. Comments should address one or more of the following points:

(1) Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

(2) The accuracy of the BLM's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) The quality, utility, and clarity of the information collected; and

(4) How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1004–0165 in your correspondence. 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.

Jean Sonneman,

Bureau of Land Management, Acting Information Collection Clearance Officer.

[FR Doc. E9–16550 Filed 7–13–09; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/Wilderness Study/Off-Road Vehicle Management Plan, Draft Environmental Impact Statement, Big Cypress National Preserve Addition, Florida

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the draft Environmental Impact Statement for the General Management Plan/Wilderness Study/Off-Road Vehicle Management Plan (DEIS/GMP/WS/ORV Plan), Big Cypress National Preserve (Preserve) Addition.

SUMMARY: Pursuant to 42 U.S.C. 4332(2)(C) of the National Environmental Policy Act of 1969 and National Park Service (NPS) policy in Director's Order Number 2 (Park Planning) and Director's Order Number 12 (Conservation Planning, Environmental Impact Analysis, and Decision-making), the NPS announces the availability of a DEIS/GMP/WS/ORV Plan for the Big Cypress National Preserve Addition, Florida.

The 1991 GMP for the original Preserve contains no guidance for the approximately 147,000 acres added to the Preserve in 1988 by Public Law 100–301 (the Addition). A GMP is needed to clearly define resource conditions and visitor experiences to be achieved in the Addition.

DATES: There will be a 60-day comment period beginning with the Environmental Protection Agency's publication of its Notice of Availability in the **Federal Register**. Public meetings will be held during the review period. The date, time, and location of public meetings will be announced through the NPS Planning, Environment, and Public Comment (PEPC) Web site *http://parkplanning.nps.gov* and in a mailed announcement to be released in the summer of 2009.

ADDRESSES: The document will be available for public review and comment online at *http://parkplanning.nps.gov*. A limited number of CDs and hard copies will be made available at Preserve headquarters. You may also request a hard copy or CD by contacting Big Cypress National Preserve, 33100 Tamiami Trail East, Ochopee, Florida 34141–1000; telephone 239–695–1103.

SUPPLEMENTARY INFORMATION: Public scoping was initiated in the summer of 2001. Public meetings and six newsletters were used to keep the public informed and involved

throughout the planning process for the Addition. The resulting document provides a framework for management, use, and development options for the Addition by the NPS for the next 15 to 20 years. It describes four management alternatives for consideration, including a no-action alternative that continues current management policies, and the NPS's preferred alternative. The three action alternatives present a range of ORV opportunities, proposed wilderness, and visitor facilities. The document analyzes the environmental impacts of the alternatives.

The four alternatives (with names as they appear in the document) are as follows:

Alternative A: No-Action Alternative—the continuation of current management practices and trends. The enabling legislation would be the long-term document to guide management and development of the Preserve.

Alternative B: The general theme is to enable visitor participation in a wide variety of challenging outdoor recreational experiences. This alternative would provide access to up to 140 miles of sustainable primary ORV trails, while proposing a relatively small amount of wilderness. Secondary ORV trails, as defined in the plan, could be designated in any of the backcountry recreation areas, approximately 94,817 acres or 65 percent of the Addition.

Preferred Alternative: The general theme is to provide a diversity of frontcountry and backcountry recreational opportunities, enhance day use opportunities along road corridors, and preserve opportunities for self-reliant recreation. This alternative would provide access to up to 140 miles of sustainable primary ORV trails, while proposing a modest amount of wilderness. Secondary ORV trails, as defined in the plan, could be designated only in the ORV trail corridors and other backcountry recreation areas, approximately 52,431 acres or 36 percent of the Addition.

Alternative F: The general theme is to emphasize resource preservation, restoration, and research while providing recreational opportunities with limited facilities and services. This alternative would provide no ORV trails. It would propose for wilderness designation all lands found eligible for designation in the Wilderness Eligibility Assessment.

If you wish to comment on the DEIS/GMP/WS/ORV Plan, you may submit your comments by any one of several methods. The preferred method for submitting comments is via the Internet at *http://parkplanning.nps.gov.* If you do not receive a confirmation from the system that we have received your internet message, please contact us directly at the address above. You may also mail comments to the Preserve at the address shown above. Finally, you may present your comments in person at the public meetings to be held during the public review period or at the address listed above.

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. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials or organizations or businesses, available for public inspection in their entirety.

Authority: The authority for publishing this notice is 40 CFR § 1506.6.

FOR FURTHER INFORMATION CONTACT: Big Cypress National Preserve at the address and telephone number shown above.

The responsible official for this Draft EIS is the Regional Director, Southeast Region, NPS, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: June 30, 2009.

David Vela,

Regional Director, Southeast Region, National Park Service.

[FR Doc. E9–16661 Filed 7–13–09; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Delta-Mendota Canal/California Aqueduct Intertie, Alameda County, CA

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of availability of the Draft Environmental Impact Statement (Draft EIS) and notice of public hearings.

SUMMARY: The Bureau of Reclamation, as the National Environmental Policy Act Federal lead agency, has made available for public review and comment the Delta-Mendota Canal/California Aqueduct Intertie (Intertie) Draft EIS. The Intertie is a proposed action in the August 2000 CALFED Bay-Delta Program Programmatic Record of Decision. The Intertie Draft EIS evaluates constructing and operating a pipeline connecting the Delta-Mendota Canal (DMC) and the California Aqueduct. The purpose of the Proposed Action is to improve the DMC conveyance conditions that restrict the CVP Jones Pumping Plant to less than its authorized pumping capacity of 4,600 cubic feet per second. The Draft EIS describes and presents the environmental effects of the No-Action Alternative and three action alternatives. Two public hearings will be held to receive comments from agencies, individuals, and organizations on the Draft EIS.

DATES: Two public hearings have been scheduled to receive oral or written comments regarding environmental effects:

- Tuesday, August 4, 2009, 1 p.m.–3 p.m., Sacramento, CA.
- Wednesday, August 5, 2009, 6 p.m.–8 p.m., Stockton, CA.

The Draft EIS will be available for a 45-day public review and comment period.

Comments are due by Monday, August 31, 2009.

ADDRESSES: The public hearings will be held at the following locations:

- Sacramento, CA—Bureau of Reclamation, 2800 Cottage Way, Bureau of Indian Affairs Conference Room W–2620.
- Stockton, CA—Arnold Rue Community Center, 5758 Lorraine Avenue (in Panella Park at Amaretto Street).

Send written comments on the Draft EIS to Mr. Louis Moore, Bureau of Reclamation, 2800 Cottage Way, MP–700, Sacramento, CA 95825.

Copies of the Draft EIS may be requested from Mr. Louis Moore, by writing to Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825; by calling 916–978–5189 (TDD 916–978–5608); or by e-mailing *wmoore@usbr.gov.* The Draft EIS is also accessible from the following Web site: *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=1014.* See **SUPPLEMENTARY INFORMATION** section for locations where copies of the Draft EIS are available for public review.

FOR FURTHER INFORMATION CONTACT: Mr. Louis Moore, Bureau of Reclamation, at 916–978–5189 (TDD 916–978–5608) or *wmoore@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Draft EIS documents the direct, indirect, and cumulative effects to the physical, biological, and socioeconomic environment that may result from the construction and operation of the Intertie facilities.

The Intertie Draft EIS evaluates constructing and operating a pipeline connecting between the Delta-Mendota Canal (DMC) and the California Aqueduct. The purpose of the Proposed Action is to improve the DMC conveyance conditions that restrict the CVP Jones Pumping Plant to less than its authorized pumping capacity of 4,600 cubic feet per second. The Draft EIS evaluates four alternatives, including the No Action, Proposed Action (alternative previously analyzed in the Environmental Assessment), an alternative location of the same design, and a temporary structure. The Intertie would be located in an unincorporated area of the San Joaquin Valley in Alameda County, west of the city of Tracy, in a rural agricultural area that is owned by the State and Federal governments. The primary study area includes the Intertie alternative facilities and the associated transmission lines connecting to the Tracy substation, which is located at DMC Milepost 3.5.

Copies of the Draft EIS are available for public review at the following locations:

- Bureau of Reclamation, Mid-Pacific Region, Regional Library, 2800 Cottage Way, Sacramento, CA 95825.
- California Bay-Delta Authority, 650 Capitol Mall, 5th Floor, Sacramento, CA 95812.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW., Main Interior Building, Washington, DC 20240–0001.

If special assistance is required at the public hearings, please contact Mr. Louis Moore at 916–978–5189, TDD 916–978–5608, or by e-mailing *wmoore@usbr.gov.* Please notify Mr. Moore as far in advance as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified.

Before including your name, 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.

Dated: March 11, 2009.

Richard M. Johnson,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. E9–16645 Filed 7–13–09; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before June 27, 2009. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 29, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARIZONA

Maricopa County

Roald Amundsen Pullman Private Railroad Car, 7301 Indian Bend Rd., Scottsdale, 09000582

Pima County

Barrio El Membrillo Historic District, Bounded by W. Granada St. on the N., W. Simpson St. on the S., the right-of-way of the former EP&SW Railroad on the E., Tucson, 09000583

COLORADO

Jefferson County

Rockland Community Church and Cemetery, 24225 Rockland Rd., Golden, 09000584

GEORGIA

DeKalb County

Donaldson-Bannister House and Cemetery, 4831 Chamblee-Dunwoody Rd., Dunwoody, 09000585

Gwinnett County

Buford Public School Auditorium, 4975 Little Mill Rd., Buford, 09000586

HAWAII

Hawaii County

Crater Rim Drive, Hawaii Volcanoes National Park, Hilo, 09000588

Hilina Pali Road, Hawaii Volcanoes National Park, Hilo, 09000587

ILLINOIS

Champaign County

Alpha Gamma Delta Fraternity House, (Fraternity and Sorority Houses at the Urbana—Champaign Campus of the University of Illinois MPS) 1106 S. Lincoln Ave., Urbana, 09000589

Cook County

Episcopal Church of the Atonement and Parish House, The, 5751 N. Kenmore Ave., Chicago, 09000590

KENTUCKY

Garrard County

Bowman House, (Garrard County MRA) 1596 Bowmans Bottom Rd., Lancaster, 09000591

MAINE

Androscoggin County

Turner Cattle Pound, SW corner of Gen. Turner Hill Rd. and Kennebec Trail, Turner, 09000592

Hancock County

Bass Harbor Memorial Library, 89 Bernard Rd., Tremont, 09000593

Sagadahoc County

Fiddler's Reach Fog Signal, N. shore of Kennebec River, E. of Doubling Point Light Station, Arrowsic, 09000594

Waldo County

(Former) Maine Central Railroad Depot, ME Rt. 7, Brooks, 09000595

MISSOURI

Buchanan County

Museum Hill Historic District (Boundary Increase), (St. Joseph, Buchanan County, Missouri MPS AD) 321 and 323 N. 15th and 1510 Faraon St., St. Joseph, 09000598

Cooper County

Blackwater Residential Historic District, Parts of the 300–400 block of Trigg Ave., 300 block of Scott Ave. and the 300 block of Main St., Blackwater, 09000597

St. Louis Independent city

Forest Park Southeast Historic District (Boundary Increase III), 4100–4162 Manchester (even) 4151–4201 Manchester (odd) & 4216 Gibson, St. Louis, 09000596

NORTH CAROLINA

Alamance County

Beverly Hills Historic District, (Burlington MRA) Portion of 14 blocks on N. Main St., Rolling Rd., Highland Ave., Virginia Ave., N. Ireland St., N. St. John St., Burlington, 09000599

Catawba County

Frye, Dr. Glenn R., House, 539 N. Center St., NE, Hickory, 09000600

Durham County

Russell School, 2001 St. Mary's Rd. (S. side SR 1002.1 mi. W of jct with SR 1003), Durham, 09000601

Forsyth County

Winston-Salem Tobacco Historic District, Bounded by Chestnut St. on the W., 5th and 7th Sts. on the N., Linden St. on the E., and 4th and Fogle Sts. on the S., Winston-Salem, 09000602

[FR Doc. E9–16574 Filed 7–13–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Geological Survey

Privacy Act of 1974, as Amended; Notice of a New System of Records

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of creation of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department of the Interior (DOI) is issuing a public notice of its intent to create the U.S. Geological Survey ''Earthquake Hazards Program Earthquake Information'' system of records. The system includes individuals' e-mail addresses, and in some cases their name and address, for Program staff to reply to inquiries from those individuals for dissemination of requested earthquake-related information in real time, and for creating Web-accessible maps of earthquake-shaking by Zip code in real time.

DATES: Comments must be received by August 24, 2009.

ADDRESSES: Any person interested in commenting on this new notice may do so by: Submitting comments in writing to USGS Privacy Act Officer, 12201 Sunrise Valley Drive, MS807, Reston, Virginia 20192; hand-delivering comments to 12201 Sunrise Valley Drive, Reston, Virginia 20192; or e-mailing comments to *dkimball@usgs.gov*. 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.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey Privacy Act Officer, Deborah Kimball, 12201 Sunrise Valley Drive, Reston, Virginia 20192 by e-mail to *dkimball@usgs.gov*, or by phone at (703) 648–7158.

SUPPLEMENTARY INFORMATION: U.S. Geological Survey maintains the Earthquake Hazards Program Earthquake Information system of records. The purpose of this system is to make earthquake information available to members of the public who request to participate in exchanges of earthquake information by e-mail notification, Web site publications, and real-time data pushes/pulls to clients. The new system will be effective as proposed at the end of the comment period (the comment period will end 40 days after the publication of this notice in the **Federal Register**), unless comments are received which would require a contrary determination. DOI will publish a revised notice if changes are made based upon a review of the comments received.

Deborah Kimball,

USGS Privacy Act Officer.

USGS–2

SYSTEM NAME:

''Earthquake Hazards Program Earthquake Information'', USGS–2.

SYSTEM LOCATION(S):

USGS Geologic Hazards Team, 1711 Illinois St, Golden, CO 80401.

Denver Federal Center, Building 53, Lakewood, CO 80225.

USGS Earthquake Hazards Team, 345 Middlefield Rd., Menlo Park, CA 94025.

USGS Pasadena Field Office, 525 S. Wilson Ave., Pasadena, CA 91106.

EROS Data Center, 47914 252nd St., Sioux Falls, SD 57198.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who have requested information from the Earthquake Hazards Program (EHP) or have reported a Web site problem to the EHP Web Team. (2) Individuals who have signed up to receive e-mail announcements from various projects within the EHP. (3) Individuals who have subscribed to the Earthquake Notification Service. (4) Individuals who have entered data in the citizen science system(s).

CATEGORIES OF RECORDS IN THE SYSTEM:

The information retained in the system contains the following information from the individuals covered by the system: e-mail address, in some cases login id, login password, username, and non-mandatory data that may include the name, affiliation, phone number, and postal address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system of records is maintained under the authority of NEHRP (National Earthquake Hazards Reduction Program), established by Congress in 1977 (Pub. L. 95–124) and the Advanced National Seismic System (Pub. L. 106–503 and Pub. L. 108–360).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purposes of the records is: To make earthquake information available to members of the public who request to participate in exchanges of earthquake information by e-mail notification, Web site publications, and real-time data pushes/pulls to clients.

DISCLOSURES OUTSIDE DOI MAY BE MADE WITHOUT THE CONSENT OF THE INDIVIDUAL TO WHOM THE RECORD PERTAINS UNDER THE ROUTINE USES LISTED BELOW:

(1)(a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A part in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(2) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

(3) To any criminal, civil, or regulatory law enforcement authority (whether Federal, State, territorial, local, Tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or

potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(4) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(5) To Federal, State, territorial, local, Tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(6) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(7) To State and local governments and Tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(8) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

(9) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(10) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(11) To the Department of the Treasury to recover debts owed to the United States.

(12) To the news media when the disclosure is compatible with the purpose for which the records were compiled.

(13) To a consumer reporting agency if the disclosure requirements of the Debt Collection Act, as outlined at 31 U.S.C. 3711(e)(1), have been met.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are maintained in a relational MySQL database stored on hard disk on each of the Web servers in Golden, CO; Denver, CO; Menlo Park, CA; Pasadena, CA; Sioux Falls, SD, and backed up on magnetic tape. Electronic requests sent to the ''Web Team'' e-mail contact designated in the footer of every Web page on the Earthquake Hazards Program Web site, which contains the return e-mail address of the inquirer, are deleted as soon as a response to the inquiry is sent to the inquirer.

RETRIEVABILITY:

All data in the database can be accessed by the database administrators by any mandatory field, which includes e-mail address or account name.

SAFEGUARDS:

(1) *Physical Security:* The systems are physically housed in Government offices consisting of locked rooms with floor to ceiling walls. Access is granted through a proximity card system. Backup tapes are stored at the Denver Federal Center in Building 25 in Room 1860, with access granted through a proximity card system, and in Menlo Park Building 11 and 3, with access granted through a proximity card system.

(2) *Technical Security:* Electronic records are maintained in conformity with Office of Management and Budget, National Institute of Standards Technology and Departmental requirements reflecting the implementation of the Federal Information Security Management Act. Electronic data is protected through user identification, passwords, database permissions, a Privacy Act Warning, and software controls. These security measures establish different degrees of access for different types of users. The security controls protecting these databases are implemented in a hierarchical manner. The top layer is the Department of the Interior's Enterprise Services Network (ESN) security infrastructure which includes firewalls maintained in accordance with Department of Interior standards, Active-Scout Intrusion Detection, and a Juniper Intrusion Detection and Prevention (IDP) system. Additional security methods are implemented at each site: Firewalls, SSH, TCPwrappers, and Microsoft Active Directory. In addition to the layers of security described above, database access is controlled by restricted access to *http://usgs.gov* domains and by IP address, system user authentication, database access (table and row level) via grants, and specific database-table access by user account restrictions. Privacy information sent via the Internet is encrypted by SSL. The Security Plan addresses the Department's Privacy Act safeguard requirements for Privacy Act systems at 43 CFR 2.51. A Privacy Impact Assessment was completed to ensure that Privacy Act requirements and safeguards are sufficient and in place. Its provisions will be updated as needed to ensure that Privacy Act requirements continue to be met.

(3) *Administrative Security:* Access is strictly limited to authorized personnel whose official duties require such access. All Departmental and contractor employees with access to the records are required to complete Privacy Act, Federal Records Act, and Information Technology Security Awareness training prior to being given access to the system, and on an annual basis, thereafter. All users sign security forms stating they will neither misuse government computers nor the information contained therein. In addition, managers and supervisors of users monitor the use of the database and ensure that the information is used in accordance with certified and accredited business practices.

RETENTION AND DISPOSAL:

The records in the system are retained and disposed of in accordance with National Archives and Records Administration procedures and General Records Schedule 308–01 and 310–01.

SYSTEM MANAGER AND ADDRESS:

ANSS Manager, USGS-GD–GHT, DFC P.O. Box 25046 MS–966, Denver, CO 80225.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the Systems Manager identified above. The request envelope and letter should both be clearly marked ''PRIVACY ACT INQUIRY.'' A request for notification must meet the requirements of 43 CFR 2.60.

RECORDS ACCESS PROCEDURES:

An individual requesting records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request should describe the records sought as specifically as possible. The request envelopes and letter should both be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS.'' A request for access must meet the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

An individual requesting corrections or the removal of material from his or her records should send a signed, written request to the System Manager identified above. A request for corrections or removal must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from the individuals who access the Earthquake Hazards Program Web site and fill out one of the forms either to provide information or to request information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–16595 Filed 7–13–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

Notice of Stay of Filing of Plat

[LLCO956000–L14200000 BJ0000]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Stay of Filing of Plat.

SUMMARY: On Wednesday, January 14, 2009, the Bureau of Land Management (BLM) published a Filing of Plats of Survey notice in the **Federal Register** (74 FR 2090). This notice provided the public notification that the plat was officially filed in the Colorado State Office, effective 10 a.m., December 31, 2008. The BLM is publishing this notice to inform the public of the setting aside of the plat filing and to afford all affected parties a proper period of time to protest this action, prior to the plat filing.

DATES: The filing of this plat is set aside until August 28, 2009.

ADDRESSES: Colorado State Office (CO–956), Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

FOR FURTHER INFORMATION CONTACT: Paul Lukacovic, Acting Chief Cadastral Surveyor for Colorado, (303) 239–3818.

SUPPLEMENTARY INFORMATION: If a protest of this dependent resurvey is received prior to the date of the official filing, the official filing will be stayed pending consideration of the merits of the protest. Pursuant to the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals order dated June 15, 2009, concerning IBLA 2009–112 and 2009–113, McCollum Family Limited Partnership Number One, L.L.L.P. *et al.,* the BLM, Colorado State Office's December 31, 2008 (74 FR 2090), the official filing of the dependent resurvey of the east boundary and a portion of the subdivisional lines in Township 42 North, Range 13 West, New Mexico Principal Meridian, Colorado, is set aside.

This particular plat will not be officially filed until after all protests have been accepted or dismissed and become final.

Paul Lukacovic,

Acting, Chief Cadastral Surveyor for Colorado.

[FR Doc. E9–16652 Filed 7–13–09; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–09–020]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 15, 2009 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, *Telephone:* (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–457 and 731–TA–1153 (Final) (Certain Tow-Behind Lawn Groomers and Parts Thereof from China)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before July 27, 2009.)
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier announcement of this meeting was not possible.

By order of the Commission:

Issued: July 9, 2009.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E9–16732 Filed 7–10–09; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

United States Parole Commission

[8P04091]

Public Announcement Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 11 a.m., Thursday, July 16, 2009.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed.

MATTERS CONSIDERED: The following matters will be considered during the closed portion of the Commission's Business Meeting:

Petition for reconsideration involving one original jurisdiction case pursuant to 28 CFR 2.27.

Approval or disapproval of a hearing examiner appointment.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: July 7, 2009.

Rockne J. Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. E9–16471 Filed 7–13–09; 8:45 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

United States Parole Commission

[9P04091]

Public Announcement Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 10 a.m., Thursday, July 16, 2009.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of Minutes of May 14, 2009 Quarterly Business Meeting.

2. Reports from the Chairman, Commissioners, Chief of Staff, and Section Administrators.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: July 7, 2009.

Rockne J. Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. E9–16472 Filed 7–13–09; 8:45 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 7, 2009.

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: *DOL_PRA_PUBLIC@dol.gov* .

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor—Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316 / *Fax:* 202–395–5806 (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: Bureau of Labor Statistics.

Type of Review: Reinstatement with change of a previously approved collection.

Title of Collection: National Longitudinal Survey of Youth 1979.

OMB Control Number: 1220–0109.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 14,560.

Total Estimated Annual Burden Hours: 13,763.

Total Estimated Annual Costs Burden: $0.

Description: The information obtained in this survey will be used by the Department of Labor, other government agencies, academic researchers, the news media, and the general public to understand the employment experiences and life-cycle transitions of men and women born in the years 1957 to 1964 and living in the United States when the survey began in 1979. For additional information, see related notice published at Vol. 74 FR 17215 on April 14, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–16600 Filed 7–13–09; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 8, 2009.

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: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor—Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316 / *Fax:* 202–395–5806 (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 a currently approved collection.

Title of Collection: ERISA Summary Annual Report Requirement.

OMB Control Number: 1210–0040.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 716,000.

Total Estimated Annual Burden Hours: 2,142,100.

Total Estimated Annual Costs Burden (excludes hourly wage costs): $46,551,000.

Description: Employee Retirement Income Security Act of 1974 section 104(b)(3) and regulations codified at 29 CFR 2520.104b-10 require employee benefit plans to furnish a summary of the plan's annual report to participants

and specified beneficiaries for purposes of disclosure of basic financial information. For additional information, see related notice published at 74 FR 13477 on March 27, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–16602 Filed 7–13–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 07, 2009.

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: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor—Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316 / Fax: 202–395–5806 (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: Bureau of Labor Statistics.

Type of Review: Reinstatement with change of a previously approved collection.

Title of Collection: National Longitudinal Survey of Youth 1979.

OMB Control Number: 1220–0109.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 14,560.

Total Estimated Annual Burden Hours: 13,763.

Total Estimated Annual Costs Burden: $0.

Description: The information obtained in this survey will be used by the Department of Labor, other government agencies, academic researchers, the news media, and the general public to understand the employment experiences and life-cycle transitions of men and women born in the years 1957 to 1964 and living in the United States when the survey began in 1979. For additional information, see related notice published at 74 FR 17215 on April 14, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–16601 Filed 7–13–09; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *June 15 through June 26, 2009*.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–65,290; Paragon Molds Corporation, Fraser, MI: January 17, 2008.

TA–W–65,672; Chrysler, LLC, Sterling Heights Vehicle Center, Sterling Heights, MI: March 6, 2008.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–65,797; ABB, Inc., Wichita Falls, TX: April 13, 2008.

TA–W–65,839; JCIM U.S. LLC, Formerly Know as Plastech Engineered Products, Plymouth, MI: March 22, 2008.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–65,554; Tube Fab/Roman Engineering Company, Afton, MI: March 3, 2008.

TA–W–65,751; Allegheny Ludlum Corporation, A Division of Allegheny Technologies, Brackenridge, PA: March 11, 2008.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–65,740; Best Shingle Sales, Inc., Hoquiam, WA.

TA–W–65,882; Belcher—Robinson Foundry, Alexander City, AL.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–65,892; Specmo Enterprises, Inc., Madison Heights, MI.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of *June 15 through June 26, 2009.* Copies of these determinations are available for inspection in Room N–5428, U.S. Department of Labor, 200 Constitution Avenue, NW.,

Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 7, 2009.

Linda G. Poole

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–16624 Filed 7–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,700]

Weyerhaeuser NR Company, Raymond Lumbermill, Raymond, WA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated June 23, 2009, the International Association of Machinists and Aerospace Workers, Woodworkers District Lodge W1 requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on June 5, 2009. The Notice of Determination was published in the **Federal Register** on June 18, 2009 (74 FR 28961).

The initial investigation resulted in a negative determination based on the finding that imports of softwood dimensional lumber (hemlock) did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioner provided additional information regarding imports of softwood dimensional lumber and alleged that the subject firm might have increased imports of softwood dimensional lumber in the relevant period.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 6th day of July 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–16608 Filed 7–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,628]

Kelsey-Hayes Company, a Subsidiary of TRW Automotive Holdings Corporation, Including On-Site Leased Workers From Volt Technical Resources, Livonia, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 4, 2009, applicable to workers of Kelsey-Hayes Company, a subsidiary of TRW Automotive Holding Corporation, Livonia, Michigan. The notice was published in the **Federal Register** on March 3, 2009 (74 FR 9282).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in administrative functions and product engineering support for automotive components.

New information shows that workers leased from Volt Technical Resources were employed on-site at the Kelsey-Hayes Company, a subsidiary or TRW Automotive Holdings Corporation, Livonia, Michigan. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Volt Technical Resources employed on-site at the Kelsey-Hayes Company, a subsidiary or TRW Automotive Holdings Corporation, Livonia, Michigan.

The amended notice applicable to TA–W–64,628 is hereby issued as follows:

All workers of Kelsey-Hayes Company, a subsidiary or TRW Automotive Holdings Corporation, including on-site leased workers from Volt Technical Resources, Livonia, Michigan, who became totally or partially separated from employment on or after December 8, 2007, through February 4, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of June 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–16606 Filed 7–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,209]

Spartan Light Metal Products Including On-Site Leased Workers From Defender Services and Manpower, Sparta, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 9, 2009, applicable to workers of Spartan Light Metal Products, Sparta, Illinois. The notice will be published soon in the **Federal Register**.

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm. The workers produce die cast parts for automotive and commercial drive train applications.

New information provided by the petitioner, and confirmed by the company official, show that the worker group includes on-site workers leased from Defender Services and Manpower.

The intent of the Department's certification is to include all workers of Spartan Light Metal Products, Inc., Sparta, Illinois, who were adversely affected secondary workers.

Accordingly, the Department is amending this certification to include on-site workers leased from Defender Services and Manpower.

The amended notice applicable to TA-W–65,209 is hereby issued as follows:

All workers of Spartan Light Metal Products, Inc., including on-site leased workers from Defender Services and Manpower, who became totally or partially separated from employment on or after February 9, 2008 through April 9, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of June 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–16629 Filed 7–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,806]

Garvin Industries, a Division of Guarantee Specialties, Inc. Including On-Site Leased Workers From Meadville Staffing/Career Concepts, Adamsville, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 13, 2009, applicable to workers of Garvin Industries, a division of Guarantee Specialties, Inc., Adamsville, Pennsylvania. The notice was published in the **Federal Register** on April 30, 2009 (74 FR 19996).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of gaskets and seals for the automotive industry.

The review of the investigation record shows that the Department inadvertently excluded from the certification on-site leased workers from Meadville Staffing/Career Concepts. The Department has determined that these workers were sufficiently under the control of the subject to be considered leased workers.

The intent of the Department's certification is to include all workers of the Adamsville, Pennsylvania location of the subject firm who were secondarily affected as a supplier of gaskets and seals for the automobile industry.

Accordingly, the Department is amending this certification to include workers leased from Meadville Staffing/Career Concepts working on-site at the Adamsville, Pennsylvania location of the subject firm.

The amended notice applicable to TA–W–64,806 is hereby issued as follows:

All workers of Garvin Industries, a division of Guarantee Specialties, Inc., including on-site leased workers from Meadville Staffing/Career Concepts, Adamsville, Pennsylvania, who became totally or partially separated from employment on or after January 2, 2008 through April 13, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 29th day of June 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–16607 Filed 7–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

TA–W–65,120; TA–W–65,120A

Santee Print Works, Sumter, SC; Santee Print Works, New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 27, 2009, applicable to workers of Santee Print Works, Sumter, South Carolina. The notice was published in the **Federal Register** on April 7, 2009 (74 FR 15756).

At the request of the State agency and company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of finished fabric.

New findings show that the New York, New York location of Santee Print Works also experienced an employment decline during the relevant period. Workers at the New York, New York facility provide sales and accounting functions directly supporting and sufficiently under the control of the Sumter, South Carolina production facility of the subject firm.

Accordingly, the Department is amending the certification to cover workers at the New York, New York location of Santee Print Works.

The intent of the Department's certification is to include all workers of Santee Print Works who were adversely affected by increased imports of finished fabric.

The amended notice applicable to TA–W–65,120 is hereby issued as follows:

All workers of Santee Print Works, Sumter, South Carolina (TA–W–65,120), and Santee Print Works, New York, New York (TA–W–65,120A), who became totally or partially separated from employment on or after February 3, 2008, through March 27, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington DC, this 26th day of June 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–16628 Filed 7–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,232]

Sierra Pine Ltd., Medite Division, Including On-Site Workers Leased From Personnel Source, Medford, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 24, 2008, applicable to all workers of Sierra Pine Ltd., Medite Division, Medford, Oregon. The notice was published in the **Federal Register** on November 10, 2008 (73 FR 66676).

At the request of a State agency representative, the Department reviewed the certification for workers of the

subject firm. The workers produce medium density fiberboard.

New information submitted to the Department shows that the worker group includes on-site workers leased from Personnel Source.

The intent of the Department's certification is to include all workers of Sierra Pine Ltd., Medite Division, Medford, Oregon, who were adversely affected by increased imports.

Accordingly, the Department is amending this certification to include on-site workers leased from Personnel Source.

The amended notice applicable to TA–W–65,232 is hereby issued as follows:

All workers of Sierra Pine Ltd., Medite Division, Medford, Oregon, including on-site leased workers from Personnel Source, who became totally or partially separated from employment on or after October 15, 2007 through October 24, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 26th day of June 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–16626 Filed 7–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,762]

Chrysler, LLC, Sterling Heights Assembly Plant, Including On-Site Leased Workers From Caravan Knight Facilities Management LLC, Sterling Heights, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 27, 2009, applicable to workers of Chrysler, LLC, Sterling Heights Assembly Plant, Sterling Heights, Michigan. The notice was published in the **Federal Register** on May 18, 2009 (74 FR 23214).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers assemble the Chrysler Sebring, Chrysler Sebring Convertible and the Dodge Avenger.

New information shows that workers leased from Caravan Knight Facilities Management LLC were employed on-site at the Sterling Heights, Michigan location of Chrysler, LLC, Sterling Heights Assembly Plant. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Caravan Knight Facilities Management LLC working on-site at the Sterling Heights, Michigan location of Chrysler, LLC, Sterling Heights Assembly Plant.

The amended notice applicable to TA–W–65,762 is hereby issued as follows:

All workers of Chrysler, LLC, Sterling Heights Assembly Plant, including on-site leased workers from Caravan Knight Facilities Management LLC, Sterling Heights, Michigan, who became totally or partially separated from employment on or after March 8, 2008, through April 27, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 29th day of June 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–16623 Filed 7–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,760]

Delphi Corporation Electronics and Safety Division Including On-Site Leased Workers From Acro Service Corporation, Manpower, Manpower Professional Continental, Inc. and Alliance Group Technology, Kokomo, IN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 14, 2008, applicable to workers of Delphi Corporation, Electronics and Safety Division, Kokomo, Indiana. The notice was published in the **Federal Register** on February 29, 2008 (73 FR 11152). The certification was amended on October 16, 2008, April 14, 2009 and May 12, 2009 to include on-site leased workers from Acro Service Corporation, Manpower, Manpower Professional and Continental, Inc. The notices were published in the **Federal Register** on October 27, 2008 (73 FR 63733), April 30, 2009 (74 FR 19989) and June 16, 2009 (74 FR 28556–28557), respectfully.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of various types of automobile components, including: Heating, ventilating, air-conditioning systems (HVAC), amplifiers, mainboards, gas control modules, hybrid airmeter electronics, hybrid ignition electronics, pressure sensors, transmission control modules, crash sensing devices, occupant sensing devices, warning systems and semiconductors.

New information shows that leased workers of Alliance Group Technology were employed on-site at the Kokomo, Indiana location of Delphi Corporation, Electronics and Safety Division. The Department has determined that these workers were sufficiently under the control of Delphi Corporation, Electronics and Safety Division.

Based on these findings, the Department is amending this certification to include leased workers of Alliance Group Technology working on-site at the Kokomo, Indiana location of the subject firm.

The intent of the Department's certification is to include all workers employed at Delphi Corporation, Electronics and Safety Division who were adversely affected by a shift in production Mexico.

The amended notice applicable to TA–W–62,760 is hereby issued as follows:

All workers of Delphi Corporation, Electronics and Safety Division, including on-site leased workers from Acro Service Corporation, Manpower, Manpower Professional, Continental, Inc., and Alliance Group Technology, Kokomo, Indiana, who became totally or partially separated from employment on or after January 28, 2007, through February 14, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 26th day of June 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–16625 Filed 7–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,484]

Halmode Apparel, Halmode/Liz Claiborne Dresses, 1400 Broadway, a Division of Kellwood Company, New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 10, 2008, applicable to workers of Halmode Apparel, a Division of Kellwood Company, New York, New York. The notice was published in the **Federal Register** on January 25, 2008 (73 FR 4634).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production women's apparel samples and patterns.

New information provided by the company official shows that some of workers wages at Halmode Apparel are reported under Federal Employment Identification Number (FEIN) for Halmode Apparel/Liz Claiborne Dresses.

Accordingly, the Department is amending the certification to include workers of Halmode Apparel, a Division of Kellwood Company, 1400 Broadway, New York, New York, whose wages were reported under the FEIN for Halmode/Liz Claiborne Dresses.

The amended notice applicable to TA–W–62,484 is hereby issued as follows:

All workers of Halmode Apparel, Halmode/Liz Claiborne Dresses, 1400 Broadway, a Division of Kellwood Company, New York, New York, who became totally or partially separated from employment on or after November 4, 2007, through January 10, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 2nd day of July 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–16605 Filed 7–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,619]

Chrysler, LLC Twinsburg Stamping Plant Including On-Site Leased Workers From Caravan Knight Facilities Management LLC and Wackenhut Security, Twinsburg, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 4, 2009, applicable to workers of Chrysler, LLC, Twinsburg Stamping Plant, Twinsburg, Ohio. The notice was published in the **Federal Register** on March 3, 2009 (74 FR 9282).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of metal automotive stampings, a substantial portion of which are shipped to an affiliated plant where they are used in the assembly of automotive vehicles.

New information shows that workers leased from Caravan Knight Facilities Management LLC and Wackenhut Security were employed on-site at the Twinsburg, Ohio location of Chrysler, LLC, Twinsburg Stamping Plant. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Caravan Knight Facilities Management LLC and Wackenhut Security working on-site at the Twinsburg, Ohio location of Chrysler, LLC, Twinsburg Stamping Plant.

The amended notice applicable to TA–W–64,619 is hereby issued as follows:

All workers of Chrysler, LLC, Twinsburg Stamping Plant, including on-site leased workers from Caravan Knight Facilities Management LLC and Wackenhut Security, Twinsburg, Ohio, who became totally or partially separated from employment on or after December 2, 2007, through February 4, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 29th day of June 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–16627 Filed 7–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,051]

Aavid Thermalloy, LLC, Laconia, NH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 26, 2009, applicable to workers of Aavid Thermalloy, LLC, Laconia, New Hampshire. The notice will soon be published in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of thermal management equipment.

The review shows that all workers of Aavid Thermalloy, LLC, Laconia, New Hampshire, were previously certified eligible to apply for adjustment assistance under petition number TA–W–61,394, which expired on May 16, 2009.

Therefore, in order to avoid an overlap in worker group coverage, the Department is amending the May 18, 2008 impact date established for TA–W–70,051, to read May 17, 2009.

The amended notice applicable to TA–W–70,051 is hereby issued as follows:

All workers of Aavid Thermalloy, LLC, Laconia, New Hampshire, who became

totally or partially separated from employment on or after May 17, 2009 through June 26, 2011, and all workers in the group threatened with total or partial separation from employment on June 26, 2009 through June 26, 2011, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 9th day of July 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–16603 Filed 7–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,086]

Ford Motor Company Product Development and Engineering Center Including On-Site Leased Workers From Roush Management LLC, Rapid Global Business Solutions, Inc. and TAC Automotive, Dearborn, MI; Amended Notice of Revised Determination on Reconsideration

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Notice of Revised Determination on Reconsideration on August 8, 2007. The notice was published in the **Federal Register** on August 20, 2007 (72 FR 46515–46516). The Revised Determination on Reconsideration was amended on January 30, 2009 to include on-site leased workers from Roush Management LLC. The notice was published in the **Federal Register** on February 13, 2009 (74 FR 7269).

At the request of a petitioner, the Department reviewed the Notice of Revised Determination on Reconsideration for workers of the subject firm. The workers are in direct support of production of numerous production assembly plants of Ford Motor Company. All of these production facilities were certified eligible for adjustment assistance during April through December 2006.

New information shows that workers leased workers from Rapid Global Business Solutions, Inc., and TAC Automotive were employed on-site at the Dearborn, Michigan location of Ford Motor Company, Product Development Center. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this revised determination to include workers leased from Rapid Global Business Solutions, Inc., and TAC Automotive working on-site at the Dearborn, Michigan location of the subject firm.

The intent of the Department's certification is to include all workers employed at Ford Motor Company, Product Development and Engineering Center, Dearborn, Michigan who were adversely affected by increased imports.

The amended notice applicable to TA–W–60,086 is hereby issued as follows:

All workers of Ford Motor Company, Product Development and Engineering Center, including on-site leased workers from Roush Management LLC, Rapid Global Business Solutions, Inc., and TAC Automotive, Dearborn, Michigan, who became totally or partially separated from employment on or after September 14, 2005, through August 8, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of July 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–16604 Filed 7–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,739]

EOS Airlines Incorporated, Purchase, NY; Notice of Negative Determination; Regarding Application for Reconsideration

By application dated May 18, 2009, the petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 14, 2009 and published in the **Federal Register** on April 30, 2009 (74 FR 19996).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The negative TAA determination issued by the Department for the workers of Eos Airline Incorporated, Purchase, New York was based on the findings that the worker group did not produce an article within the meaning of Section 222 of the Trade Act of 1974. The investigation revealed that workers of the subject firm provided air transportation services to customers. The investigation further revealed that no production of article(s) occurred within the firm or appropriate subdivision during the relevant period.

The petitioner in the request for reconsideration contends that the Department erred in its interpretation of the work performed by the workers of the subject firm. The petitioner states that the workers of the subject firm produced an article in the form of ''Available Seat Mile''. The petitioner seems to allege that the pilots produced Seat Miles while transporting customers to their destination.

The investigation revealed that during the relevant period, the workers of Eos Airlines Incorporated, Purchase, New York provided air transportation services to customers. Specifically, according to the company official, the workers of the subject firm were pilots who provided air services between the United States and Europe.

These functions, as described above, are not considered production of an article within the meaning of Section 222 of the Trade Act. While the provision of services results in providing the customers with the Available Seat Mile, which is used in measuring the productivity of an airline, the Seat Mile is incidental to the provision of these services. No production took place at the subject facility, nor did the workers support production of an article at any domestic location during the relevant period.

The petitioner also states that the workers would have been eligible for TAA under the new Trade Act if they filed the petition in May 2009. The petitioner seems to allege that the workers of the subject firm should be evaluated using new eligibility criteria and receive a certification for TAA under the new law, even though they filed a petition under the old Trade Act before the new provision went into effect.

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009, commonly known as the economic stimulus package. The new provision of the Trade Act went into effect on May 18, 2009 and applies to petitions filed on or after that date. The petition at hand was filed on March 30, 2009, and therefore, cannot be considered under the new provision.

The workers are encouraged to file a new petition, if the workers wish to be considered under the New TAA Program.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 22nd day of June, 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–16631 Filed 7–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,433]

American Racing Equipment, LLC, Denver, CO; Notice of Negative Determination on Reconsideration

On May 11, 2009, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on June 16, 2009 (74 FR 28552).

The initial investigation resulted in a negative determination based on the finding that imports of two-piece automotive wheels did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioner alleged that the workers of the subject firm also supported production of cast, one piece wheels. The petitioner alleged that the subject firm shifted production of the cast, one piece wheels abroad and that there was an increase in imports of the cast, one piece wheels.

The Department of Labor contacted a company official to verify this information. The company official stated that the workers of the subject firm distributed the cast, one piece wheels which were mostly manufactured in China. The company official also stated that the subject firm ceased production of the cast, one piece wheels long before 2008 and that no cast, one piece wheels were manufactured by American Racing Equipment, LLC during the relevant period.

When assessing eligibility for Trade Adjustment Assistance, the Department exclusively considers production, shifts in production and import impact during the relevant time period (one year prior to the date of the petition). Therefore, events occurring prior to February 26, 2008, are outside of the relevant period and are not relevant in this investigation. The investigation revealed that workers of the subject firm did not manufacture the cast, one piece wheels and did not support production of the cast, one piece wheels at any affiliated domestic facility during the relevant period.

To support the allegation of a shift in production to China the petitioner attached an e-mail correspondence from an American Racing Equipment, LLC employee dated March 13, 2008.

Upon further analysis it was revealed that the document contains a review of the subject firm's sales for the month of February 2008. The letter also refers to the negative impact of bad winter conditions in China to the Chinese production which was the reason of reduced sales at the subject firm in February 2008.

The investigation revealed that the above mentioned document does not contain any information which supports the petitioner allegation regarding production of the cast, one piece wheels by workers of the subject firm or a shift in production of the cast, one piece wheels during the relevant period.

The petitioner also attached a letter dated June 29, 2007 signed by a company official.

Documents referring to the events which took place in 2007 are outside of the relevant time period and cannot be considered in this investigation.

The petitioner also attached a spreadsheet named ''Salesperson Pace Report—Daily Needs''. The Department reviewed the document and determined that it does not contain any additional valid information as it relates to this determination.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of American Racing Equipment, LLC, Denver, Colorado.

Signed at Washington, DC, this 26th day of June 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–16630 Filed 7–13–09; 8:45 am]

BILLING CODE 4510–FN–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0306]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 18, 2009, to July 1, 2009. The last biweekly notice was published on June 30, 2009 (74 FR 31318).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this

proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory 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 an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any 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 Web site 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 Web site 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 using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, 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 request and/or petition 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).

Documents submitted in adjudicatory proceedings will appear in NBC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. 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 submissions.

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: May 13, 2009.

Description of amendments request: The amendment would incorporate Technical Specification Task Force Traveler (TSTF) 479–A, Revision 0, ''Changes to Reflect Revision of 10 CFR 50.55a,'' and TSTF 497–A, Revision 0, ''Limit Inservice Testing Program SR 3.0.2 Application to Frequencies of 2 Years or Less,'' approved by the Nuclear Regulatory Commission (NRC) on December 6, 2005 and October 4, 2006 respectively. The proposed changes revise the Improved Standard Technical Specification administrative controls of the Inservice Testing Program to be consistent with the requirements of Title 10 of the *Code of Federal Regulations* Section 50.55a(f)(4) for pumps and valves classified as American Society of Mechanical Engineers (ASME) Code Class 1, Class 2, and Class 3.

The proposed change replaces references to ASME Section XI of the Boiler and Pressure Vessel Code with references to the ASME Code for Operation and Maintenance of Nuclear Power Plants within Technical Specification (TS) 5.5.8. In TS 5.5.8.b, the proposed change applies the extension of Surveillance Requirement 3.0.2 to other normal and accelerated inservice testing frequencies of 2 years or less that were not included in the frequencies of the table listed in TS 5.5.8.a.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will replace, within TS 5.5.8, references to Section XI of ASME Boiler and Pressure Vessel Code, with references to the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code). In addition the proposed change

adds words to TS 5.5.8.b which applies the extension allowance of the Surveillance Requirement 3.0.2 to other normal and accelerated inservice testing frequencies of two years or less that were not included in the frequencies of the table listed in TS 5.5.8.a.

The proposed change is administrative, does not affect any accident initiators, does not affect the ability to successfully respond to previously evaluated accidents and does not affect radiological assumptions used in the evaluations. Thus, operation of the facility in accordance with the proposed change will not involve an increase in the probability or the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will replace, within TS 5.5.8 references to Section XI of ASME Boiler and Pressure Vessel Code with references to the ASME OM Code. In addition the proposed change also adds words to TS 5.5.8.b which applies the extension allowance of Surveillance Requirement 3.0.2 to other normal and accelerated inservice testing frequencies of two years or less that were not included in the frequencies of the table listed in TS 5.5.8.a.

The proposed change does not involve a modification to the physical configuration of the plant (*i.e.*, no new equipment will be installed) or involve a change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally there is no change in the types or increase in the amounts of any effluent that may be released offsite and there is no increase in individual or cumulative occupational exposure.

Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed change will replace, within TS 5.5.8 references to Section XI of ASME Boiler and Pressure Vessel Code with references to the ASME OM Code. In addition the proposed change also adds words to TS 5.5.8.b which applies the extension allowance of Surveillance Requirement 3.0.2 to other normal and accelerated inservice testing frequencies of two years or less that were not included in the frequencies of the table listed in TS 5.5.8.a.

The proposed change does not involve a modification to the physical configuration of the operating units or change the methods governing normal plant operation. The proposed change incorporates revisions to the ASME Code that results in a net improvement in the measures for testing pumps and valves. The safety functions of the applicable pumps and valves will be maintained.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Carey Fleming, Sr. Counsel—Nuclear Generation, Constellation Generation Group, LLC, 750 East Pratt Street, 17th floor, Baltimore, MD 21202.

NRC Acting Branch Chief: Richard Guzman.

DTE Energy, Inc., Docket No. 50–16, Enrico Fermi Atomic Power Plant, Unit 1, Monroe County, Michigan

Date of amendment request: March 25, 2009.

Description of amendment request: The proposed amendment would add a license condition incorporating a site license termination plan (LTP) for the Enrico Fermi Atomic Power Plant, Unit 1 (Fermi-1). The proposed license condition includes LTP change control criteria specifying when changes to the LTP require prior Nuclear Regulatory Commission approval. Since Fermi-1 is completely within the boundary of Unit 2, the Fermi-1 property would become part of Unit 2 site upon successful completion of license termination activities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The change allows for the approval of the LTP and provides the criteria for when changes to the LTP require prior NRC approval. This change does not affect possible initiating events for the three postulated accidents previously evaluated in the Fermi-1 Safety Analysis Report (SAR), as updated, or alter the configuration or operation of the facility. Safety limits, limiting safety system settings, and limiting control systems are no longer applicable to Fermi-1 in the permanently defueled condition, and are therefore not considered further. The proposed change does not affect the boundaries used to evaluate compliance with liquid or gaseous effluent limits, and has no impact on plant operations.

Therefore, the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the probability of a new or different accident from any accident previously evaluated?

No. The safety analysis for the facility remains accurate as described in the Fermi-1 SAR, as updated, Section 8.4, Postulated Radiological Accidents. There are sections of the LTP that make reference to the decommissioning activities still remaining (*e.g.,* removal of large components, decontamination, etc.), however these activities are performed in accordance with approved Fermi-1 work authorizations and undergo 10 CFR 50.59 screening prior to initiation. The plant conditions for which the postulated accidents have been evaluated are still valid and no new accident scenarios, failure mechanisms, or single failures are introduced by this amendment. The system operating procedures are not affected.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. There are no changes to the design or operation of the facility resulting from this amendment. The proposed change does not affect the boundaries used to evaluate compliance with liquid or gaseous effluent limits, and has no impact on plant shutdown operations. Accordingly, neither the postulated accident assumptions in the Fermi-1 SAR, as updated, nor the basis of the Technical Specifications are affected.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David Pettinari.

NRC Branch Chief: Andrew Persinko.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: June 3, 2009.

Description of amendment request: The proposed change will modify Technical Specification (TS) 2.1.1.1 to account for the Combustion Engineering (CE) 16 x 16 Next Generation Fuel (NGF) and different U.S. Nuclear Regulatory Commission (NRC) reviewed and approved Departure from Nucleate Boiling (DNB) correlations. These new correlations will be implemented in the safety analyses for the next fuel cycle of

operation consistent with NRC-approved methodologies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

No changes to plant equipment or operating procedures are required due to the change in the safety limit for DNBR [Departure from Nucleate Boiling Ratio]. This change does not impact any of the accident initiators. The analyses of the reload are performed using NRC-approved methodologies to ensure the Specified Acceptable Fuel Design Limits (SAFDLs), of which DNBR is one, are not violated. The current DNBR setpoint continues to ensure automatic protective action and is initiated to prevent exceeding the proposed DNBR safety limit.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any plant modifications or change in the way the plant is designed to function. The proposed change is not associated with any accident precursor or initiator. The proposed change supports the loading and use of Next Generation Fuel (NGF) at Waterford 3 as previously approved by the NRC.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The use of the NRC-approved NGF WSSV–T correlation with the ABB–NV correlation to establish a new bounding DNBR safety limit of 1.24, preserves the DNBR margin of safety at a 95/95 level. The Core Protection Calculator (CPC) DNBR power adjustment addressable constant BERR1 is calculated based on the WSSV–T and ABB–NV CHF [Critical Heat Flux] correlations such that a CPC trip at a DNBR of 1.26 using the CE–1 CHF correlation ensures that the bounding DNBR safety limit of 1.24 for the WSSV–T and ABB–NV CHF correlations will not be violated during normal operation and AOOs [anticipated operational occurrences] to at least a 95/95 probability/confidence level.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

FPL Energy, Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: April 17, 2009.

Description of amendment request: The proposed change would amend the Renewed Facility Operating Licenses DPR–24 and DPR–27 for Point Beach Nuclear Plant, Units 1 and 2, respectively, to reflect a change in the legal name of the Licensee from ''FPL Energy Point Beach, LLC'' to ''NextEra Energy Point Beach, LLC.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This request is for administrative changes only. No actual facility equipment or accident analyses will be affected by the proposed changes. Therefore, this request will have no impact on the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This request is for administrative changes only. No actual facility equipment or accident analyses will be affected by the proposed changes and no failure modes not bounded by previously evaluated accidents will be created. Therefore, this request will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.*, fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. This request is for administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed changes. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety system settings, and will not relax the bases for any limiting conditions of operation. Therefore, these proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Antonio Fernandez, Esquire, Senior Attorney, FPL Energy Point Beach, LLC, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Lois M. James.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of amendment request: May 21, 2009 (TSC 09–02).

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) Section 6.8.4.k, ''Steam Generator Program,'' for Unit 2 including associated TSs Bases 3/4.4.5, ''Steam Generator (SG) Tube Integrity,'' to allow the implementation of SG tubing alternate repair criteria for axial indications in the Westinghouse Electric Company explosive tube expansion region below the top of the tubesheet and specify the W* distance for the SG cold legs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Of the various accidents previously evaluated, the proposed changes only affects the steam generator tube rupture (SGTR) event evaluation and the postulated steam line break (SLB) accident evaluation. Loss-of-coolant accident (LOCA) conditions cause a compressive axial load to act on the tube. Therefore, since the LOCA tends to force the tube into the tubesheet rather than pull it out, it is not a factor in this amendment request. Another faulted load consideration is a safe shutdown earthquake (SSE); however, the seismic analysis of Westinghouse 51 Series steam generators (SGs) has shown that axial loading of the tubes is negligible during an SSE.

TVA's [Tennessee Valley Authority's] amendment request allows taking credit for

how the tubesheet enhances the tube integrity in the Westinghouse Electric Company explosive tube expansion (WEXTEX) region by precluding tube deformation beyond its initial expanded outside diameter. For the SGTR and SLB events, the required structural margins of the SG tubes will be maintained due to the presence of the tubesheet. Tube rupture is precluded for axial cracks in the WEXTEX region due to the constraint provided by the tubesheet. Therefore, the normal operating 3ΔP margin and the postulated accident 1.43ΔP margin against burst are maintained.

The W* length supplies the necessary resistive force to preclude pullout loads under both normal operating and accident conditions. The contact pressure results from the WEXTEX process, thermal expansion mismatch between the tube and tubesheet and from the differential pressure between the primary and secondary side. Therefore, the proposed change results in no significant increase in the probability or the occurrence of an SGTR or SLB accident.

The proposed changes do not affect other systems, structures, components or operational features. Therefore, based on the above evaluation, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

The consequences of an SGTR event are primarily affected by the primary-to-secondary flow rate and the time duration of the primary-to-secondary flow during the event. Primary-to-secondary flow rate through a postulated ruptured tube (*i.e.*, complete severance of a single SG tube) is not affected by the proposed change since the flow rate is based on the inside diameter of a SG tube and the pressure differential. TVA's amendment request does not change either of these. The duration of primary-to-secondary leakage is based on the time required for an operator to determine that an SGTR has occurred, the time to identify and isolate the faulty SG, and ensure termination of radioactive release to the atmosphere from the faulty SG. TVA's amendment request does not affect the duration of the primary-to-secondary leakage because it does not change the control room indicators with which an operator would determine that an SGTR has occurred. The consequences of an SGTR are secondarily affected by primary-to-secondary leakage, which could occur due to axial cracks remaining in service in the WEXTEX region in a non-faulted SG. During a SGTR, the primary-to-secondary differential pressure is less than or equal to the normal operating differential pressure; therefore, the primary-to-secondary leakage due to axial cracks in the WEXTEX region of a non-faulted SG during a SGTR would be less than or equal to the primary-to-secondary leakage experienced during normal operation. Primary-to-secondary leakage is considered in the calculation determining the consequences of a SGTR and the value is bounding.

The postulated SLB has the greatest primary-to-secondary pressure differential, and therefore could experience the greatest primary-to-secondary leakage. TVA's amendment request allows axial cracks to remain in service in the WEXTEX region, which have the possibility of primary-to-secondary leakage during a postulated SLB accident. However, the primary-to-secondary leakage would be limited by the amount the crack face can open (compared to a similar free-span axial crack) and by the restriction resulting from the tube to tubesheet contact pressure which create a restricted leakage path from the upper tip of the crack to the top of the WEXTEX expansion. TVA's amendment request requires the aggregate leakage, (*i.e.*, the combined leakage for the tubes with axial cracks in the WEXTEX region) plus the combined leakage developed by other alternate repair criteria (ARC), to remain below the maximum allowable SLB primary-to-secondary leakage rate limit such that the doses are maintained to less than a fraction of the 10 CFR 100 limits and also less than the General Design Criteria (GDC)–19 limits.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

TVA's amendment request does not introduce any physical changes to the Sequoyah Unit 2 SGs. TVA's amendment request takes credit for how the tubesheet enhances the SG tube integrity in the WEXTEX region by precluding tube deformation beyond its initial expanded outside diameter and allows axial cracks in the WEXTEX region to remain in service if prescribed criteria are met. Removal of the existing primary water stress corrosion cracking (PWSCC) axial at dented tube support plate ARC incorporates the more conservative TS limit for SG tube plugging. A failure to meet SG tube integrity results in an SGTR. Because the circumferential cracks detected within the WEXTEX region are required to be plugged, it is highly unlikely that a W* tube would fail as a result of a circumferential defect. Therefore, a tube severance which would strike neighboring tubes and create a multiple tube rupture is not credible.

The proposed change does not introduce any new equipment or any change to existing equipment. No new effects on existing equipment are created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The amendment request maintains the structural margins of the SG tubes for both normal and accident conditions that are required by Regulatory Guide 1.121.

For primarily axially oriented cracking located within the tubesheet, tube burst is precluded because of the presence of the tubesheet. WCAP–14797 defines a length, W*, of degradation free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces (with applicable safety factor applied). Application of the W* criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the W* criteria.

Plugging of the SG tubes reduces the reactor coolant flow margin for core cooling. Implementation of the proposed changes is expected to result in plugging of fewer tubes than with the current criteria. Thus, implementation of the proposed changes will maintain the margin of flow that may have otherwise been reduced by tube plugging.

It is concluded that the proposed changes do not result in a significant reduction of margin with respect to plant safety as defined in the Updated Final Safety Analysis Report or TSs.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Thomas H. Boyce.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: April 13, 2009.

Description of amendment request: The proposed change revises Technical Specifications (TS) Table 3.7–1 Operator Action 3.b and provides direction if the less-than-required-minimum-operable-channels-condition for the nuclear flux intermediate range occurs between 7% and 11% of rated power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change revises TS Table 3.7–1 Operator Action 3.b and provides direction if the less-than-required-minimum-operable-channels-condition for the nuclear flux intermediate range occurs between 7% and 11% of rated power. Required action between 7% and 11% of rated power is currently not addressed in the Operator Action 3.b. The proposed TS change does not involve a physical change to any structures, systems, or components (SSCs) at Surry Power Station; nor does it change any of the previously evaluated accidents in the

Updated Final Safety Analysis Report (UFSAR). Thus, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change revises TS Table 3.7–1 Operator Action 3.b, and provides required action between 7% and 11% of rated power, which is currently not addressed in the Operator Action 3.b. The proposed change does not involve a physical change to any SSCs, and there is no impact on their design function. The proposed change does not affect initiators of analyzed events. Therefore, the proposed change does not introduce any new failures that could create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed change provides required action for inoperability of nuclear flux intermediate range instrumentation between 7% and 11% of rated power in TS Table 3.7–1 Operator Action 3.b. Margin of safety is established through the design of plant SSCs, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event. The proposed change does not impact the condition or performance of SSCs relied upon for accident mitigation or any safety analysis assumptions. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.

NRC Branch Chief: Melanie C. Wong.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: May 31, 2009.

Description of amendment request: Revise Technical Specification 3.1.3.4, related to requirements for Control Element Assembly (CEA) drop time to increase the available margin for CEA drop time testing.

Date of publication of individual notice in the ***Federal Register***: June 1, 2009 (74 FR 26261).

Expiration date of individual notice: July 1, 2009 (Comments) and July 31, 2009 (Hearing).

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: September 12, 2008.

Brief description of amendment: The amendment revises Fermi 2 Plant Operating License, Appendix A, Technical Specifications (TS) to remove statements relating to Nuclear Power Plant Staff Working Hours in Section 5.2.2, ''Unit Staff,'' specifically deleting subsection 5.2.2.e. The requested amendment removes references to and limits imposed by Nuclear Regulatory Commission Generic Letter (GL) 82–12, ''Nuclear Power Plant Staff Working Hours'' from the administrative controls section of the Fermi 2 TS. The regulations in 10 CFR Part 26, Subpart I, supersede the guidelines in GL 82–12.

Date of issuance: June 19, 2009.

Effective date: As of the date of issuance and shall be implemented no later than October 1, 2009.

Amendment No.: 181.

Facility Operating License No. NPF–43: Amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register***: December 2, 2008 (73 FR 73353).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 2009.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: January 14, 2009.

Brief description of amendment: The amendment: (1) Deleted Technical Specification (TS) surveillance requirement (SR) 3.1.3.2 and revised SR 3.1.3.3, (2) removed the reference to SR 3.1.3.2 from Required Action A.2 of TS

3.1.3, ''Control Rod OPERABILITY,'' (3) renumbered SRs 3.1.3.3 through 3.1.3.5 to reflect the deletion of SR 3.1.3.2, and (4) revised Example 1.4–3 in Section 1.4, ''Frequency,'' to clarify the applicability of the 1.25 surveillance test interval extension. The changes are in accordance with NRC-approved TS Task Force (TSTF) change traveler TSTF–475, Revision 1, ''Control Rod Notch Testing Frequency and SRM Insert Control Rod Action.''

Date of issuance: June 30, 2009.

Effective date: As of its date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 212.

Facility Operating License No. NPF–21: The amendment revised the Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register***: February 10, 2009 (74 FR 6665).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 2009.

No significant hazards consideration comments received: No.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 25, 2008, as supplemented by letters dated April 14 and 29, 2009.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.7.5, ''Main Turbine Bypass System.'' The change provides an alternative to the existing Limiting Condition for Operation for the Main Turbine Bypass System (MTBS). The revised TS will require that the MTBS be operable or that the Average Planar Linear Heat Generation Rate, the Minimum Critical Power Ratio, and the Linear Heat Generation Rate limits for the inoperable MTBS be placed in effect as specified in the Core Operating Limits Report.

Date of issuance: June 24, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 163.

Facility Operating License No. NPF–47: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: March 11, 2008 (73 FR 13023). The supplemental letters dated April 14 and 29, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 24, 2009.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: June 21, 2007, as supplemented by letter dated January 30, 2009.

Brief description of amendment: A change is proposed to the technical specifications (TSs) of Clinton Power Station, Unit 1, consistent with TS Task Force (TSTF) change TSTF–423 to the standard technical specifications (STSs) for boiling-water reactor plants to allow, for some systems, entry into hot shutdown rather than cold shutdown to repair equipment, if risk is assessed and managed consistent with the program in place for complying with the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.65(a)(4). The proposed amendment would modify the TS to risk-informed requirements regarding selected required action end states provided in TSTF–423, Revision 0, ''Technical Specification End States, NEDC–32988–A.''

Date of issuance: June 26, 2009.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 187.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register***: February 12, 2008 (73 FR 8070). The January 30, 2009, supplement, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 26, 2009.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: June 30, 2008, as supplemented on August 13, 2008.

Brief description of amendments: The proposed amendment modified Technical Specification (TS) requirements related to Refueling Water Tank (RWT) minimum contained volume of borated water. The proposed changes would make permanent the current administrative RWT minimum level of 32.5 feet for both units.

Date of Issuance: June 30, 2009.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 209 and 157.

Renewed Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: February 10, 2009 (74 FR 6665). The supplement dated August 13, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 30, 2009.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: June 26, 2008, as supplemented by letters dated March 16 and May 1, 2009.

Brief description of amendments: The amendments revise the Facility Operating Licenses by revising the licensing basis loss-of-coolant accident and main steam line break accident radiological dose consequences as currently described in the Prairie Island Nuclear Generating Plant Units 1 and 2 Updated Safety Analysis Report. The amendments also make concomitant amendments to Technical Specifications (TSs) 3.3.5, 3.4.17, and 3.6.3, which are necessary to implement the revised analyses.

Date of issuance: June 19, 2009.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 191, 180.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 9, 2008 (73 FR 52420). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 19, 2009.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: June 27, 2008, as supplemented letters dated August 13, 2008, and February 5, 2009.

Brief description of amendments: The changes consist of revisions to the Technical Specifications in support of the replacement of the steam generators (SGs) at San Onofre Nuclear Generating Station (SONGS), Units 2 and 3. The changes reflect revised SG inspection and repair requirements, and revised peak containment post-accident pressure resulting from installation of the replacement SGs.

Date of issuance: June 25, 2009.

Effective date: Upon issuance; to be implemented for Unit 2 prior to entry into Mode 4 during the Unit 2 Cycle 16 refueling outage return-to-service, and to be implemented for Unit 3 prior to entry into Mode 4 during the Unit 3 Cycle 16 refueling outage return-to-service.

Amendment Nos.: Unit 2—220; Unit 3–213.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** September 23, 2008 (73 FR 54867). The supplemental letters dated August 13, 2008, and February 5, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 25, 2009.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: June 3, 2008, as supplemented by letters dated January 9 and 23, 2009.

Brief description of amendment: The amendment revised Technical Specifications (TSs) 3.3.7, 3.3.8, 3.7.10, 3.7.13, 3.8.2, 3.8.5, 3.8.8, and 3.8.10. The amendment (1) deleted MODES 5 and 6 from the Control Room Emergency Ventilation System and its actuation instrumentation in TS 3.7.10 and TS 3.3.7; (2) adopted U.S. Nuclear Regulatory Commission (NRC)-approved Technical Specification Task Force (TSTF) change traveler TSTF–36–A for TSs 3.3.8, 3.7.13, 3.8.2, 3.8.5, 3.8.8, and 3.8.10; and (3) added a more restrictive change to the Limiting Condition for Operation (LCO) applicability for TSs 3.8.2, 3.8.5, 3.8.8, and 3.8.10 such that these LCOs apply not only during MODES 5 and 6, but also during the movement of irradiated fuel assemblies regardless of the MODE in which the plant is operating.

Date of issuance: June 30, 2009.

Effective date: As of its date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 192.

Facility Operating License No. NPF–30: The amendment revised the Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** October 7, 2008 (73 FR 58678). The supplemental letters dated January 9 and 23, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 2009.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: June 9, 2008.

Brief description of amendments: These amendments revise the Technical Specifications to revise action statements in TS 3.12 for insertion limit and shutdown margin requirements, revise the applicability for the operability of the rod position indication and bank demand position indication systems, revise/add action statements for rod position indication, and add action statements for group step demand counters.

Date of issuance: June 25, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 265, 264.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the licenses and the technical specifications.

Date of initial notice in ***Federal Register:*** July 29, 2009 (73 FR 43957).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 25, 2009.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 6th day of July 2009.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–16347 Filed 7–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0307]

Final Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance and availability of Regulatory Guide, RG 5.75.

FOR FURTHER INFORMATION CONTACT: Bonnie Schnetzler, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* (301) 415–7883 or e-mail to *Bonnie.Schnetzler@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) is issuing a new guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

RG 5.75, ''Training and Qualification of Security Personnel at Nuclear Power Plants,'' was issued with a temporary identification as Draft Regulatory Guide, DG–5015. This regulatory guide applies to operating power reactors licensed in accordance with Title 10 of the *Code of Federal Regulations* Part 50, ''Domestic Licensing of Production and Utilization Facilities'' (10 CFR Part 50), and with 10 CFR Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power

Plants.'' New applicants should consider this guidance in preparing an application for a combined license under 10 CFR Part 52.

II. Further Information

In January 2008, DG–5015 was published for public comment. The staff's responses to the public comments received are located in the NRC's Agencywide Documents Access and Management System under Accession Number ML091690198. Electronic copies of RG 5.75 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 6th day of July 2009.

For the Nuclear Regulatory Commission.

Mark P. Orr,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–16660 Filed 7–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0311]

Fiscal Year 2010–2015 Information Security Strategic Plan; Solicitation of Public Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Solicitation of public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is soliciting public comment on its draft information security strategic plan (ISSP) for Fiscal Year 2010–2015 (ADAMS Accession No. ML090230026). The purpose of the NRC's ISSP is to establish an information security (IS) vision and to focus the NRC's IS program on attaining that vision.

DATES: Comments must be filed no later than 30 days from the date of publication of this notice in the **Federal Register**. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

We request that any party soliciting or aggregating comments received from other persons for submission to the NRC to inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want it to be publicly disclosed.

Comments may be mailed to: Chief, Rulemaking and Directives Branch, Mail Stop: TWB–05–B01M, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Persons may also provide comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov;* search on docket ID: NRC–2009–0311. Address questions about NRC dockets to Carol Gallagher, (301) 492–3668; e-mail *Carol.Gallagher@nrc.gov.* You can also fax comments to: Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492–3446.

The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Lyons-Burke, Senior IT Security Officer, Computer Security Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–6595 or e-mail at *Kathy.Lyons-Burke@nrc.gov* or Mr. Scott Morris, Deputy Director for Reactor Security, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–7083 or e-mail at *Scott.Morris@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC staff is issuing this notice to solicit public comments on the draft ISSP. After the NRC staff considers any public comments, it will make a determination regarding the draft ISSP.

The IS involves: (1) Ensuring that accurate information is available to those authorized to access the information when they need it, and (2) protecting information an information systems from unauthorized access, use, disclosure, disruption, modification, and destruction. The NRC's Draft ISSP defines IS as (1) protecting NRC and licensee information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction; (2) protecting electronic control functions from unauthorized access or manipulation; and (3) ensuring that adequate controls for protecting security-related information are used in the conduct of NRC business, both internal and external to the agency. The ISSP describes the NRC's strategy for strengthening its capabilities across all aspects of the IS program. This plan provides a strategic approach for planning and decision making and focuses on all types of activities closely related to IS, including but not limited to: (1) Physical and environmental security, (2) personnel security, (3) classification management, (4) documentation, (5) systems, (6) telecommunications, (7) embedded information, (8) intelligence information, and (9) cyber-terrorism in its various forms. The IS program addresses activities in the following areas: requirements and guidance, licensing and approval, inspection, enforcement, allegation processing, and emergency preparedness and incident response.

Dated at Rockville, Maryland, this 6th day of July 2009.

For the Nuclear Regulatory Commission.

Scott Morris,

Deputy Director for Reactor Security, Division of Security Policy, Office of Nuclear Security and Incident Response.

[FR Doc. E9–16654 Filed 7–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

[NRC–2009–0302]

On January 6, 1982 (47 FR 596 and 47 FR 600), the U.S. Nuclear Regulatory Commission (NRC) published in the **Federal Register** final amendments to 10 CFR Parts 71 and 73 (effective July 6, 1982), that require advance notification to Governors or their designees by NRC licensees prior to

transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in Part 73 is for spent nuclear reactor fuel shipments and the notification for Part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR Part 73).

The following list updates the names, addresses, and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register** on or about June 30, to reflect any changes in information. Current State contact information can also be accessed throughout the year at *http://nrc-stp.ornl.gov/special/designee.pdf*.

Questions regarding this matter should be directed to Stephen N. Salomon, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, by e-mail at *Stephen.Salomon@nrc.gov* or by telephone at 301–415–2368.

Dated at Rockville, Maryland this 2nd day of July 2009.

For the Nuclear Regulatory Commission.

Mark R. Shaffer,

Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

State	Part 71	Part 73
ALABAMA	Colonel J. Christopher Murphy, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36102–1511, (334) 242–4394, 24 hours: (334) 242–4128, Fax: (334) 242–0512.	SAME.
ALASKA	Douglas H. Dasher, PE, Alaska Monitoring and Assessment Section Manager, 610 University Avenue, Fairbanks, AK 99709, (907) 451–2172 24 hours: (907) 457–1421; Cell (907) 347–7779, Fax: (907) 451–5146.	SAME.
ARIZONA	Aubrey V. Godwin, Director, Arizona Radiation Regulatory Agency, 4814 South 40th Street, Phoenix, AZ 85040, (602) 255–4845, ext. 222, 24 hours: (602) 223–2212, Fax: (602) 437–0705.	SAME.
ARKANSAS	Bernard Bevill, Radiation Control Section, Arkansas Department of Health, 4815 West Markham Street, Mail Slot #30, Little Rock, AR 72205–3867, (501) 661–2301, 24 hours: (501) 661–2136, Fax: (501) 661–2236.	SAME.
CALIFORNIA	Captain Steve Dowling, Enforcement Services Division, California Highway Patrol, 444 North 3rd St., Suite 310, P.O. Box 942898, Sacramento, CA 94298–0001, (916) 445–1865, 24 hours: (916) 657–8287, Fax: (916) 446–4579.	SAME.
COLORADO	Captain Allan Turner, Troop 8–C, Hazardous Materials Transport Safety and Response (HMTSR), Colorado State Patrol, 15065 South Golden Road, Denver, CO 80401–3990, (303) 273–1910, 24 hours: (303) 329–4501, Fax: (303) 273–1911.	SAME.
CONNECTICUT	Edward L. Wilds, Jr., PhD, Director, Radiation Division, Department of Environmental Protection, 79 Elm Street, 5th floor, Hartford, CT 06106–5127, (860) 424–3029; Cell (860) 490–3211, 24 hours: (860) 424–3333, Fax: (860) 424–4065.	SAME.
DELAWARE	Gregory B. Patterson, Legislative Liaison, Office of the Governor, Tatnall Bldg., Second Floor, 150 William Penn Street, Dover, DE 19901, (302) 744–4222, 24 hours: Cell (302) 242–9318, Fax: (302) 739–2775.	SAME.
FLORIDA	John A. Williamson, Environmental Administrator, Bureau of Radiation Control, Environmental Radiation Program, Department of Health, P.O. Box 680069, Orlando, FL 32868–0069, (407) 297–2096; Cell (850) 528–4151, 24 hours: (407) 297–2095, Fax: (407) 297–2085.	SAME.
GEORGIA	Captain Bruce Bugg, Special Projects Coordinator, Georgia Department of Public Safety, Motor Carrier, Compliance Division, P.O. Box 1456, Atlanta, GA 30371–1456, (404) 624–7226, 24 hours: (404) 635–7200, Fax:	SAME.
HAWAII	Laurence K. Lau, Deputy Director for Environmental Health, Hawaii State Department of Health, P.O. Box 3378, Honolulu, HI 96813, (808) 586–4424, 24 hours: (808) 368–6004, Fax: (808) 586–4368. Chiyome L. Fukino, M.D., Director of Health, Hawaii State Department of Health, P.O. Box 3378, Honolulu, HI 96813, (808) 586–4410, 24 hours: (808) 368–6002, Fax: (808) 586–4368.	SAME.
IDAHO	Lieutenant William L. Reese, Deputy Commander, Commercial Vehicle Safety, Idaho State Police, P.O. Box 700, Meridian, ID 83680–0700, (208) 884–7222, 24 hours: (208) 846–7500, Fax: (208) 884–7192.	SAME.
ILLINOIS	Joseph G. Klinger, Assistant Director, Illinois Emergency Management Agency, Division of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 785–9868, 24 hours: (217) 782–7860, Fax: (217) 782–7774, 24 hour fax: (217) 782–7774.	SAME.
INDIANA	Superintendent Paul Whitesell, PhD, Indiana State Police, Commercial Motor Vehicle Enforcement Division, IGCN, 100 N. Senate Avenue, 3rd Floor, Indianapolis, IN 46204, (317) 232–8248, 24 hours: (317) 232–8248, Fax: (317) 317–2350.	SAME.
IOWA	David L. Miller, Administrator, Iowa Homeland Security and Emergency Management Division, 7105 Northwest 70th Avenue, Camp Dodge, Building W–4, Johnston, IA 50131, (515) 725–3231, 24 hours: (515) 725–3231, Fax: (515) 725–3260.	SAME.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
KANSAS	Jennifer Clark, Technological Hazards Section Chief, Department of the Adjutant General, Division of Emergency Management, 2800 SW Topeka Boulevard, Topeka, KS 66611–1287, (785) 274–1394, 24 hours: (785) 296–3176, Fax: (785) 274–1426.	SAME.
KENTUCKY	Dewey Crawford, Manager, Radiation Health and Toxic Agents Branch, Cabinet for Health and Family Services, 275 East Main Street, Mail Stop HS–1C–A, Frankfort, KY 40621–0001, (502) 564–3700, ext 3695, 24 hours: (502) 667–1637, Fax: (502) 564–7815.	SAME.
LOUISIANA	Captain Dewayne White, Louisiana State Police, 7919 Independence Boulevard, P.O. Box 66168, Baton Rouge, LA 70896–6168, (225) 925–6113, ext. 241, 24 hours: (877) 925–6595, Fax: (225) 925–3559.	SAME.
MAINE	Colonel Patrick Fleming, Chief of the State Police, Maine Department of Public Safety, 42 State House Station, Augusta, ME 04333–0042, (207) 624–7206 or (207) 624–7200, 24 hours: (207) 624–7076, Fax: (207) 287–3042.	SAME.
MARYLAND	Michael Bennett, Director, Electronic Systems Division, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208, (410) 653–4229, 24 hours: (410) 653–4200, Fax: (410) 653–4269.	SAME.
MASSACHUSETTS	Robert J. Walker, Director, Radiation Control Program, Massachusetts Department of Public Health, Shraffts Center, Suite 1M2A 529 Main Street, Charlestown, MA 02129, (617) 242–3035, 24 hours: (617) 242–3453, Fax: (617) 242–3457.	SAME.
MICHIGAN	Captain Gary Nix, Commander, Special Operations Division, Michigan State Police, 4000 Collins Rd., Lansing, MI 48910, (517) 336–6136, 24 hours: (517) 241–8000, Fax: (517) 241–8000.	SAME.
MINNESOTA	Kevin C. Leuer, Director, Preparedness Branch, Minnesota Division of Homeland Security & Emergency Management, 444 Cedar Street, Suite 223, St. Paul, MN 55101–6223, (651) 201–7406, 24 hours: (651) 649–5451 or 1–800–422–0798, Fax: (651) 296–0459.	SAME.
MISSISSIPPI	Harrell B. Neal, Program Manager, Mississippi Emergency Management Agency, Office of Preparedness-Plans Bureau, P.O. Box 5644, #1 MEMA Drive 39208, Pearl, MS 39208, (601) 933–6369, 24 hours: (800) 352–9100, Fax: (601) 933–6815.	SAME.
MISSOURI	Paul P. Parmenter, Director, Emergency Management Agency, P.O. Box 116, 2302 Militia Drive, Jefferson City, MO 65102, (573) 526–9101, 24 hours: (573) 751–2748, Fax: (573) 634–7966, Alternate: Timothy A. Diemler. Deputy Director, (573) 751–9193. Other numbers the same.	SAME.
MONTANA	Dan McGowan, Administrator, Homeland Security Advisor, Montana Disaster and Emergency Services Division, 56 MT Majo Street, P.O. Box 4789, Fort Harrison, MT 59636–4789, (406) 324–3387; Cell: (406) 431–2414, 24 hours: (406) 841–3911, Fax: (406) 324–4800.	SAME.
NEBRASKA	Lieutenant Carla Schreiber, Nebraska State Patrol, P.O. Box 94907, Lincoln, NE 68509–4907, (402) 479–4031, 24 hours: (402) 471–4545, Fax: (402) 479–4950.	SAME.
NEVADA	Karen K. Beckley, Program Manager, Radiation Control, Bureau of Health Care Quality and Compliance, Nevada State Health Division, 4150 Technology Way, Suite 300, Carson City, NV 89706, (775) 687–7540 24 hours: 1–877–438–7231, Fax: (775) 687–7522.	SAME.
NEW HAMPSHIRE	Sergeant Nathan Boothby, New Hampshire State Police—Troop G, 33 Hazen Drive, Concord, NH 03305, (603) 223–8909, 24 hours: (603) 271–3636, Fax: (603) 271–1760.	SAME.
NEW JERSEY	Paul Baldauf, Assistant Director, Radiation Protection Programs, Division of Environmental Safety, Health & Analytical Programs, Department of Environmental Protection, P.O. Box 415, Trenton, NJ 08625–0415, (609) 984–5636, 24 hours: (609) 658–3072, Fax: (609) 633–2210.	SAME.
NEW MEXICO	Don Shainin, Technical Hazards Unit Leader, WIPP Program Manager, New Mexico Department of Homeland Security and Emergency Management (DHSEM), P.O. Box 27111, Santa Fe, NM 87502, (505) 476–9628, 24 hours: (505) 476–9635, Fax: (505) 476–9695.	SAME.
NEW YORK	John R. Gibb, Director, New York State Emergency Management Office, 1220 Washington Avenue, Building 22—Suite 101, Albany, NY 12226–2251, (518) 292–2301; Cell: (518) 469–0000, 24 hours: (518) 292–2200, Fax: (518) 322–4978.	SAME.
NORTH CAROLINA	First Sergeant Shane S. Manuel, North Carolina Highway Patrol, Special Operations Section, 1142 Southeast Maynard Road, Raleigh, NC 27511, (919) 319–1523; Cell: (919) 618–0434, 24 hours: (919) 733–3861, Fax: (919) 319–1534.	SAME.
NORTH DAKOTA	Terry L. O'Clair, Director, Division of Air Quality, North Dakota Department of Health, 918 East Divide Avenue—2nd Floor, Bismarck, ND 58501–1947, (701) 328–5188, 24 hours: (701) 328–9921, Fax: (701) 325–5185.	SAME.
OHIO	Carol A. O'Claire, Chief, Radiological Branch, Ohio Emergency Management Agency, 2855 West Dublin Granville Road, Columbus, OH 43235–2206, (614) 799–3915, 24 hours: (614) 889–7150, Fax: (614) 799–5950.	SAME.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
OKLAHOMA	Major Mike Thompson #17, Zone Commander, Oklahoma Highway Patrol, P.O. Box 11415, Oklahoma City, OK 73136–0145, (405) 425–7701, 24 hours: (405) 425–2323, Fax: (405) 425–2254.	SAME.
OREGON	Ken Niles, Assistant Director, Nuclear Safety and Energy Siting Division, Oregon Department of Energy, 625 Marion Street, NE., Salem, OR 97301, (503) 378–4906; Cell: (503) 884–3905, 24 hours: (503) 378–6377, Fax: (503) 378–6457.	SAME.
PENNSYLVANIA	Scott Forster, State Emergency Operations, Coordinator, Pennsylvania Emergency Management Agency, 2605 Interstate Drive, Harrisburg, PA 17110–3321, (717) 651–2001, 24 hours: (717) 651–2021, Fax: (717) 651–2001.	SAME.
RHODE ISLAND	Terrence Mercer, Associate Administrator, Motor Carriers Section, Division of Public Utilities and Carriers, 89 Jefferson Boulevard, Warwick, RI 02888, (401) 941–4500, Ext. 150, 24 hours: (401) 444–1183 (State Police).	SAME.
SOUTH CAROLINA	Susan Jenkins, Bureau of Land and Waste Management, Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 896–4271, 24 hours: (803) 667–0019 or (803) 408–2816, Fax: (803) 896–4242.	SAME.
SOUTH DAKOTA	Kristi Turman, Director, South Dakota Office of Emergency Management, 118 W. Capitol Avenue, Pierre, SD 57501–5070, (605) 773–3231, 24 hours: (605) 773–3231, Fax: (605) 773–3580.	SAME.
TENNESSEE	Elgan Usrey, Assistant Director, Preparedness, Tennessee Emergency Management Agency, 3041 Sidco Drive, Nashville, TN 37204–1502, (615) 741–2879; Cell: (615) 476–3204, 24 hours: (615) 741–0001, Fax: (615) 741–0006.	SAME.
TEXAS	Richard A. Ratliff, P.E. L.M.P., Radiation Safety Licensing Branch Manager, Division for Regulatory Services, Texas Department of State Health Services, Mail Code 2835, P.O. Box 149347, Austin, TX 78714–9347, (512) 834–6679, 24 hours: (512) 458–7460, Fax: (512) 834–6716.	Steven C. McCraw, Director, Texas Office of Homeland Security, P.O. Box 12428, Austin, TX 78711–2428, 24 hours: (512) 424–2208, Fax: (512) 424–7160.
UTAH	Dane Finerfrock, Director, Division of Radiation Control, Department of Environmental Quality, 168 North 1950 West, P.O. Box 144850, Salt Lake City, UT 84114–4850, (801) 536–4257, 24 hours: (801) 536–4123, Fax: (801) 553–4097.	SAME.
VERMONT	Thomas R. Tremblay, Commissioner, Department of Public Safety, Division of Vermont State Police, 103 South Main Street, Waterbury, VT 05671–2101, (802) 844–8718, 24 hours: (802) 244–8727, Fax: (802) 241–5377.	SAME.
VIRGINIA	Gregory F. Britt, Director, Technological Hazards Division, Virginia Department of Emergency Management, 10501 Trade Court, Richmond, VA 23236, (804) 897–6500, ext. 6578, 24 hours: (804) 674–2400 or 1–800–468–8892, Fax: (804) 897–6576.	SAME.
WASHINGTON	Paul Perz, Assistant State Fire Marshall, Fire Protection Bureau, Washington State Patrol, P.O. Box 42600, Olympia, WA 98504–2600, (360) 596–3919; Cell: (360) 789–0435, 24 hours: (253) 536–6210, Fax: (360) 596–3934.	SAME.
WEST VIRGINIA	Colonel T. S. Pack, West Virginia State Police, 725 Jefferson Road, South Charleston, WV 25309, (304) 746–2111, 24 hours: (304) 746–2158, Fax: (304) 746–2246.	SAME.
WISCONSIN	Johnnie L. Smith, Administrator, Wisconsin Emergency Management, P.O. Box 7865, Madison, WI 53707–7865, 608–242–3210, 24 hour: (608) 242–3232, Fax: (608) 242–3247.	SAME.
WYOMING	Captain Shannon Ratliff, Support Services Officer, Commercial Carrier, Wyoming Highway Patrol, 5300 Bishop Boulevard, Cheyenne, WY 82009–3340, (307) 777–4312; Cell: (307) 630–0197, 24 hours: (307) 777–4321, Fax: (307) 777–4282.	SAME.
DISTRICT OF COLUMBIA	Gregory B. Talley, Program Manager, Radiation Protection Division, Health, Regulation & Licensing Administration, District of Columbia Department of Health, 717 14th Street, NE., Room 639, Washington, DC 20005, (202) 741–7686, 24 hours: (202) 727–1000, Fax: (202) 727–8471.	SAME.
PUERTO RICO	Dr. Jaime Rivera-Dueño, Secretary of Health, P.O. Box 70184, San Juan, PR 00936–8184, (787) 765–2929, ext. 3377, 24 hours: (787) 765–2929, ext. 3377, Fax: (787) 274–3384.	SAME.
GUAM	Lorilee T. Crisostomo, Administrator, Guam Environmental Protection Agency, P.O. Box 22439, Barrigada, Guam 96921, (671) 475–1658, 24 hours: (671) 635–9500, Fax: (671) 477–9402.	SAME.
VIRGIN ISLANDS	Robert S. Mathes, Commissioner, Department of Planning and Natural Resources, 8100 Linberg Bay, Ste. #61, Cyril E. King Airport, Terminal Bldg., 2nd Floor, St. Thomas, Virgin Islands 00802, (340) 774–3320 ext 5102, 24 hours: (340) 774–5138, Fax: (340) 775–5706.	SAME.
AMERICAN SAMOA	Pati Faiai, Government Ecologist, American Samoa Environmental Protection Agency, Office of the Governor, Pago Pago, American Samoa 96799, (684) 633–2304, 24 hours: (684) 622–7106, Fax: (684) 633–2269.	SAME.
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.	Dr. Ignacio T. dela Cruz, D.V.M., Secretary, Department of Lands & Natural Resources, Commonwealth of Northern Mariana Islands, Caller Box 10007, Saipan, MP 96950, (670) 322–9830; (670) 322–2633.	SAME.

[FR Doc. E9–16351 Filed 7–9–09; 8:45 am]
BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11804 and #11805]

Illinois Disaster #IL–00022

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Illinois (FEMA–1850–DR) , dated 07/02/2009.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 05/08/2009 through 05/09/2009.

Effective Date: 07/02/2009.

Physical Loan Application Deadline Date: 08/31/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 04/02/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/02/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Franklin, Gallatin, Jackson, Randolph, Saline, Williamson.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11804B and for economic injury is 11805B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–16598 Filed 7–13–09; 8:45 am]
BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Waiver of the Nonmanufacturer Rule for 13 Watt Compact Fluorescent Lamps (CFLs), 26 Watt CFLs, and Occupancy Sensors Dual Technology.

SUMMARY: The U.S. Small Business Administration (SBA) is granting a class waiver of the Nonmanufacturer Rule for 13 Watt CFLs, 26 Watt CFLs, and Occupancy Sensors Dual Technology. The basis for the waiver is that no small businesses manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified small businesses to supply the products of any manufacturer on a Federal contract set aside for small businesses, service-disabled veteran-owned small businesses, or Participants in SBA's 8(a) Business Development (BD) Program.

DATES: The waiver is effective July 29, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Edith G. Butler, by telephone at (202) 619–0422; by FAX at (202) 481–1788; or by e-mail at *edith.butler@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), and 15 U.S.C. 637(a)(17), require SBA's implementing regulations that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or Participants in the SBA's 8(a) BD Program must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA's regulations imposing this requirement are found at 13 CFR 121.406(b), 125.15(c). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. 13 CFR 121.1202(1). The SBA defines ''class of products'' based on the Office of Management and Budget North American Industry Classification System (NAICS). In addition, SBA uses product service codes to identify particular products within the NAICS code to which a waiver would apply.

The SBA received a request on May 13, 2009, to waiver the Nonmanufacturer Rule for 13 Watt CFLs, 26 Watt CFLs, and Occupancy Sensors Dual, North American Industry Classification System (NAICS) code 335110, product service code 6240. In response, no small business manufacturers were identified.

Dated: July 8, 2009.

James A. Gambardella,

Acting Director, Office of Government Contracting.

[FR Doc. E9–16597 Filed 7–13–09; 8:45 am]
BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60246; File No. SR–BX–2009–031]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide an Optional Anti-Internalization Functionality

July 6, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 24, 2009, NASDAQ OMX BX, Inc. (''NASDAQ OMX BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ OMX BX. NASDAQ OMX BX filed the proposed rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is

[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).

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 OMX BX is filing with the Commission a proposed rule change to provide an optional anti-internalization functionality.

The text of the proposed rule change is below. Proposed new language is underlined and proposed deletions are in brackets.

* * * * *

4757. Book Processing

System orders shall be executed through the Book Process set forth below:

(a) Execution Algorithm–Price/Time—The System shall execute equally priced or better priced trading interest within the System in price/time priority in the following order:

(1)–(2) No Change.

(*3*) *Exception: Anti-Internalization—Market participants may direct that quotes/orders entered into the System not execute against quotes/orders entered under the same MPID. In such a case, the later entered of the quote/orders will be cancelled back to the entering party.*

(b)–(c) No Change.

* * * * *

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. NASDAQ OMX BX 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 OMX BX is proposing to provide a voluntary anti-internalization function. Under the proposal, market participants entering quotes/orders under a specific market participant identifier (''MPID'') may voluntarily direct that they not execute against other quotes/orders entered into the System under the same MPID.

Under the proposal, the System, if requested, will not execute quote/orders entered under the same MPID against each other. Instead, the System will execute against all eligible trading interest of other market participants, in time-priority, up to the point where it would interact with a resting order having the MPID and thereupon immediately cancel any remaining portion of the most recently entered of the two same-MPID quote/orders to its entering party.

Anti-internalization functionality is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act (''ERISA'') that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. It can also assist market participants in reducing execution fees potentially resulting from the interaction of executable buy and sell trading interest from the same firm. Nasdaq OMX BX notes that use of the functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers. As such, market participants using anti-internalization functionality will need to take appropriate steps to ensure that public customer orders that do not execute because of the use of anti-internalization functionality ultimately receive the same execution price (or better) they would have originally obtained if execution of the order was not inhibited by the functionality.

2. Statutory Basis

Nasdaq OMX BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections [sic] 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. Nasdaq OMX BX notes that similar functionality has previously [sic] approved for other trading systems.[7]

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] *See* SR–NASD–2003–039.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ OMX BX 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.

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 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 on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) 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 Number SR–BX–2009–031 on the subject line.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 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.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–031. 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 NASDAQ OMX BX. 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–BX–2009–031 and should be submitted on or before August 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16553 Filed 7–13–09; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60258; File No. SR–CHX–2009–07]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Participant Fees and Credits

July 7, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2009, the Chicago Stock Exchange, Inc. (''CHX'' 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 by the Exchange. CHX filed the proposal pursuant to Section 19(b)(3)(A) 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

The CHX proposes to amend its Schedule of Participant Fees and Assessments (the ''Fee Schedule''), effective July 1, 2009, to provide for an increased rebate for trade executions of one-sided orders in Tape A and C securities which execute within the Exchange's Matching System. The Exchange also proposes to delete obsolete text from the Fee Schedule. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm* and in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549.

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

Through this filing, the Exchange would amend its Fee Schedule, effective July 1, 2009, to provide for an increased rebate for trade executions of one-sided orders in Tape A and C securities which execute within the Exchange's Matching System. The Fee Schedule would be amended to provide for an increased Rebate of $0.0029 per share in Tape A and C securities if liquidity was provided to the Matching System. The Exchange believes that the increased rebate will help attract additional orders to be displayed and executed on our trading facilities. The Exchange notes that some of our competitors have recently raised their provide rebates, and that our proposed increase will help us remain competitive with these entities. While an increase in transaction volume would not increase the amount of direct transaction revenue in Tape A and C securities to the Exchange (since the provide credit would equal the take fees), the Exchange believes that an increase in market data revenue arising from the execution of such transactions would provide additional revenue.

Finally, the Exchange proposes to make certain minor corrections and updates to the Fee Schedule. These corrections and updates include the deletion of certain obsolete sections of the Fee Schedule which refer to Specialist Credits and the Specialist Fixed Fee. The Exchange discontinued its Specialist program as part of the transition to its New Trading Model in late 2006 and early 2007, and such fees are no longer being assessed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members. Among other things, the change to the fee schedule would increase the amount of credits paid to liquidity providers and may contribute to an increase in trading volume on the Exchange's facilities and

[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] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

therefore in the income derived therefrom. The deletion of the obsolete references to Credits paid to Specialists and Fixed Fees charged to Specialists will eliminate a source of potential confusion about the operations of the Exchange and the application of its Fee Schedule.

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.

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 foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2) thereunder.[8] 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–CHX–2009–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2009–07. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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–CHX–2009–07 and should be submitted on or before August 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16581 Filed 7–13–09; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60257; File No. SR–BX–2009–036]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Further Extend the Temporary Cap on Certain Fees for Members

July 7, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2009, NASDAQ OMX BX, Inc. (''BX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. BX filed the proposal pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(2)[4] thereunder. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX proposes to extend the temporary cap on fees charged for OUCH ports to the Equities Market due to unanticipated delays in developing and implementing an anti-internalization function. The text of the proposed rule change is below. Proposed new language is underlined; deleted language is in brackets.[5]

* * * * *

7015. Access Services

The following charges are assessed by the Exchange for ports to establish connectivity to the NASDAQ OMX BX Equities Market, as well as ports to receive data from the NASDAQ OMX BX Equities Market:

- $400 per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is $1000 per month. Additional OUCH port pairs beyond 15 are at no cost for the months of May[and], June *and July* 2009.
- Internet Ports: An additional $200 per month for each Internet port that requires additional bandwidth.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX 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. BX 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

BX is proposing to extend the temporary modification to its pricing for OUCH ports, which provide

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomxbx.cchwallstreet.com*.

connectivity to the NASDAQ OMX BX Equities Market. On May 1, 2009, BX filed an immediately effective rule change to eliminate fees for a member firm's OUCH ports in excess of 15 for the months of May and June 2009.[6] In that filing, BX noted member firms had complained that, because BX does not have an anti-internalization capability, they must purchase additional OUCH ports that they would otherwise not need to purchase solely to avoid unwanted execution against their customer orders. Internalization occurs when a member firm's customer order is posted on the market and executed all or in part by the same member firm. Member firms must avoid internalization of certain customer orders to avoid violating rules and regulations of the Employee Retirement Income Security Act that preclude and/or limit managing broker-dealers of such customer accounts from trading as principal with orders generated for those accounts. Currently, some member firms are only able to avoid internalization by purchasing additional OUCH ports through which they place all order flow that must not be internalized. Such additional ports have a [sic] discrete MPID numbers, which allow these member firms to identify the orders and avoid internalization.

BX determined to limit the number of OUCH port pairs that a member is charged monthly to 15 for the months of May and June 2009, so that those firms affected by BX's lack of an anti-internalization function were provided relief until BX could implement such a function. BX noted in its rule change that it would either seek to remove the cap language from the rule upon its expiration or alternatively would seek to extend the cap until such time the anti-internalization function could be implemented. BX had originally anticipated developing and implementing the anti-internalization function by the end of June; however, BX has encountered unanticipated delays that will prevent the function from being implemented on schedule. As such, BX is proposing to further extend the temporary modification of its OUCH port pair pricing through July 2009, at which time BX anticipates the implementation of the anti-internalization function will be complete and affected member firms can reduce the number of ports currently subscribed to solely due to the lack of such a function. BX will seek to remove the cap language from the rule upon its expiration or alternatively will seek to extend the cap until such time the anti-internalization function can be implemented.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] 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 BX operates or controls. The proposed fee change applies uniformly to all BX members. BX has determined that temporarily instituting a cap on fees for OUCH ports in excess of 15 will provide relief to member firms required to purchase additional ports solely due to BX's lack of an anti-internalization function.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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.

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 rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder.[10] 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–BX–2009–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–036. 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 filings 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–BX–2009–036 and should be submitted on or before August 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16580 Filed 7–13–09; 8:45 am]

BILLING CODE 8010–01–P

[6] *See* Securities Exchange Act Release No. 59894 (May 8, 2009), 74 FR 23000 (May 15, 2009).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60259; File No. SR–CHX–2009–08]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Reallocation of Credits Paid to Institutional Brokers

July 7, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2009, the Chicago Stock Exchange, Inc. (''CHX'' 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 by the Exchange. CHX filed the proposal pursuant to Section 19(b)(3)(A) 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

The CHX proposes to amend its Schedule of Participant Fees and Assessments (the ''Fee Schedule''), effective July 1, 2009, to change the manner in which CHX-registered Institutional Brokers are paid a credit based upon (1) Transaction Fees generated by Agency orders executed by them on the Exchange's trading facilities and (2) Trade Processing Fees generated by transactions executed on another trading center, but submitted to clearing via the Exchange's systems. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm* and in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549.

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

Through this filing, the Exchange would amend its Fee Schedule, effective July 1, 2009, to change the manner in which CHX-registered Institutional Brokers are paid credits based on both Transaction Fees generated by Agency orders executed by them on the Exchange's trading facilities and on Trade Processing Fees generated by orders executed on away markets, but submitted to clearing by them via the Exchange's systems.

CHX-registered Institutional Brokers are paid a Credit which is based upon a percentage of the fees derived from transactions handled by them for other Exchange Participants.[5] Pursuant to this filing, the Fee Schedule would be amended to reduce the overall Credit paid to Institutional Brokers (''Credit'') from 18% to 16% of the Fees charged to Participants in transactions in which the Institutional Brokers are involved in either the execution or clearance thereof. The amended Fee Schedule would also alter the manner in which such credits are distributed to Institutional Brokers involved in such transactions. Currently, the Institutional Broker representing the ultimate clearing participant in transactions executed on the Exchange receives the full Credit. For transactions executed on another trading center and reported to clearing via the Exchange's systems, however, the Credit is divided between the Originating Broker (defined as the Institutional Broker which executed the trade) and the Broker of Credit (defined as the Institutional Broker that acted as the broker for the ultimate Exchange clearing participant).

Under the proposed changes, the Fee Schedule would be modified to harmonize the allocation of Credits paid to Institutional Brokers derived from Transaction Fees with those paid based upon Trade Processing Fees. In each case, the Credits would be divided between the Originating Broker and the Broker of Credit and would be paid at the same rates.[6] Pursuant to the revised Fee Schedule, the Broker of Credit would receive three-quarters (3/4) of the total Credit paid to Institutional Brokers in the relevant transactions, or 12%. The Originating Broker would receive the remaining 4% of the Credit for the initial execution of the trade, whether on our trading facilities or in an away market. An Institutional Broker could act as both the Originating Broker and the Broker of Credit in any given transaction, in which case it would earn Credits in both capacities.

The Exchange believes that the harmonization of the manner of payment and rates for Transaction Fee Credits with those for Trade Processing Fee Credits is sensible and will serve to eliminate potential confusion concerning the nature and amount of Credits paid in Institutional Broker-handled transactions. Moreover, the transactions handled by Institutional Brokers frequently are complicated and involve numerous counterparties. Originating Brokers typically retain additional clerical and operational staff to process and reconcile all of the terms of and parties to these transactions. The payment of a portion of the Credit to the Originating Broker recognizes the additional costs borne by them and the Exchange hopes that it will also incent Institutional Brokers to execute additional fee-generating orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members. The Exchange believes that the proposed changes to the allocation of Institutional Broker credits is fair and reasonable in that it provides for additional compensation to Originating Brokers in circumstances where they did not previously receive any portion of the Credit. While the overall amount of Credits is being reduced for transactions consummated on our trading facilities, this reduction is offset by an increase in the amount of Credits paid based upon away market trades.

[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] These fees are set forth in Sections E.3. (Agency executions through an institutional broker) and E.7. (Trade Processing Fees) of the Fee Schedule.

[6] In order to accommodate this change, the definition of ''Originating Broker'' would be modified to delete the reference to executions ''on an away market.''

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

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.

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 foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and Rule 19b–4(f)(2) thereunder.[10] 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–CHX–2009–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2009–08. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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–CHX–2009–08 and should be submitted on or before August 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16582 Filed 7–13–09; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60253; File No. SR–ISE–2009–34]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Customer Cross Orders

July 7, 2009.

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 June 24, 2009, International Securities Exchange, LLC (''ISE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to adopt rules related to the execution of Customer Cross Orders. The text of the proposed rule amendment is as follows, with deletions in [brackets] and additions *italicized:*

* * * * *

Rule 715. Types of Orders

(a) through (h) no change.

(i) Customer Cross Orders. A Customer Cross Order is comprised of a Public Customer Order to buy and a Public Customer Order to sell at the same price and for the same quantity.

* * * * *

Rule 717. Limitations on Orders

(a) through (g) no change.

Supplemental Material to Rule 717

.01 Rule 717(d) prevents an Electronic Access Member from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the Member was already bidding or offering on the book. However, the Exchange recognizes that it may be possible for an Electronic Access Member to establish a relationship with a customer or other person (*including affiliates*) to deny agency orders the opportunity to interact on the Exchange and to realize similar economic benefits as it would achieve by executing agency orders as principal. It will be a violation of Rule 717(d) for an Electronic Access Member to be a party to any arrangement designed to circumvent Rule 717(d) by providing an opportunity for a customer *or other person (including affiliates)* to regularly execute against agency orders handled by the Electronic Access Member immediately upon their entry into the System.

.02 no change.

* * * * *

Rule 721. [[Reserved]] Customer Cross Orders

Customer Cross Orders are automatically executed upon entry provided that the execution is at or between the best bid and offer on the Exchange and (i) is not at the same price as a Public Customer Order on the Exchange's limit order book and (ii) will not trade through the NBBO unless the order is for at least 500 contracts and has a premium value of at least $150,000.

(a) Customer Cross Orders will be automatically canceled if they cannot be executed.

(b) Customer Cross Orders may only be entered in the regular trading increments applicable to the options class under Rule 710.

(c) Supplemental Material .01 to Rule 717 applies to the entry and execution of Customer Cross Orders.

* * * * *

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 self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the Exchange's options rules, members are required to expose trading interest to the market before executing agency orders as principal or before executing agency orders against orders that were solicited from other broker-dealers (*i.e.*, proprietary and solicited crossing transactions),[3] and the Exchange provides several different mechanisms that allow members to execute these types of crossing transactions in a manner that complies with the exposure requirement.[4] However, the ISE options rules do not contain any limitations or exposure requirements regarding the execution of customer orders against other customer orders, and the Exchange has developed a way to enter opposing customer orders using a single order type (''Customer Cross Orders'').

The purpose of this rule proposal is to adopt rules regarding the entry and execution of Customer Cross Orders. In particular, the Exchange proposes to add a definition of a Customer Cross Order specifying that a Customer Cross Order is comprised of a Public Customer Order to buy and a Public Customer Order to sell at the same price and for the same quantity. The Exchange also proposes to adopt Rule 721 specifying that Customer Cross Orders are automatically executed upon entry provided that the execution will not take place at the same price as a Public Customer Order on the limit order book, nor trade through the national best bid or offer unless the order is for at least 500 contracts and has a premium value of at least $150,000.[5] The proposed rule also specifies that Customer Cross Orders entered at a price that is outside of the NBBO or at the same price as a Public Customer Order on the limit order book will be automatically canceled, and that Customer Cross Orders may only be entered in the regular trading increments applicable to the options class under Rule 710. Finally, the proposal specifies that Supplemental Material .01 to Rule 717, which prohibits a member from being a party to any arrangement designed to circumvent the requirements applicable to executing agency orders as principal, applies to the entry and execution of Customer Cross Orders. In this respect, the Exchange proposes to amend Supplemental Material .01 to Rule 717 to specifically reference affiliates of member firms, which is consistent with how the Exchange has interpreted the provision.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the requirement of Section 6(b)(5)[7] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal provides for the efficient entry and execution of Customer Cross Orders while also protecting Public Customer Orders on the book at the same price.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not 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 not solicited, and does not intend to solicit, comments regarding this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) 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:

---

[3] ISE Rule 717(d) (Principal Transactions) and Rule 717(e) (Solicitation Orders).

[4] ISE Rule 716 (Block Trades) and Rule 723 (Price Improvement Mechanism for Crossing Transactions). *See* e-mail from Kathy Simmons, Deputy General Counsel, ISE, to Ira Brandriss, Special Counsel, and Brian O'Neill, Attorney, Division of Trading and Markets, Commission, dated July 1, 2009.

[5] Execution of orders of at least 500 contracts and with a premium value of at least $150,000 will meet the definition of a Block Trade in ISE Rule 1900(2) (definitions under the Linkage Rules).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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–ISE–2009–34 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–34. 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 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–ISE–2009–34 and should be submitted on or before August 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16577 Filed 7–13–09; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60255; File No. SR–NYSE–2009–58]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Amend the Scope of the Exchange's Prior Approval to Receive Inbound Routes from Archipelago Securities LLC (''ArcaSec''), an Affiliated Member

July 7, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2009, the New York Stock Exchange LLC (''NYSE'' or the ''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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the scope of the Exchange's prior approval to receive inbound routes of PO Plus Orders from Archipelago Securities LLC (''ArcaSec''), an NYSE affiliated member. 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 self-regulatory organization 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 those 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 parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ArcaSec is the approved outbound order routing facility of the NYSE, NYSE Arca Inc. (''NYSE Arca'') and NYSE Amex LLC.[3] In this context, the Exchange has been previously authorized, on a pilot basis, to receive inbound PO Plus Orders from ArcaSec, acting in its capacity as the outbound order routing facility for NYSE Arca.[4] The Exchange hereby proposes that, in addition to PO Plus Orders, the Commission authorize the NYSE to receive all NYSE Arca order types approved or implemented on or after the date of approval of this proposal. The Exchange does not propose any further changes to its authorization to receive inbound routes from ArcaSec or to the term of the pilot period. All existing conditions currently in place with respect to ArcaSec routing orders to the NYSE, in its capacity as an outbound order routing facility for NYSE Arca, will continue to apply. The Exchange believes that this proposal, if approved, will authorize the Exchange to receive any NYSE Arca order types approved subsequent to the approval of this proposal and going forward through the end of the pilot period.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[5] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster

[3] *See* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR–PCX–2005–90); *see also* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25); *see also* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca–2008–90). *See* Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR–NYSE–2007–29); *see also* Securities Exchange Act Release No. 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR–NYSE–2008–76). *See* Securities Exchange Act Release No. 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (SR–NYSEALTR–2008–07).

[4] *See* Securities Exchange Act Release No. 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR–NYSE–2008–76). ArcaSec had been previously authorized to deliver inbound routes to the NYSE, acting in its capacity as an order routing facility for NYSE Arca. *See supra* note 3.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes authorizing the Exchange to receive inbound routes, via ArcaSec, of all NYSE Arca order types approved or implemented on or after the date of approval of this proposal reflects the Exchange's ongoing efforts to effectively address the concerns previously identified by the Commission regarding the potential for informational advantages favoring ArcaSec vis-à-vis other non-affiliated NYSE 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

No written comments were solicited or received with respect to the proposed rule change.

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–NYSE–2009–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–58. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–58 and should be submitted on or before August 4, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

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.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[9]Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests when the exchange is affiliated with one of its members, the Commission believes that it is consistent with the Act to permit ArcaSec to provide inbound routing to the NYSE from NYSE Arca for all NYSE Arca order types approved or implemented on or after the date of this approval order on a pilot basis and subject to certain conditions. The Commission notes that this proposal seeks to expand a previously approved pilot program that allows the NYSE to receive PO Plus Orders from NYSE Arca via ArcaSec [10] to include any additional order types approved or implemented on or after the date of this approval order. The Commission also notes that all existing conditions currently in place with respect to ArcaSec routing orders to the NYSE, in its capacity as an outbound routing facility for NYSE Arca, will continue to apply.[11]

The NYSE has asked the Commission to accelerate approval of the proposed rule change. The NYSE notes that the proposed rule change reflects the Exchange's efforts to effectively include within the pilot program authorizing the NYSE to receive certain inbound orders routed via ArcaSec, all NYSE Arca order types approved or implemented on or after the date of approval of this proposal.[12] NYSE also states that accelerated approval will authorize the Exchange to receive such order types through the end of the pilot period, including certain pending NYSE Arca proposed order types.[13] The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the protections currently in place with respect to ArcaSec routing orders to the NYSE, in its capacity as an outbound routing facility for NYSE

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See, e.g.*, Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); and 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings) at 11255; *see also* Securities Exchange Act Release No. 58681, *supra* note 3.

[10] *See* Securities Exchange Act Release No. 58680, *supra* note 4.

[11] *See id* at notes 16–21 and accompanying text. ArcaSec's routing of orders to the NYSE, in its capacity as an outbound routing facility for NYSE Arca with respect to order types in effect prior to the establishment of the pilot program for PO Plus Orders, is not subject to the pilot program.

[12] *See* SR–NYSE–2009–58, Item 7.

[13] *See id*. *See also* SR–NYSEArca–2009–56.

Arca, which are designed to address conflicts of interest concerns identified by the Commission in connection with inbound routing of orders to an exchange when the routing broker-dealer is an affiliate of the exchange, will continue to apply and were previously approved by the Commission.[14] The Commission also notes that no comments were received in connection with SR–NYSE–2008–76.[15] Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[16] to approve the proposed rule change on an accelerated basis for a pilot period expiring September 29, 2009.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2009–58) is hereby approved on an accelerated basis for a pilot period to expire on September 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16548 Filed 7–13–09; 8:45 am]

BILLING CODE 8010–01–P 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60252; File No. SR–NYSEAmes–2009–24]

Self-Regulatory Organizations; NYSE Amex LLC; Order Granting Accelerated Approval to a Proposed Rule Change Amending Rule 70.25 To Permit All Available Contra-Side Liquidity To Trigger the Execution of a d-Quote

July 7, 2009.

On June 4, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Amex Equities Rule 70.25 to permit all available contra-side liquidity to trigger the execution of a d-Quote. The proposed rule change was published for comment in the **Federal Register** on June 15, 2009.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change on an accelerated basis.

The Exchange proposes to amend Rule 70.25 to expand the categories of liquidity that would be considered when determining whether the contra-side volume is within the discretionary size range of the d-Quote.[4] Currently, only displayed interest is considered by Exchange systems in determining whether the d-Quote is triggered. Under the proposed rule change, all available contra-side interest at a possible execution price of the d-Quote, including undisplayed liquidity, would be considered. This rule change will conform Rule 70.25 to the corresponding rule of the New York Stock Exchange LLC (''NYSE'') that governs the execution of NYSE Floor broker interest.[5]

In its filing, the Exchange stated that this rule change would provide Floor brokers with a similar functionality that was previously available to Floor brokers with convert-and-parity (''CAP'') orders, and that was also previously available to NYSE Floor brokers with CAP–DI orders under former NYSE Rule 123A.30(a).[6] Under that former rule, an elected CAP–DI order would automatically execute against any contra-side volume available at the electing price, and was eligible to participate in a sweep.[7] At the time the CAP order was eliminated, the NYSE did not have the technology to replicate a similar functionality with d-Quotes.[8] Since that time, both the Exchange and the NYSE have introduced two new order types, the Minimum Display Reserve Order, and the Non-Displayed Reserve Order.[9] With the proposed rule change, these two order types would be considered when determining whether there is sufficient contra-side volume to trigger a d-Quote.

The Commission has carefully reviewed the proposed rule change and 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[10] including, in particular, Section 6(b)(5) of the Act,[11] which requires that an exchange have rules 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, protect investors and the public interest.

Because it would provide a d-Quote with access to both displayed and undisplayed liquidity, the proposed rule change benefits Floor brokers by allowing their d-Quotes to be triggered more often. This proposal should also benefit customers by providing them with more opportunities to have their non-displayed reserve orders receive executions.

The Commission also finds good cause to approve the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that no comments were received during the 21-day comment period. The purpose of this proposed rule change is to conform Rule 70.25 to the NYSE rule that governs the execution of floor broker interest. In that respect, the Commission believes that the Exchange has provided reasonable support for its representation that the proposed rule change provides Floor brokers with a functionality similar to that previously available with CAP orders, and to the functionality that was previously available to NYSE Floor brokers with CAP–DI orders. In addition, the potential benefits of this proposal to customers, such as the increased opportunities for the execution of customer non-displayed reserve orders, would be available sooner by approving this proposed rule change on an accelerated basis. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[12] to approve the proposed rule change on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEAmes–2009–24) be, and it hereby is, approved on an accelerated basis.

---

[14] *See* Securities Exchange Act Release No. 58680, *supra* note 4.

[15] *See id.*

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60055 (June 5, 2009), 74 FR 28299 (''Notice'').

[4] A d-Quote is an e-Quote for which a Floor Broker enters discretionary instructions as to size and/or price. *See* NYSE Amex Equities Rule 70.25(a)(i). An e-Quote is a broker agency interest file that a Floor broker places within the Display Book system. *See* NYSE Amex Equities Rule 70(a)(i).

[5] *See* Securities Exchange Act Release No. 60045 (June 4, 2009), 74 FR 27854 (June 11, 2009) (SR–NYSE–2009–55).

[6] *See* Notice at 28300. The Exchange noted that the CAP functionality that was historically available to Floor brokers was similar to the NYSE CAP functionality. *See id.* at n.10. The Exchange states that it eliminated this functionality in connection with the implementation of Regulation NMS. *Id.*

[7] *See* Notice at 28300.

[8] *Id.* at 28301.

[9] *Id. See also* NYSE Amex Equities Rule 13 (Definitions of Orders); NYSE Rule 13 (same).

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16545 Filed 7–13–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60251; File No. SR–NYSE–2009–55]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Accelerated Approval to a Proposed Rule Change Amending Rule 70.25 To Permit All Available Contra-Side Liquidity To Trigger the Execution of a d-Quote

July 7, 2009.

On June 2, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 70.25 to permit all available contra-side liquidity to trigger the execution of a d-Quote. The proposed rule change was published for comment in the **Federal Register** on June 11, 2009.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change on an accelerated basis.

The Exchange proposes to amend Rule 70.25 to expand the categories of liquidity that would be considered when determining whether the contra-side volume is within the discretionary size range of the d-Quote.[4] Currently, only displayed interest is considered by Exchange systems in determining whether the d-Quote is triggered. Under the proposed rule change, all available contra-side interest at a possible execution price of the d-Quote, including undisplayed liquidity, would be considered.

In its filing, the Exchange stated that this rule change would provide Floor brokers with a similar functionality that was previously available to Floor brokers with a CAP–DI order under former Rule 123A.30(a).[5] Under that former rule, an elected CAP–DI order would automatically execute against any contra-side volume available at the electing price, and was eligible to participate in a sweep.[6] The Exchange also noted that, at the time the CAP order was eliminated, the Exchange did not have the technology to replicate a similar functionality with d-Quotes.[7] Since that time, the Exchange has introduced two new order types, the Minimum Display Reserve Order, and the Non-Displayed Reserve Order.[8] With the proposed rule change, these two order types would be considered when determining whether there is sufficient contra-side volume to trigger a d-Quote.

The Commission has carefully reviewed the proposed rule change and 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] including, in particular, Section 6(b)(5) of the Act,[10] which requires that an exchange have rules 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, protect investors and the public interest.

Because it would provide a d-Quote with access to both displayed and undisplayed liquidity, the proposed rule change benefits Floor brokers by allowing their d-Quotes to be triggered more often. This proposal should also benefit customers by providing them with more opportunities to have their non-displayed reserve orders receive executions.

The Commission also finds good cause to approve the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that no comments were received during the 21-day comment period. The Commission believes that the Exchange has provided reasonable support for its representation that the proposed rule change provides Floor brokers with a functionality similar to that previously available with CAP–DI orders. In addition, the potential benefits of this proposal to customers, such as the increased opportunities for the execution of customer non-displayed reserve orders, would be available sooner by approving this proposed rule change on an accelerated basis. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[11] to approve the proposed rule change on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2009–55) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16544 Filed 7–13–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60236; File No. SR–BATS–2009–019]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Its New Sponsored Access Risk Management Tool Service

July 2, 2009.

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 June 26, 2009, BATS Exchange, Inc. (''BATS'' 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 prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60045 (June 4, 2009), 74 FR 27854 (''Notice'').

[4] A d-Quote is an e-Quote for which a Floor Broker enters discretionary instructions as to size and/or price. *See* NYSE Rule 70.25(a)(i). An e-Quote is a broker agency interest file that a Floor broker places within the Display Book system. *See* NYSE Rule 70(a)(i).

[5] *See* Notice at 27855.

[6] *Id.*

[7] *Id.*

[8] *Id. See also* NYSE Rule 13 (Definitions of Orders).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] U.S.C. 78s(b)(2).

[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).

[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 establish its new Sponsored Access Risk Management Tool (the ''Tool'') service.

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 those 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 parts 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 offer the Tool service to BATS Members and Member organizations.

Background

The Exchange defines a ''Sponsored Participant'' as a person who has entered into a sponsorship arrangement with a Sponsoring Member.[5] A ''Sponsoring Member'' is defined as a broker-dealer that is a Member of the Exchange and has been designated by a Sponsored Participant to execute, clear and settle transactions occurring on the Exchange.[6] Under BATS Rule 11.3(b), a Sponsoring Member may allow its customers to enter orders directly into the trading systems of the Exchange as Sponsored Participants, without the Sponsoring Member acting as an intermediary.

Sponsored Access Risk Management Tool

To facilitate the ability of a Sponsoring Member to monitor and oversee the sponsored access activity of its Sponsored Participants, the Exchange will offer the Sponsored Access Risk Management Tool. This optional service will act as a risk filter by causing the orders of Sponsored Participants to be evaluated by the Tool prior to entering the Exchange's trading systems for execution. When a Sponsored Participant's order is evaluated by the Tool, it determines whether the order complies with the order criteria established by the Sponsoring Member for that Sponsored Participant. The order criteria pertain to such matters as the size of the order (*e.g.*, maximum notional value per order and maximum shares per order), the order type (*e.g.*, pre-market, post-market, short sales and ISOs), restricted securities, easy to borrow securities, and order cut-off (*e.g.*, block new orders and cancel all open orders).

The Tool also offers Sponsoring Members the capability to receive FIX Drop Order Copy sessions, which include the complete FIX conversation, as well as web based management tools to configure the Sponsored Access controls.

The Sponsoring Member, and not the Exchange, will have full responsibility for ensuring that Sponsored Participants' sponsored access to the Exchange complies with the Exchange's sponsored access rules. The use of the Tool by a Sponsoring Member does not automatically constitute compliance with Exchange Rules.

The Sponsored Participant's orders are validated in the FIX handler prior to entering the matching engine. Based on parameters provided to the Tool by the Sponsoring Member, the order is immediately passed on to the matching engine or rejected back to the Sponsored Participant.

The Exchange does not require Sponsoring Members to use the Tool. Sponsoring Members are free to use any appropriate risk-management tool or service. The Exchange will not provide preferential treatment to Sponsoring Members using the Tool.

The Exchange proposes to make the Tool available to its Members upon request. The Exchange believes the Tool will offer the Exchange's Members another option in the efficient risk management of its Sponsored Participants' access to BATS Exchange.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[8] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[9] 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. Specifically, the Exchange believes that the proposed rule change is consistent with all of the aforementioned principles because it fosters competition by providing another option in the efficient risk management of trading on the Exchange. BATS notes that a similar functionality has already been found to be consistent with the Act by the Commission.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] 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.[13] However, Rule 19b–

[5] *See* BATS Rule 1.5(w).

[6] *See* BATS Rule 1.5(x).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

[10] Securities Exchange Act Release No. 59354 (February 3, 2009), 74 FR 6683 (February 10, 2009) (SR–NYSE–2008–101) (Approval of NYSE Risk Management Gateway).

[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). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule

Continued

4(f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing so that the expected benefits to Exchange Users from use of the Tool would not be delayed. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that other self-regulatory organizations have similar functionality [15] and that this filing raises no new regulatory issues. Therefore, the Commission designates the proposal operative upon filing.[16]

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–BATS–2009–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2009–019. 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 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–BATS–2009–019 and should be submitted on or before August 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16576 Filed 7–13–09; 8:45 am]

BILLING CODE 8010–01–P

change, or such shorter time as designated by the Commission. The Exchange has complied with this requirement.

[14] *Id.*

[15] *See* Securities Exchange Act Release No. 59354 (February 3, 2009), 74 FR 6683 (February 10, 2009) (SR–NYSE–2008–101) (Approval of NYSE Risk Management Gateway).

[16] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 6692]

30-Day Notice of Proposed Information Collection: DS–7655, Iraqi Citizens and Nationals Employed by U.S. Federal Contractors, Grantees, and Cooperative Agreement Partners, OMB Control Number 1405–0184

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:* Iraqi Citizens and Nationals Employed by U.S. Federal Contractors, Grantees, and Cooperative Agreement Partners.
- *OMB Control Number:* 1405–0184.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* A/LM.
- *Form Number:* DS–7655.
- *Respondents:* Federal contractors, grantees, and cooperative agreement partners of the Department of State.
- *Estimated Number of Respondents:* 50.
- *Estimated Number of Responses:* 50.
- *Average Hours per Response:* .50.
- *Total Estimated Burden:* 100 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Mandatory.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from July 14, 2009.

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:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Rob Lower, Department of State, A/LM Room 525, P.O. Box 9115 Rosslyn Station, Arlington, VA 22219, who may be reached at 703–875–5822 or at *lowerrs@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 Refugee Crisis in Iraq Act of 2007 was included in the National Defense

Authorization Act of 2008 which became Public Law 110–181 on 28 January 2008. Section 1248(c) of this Act requires the Secretary of State to request from each Department of State prime contractor, grantee, or cooperative agreement partner that has performed work in Iraq since March 20, 2003, under a contract, grant, or cooperative agreement with the Department that is valued in excess of $25,000, information that can be used to verify the employment of Iraqi citizens and nationals by such contractor, grantee or cooperative agreement partner. To the extent possible, biographical information, to include employee name, date(s) of employment, biometric, and other data must be collected and used to verify employment for the processing and adjudication of refugee, asylum, special immigrant visa, and other immigration claims and applications.

Methodology

The Department of State will collect the information via electronic submission.

Additional Information

This information collection will be used to fulfill the requirements under Section 1248(c) of the National Defense Authorization Act of 2008 (Pub. L. 110–181).

Dated: July 1, 2009.

William H. Moser,

Deputy Assistant Secretary, Office of Logistics Management, Bureau of Administration, Department of State.

[FR Doc. E9–16284 Filed 7–13–09; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

Office of the United States Trade Representative

[Public Notice 6693]

Notice of Public Meeting and Solicitation of Written Comments

Title: Written Comments Concerning the Administration's Review of the U.S. Model Bilateral Investment Treaty.

SUMMARY: The Department of State and the Office of the United States Trade Representative (USTR), co-leads of the U.S. bilateral investment treaty (BIT) program, are soliciting written comments and will hold a public meeting concerning the Administration's review of the U.S. model BIT. The review is intended to ensure that the model BIT is consistent with the public interest and the overall U.S. economic agenda. The key question is whether the current model text, last updated in 2004, achieves these objectives or whether there are changes that should be made.

DATES: The public meeting will be held on July 29, 2009, from 9 a.m.–12 noon and 2 p.m.–5 p.m. (or until business is concluded) in the Loy Henderson Auditorium of the Harry S. Truman Building of the Department of State (Truman Building). Representatives from the Department of State and USTR will chair the meeting. To provide for efficient conduct of the meeting, persons wishing to speak at the meeting are requested to provide a written summary of their remarks in advance; however, failure to do so will not bar a person from speaking. Speakers will be asked to limit their remarks to five minutes. Written comments submitted under this notice are due by 5 p.m. on July 31.

ADDRESSES: To gain admission to the Department of State for the meeting, RSVP by 5 p.m. on July 23 with the following information, which will be used to expedite admission to the Truman Building:

- Full name.
- Date of birth.
- Driver's license state and number or passport number.

We request that RSVPs also include the organization, agency, or company affiliation of each individual (if any). RSVPs should also include any requests for reasonable accommodation, which should be made before July 23. Requests made after that date will be considered, but might not be possible to fulfill. To support full and effective participation of persons with disabilities, the Loy Henderson is equipped with wheelchair accessible podiums and ramps. RSVPs should be sent by e-mail to *Model_BIT_RSVP@state.gov* or by fax to (202) 647–0320. The Truman Building is located at 2201 C Street, NW., Washington, DC, 20520. PERSONS ATTENDING THE JULY 29 PUBLIC MEEING MUST ENTER THE STATE DEPARTMENT THROUGH THE 23rd STREET ENTRANCE OF THE TRUMAN BUILDING.

Written comments may be submitted by e-mail to *Model_BIT_Review@state.gov* and *jonathan_kallmer@ustr.eop.gov* or, for those with access to the Internet, may be submitted at the following address: http://www.regulations.gov/search/index.jsp. If needed, comments may be submitted by fax to (202) 647–0320 or (202) 395–3891. Please note that all comments submitted under this notice will be posted on regulations.gov and will be accessible to the general public.

FOR FURTHER INFORMATION CONTACT: Michael Tracton, State Department BIT Coordinator, at (202) 736–4060, or Jonathan (Josh) Kallmer, Deputy Assistant U.S. Trade Representative for Investment, at (202) 395–9451.

SUPPLEMENTARY INFORMATION:

Background

The United States negotiates BITs on the basis of a model text, last updated in 2004. The model may be viewed on the State Department Web site (*http://www.state.gov/documents/organization/117601.pdf*) or the USTR Web site (*http://www.ustr.gov/sites/default/files/U.S.%20model%20BIT.pdf*). The United States is presently a Party to BITs with 40 countries (list available at: *http://www.state.gov/e/eeb/ifd/bit/117402.htm*). In addition to the above-mentioned public meeting and the opportunity to submit written comments, the Administration is seeking advice from State Department's Advisory Committee on International Economic Policy and from statutory advisory committees that advise USTR and the Department of Commerce.

Dated: July 8, 2009.

Wesley S. Scholz,

Director, Office of Investment Affairs, Department of State.

Dated: July 8, 2009.

Jonathan S. Kallmer,

Deputy Assistant U.S. Trade Representative for Investment, Office of the United States Trade Representative.

[FR Doc. E9–16639 Filed 7–13–09; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Waiver of Discriminatory Purchasing Requirements With Respect to Goods and Services of Taiwan (Known in the World Trade Organization as ''the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu'' (Chinese Taipei))

AGENCY: Office of the United States Trade Representative.

ACTION: Determination regarding waiver of discriminatory purchasing requirements under the Trade Agreements Act of 1979.

DATES: *Effective Date:* July 15, 2009.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395–9476.

SUPPLEMENTARY INFORMATION: On December 9, 2008, the WTO Committee

on Government Procurement approved the accession of ''the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu'' (Chinese Taipei) to the World Trade Organization (''WTO'') Agreement on Government Procurement (''GPA''). Chinese Taipei submitted its instrument of accession to the Secretary-General of the WTO on June 15, 2009. The GPA will enter into force for Chinese Taipei on July 15, 2009. The United States, which is also a party to the GPA, has agreed to waive discriminatory purchasing requirements for eligible products and suppliers of Taiwan (known in the WTO as Chinese Taipei) beginning on July 15, 2009.

Section 1–201 of Executive Order 12260 of December 31, 1980 delegated the functions of the President under sections 301 and 302 of the Trade Agreements Act of 1979 (''the Trade Agreements Act'') (19 U.S.C. 2511, 2512) to the United States Trade Representative.

Determination: In conformity with sections 301 and 302 of the Trade Agreements Act, and in order to carry out U.S. obligations under the GPA, I hereby determine that:

1. Taiwan (known in the WTO as Chinese Taipei) has become a party to the GPA and will provide appropriate reciprocal competitive government procurement opportunities to United States products and services and suppliers of such products and services. In accordance with section 301(b)(1) of the Trade Agreements Act, Taiwan (known in the WTO as Chinese Taipei) is so designated for purposes of section 301(a) of the Trade Agreements Act.

2. Accordingly, beginning on July 15, 2009, with respect to eligible products (namely, those goods and services covered under the GPA for procurement by the United States) of Taiwan (known in the WTO as Chinese Taipei) and suppliers of such products, the application of any law, regulation, procedure, or practice regarding government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(A) To United States products and suppliers of such products, or

(B) To eligible products of another foreign country or instrumentality which is a party to the GPA and suppliers of such products, shall be waived. This waiver shall be applied by all entities listed in United States Annexes 1 and 3 of GPA Appendix 1.

3. The Trade Representative may modify or withdraw the designation in paragraph 1 and the waiver in paragraph 2.

Ron Kirk,

United States Trade Representative.

[FR Doc. E9–16543 Filed 7–13–09; 8:45 am]

BILLING CODE 3190–W9–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: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before August 13, 2009.

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: 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://fdms.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 July 7, 2009.

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
14871–N	.....	Calico Brands, Inc., Ontario, CA.	49 CFR 172.302(c) and 173.308(c)(2).	To authorize the transportation in commerce of lighters containing flammable gas in non-DOT specification containers that are capable of meeting UN performance standards at the PG II performance level that are further overpacked in a corrugated container. (mode 1)
14872–N	.....	Arkema, Inc., Philadelphia, PA.	49 CFR 173.31(e)(2)(ii) and 173.314(c).	To authorize the transportation in commerce of methyl mercaptan in certain DOT I 05J300W tank cars. (mode 2)
14873–N	.....	Matson Navigation Company, Inc., Oakland, CA.	49 CFR 176.116(e)(3)	To authorize the transportation in commerce of certain Class I (explosive) hazardous materials in an alternative stowage configuration. (mode 3)
14875–N	.....	Canton Railroad Company, Baltimore, MD.	49 CFR 174.85	To authorize transportation of hazardous materials by rail without the use of a buffer car between the rail car containing the hazardous materials and the locomotive. (mode 2)
14877–N	.....	Halon Banking Systems, New Hope, MN.	49 CFR 173.304a	To authorize the one-time, one-way transportation in commerce of non-DOT specification cylinders containing a refrigerant gas. (modes 1, 2)

NEW SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14878–N	.....	Humboldt County Waste Management Authority, Eureka, CA.	49 CFR 172.102 Special Provision 130.	To authorize the transportation in commerce of certain dry batteries in packaging without protecting against short circuits. (mode 1)
14881–N	.....	United Parcel Service, Atlanta, GA.	49 CFR 172.404(b)	To authorize the transportation in commerce of small unpalletized packages in an overpack (reusable, collapsible consolidation bins) without hazard warning labels on the overpack. (modes 1, 2)
14883–N	.....	Structural Composites Industries (SCI), Pomona, CA.	49 CFR 173.302a and 173.304a.	To authorize the manufacture, marking, sale and use of non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinders. (modes 1, 2, 3, 4)

[FR Doc. E9–16517 Filed 7–13–09; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0078]

Commercial Driver's License (CDL) Standards; Rotel North American Tours, LLC; Amendment of Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to grant Rotel North American Tours, LLC (Rotel), amendment of its existing exemption that permits 22 named drivers, employed by Rotel and possessing German CDLs, to operate commercial motor vehicles (CMVs) in the U.S. without a CDL issued by one of the States. The Rotel roster of its 22 exempt drivers is amended to permit three new Rotel drivers to be substituted for three drivers no longer employed by Rotel. The new Rotel drivers are subject to all the terms and conditions of the current exemption, including its expiration date of July 30, 2010.

DATES: This exemption is effective upon publication and expires on July 30, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Schultz, Jr., FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations: *Telephone:* 202–366–4325. *E-mail: MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide FMCSA authority to grant exemptions from its motor carrier safety regulations, including the HOS rules. The procedure for requesting an exemption is prescribed in 49 CFR part 381. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted, and to comment on the request.

The Agency must review the safety analyses and public comments. Then it may grant the exemption for up to 2 years if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption'' (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for denying or, in the alternative, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which the exemption is granted. The notice must also specify the effective period of the exemption and its terms and conditions.

Rotel provides seasonal motorcoach tours for non-English speaking tourists. The service is unique because the drivers of these buses serve as the tour guides, providing oral commentary to the passengers in their native language, usually German. Rotel states that none of the States of the U.S. will issue CDLs to these drivers because they are not State residents. Until recent years, Rotel drivers were able to obtain a nonresident CDL from certain States. Rotel asserts that without the exemption from the requirement that its drivers have a CDL issued by a State, it would have to terminate these tour operations. Complete details of Rotel's operations, including the names of the drivers, can be found in its original application, dated August 27, 2007, which is contained in the docket of this notice.

On July 30, 2008, FMCSA granted, after notice and comment, Rotel's request to allow 22 drivers, each holding a German CDL, to operate Rotel motor coaches in the U.S. without a CDL issued by one of the States as required by 49 CFR 383.23 (73 FR 44313). FMCSA found that these drivers, operating specialty tour buses in the U.S., would ''likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption,'' in accordance with 49 CFR 381.305. The two-year exemption expires on July 30, 2010.

Comments

On May 5, 2009, FMCSA published notice of this application to withdraw 3 Rotel drivers previously approved for this exemption but no longer employed by Rotel, Jens Radloff, Christian Hafner, and Ludwig Gerlsberger, and to substitute 3 new drivers, Klaus Endres, Sebastian Nicki, and Karl-Heinz Schmitz, in their place on the roster of exempt Rotel drivers. The Agency asked for public comment (74 FR 20776). No comments were submitted to the docket.

FMCSA Decision

The FMCSA has evaluated Rotel's application for amendment. The Agency grants Rotel's request that three former Rotel drivers, originally approved for this exemption, Jens Radloff, Christian Hafner, and Ludwig Gerlsberger be dropped from the roster of exempt drivers. The Agency believes that the three new drivers, Klaus Endres, Sebastian Nicki, and Karl-Heinz Schmitz, are qualified to replace the drivers dropped from the Rotel roster. Like the other 19 Rotel drivers already operating under the exemption, the three new drivers are non-residents of the U.S. and holders of German CDLs. The FMCSA finds that they possess sufficient knowledge, skills, and experience to ensure a level of safety that is equivalent to, or greater than, the

level of safety that would be obtained by complying with the requirement for a U.S. CDL. Therefore, FMCSA hereby grants exemption for the balance of the two-year period of the exemption which ends on July 30, 2010. The three new Rotel drivers are subject to the terms and conditions of the original Rotel exemption.

Interested parties possessing information that would demonstrate that any or all of these 22 drivers are not achieving the requisite statutory level of safety should immediately notify the FMCSA. The Agency will evaluate any such information, and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31315(b)(4) and 31136(e), will take immediate steps to revoke the exemption of the driver(s) in question, as well as Rotel's exemption if warranted.

Issued on: July 2, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–16586 Filed 7–13–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–21254]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 7 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective August 10, 2009. Comments must be received on or before August 13, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2005–21254, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 7 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 7 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Andrew B. Clayton
Dean A. Maystead
Thomas D. Reynolds
Kenneth D. Daniels
Donald L. Murphy
Donald M. Jenson
Carl V. Murphy, Jr.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer

than two years from its approval date and may be renewed upon application for additional two-year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 7 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (70 FR 30999; 70 FR 46567; 72 FR 40359). Each of these 7 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by August 13, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 7 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: July 7, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–16591 Filed 7–13–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No FMCSA–2000–8398; FMCSA–2003–14504; FMCSA–2005–20560; FMCSA–2007–27515]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 21 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*.

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on June 18, 2009.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 21 renewal applications, FMCSA renews the Federal vision exemptions for Roosevelt Bell, Jr., Joseph M. Blankenship, David K. Boswell, Melvin M. Carter, Bernabe V. Cerda, Michael S. Crawford, Rex A. Dyer, Patrick J. Goebel, Thomas A. Gotto, Louis W. Henderson, Jr., William P. Holloman, Wilbur J. Johnson, Joseph W. Mayes, Larry L. Morseman, Kenneth C. Reeves, Charles J. Rowsey, Dustin N. Sullivan, Thomas E. Summers, Sr., Jon C. Thompson, Daniel E. Watkins, and Tommy N. Whitworth.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: July 7, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–16594 Filed 7–13–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 7, 2009.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date

of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 13, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–2109.
Type of Review: Extension.
Title: Form 13925, Notice of Election of an Agreement to Special Lien Under Internal Revenue Code Section 6324A and Regulations.
Description: Under IRC section 6166, an estate may elect to pay the estate tax in installments over 14 years if certain conditions are met. If the IRS determines that the government's interest in collecting estate tax is sufficiently at risk, it may require the estate provide a bond. Alternatively, the executor may elect to provide a lien in lieu of bond. Under section 6324A(c) and the regulations there under (OMB 1545–0757), to make this election the executor must submit a lien agreement to the IRS. Form 13925 is a form lien agreement that executors may use for this purpose.
Respondents: Businesses or other for-profits.
Estimated Total Burden Hours: 500 hours.

OMB Number: 1545–1820.
Type of Review: Extension.
Title: Revenue Procedure 2003–33, Section 9100 Relief for 338 Elections
Description: Pursuant to Sec. 301.9100–3 of the Procedure and Administration Regulations, this procedure grants certain taxpayers an extension of time to file an election described in Sec. 338(a) or Sec. 338(h)(10) of the Internal Revenue Code to treat the purchase of the stock of a corporation as an asset acquisition.
Respondents: Businesses or other for-profits.
Estimated Total Burden Hours: 300 hours.

OMB Number: 1545–2132.
Type of Review: Extension.
Form: 8933.
Title: Carbon Dioxide Sequestration Credit.
Description: Form 8933 will provide a standardized format to claim this credit to an eligible person that captures, after October 3, 2008, qualified carbon dioxide at a qualified facility and physically or contractually ensures the disposal of or the use as a tertiary injectant of the qualified carbon dioxide.
Respondents: Businesses or other for-profits.
Estimated Total Burden Hours: 215 hours.

OMB Number: 1545–1984.
Type of Review: Revision.
Form: 8903.
Title: Domestic Production Activities Deduction.
Description: Taxpayers will use the new Form 8903 and related instructions to calculate the domestic production activities deduction.
Respondents: Businesses or other for-profits.
Estimated Total Burden Hours: 6,450,000 hours.

OMB Number: 1545–1541.
Type of Review: Extension.
Title: Revenue Procedure 97–27, Changes in Methods of Accounting
Description: The information requested in sections 6, 8, and 13 of Revenue Procedure 97–27 is required in order for the Commissioner to determine whether the taxpayer is properly requesting to change its method of accounting and the terms and condition of that change.
Respondents: Businesses or other for-profits.
Estimated Total Burden Hours: 9,083 hours.

OMB Number: 1545–1932.
Type of Review: Extension.
Title: REG–158138–04 (Final) Information Return by Donees Relating to Qualified Intellectual Property Contributions.
Description: These proposed and temporary regulations provide guidance for filing information returns by donees relating to qualified intellectual property contributions. The regulations affect donees receiving qualified intellectual property contributions after June 3, 2004.
Respondents: Not-for-profit institutions.
Estimated Total Burden Hours: 2 hours.

OMB Number: 1545–1982.
Type of Review: Extension.
Form: 8906.
Title: Distilled Spirits Credit.
Description: Form 8906, Distilled Spirits Credit, was developed to carry out the provisions of IRC section 5011(a). This section allows eligible wholesalers and persons subject to IRC section 5055 an income tax credit for the average cost of carrying excise tax on bottled distilled spirits. The new form provides a means for the eligible taxpayer to compute the amount of credit.
Respondents: Businesses or other for-profits.
Estimated Total Burden Hours: 558 hours.

OMB Number: 1545–1970.
Type of Review: Extension.
Form: 13750.
Title: Election to Participate in Announcement 2005–80 Settlement Initiative.
Description: Announcement 2005–80 provides a settlement initiative under which taxpayers and the Service may resolve certain abusive tax transactions. Pursuant to Announcement 2005–80, Form 13750 is the ONLY specified manner in which taxpayers may elect to participate in the settlement initiative.
Respondents: Businesses or other for-profits.
Estimated Total Burden Hours: 2,500 hours.

OMB Number: 1545–1049.
Type of Review: Extension.
Title: IA–7–88 (Final) Excise Tax Relating to Gain or Other Income Realized by Any Person on Receipt of Greenmail.
Description: The final regulations provide rules relating to the manner and method of reporting and paying the nondeductible 50 percent tax imposed by section 5881 of the Internal Revenue Code with respect to the receipt of greenmail.
Respondents: Businesses or other for-profits.
Estimated Total Burden Hours: 2 hours.

OMB Number: 1545–1504.
Type of Review: Extension.
Form: 911.
Title: Application for Taxpayer Assistance Order (ATAO).
Description: This form is used by taxpayers to apply for relief from a significant hardship which may have already occurred or is about to occur if the IRS takes or fails to take certain actions. This form is submitted to the IRS Taxpayer Advocate Office in the state or city where the taxpayer lives.
Respondents: Individuals or Households.
Estimated Total Burden Hours: 46,500 hours.

OMB Number: 1545–0233.
Type of Review: Extension.
Form: 7004.
Title: Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns.
Description: Form 7004 is used by corporations and certain non-profit

institutions to request an automatic 6-month extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 19,216,744 hours.

OMB Number: 1545–1480.

Type of Review: Extension.

Title: REG–107047–00 (Final), Hedging Transactions.

Description: The information is required by the IRS to aid it in administering the law and to prevent manipulation. The information will be used to verify that a taxpayer is properly reporting its business hedging transactions.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 171,050 hours.

OMB Number: 1545–1994.

Type of Review: Extension.

Title: Notice 2008–36 (Previously Notice 2006–28), Energy Efficient Home Credit; Manufactured Homes.

Description: This notice supersedes Notice 2006–28 by substantially republishing the guidance contained in that publication. This notice clarifies the meaning of the terms equivalent rating network and eligible contractor, and permits calculation procedures other than those identified in Notice 2006–28 to be used to calculate energy consumption. Finally, this notice clarifies the process for removing software from the list of approved software and reflects the extension of the tax credit through December 31, 2008. Notice 2006–28, as updated, provided guidance regarding the calculation of heating and cooling energy consumption for purposes of determining the eligibility of a manufactured home for the New Energy Efficient Home Credit under Internal Revenue Code § 45L. Notice 2006–28 also provided guidance relating to the public list of software programs that may be used to calculate energy consumption. Guidance relating to dwelling units other than manufactured homes is provided in Notice 2008–35.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 60 hours.

OMB Number: 1545–1099.

Type of Review: Extension.

Form: 8811.

Title: Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations.

Description: Form 8811 is used to collect the name, address, and phone number of a representative of a REMIC who can provide brokers with the correct income amounts that the broker's clients must report on their income tax returns. The form allows the IRS to provide the REMIC industry the information necessary to issue correct information returns to investors.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 4,380 hours.

OMB Number: 1545–1344.

Type of Review: Extension.

Title: CO–30–92 (Final) Consolidated Returns—Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless.

Description: The reporting requirements affect consolidated taxpayers who will be making elections (if made) to treat certain loss carryovers as expiring and an election (if made) allocating items between returns. The information will facilitate enforcement of consolidated return regulations.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 18,600 hours.

OMB Number: 1545–0770.

Type of Review: Extension.

Title: FI–182–78 (NPRM) Transfers of Securities Under Certain Agreements.

Description: Section 1058 of the Internal Revenue Code provides tax-free treatment for transfers of securities pursuant to a securities lending agreement. The agreement must be in writing and is used by the taxpayer, in a tax audit situation, to justify no recognition treatment of gain or loss on the exchange of the securities.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 9,781 hours.

OMB Number: 1545–1537.

Type of Review: Extension.

Title: REG–253578–96 Final Regulations for Health Coverage Portability for Group Health Plans and Group Health Insurance Issuers under HIPPA Titles I & IV.

Description: The regulations provide guidance for group health plans and the employers maintaining them regarding requirements imposed on plans relating to preexisting condition exclusions, discrimination based on health status, and access to coverage.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 262,289 hours.

OMB Number: 1545–0022.

Type of Review: Extension.

Form: 712.

Title: Life Insurance Statement.

Description: Form 712 is used to establish the value of life insurance policies for estate and gift tax purposes. The tax is based on the value of these policies. The form is completed by life insurance companies.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1,120,200 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–16670 Filed 7–13–09; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
July 14, 2009

Part II

Department of Energy

10 CFR Part 430

Energy Conservation Program: Energy Conservation Standards and Test Procedures for General Service Fluorescent Lamps and Incandescent Reflector Lamps; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EE–2006–STD–0131]

RIN 1904–AA92

Energy Conservation Program: Energy Conservation Standards and Test Procedures for General Service Fluorescent Lamps and Incandescent Reflector Lamps

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

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is announcing that pursuant to the Energy Policy and Conservation Act (EPCA), it is amending the energy conservation standards for certain general service fluorescent lamps and incandescent reflector lamps. DOE is also adopting new energy conservation standards and amendments to its test procedures for certain general service fluorescent lamps not currently covered by standards. Additionally, DOE is amending the definitions of certain terms found in the general provisions. It has determined that energy conservation standards for these products would result in significant conservation of energy, and are technologically feasible and economically justified.

DATES: The effective date of this rule is September 14, 2009. Compliance with the standards established in today's final rule is required starting on July 14, 2012. The incorporation by reference of certain publications listed in this rule was approved by the Director of the Federal Register on September 14, 2009.

ADDRESSES: For access to the docket to read background documents, the technical support document, transcripts of the public meetings in this proceeding, or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room. You may also obtain copies of certain previous rulemaking documents in this proceeding (*i.e.*, framework document, advance notice of proposed rulemaking, notice of proposed rulemaking), draft analyses, public meeting materials, and related test procedure documents from the Office of Energy Efficiency and Renewable Energy's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/incandescent_lamps.html.*

FOR FURTHER INFORMATION CONTACT:

Ms. Linda Graves, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–1851. *E-mail: Linda.Graves@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9507. *E-mail: Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

Acronyms and Abbreviations

ACEEE American Council for an Energy Efficient Economy
ACG Applied Coatings Group
ADLT Advanced Lighting Technologies, Inc.
AEO Annual Energy Outlook
ANOPR advance notice of proposed rulemaking
ANSI American National Standards Institute
ASAP Appliance Standards Awareness Project
BEF ballast efficacy factor
BF ballast factor
BR bulged reflector (reflector lamp shape)
BT Building Technologies Program
Btu British thermal units
CAIR Clean Air Interstate Rule
CAMR Clean Air Mercury Rule
CBECS Commercial Buildings Energy Consumption Survey
CCT correlated color temperature
CEC California Energy Commission
CEE Consortium for Energy Efficiency
CFR Code of Federal Regulations
CFL compact fluorescent lamp
CIE International Commission on Illumination
CO_2 carbon dioxide
CRI color rendering index
CSL candidate standard level
DOE U.S. Department of Energy
DOJ U.S. Department of Justice
E26 Medium screw-base (incandescent lamp base type)
EEI Edison Electric Institute
EIA Energy Information Administration
EISA 2007 Energy Independence and Security Act of 2007
EL efficacy level
E.O. Executive Order
EPA U.S. Environmental Protection Agency
EPACT 1992 Energy Policy Act of 1992
EPACT 2005 Energy Policy Act of 2005
EPCA Energy Policy and Conservation Act
ER elliptical reflector (reflector lamp shape)
EU European Union
EuP Energy-Using Product
FEMP Federal Energy Management Program
FR Federal Register
FTC U.S. Federal Trade Commission
GE General Electric Lighting and Industrial
GRIM Government Regulatory Impact Model
GSFL general service fluorescent lamp
GSIL general service incandescent lamp
GW gigawatt
Hg mercury
HID high-intensity discharge
HIR halogen infrared reflector
HO high output
HVAC heating, ventilating and air-conditioning
IALD International Association of Lighting Designers
IESNA Illuminating Engineering Society of North America
ImSET Impact of Sector Energy Technologies
INPV industry net present value
IPCC Intergovernmental Panel on Climate Change
I–O input-output
IR infrared
IRL incandescent reflector lamp
K Kelvin
kt kilotons
LCC life-cycle cost
LED light-emitting diode
lm lumens
LMC U.S. Lighting Market Characterization Volume I
lm/W lumens per watt
MBP medium bipin
MECS Manufacturer Energy Consumption Survey (MECS)
MIA manufacturer impact analysis
miniBP miniature bipin
MMt million metric tons
Mt metric tons
MW megawatts
NAICS North American Industry Classification System
NEEP Northeast Energy Efficiency Partnership
NEMA National Electrical Manufacturers Association
NEMS National Energy Modeling System
NEMS–BT National Energy Modeling System—Building Technologies
NES national energy savings
NIA national impact analysis
NIST National Institute of Standards and Technology
NOPR notice of proposed rulemaking
NO_X nitrogen oxides
NPV net present value
NRDC Natural Resources Defense Council
NVLAP National Voluntary Laboratory Accreditation Program
OEM original equipment manufacturer
OIRA Office of Information and Regulatory Affairs
OMB U.S. Office of Management and Budget
PAR parabolic aluminized reflector (reflector lamp shape)
PBP payback period
PG&E Pacific Gas and Electric
PSI Product Stewardship Institute
quad quadrillion (10^{15}) Btu
R reflector (reflector lamp shape)
R–CFL reflector compact fluorescent lamp
R&D research and development
RDC recessed double contact
RECS Residential Energy Consumption Survey
RIA regulatory impact analysis
SBA U.S. Small Business Administration
SO standard output
SO_2 sulfur dioxide
SP single pin

T5, T8, T10, T12 tubular fluorescent lamps, diameters of 0.625, 1, 1.25 or 1.5 inches, respectively
TSD technical support document
TSL trial standard level
TWh terawatt-hour
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code
UV ultraviolet
V volts
VHO very high output
W watts

I. Summary of the Final Rule

A. The Standard Levels

The Energy Policy and Conservation Act, as amended (42 U.S.C. 6291 *et seq.*; EPCA), provides that any new or amended energy conservation standard that the Department of Energy prescribes for covered consumer and/or commercial products, including general service fluorescent lamps (GSFL) and incandescent reflector lamps (IRL), must be designed to ''achieve the maximum improvement in energy efficiency * * * which the Secretary determines is technologically feasible and economically justified.'' (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must ''result in significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B)) The energy conservation standards in today's final rule, which apply to certain types of types of GSFL and IRL, satisfy these requirements, as well as all other applicable statutory provisions discussed in this notice.

Table I.1 and Table I.2 present the energy conservation standard levels DOE is adopting today. These standards will apply to GSFL and IRL listed in those tables that are manufactured for sale in the United States, or imported into the United States, on or after July 14, 2012.

TABLE I.1—SUMMARY OF THE AMENDED ENERGY CONSERVATIONS STANDARDS FOR GENERAL SERVICE FLUORESCENT LAMPS

Lamp type	Correlated color temperature	Energy conservation standard (lm/W)
4-Foot Medium Bipin	≤4,500K	89
	>4,500K and ≤7,000K	88
2-Foot U-Shaped	≤4,500K	84
	>4,500K and ≤7,000K	81
8-Foot Slimline	≤4,500K	97
	>4,500K and ≤7,000K	93
8-Foot High Output	≤4,500K	92
	>4,500K and ≤7,000K	88
4-Foot Miniature Bipin Standard Output	≤4,500K	86
	>4,500K and ≤7,000K	81
4-Foot Miniature Bipin High Output	≤4,500K	76
	>4,500K and ≤7,000K	72

TABLE I.2—SUMMARY OF THE ENERGY CONSERVATION STANDARDS FOR INCANDESCENT REFLECTOR LAMPS

Lamp wattage	Lamp type	Diameter (inches)	Voltage	Energy conservation standard (lm/W)
40W–205W	Standard Spectrum	>2.5	≥125	$6.8*P^{0.27}$
			<125	$5.9*P^{0.27}$
		≤2.5	≥125	$5.7*P^{0.27}$
			<125	$5.0*P^{0.27}$
40W–205W	Modified Spectrum	>2.5	≥125	$5.8*P^{0.27}$
			<125	$5.0*P^{0.27}$
		≤2.5	≥125	$4.9*P^{0.27}$
			<125	$4.2*P^{0.27}$

Note 1: P is equal to the rated lamp wattage, in watts.
Note 2: Standard Spectrum means any incandescent reflector lamp that does not meet the definition of ''modified spectrum'' in 430.2.

B. Current Federal Standards for General Service Fluorescent Lamps and Incandescent Reflector Lamps

Table I.3 and Table I.4 present the current statutorily-prescribed Federal energy conservation standards for GSFL and IRL. The standards set requirements for minimum efficacy and color rendering index (CRI) levels for certain GSFL, and minimum efficacy levels for certain IRL. (42 U.S.C. 6295(i)(1); 10 CFR 430.32(n))

TABLE I.3—EPCA STANDARD LEVELS FOR GSFL

Lamp type	Nominal lamp wattage	Minimum CRI	Minimum average efficacy (lm/W)
4-Foot Medium Bipin	>35W	69	75.0
	≤35W	45	75.0
2-Foot U-Shaped	>35W	69	68.0
	≤35W	45	64.0
8-Foot Slimline	>65W	69	80.0
	≤65W	45	80.0

TABLE I.3—EPCA STANDARD LEVELS FOR GSFL—Continued

Lamp type	Nominal lamp wattage	Minimum CRI	Minimum average efficacy (lm/W)
8-Foot High Output	>100W	69	80.0
	≤100W	45	80.0

TABLE I.4—EPCA STANDARD LEVELS FOR IRL

Wattage	Minimum average efficacy (lm/W)
40–50	10.5
51–66	11.0
67–85	12.5
86–115	14.0
116–155	14.5
156–205	15.0

C. Benefits and Burdens to Purchasers of General Service Fluorescent Lamps and Incandescent Reflector Lamps

In the April 2009 notice of proposed rulemaking (NOPR), DOE considered the impacts on consumers of several trial standard levels (TSLs) related to the efficiency of GSFL and IRL. 74 FR 16920 (April 13, 2009). In the April 2009 NOPR, DOE tentatively concluded that the economic impacts on most consumers (*i.e.*, the average life-cycle cost (LCC) savings) of amended standards for GSFL and IRL would be positive. DOE has reached the same conclusion in today's final rule, as explained below.

The economic impacts on consumers, *i.e.*, the average life-cycle cost savings, are generally positive in this final rule. DOE's analyses indicate that on average residential and commercial consumers would see benefits from the proposed standards. DOE expects that under the standards presented in this final rule, the purchase price of high-efficacy GSFL would be higher (up to thirteen times higher, including the purchase of new lamps and a new ballast) than the average price of these products today; the energy efficiency gains, however, would result in lower energy costs that more than offset such higher costs for the majority of consumers analyzed in this final rule. When the potential savings due to efficiency gains are summed over the lifetime of the high-efficacy products, consumers would be expected to save up to $67.06 (depending on the lamp type), on average, compared to their expenditures over the lives of today's baseline GSFL. The results of DOE's analyses for IRL follow a similar pattern. Although DOE expects the purchase price of the higher-efficacy IRL to be 47 to 64 percent higher than the average price of these products today, the energy efficiency gains would result in lower energy costs that more than offset the higher costs for the majority of consumers analyzed in this final rule. When these potential savings due to efficiency gains are summed over the lifetime of the higher-efficacy IRL, it is estimated that consumers would save up to $7.95 per lamp (depending on the wattage and operating sector), on average, compared to their expenditures over the lives of today's baseline IRL.

D. Impact on Manufacturers

Using a real corporate discount rate of 10.0 percent, DOE estimates the net present value (NPV) of the GSFL and IRL industries to be $527–639 million and $221–301 million in 2008$, respectively. DOE expects the impact of today's standards on the industry net present value (INPV) of manufacturers of GSFL to be between a 0.6 percent loss and a 30.7 percent loss (−$4 million to −$162 million), and between a 6.8 percent loss and a 44.4 percent loss (−$21 million to −$98 million) for IRL manufacturers. Based on DOE's interviews with GSFL and IRL manufacturers, DOE expects minimal plant closings or loss of employment as a result of the standards.

E. National Benefits

DOE estimates the GSFL standards will save approximately 3.83 to 9.94 quads (quadrillion (10^{15}) British thermal units (Btu)) of energy over 30 years (2012–2042). Over the same time period, DOE estimates IRL standards will save approximately 0.94 to 2.39 quads. By 2042, DOE expects the energy savings from the GSFL and IRL standards to eliminate the need for approximately 1.8 to 6.2 and 0.2 to 1.1 gigawatts of generating capacity, respectively.

These energy savings from GSFL will result in cumulative (undiscounted) greenhouse gas emission reductions of 175 to 488 million tons (Mt) of carbon dioxide (CO_2); for IRL, DOE estimates these reductions will be 44 to 106 million tons (Mt) of CO_2. Cumulative for GSFL and IRL, DOE estimates that the range of the monetized value of CO_2 emission reductions is between $0.2 billion to $24.8 billion, at a 7-percent discount rate, and between $0.5 billion to $49.8 billion at a 3-percent discount rate. The mid-range of the CO_2 value (using $33 per ton) is $3.9 to $10.2 billion and $7.6 to $20.6 billion at 7-percent and 3-percent discount rates, respectively.

Additionally, the GSFL standards will help alleviate air pollution by resulting in between approximately 11,000 to 36,780 tons (11.0 and 36.8 kilotons (kt)) of nitrogen oxides (NO_X) cumulative emission reductions from 2012 through 2042; the IRL standards will result in NO_X cumulative emission reductions of 6.4 to 8.4 kt. Mercury (Hg) cumulative emissions reductions over the same time period will be reduced by up to 7.3 metric tons due to GSFL standards and 1.65 metric tons from IRL standards. The monetized values of these emissions reductions, cumulative for both GSFL and IRL, are estimated at $6.0 to $131.5 million for NO_X and up to $82.6 million for Hg at a 7-percent discount rate. Using a 3-percent discount rate, the monetized values of these emission reductions are $6.9 to $162.3 million for NO_X and up to $153.7 million for Hg.

The national NPV of the GSFL and IRL standards is between $10.02 and $26.31 billion and $1.83 and $9.06 billion, respectively, using a 7-percent discount rate cumulative from 2012 to 2042 in 2008$. Using a 3-percent discount rate, the national NPV of the GSFL and IRL standards is between $21.84 and $53.53 billion and $3.78 and $17.81 billion, respectively, cumulative from 2012 to 2042 in 2008$. This is the estimated total value of future savings minus the estimated increased costs of purchasing GSFL and IRL, discounted to 2009.

The benefits and costs of today's final rule can also be expressed in terms of annualized 2008$ values over the forecast period 2012 through 2042. Using a 7-percent discount rate for the annualized cost analysis, the cost of the standards established in today's final rule is $700 million per year in increased product and installation costs, while the annualized benefits are $2.95 billion per year in reduced product operating costs. Using a 3-percent discount rate, the cost of the standards established in today's final rule is $531 million per year, while the benefits of today's standards are $3.12 billion per year. The following tables depict these annualized benefits and costs for the adopted standards for GSFL and IRL.

TABLE I.5—ANNUALIZED BENEFITS AND COSTS FOR GSFL

Category	Primary estimate	Low estimate	High estimate	Units		
				Year dollars	Disc (%)	Period covered
Benefits						
Annualized Monetized $millions/year.	2302	1329	3275	2008	7	31
	2420	1387	3452	2008	3	31
Annualized Quantified ..	10.48 CO_2 (Mt)	5.76 CO_2 (Mt)	15.2 CO_2 (Mt)		7	31
	1.78 NO_X (kt)	1.03 NO_X (kt)	2.54 NO_X (kt)		7	31
	0.11 Hg (t)	0 Hg (t)	0.22 Hg (t)		7	31
	10.6 CO_2 (Mt)	5.69 CO_2 (Mt)	15.52 CO_2 (Mt)		3	31
	1.19 NO_X (kt)	0.63 NO_X (kt)	1.76 NO_X (kt)		3	31
	0.11 Hg (t)	0 Hg (t)	0.23 Hg (t)		3	31
Qualitative						
Costs						
Annualized Monetized $millions/year.	582	378	786	2008	7	31
	425	230	621	2008	3	31
Qualitative						
Net Benefits/Costs						
Annualized Monetized $millions/year.	1720	951	2489	2008	7	31
	1994	1158	2831	2008	3	31
Qualitative						

TABLE I.6—ANNUALIZED BENEFITS AND COSTS FOR IRL

Category	Primary estimate	Low estimate	High estimate	Units		
				Year dollars	Disc (%)	Period covered
Benefits						
Annualized Monetized $millions/year.	650	406	894	2008	7	31
	696	424	968	2008	3	31
Annualized Quantified ..	2.39 CO_2 (Mt)	1.51 CO_2 (Mt)	3.28 CO_2 (Mt)		7	31
	0.51 NO_X (kt)	0.45 NO_X (kt)	0.58 NO_X (kt)		7	31
	0.02 Hg (t)	0 Hg (t)	0.05 Hg (t)		7	31
	2.4 CO_2 (Mt)	1.45 CO_2 (Mt)	3.35 CO_2 (Mt)		3	31
	0.35 NO_X (kt)	0.31 NO_X (kt)	0.4 NO_X (kt)		3	31
	0.02 Hg (t)	0 Hg (t)	0.05 Hg (t)		3	31
Costs						
Annualized Monetized $millions/year.	118	227	9	2008	7	31
	106	218	−6	2008	3	31
Qualitative						
Net Benefits/Costs						
Annualized Monetized $millions/year.	532	179	885	2008	7	31
	590	207	973	2008	3	31

F. Conclusion

DOE has evaluated the benefits (energy savings, consumer LCC savings, positive national NPV, and emissions reductions) to the Nation of today's new and amended energy conservation standards for certain GSFL and IRL, as well as the costs (loss of manufacturer INPV and consumer LCC increases for some users of GSFL and IRL). Based upon all available information, DOE has determined that the benefits to the Nation of the standards for GSFL and IRL outweigh their costs. Today's standards also represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and will result

in significant energy savings. At present, GSFL and IRL that meet the new standard levels are commercially available.

II. Introduction

A. Authority

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part A[1] of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The program covers consumer products and certain commercial products (all of which are referred to hereafter as ''covered products''), including GSFL and IRL. (42 U.S.C. 6292(a)(14) and 6292(i)) DOE publishes today's final rule pursuant to Part A of Title III, which provides for test procedures, labeling, and energy conservation standards for GSFL and IRL and certain other types of products, and authorizes DOE to require information and reports from manufacturers. The test procedures for GSFL and IRL appear at title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix R.

The scope of coverage of these provisions for GSFL and IRL is dictated by EPCA's definitions of these and related terms, as further discussed below. EPCA defines ''general service fluorescent lamp'' as follows:

* * * [F]luorescent lamps which can be used to satisfy the majority of fluorescent applications, but does not include any lamp designed and marketed for the following non-general lighting applications:

(i) Fluorescent lamps designed to promote plant growth.

(ii) Fluorescent lamps specifically designed for cold temperature installations.

(iii) Colored fluorescent lamps.

(iv) Impact-resistant fluorescent lamps.

(v) Reflectorized or aperture lamps.

(vi) Fluorescent lamps designed for use in reprographic equipment.

(vii) Lamps primarily designed to produce radiation in the ultra-violet region of the spectrum.

(viii) Lamps with a color rendering index of 87 or greater.

(42 U.S.C. 6291(30)(B))

EPCA defines ''incandescent reflector lamp'' as follows:

* * * [A] lamp in which light is produced by a filament heated to incandescence by an electric current * * * [and] (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications, that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, ER, BR, BPAR, or similar bulb shapes with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.25 inches, and has a rated wattage that is 40 watts or higher.

(42 U.S.C. 6291(30)(C), (C)(ii) and (F))

EPCA further clarifies this definition of IRL by defining lamp types excluded from the definition, including ''rough service lamp,'' ''vibration service lamp,'' and ''colored incandescent lamp.'' (42 U.S.C. 6291(30)(X), (AA), and (EE)) EPCA prescribes specific energy conservation standards for certain GSFL and IRL. (42 U.S.C. 6295(i)(1)) The statute further directs DOE to conduct two cycles of rulemakings to determine whether to amend these standards, and to initiate a rulemaking to determine whether to adopt standards for additional types of GSFL. (42 U.S.C. 6295(i)(3)–(5)) This rulemaking represents the first round of amendments to the GSFL and IRL energy conservation standards as directed by 42 U.S.C. 6295(i)(3), and it also implements the requirement for DOE to consider energy conservation standards for additional GSFL under 42 U.S.C. 6295(i)(5). The advance notice of proposed rulemaking (ANOPR) in this proceeding, 73 FR 13620, 13622, 13625, 13628–29 (March 13, 2008) (the March 2008 ANOPR), the notice of proposed rulemaking (NOPR) in this proceeding, 74 FR 16920, 16924–26 (April 13, 2009) (the April 2009 NOPR), and subsections II.B.2 and III.B.2 below provide additional detail on the nature and statutory history of EPCA's requirements for GSFL and IRL.

EPCA provides criteria for prescribing new or amended standards for covered products, including GSFL and IRL. As indicated above, any such new or amended standard must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Further, DOE may not prescribe an amended or new standard if DOE determines by rule that such standard would not result in ''significant conservation of energy,'' or ''is not technologically feasible or economically justified.'' (42 U.S.C. 6295(o)(3)(B)) Additionally, DOE may not prescribe an amended or new standard for any GSFL or IRL for which DOE has not established a test procedure. (42 U.S.C. 6295(o)(3)(A))

EPCA also provides that in deciding whether such a standard is economically justified for covered products, 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 products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that 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 covered 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. 6295(o)(2)(B)(i))

In addition under (42 U.S.C. 6295(o)(2)(B)(iii)), EPCA, as amended, establishes a rebuttable presumption that a standard for covered products is economically justified if the Secretary finds that ''the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy, and as applicable, water, savings during the first year that the consumer will receive as a result of the standard, as calculated under the test procedure * * *'' in place for that standard.

EPCA also contains what is commonly known as an ''anti-backsliding'' provision. (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 a covered product. EPCA further provides that the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is ''likely to result in the unavailability in the United States of any product type (or class) with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States * * *.'' (42 U.S.C. 6295(o)(4))

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

Section 325(q)(1) of EPCA sets forth additional requirements applicable to promulgating standards for any type or class of covered product that has two or more subcategories. (42 U.S.C. 6295(q)(1)) Under this provision, DOE must specify a different standard level than that which applies generally to such type or class of product ''for any group of covered products which have the same function or intended use, if * * * products within such group—(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard'' than applies or will apply to the other products. (42 U.S.C. 6295(q)(1)(A) and (B)) In determining whether a performance-related feature justifies such a different standard for a group of products, DOE must ''consider such factors as the utility to the consumer of such a feature'' and other factors DOE deems appropriate. (42 U.S.C. 6295(q)(1)) Any rule prescribing such a standard must include an explanation of the basis on which DOE established such higher or lower level. (42 U.S.C. 6295(q)(2))

Federal energy conservation requirements for covered products generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE can, however, grant waivers of Federal 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))

B. Background

1. Current Standards

The energy conservation standards that EPCA prescribes for GSFL and IRL, and that are currently in force, set efficacy levels and color rendering index (CRI) levels for certain GSFL, and efficacy standards for certain IRL. (42 U.S.C. 6295(i)(1); 10 CFR 430.32(n)) These standard levels are set forth in Table I.3 and Table I.4 above.

2. History of Standards Rulemaking for General Service Fluorescent Lamps, Incandescent Reflector Lamps, and General Service Incandescent Lamps

This rulemaking represents the first round of amendments to these GSFL and IRL standards, and it also addresses the adoption of standards for additional GSFL, as directed by 42 U.S.C. 6295(i)(3) and (5), respectively. Initially, this rulemaking also included consideration of energy conservation standards for general service incandescent lamps (GSIL). However, as explained in the April 2009 NOPR, amendments to EPCA in the Energy Independence and Security Act of 2007 [2] (EISA 2007) eliminated DOE's authority to regulate additional GSIL and statutorily prescribed standards for GSIL; therefore this rulemaking no longer addresses GSIL. 74 FR 16920, 16926 (April 13, 2009).

DOE commenced this rulemaking on May 31, 2006, by publishing its framework document for the rulemaking, and by giving notice of a public meeting and of the availability of the document for review and public comment. 71 FR 30834 (May 31, 2006). The framework document described the procedural and analytical approaches DOE anticipated using and issues to be resolved in the rulemaking. DOE held a public meeting on June 15, 2006, to present the framework document, describe the analyses DOE planned to conduct during the rulemaking, obtain public comment on these subjects, and facilitate the public's involvement in the rulemaking. DOE also allowed the submission of written statements after the public meeting, and in response received 10 written statements.

On February 21, 2008, DOE issued the March 2008 ANOPR in this proceeding. 73 FR 13620 (March 13, 2008). In the March 2008 ANOPR, DOE described and sought comment on the analytical framework, models, and tools that DOE was using to analyze the impacts of energy conservation standards for the two appliance products. In conjunction with issuance of the March 2008 ANOPR, DOE published on its Web site the complete ANOPR technical support document (TSD), which included the results of DOE's various preliminary analyses in this rulemaking. In the March 2008 ANOPR, DOE requested oral and written comments on these results, and on a range of other issues. DOE held a public meeting in Washington, DC, on March 10, 2008, to present the methodology and results of the ANOPR analyses, and to receive oral comments from those who attended. In the March 2008 ANOPR, DOE invited comment in particular on the following issues: (1) Consideration of additional GSFL; (2) amended definitions; (3) product classes; (4) scaling to product classes not analyzed; (5) screening of design options; (6) lamp operating hours; (7) energy consumption of GSFL; (8) LCC calculation; (9) installation costs; (10) base-case market-share matrices; (11) shipment forecasts; (12) base-case and standards-case forecasted efficiencies; (13) trial standard levels; and (14) period for lamp production equipment conversion. 73 FR 13620, 13686–88 (March 13, 2008). In addition, subsequent to the public meeting and the close of the ANOPR comment period, DOE and the National Electrical Manufacturers Association (NEMA) met on June 26, 2008 at NEMA's request to discuss appropriate standards for high correlated color temperature (CCT) fluorescent lamps. 74 FR 16920, 16926 (April 13, 2009). DOE addressed in detail the comments it received in response to the ANOPR, including NEMA's presentation at the June 2008 meeting, in the April 2009 NOPR.

In the April 2009 NOPR, DOE proposed amended and new energy conservation standards for GSFL and IRL. In conjunction with the NOPR, DOE also published on its Web site the complete TSD for the proposed rule, which incorporated the final analyses DOE conducted and technical documentation for each analysis. The TSD included the engineering analysis spreadsheets, the LCC spreadsheet, the national impact analysis spreadsheet, and the MIA spreadsheet-all of which are available on DOE's Web site.[3] The proposed standards were as shown in Table II.1 and Table II.2, as presented in the April 2009 NOPR. 74 FR 16920, 17027 (April 13, 2009).

TABLE II.1—PROPOSED GSFL STANDARD LEVELS IN APRIL 2009 NOPR

Lamp type	Correlated color temperature	Proposed level (lm/W)
4-Foot Medium Bipin	≤4,500K	84
	>4,500K	78

[2] Public Law 110–140 (enacted Dec. 19, 2007).

[3] The Web site address for all the spreadsheets developed for this rulemaking proceeding are available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/incandescent_lamps.html.*

TABLE II.1—PROPOSED GSFL STANDARD LEVELS IN APRIL 2009 NOPR—Continued

Lamp type	Correlated color temperature	Proposed level (lm/W)
2-Foot U-Shaped	≤4,500K	78
	>4,500K	73
8-Foot Slimline	≤4,500K	95
	>4,500K	91
8-Foot High Output	≤4,500K	88
	>4,500K	84
4-Foot Miniature Bipin Standard Output	≤4,500K	103
	>4,500K	97
4-Foot Miniature Bipin High Output	≤4,500K	89
	>4,500K	85

* For these product classes, EPCA has different efficacy standards for lamps with wattages less than 35W and greater than or equal to 35W.

TABLE II.2—PROPOSED IRL STANDARDS IN APRIL 2009 NOPR

Lamp type	Diameter (inches)	Voltage	Proposed level (lm/W)
Standard Spectrum 40W–205W	>2.5	≤125	$7.1P^{0.27}$
		<125	$6.2P^{0.27}$
	≤2.5	≥125	$6.3P^{0.27}$
		<125	$5.5P^{0.27}$
Modified Spectrum 40W–205W	>2.5	≥125	$5.8P^{0.27}$
		<125	$5.0P^{0.27}$
	≤2.5	≥125	$5.1P^{0.27}$
		<125	$4.4P^{0.27}$

Note: P is equal to the rated lamp wattage, in watts.

DOE held a public meeting in Washington, DC, on February 3, 2009, to hear oral comments on and solicit information relevant to the proposed rule. At the public meeting and in the April 2009 NOPR, DOE invited comment in particular on the following issues: (1) The scope of covered products; (2) the amended definition of ''colored fluorescent lamp''; (3) product classes for IRL; (4) product classes for T5 lamps; (5) the 4-foot MBP residential engineering analysis; (6) performance characteristics of model lamps used in the engineering analysis; (7) the efficacy levels for IRL; (8) the efficacy levels for GSFL; (9) scaling to product classes not analyzed; (10) ballast operating hours in all sectors and GSFL operating hours in the residential sector; (11) growth rates and market penetration in the shipments analysis; (12) base-case and standards-case market-share matrices; (13) the manufacturer impact analysis; (14) the determination of environmental impacts; (15) the selected trial standard levels; (16) the proposed standard levels; (17) alternative scenarios to achieve greater energy savings for GSFL; (18) other technology pathways to meet IRL TSL5. 74 FR 16920, 17025–26 (April 13, 2009). The April 2009 NOPR also included additional background information on the history of this rulemaking. 74 FR 16920, 16925–26 (April 13, 2009).

III. Issues Affecting the Scope of This Rulemaking

A. Additional General Service Fluorescent Lamps for Which DOE Is Adopting Standards

1. Scope of EPCA Requirement That DOE Consider Standards for Additional Lamps

As discussed above, EPCA established energy conservation standards for certain general service fluorescent lamps (42 U.S.C. 6295(i)(1)) and directed the Secretary to ''initiate a rulemaking procedure to determine if the standards in effect for fluorescent lamps * * * should be amended so that they would be applicable to additional general service fluorescent [lamps] * * *.'' (42 U.S.C. 6295(i)(5)) Thus, EPCA directs DOE to consider whether to adopt energy efficacy standards for additional GSFL beyond those already covered by standards prescribed in the statute.

However, as set forth in greater detail in the March 2008 ANOPR and the April 2009 NOPR, although many GSFL not currently subject to standards are potential candidates for coverage, it could be argued that EPCA's definitions of ''general service fluorescent lamp'' and ''fluorescent lamp'' conflict with (and negate) the requirement of 42 U.S.C. 6295(i)(5) that DOE consider standards for additional GSFL. 73 FR 13620, 13628–29 (March 13, 2008); 74 FR 16920, 16920, 16926–27 (April 13, 2009). Specifically, EPCA defines ''general service fluorescent lamp'' as ''fluorescent lamps'' that can satisfy the majority of fluorescent lamp applications and that are not designed and marketed for certain specified, nongeneral lighting applications. (42 U.S.C. 6291(30)(B)) Furthermore, EPCA defines ''fluorescent lamp'' as ''a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultraviolet energy generated by the mercury discharge into light,'' *and* as including ''only'' the four enumerated types of fluorescent lamps for which EPCA already prescribes standards. (42 U.S.C. 6291(30)(A); 42 U.S.C. 6295(i)(1)(B)) Thus, to construe ''general service fluorescent lamp'' in 42 U.S.C. 6295(i)(5) as being limited by all elements of the EPCA definition of ''fluorescent lamp,'' would mean there are no GSFL that are not already subject to standards, and hence, there would be no ''additional'' GSFL for which DOE could consider standards. Such an interpretation would conflict with the directive in 42 U.S.C. 6295(i)(5) that DOE consider standards for ''additional'' GSFL, thereby rendering that provision a nullity.

For the reasons below, DOE has concluded that the term ''additional general service fluorescent lamps'' in 42 U.S.C. 6295(i)(5) should be construed as

not being limited to the four enumerated lamp types specified in the EPCA definition of ''fluorescent lamp,'' thereby giving effect to the directive in 42 U.S.C. 6295(i)(5) that DOE consider standards for additional GSFL. First, DOE added this directive to EPCA at the same time it added the definitions for ''general service fluorescent lamps'' and ''fluorescent lamps,'' as part of the Energy Policy Act of 1992 (EPACT 1992; Pub. L. 102–486). DOE does not believe Congress would intentionally insert a legislative provision that, when read in conjunction with simultaneously added definitions, amounts to a nullity. Second, reading the definition of ''fluorescent lamp'' to preclude consideration of standards for additional GSFL would run counter to the energy-saving purposes of EPCA. It is reasonable to assume that, when Congress incorporated this directive into EPCA, it sought to have DOE consider whether standards would be warranted for generally available products for which EPCA did not prescribe standards. Also, it is assumed that Congress would not have intended for DOE to limit itself to consideration of energy conservation standards only for those products utilizing technologies available in 1992, but instead, it would seek to cast a broader net that would achieve energy efficiency improvements in lighting products incorporating newer technologies.

In addition, DOE understands that the industry routinely refers to ''fluorescent lamps'' as including products in addition to the four enumerated in the statutory definition of that term. In fact, in the March 2008 ANOPR, DOE presented its plan for including additional GSFL for coverage, and DOE did not receive adverse comment. 73 FR 13620, 13628–29 (March 13, 2008)

For these reasons, and as further explained in the March 2008 ANOPR, 73 FR 13620, 13629 (March 13, 2008), and in the April 2009 NOPR, 74 FR 16920, 16926–27 (April 13, 2009), DOE has concluded that, in addressing general service fluorescent lamps in 42 U.S.C. 6295(i)(5), Congress intended to refer to ''fluorescent lamps'' in a broader, more generic sense than as expressed in the EPCA definition for that term. Consequently, as set forth in the April 2009 NOPR, 74 FR 16920, 16927 (April 13, 2009), DOE views ''additional'' GSFL, as that term is used in 42 U.S.C. 6295(i)(5), as lamps that: (1) Meet the technical portion of the statutory definition of ''fluorescent lamp'' (*i.e.*, a low-pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultraviolet energy generated by the mercury discharge into light) (42 U.S.C. 6291(30)(A)) without restriction to the four lamp types specified in that definition; (2) can be used to satisfy the majority of fluorescent lighting applications (42 U.S.C. 6291(30)(B)); (3) are not within the exclusions from the definition of GSFL specified in 42 U.S.C. 6291(30)(B); and (4) are ones for which EPCA does not prescribe standards. Such an interpretation does not alter the existing statutory provision or standards for ''fluorescent lamps,'' but it does permit DOE to give effect to section 6295(i)(5) of EPCA by adopting energy conservation standards for a wide variety of GSFL that are not currently covered by standards. DOE notes that it received no adverse comments on this interpretation in response to the April 2009 NOPR.

2. Determination of the Additional Lamps to Which Standards Will Apply

To determine the additional GSFL to which energy conservation standards should apply, DOE first comprehensively reviewed the fluorescent lighting market and identified the following types of lamps as ''additional'' GSFL for consideration pursuant to 42 U.S.C. 6295 (i)(5), based on the four criteria above:

- 4-foot, medium bipin (MBP), straight-shaped lamps, rated wattage of less than 28W;
- 2-foot, medium bipin, U-shaped lamps, rated wattage of less than 28W;
- 8-foot, recessed double contact (RDC), rapid start, high-output (HO) lamps not defined in ANSI Standard C78.1–1991 [4] or with current other than 0.800 nominal amperes;
- 8-foot single pin (SP), instant start, slimline lamps with a rated wattage greater than or equal to 52, not defined in ANSI Standard C78.3–1991; [5]
- Very high output (VHO) straight-shaped lamps;
- T5 [6] miniature bipin (miniBP) straight-shaped lamps;
- Additional straight-shaped and U-shaped lamps other than those listed above (*e.g.*, alternate lengths, diameters, or bases); and
- Additional fluorescent lamps with alternate shapes (*e.g.*, circline lamps and pin-based compact fluorescent lamps (CFL)).

73 FR 13620, 13630 (March 13, 2008); 74 FR 16920, 16927–28 (April 13, 2009).

For each of these categories of GSFL, DOE assessed whether standards had the potential to result in energy savings. For each category for which it appeared that standards could save significant amounts of energy, DOE then performed a preliminary analysis of whether potential standards appeared to be technologically feasible and economically justified. Finally, for GSFL that met that test, DOE did an in-depth analysis of whether, and at what levels, standards would be warranted under the EPCA criteria in 42 U.S.C. 6295(o), pertaining to energy savings, technological feasibility, economic justification, and certain other factors. Based on this analysis, as summarized in the April 2009 NOPR, DOE proposed to cover the following additional GSFL:

- 2-foot, medium bipin U-shaped lamps with a rated wattage greater than or equal to 25 and less than 28;
- 4-foot, medium bipin lamps with a rated wattage greater than or equal to 25 and less than 28;
- 4-foot T5, miniature bipin, straight-shaped, standard output lamps with rated wattage greater than or equal to 26;
- 4-foot T5, miniature bipin, straight-shaped, high output lamps with rated wattage ≥51;
- 8-foot recessed double contact, rapid start, HO lamps other than those defined in ANSI Standard C78.1–1991;
- 8-foot recessed double contact, rapid start, HO lamps (other than 0.800 nominal amperes) defined in ANSI Standard C78.1–1991; and
- 8-foot single pin instant start slimline lamps, with a rated wattage greater than or equal to 52, not defined in ANSI Standard C78.3–1991

74 FR 16920, 16930 (April 13, 2009).

DOE received several comments regarding the additional GSFL proposed for coverage. In terms of methodology, the Green Lighting Campaign questioned the criteria DOE used in determining whether to include additional fluorescent lamps in coverage. Specifically, the Green Lighting Campaign argued that just because a product is low-volume, and, therefore, does not represent significant energy savings, does not indicate that it should not be subject to standards. According to the commenter, many low-volume products are some of the least-efficient products on the market. (Green Lighting Campaign, No. 74 at p. 3)

In response, as described in more detail for each lamp described below for which coverage was not extended, DOE concluded that coverage was inappropriate given the small market share of these lamps. DOE emphasizes that it will vigilantly monitor the market

[4] Titled ''for Fluorescent Lamps—Rapid-Start Types—Dimensional and Electrical Characteristics.''

[5] Titled ''for Fluorescent Lamps—Instant-Start and Cold-Cathode Types—Dimensional and Electrical Characteristics''

[6] T5, T8, T10, and T12 are nomenclature used to refer to tubular fluorescent lamps with diameters of 0.625, 1, 1.25, and 1.5 inches respectively.

shares and other relevant information for these lamps and consider whether to extend coverage in a future rulemaking.

NEMA and EEI agreed with the scope of coverage proposed in the April 2009 NOPR. (NEMA, Public Meeting Transcript, No. 38.4 at p. 43; EEI, No. 45 at p. 3) However, the Green Lighting Campaign disagreed with DOE's proposed scope of coverage, expressing concern that DOE's proposed standards in the April 2009 NOPR would allow a significant amount of outdated lighting equipment to be sold in the U.S. even though more efficient replacement technologies exist. Specifically, the Green Lighting Campaign requested that two-pin compact fluorescent lamps, high-intensity discharge (HID) lamps, ballasts, luminaires, and fluorescent lamps of other shapes and sizes be included in coverage. (Green Lighting Campaign, No. 74 at pp. 1–4)

In response, DOE considered two-pin compact fluorescent lamps and fluorescent lamps of other shapes and sizes for coverage but concluded that they did not meet the statutory criteria defined by EPCA, because these lamps represent relatively small market shares and do not possess the ability to serve as substitutes for most covered GSFL. See section III.A.2.g for more details. Additionally, this rulemaking only amends standards for GSFL and IRL, as described in section III. DOE is addressing standards for ballasts and HID lamps in separate rulemakings, and DOE currently does not have the authority to set energy conservation standards for luminaires. Please consult the Web site of DOE's Appliances and Commercial Equipment Standards Program for further detail.[7]

Earthjustice and the Green Lighting Campaign disagreed with DOE's proposed covered wattage ranges. In the April 2009 NOPR, DOE determined the wattage range for covered products based on commercially-available products. 74 FR 16920, 16929–30 (April 13, 2009). This approach allowed DOE to confirm that an energy conservation standard would be technologically feasible and economically justified for any covered product. In comments on the March 2008 ANOPR, stakeholders stated that instead of determining a covered wattage range based on commercially-available products, DOE should substantially lower covered wattage ranges and use narrowly-drawn exemptions for those products that did not meet the EPCA criteria for inclusion as a covered product. 74 FR 16920, 16929–30 (April 13, 2009). The stakeholders believed that this approach ensured that energy conservation standards would achieve largest potential energy savings. DOE responded in the April 2009 NOPR and agreed that current covered wattage ranges should be extended when commercially-available product exists, but disagreed that they should be extended when no products are available. DOE is required to consider energy conservation standards that are technologically feasible. If a lower wattage lamp does not yet exist, DOE cannot confirm that it would be technologically feasible or economically justified for such a lamp to meet a set energy conservation standard. Furthermore, DOE encourages the introduction of lamps at lower wattages. Thus, DOE decided to only lower the wattage range of a covered product if a commercially available product existed at a lower wattage. 74 FR 16920, 16929–30 (April 13, 2009).

In commenting on the April 2009 NOPR, Earthjustice again disagreed with DOE's approach and urged DOE to be proactive in extending the standards' covered wattage range so as to eliminate potential loopholes. Earthjustice argued that DOE should cover all wattages of the designated product classes that are lower than the existing covered wattage range unless DOE can prove that standards are not technologically feasible or economically justified. In not doing so, Earthjustice claims DOE is not meeting its obligations under EPCA to consider standards for all GSFL, including those that do not currently exist, but might be popular at the time the standard takes effect. (Earthjustice, No. 60 at p. 4) The Green Lighting Campaign asserted that the covered wattage ranges proposed in the April 2009 NOPR ''seem arbitrary and unjustified,'' commenting that the European Union's (EU) energy efficiency standards for lighting cover a much larger range of rated wattages. (Green Lighting Campaign, No. 74 at pp. 2–3)

In seeking to advance the energy-saving goals of EPCA, DOE understands stakeholders' concerns that new products may emerge that are outside of the covered wattage range. However, in setting up the statutory structure, Congress was very careful to ensure that any standards set would be based upon the best available data, particularly in terms of what standards would be technologically feasible and economically justified. Furthermore, given the anti-backsliding provision of 42 U.S.C. 6295(o)(1), DOE must exercise great care so as to set an appropriate standard in the first instance. Contrary to EPCA's direction that DOE set standards for products that the data show to be technologically feasible and economically justified, Earthjustice would have DOE broaden coverage without data, unless DOE can prove a negative (*i.e.*, that such standards are not economically feasible and economically justified). DOE concludes that such an approach would violate the statute. Accordingly, DOE maintains that it is inappropriate to lower the covered wattage range to include products that do not exist. Without knowing the performance characteristics of a lamp, DOE cannot know how energy conservation standards will affect it. It is not possible for DOE to set standards for lower-wattage lamps that currently do not exist because DOE cannot prove that standards for such lamps are technologically feasible and economically justified. Therefore, DOE maintains the covered wattage range proposed in the April 2009 NOPR in this final rule. It is further noted that if low-wattage products do subsequently enter the market, DOE would address the appropriateness of energy conservation standards for such products in considering periodic amendments to the GSFL and IRL standards pursuant to 42 U.S.C. 6295(m).

In response to comments on the EU's lighting efficiency standards, DOE notes that these standards are not directly comparable, because they are applied to a larger scope of products than what is covered in this rulemaking. Thus, the cited EU standards encompass a broader range of covered wattages (*i.e.*, include lower wattage levels) than those proposed by DOE, because the EU standard covers lamps with shorter lengths.

ACEEE and the CA Stakeholders suggested that DOE should lower the wattage range of covered products by one watt in order to account for imprecision in how lamps are rated. (ACEEE, Public Meeting Transcript, No. 38.4 at p. 44–45; CA Stakeholders, No. 63 at p. 11) ACEEE argued that because a lamp's rated wattage and its ''actual'' wattage often differ, lowering the wattage range would prevent manufacturers from circumventing standards by rating lamps at artificially low wattages. For example, a manufacturer could rerate a 25 watt lamp as a 24 watt lamp, which would then not be covered by standards.

While DOE understands the stakeholders' concerns, DOE believes that the definition of ''rated wattage'' sufficiently addresses the issue of potential circumvention. As discussed in further detail in section III.C.1 below,

[7] Available at: *http://www1.eere.energy.gov/buildings/appliance_standards/index.html.*

for lamps currently commercially-available and listed in ANSI C78.81–2005 or ANSI C78.901–2005, ''rated wattage'' (as defined in amended 10 CFR 430.2) is specified for each lamp on its corresponding datasheet in the same industry standard. Therefore, for these lamps, manufacturers may not arbitrarily lower the rated wattage of lamps listed in the ANSI standards. However, due to the emergence of new products on the market after publication of the ANSI standards, not all currently commercially-available lamps are listed in ANSI C78.81–2005 or ANSI C78.901–2005. For lamps not listed in either standard, the rated wattage corresponds to the wattage measured when operating the lamp on an appropriate ballast, as specified by part 1(iii) of the revised definition of ''rated wattage.'' In such a case, the ''actual'' wattage would be equivalent to the rated wattage, thereby preventing circumvention of the standard. Thus, for all covered lamps, DOE believes that the definition of ''rated wattage'' adopted in this final rule prevents manufacturers from artificially raising or lowering the rated wattage of a lamp, thereby addressing any potential loopholes.

The following sections discuss each additional GSFL category DOE considered throughout this rulemaking and summarize the analysis performed to determine to which lamps DOE should extend coverage.

a. Four-Foot Medium Bipin Lamps

DOE found that there are no 4-foot medium bipin lamps with a rated wattage below 25W currently on the market, but that manufacturers do market and sell 25W 4-foot medium bipin T8 fluorescent lamps as replacements for higher-wattage 4-foot bipin T8 lamps. Thus, DOE initially concluded that standards for these lamps that are 25W or higher, but less than 28W, would mitigate the risk of unregulated 25W lamps becoming a loophole, and would maximize potential energy savings. In addition, because the technology and incremental costs associated with increased efficacy of 25W lamps are similar to their already regulated 28W counterparts, DOE tentatively concluded that standards for these lamps would be technologically feasible and economically justified. 73 FR 13620, 13630 (March 13, 2008) and 74 FR 16920, 16928 (April 13, 2009). As explained in the April 2009 NOPR and as set forth below in section VII, DOE has now determined that standards for 4-foot medium bipin lamps with a rated wattage at or above 25W, and below 28W, would save significant amounts of energy and are technologically feasible and economically justified, and includes such standards in today's rule. DOE has not, however, pursued standards for 4-foot medium bipin lamps with a rated wattage below 25W. The lack of existence of such lamps precludes DOE from assessing whether standards for them are technologically feasible and economically justified, and the inability to make such an assessment could also result in the adoption of standards that would reduce the utility of such a product or even preclude its development. 74 FR 16920, 16929–30 (April 13, 2009). Therefore, in this final rule, DOE extends coverage to 4-foot medium bipin lamps with a rated wattage greater than or equal to 25W and less than 28W.

b. Two-Foot Medium Bipin, U-Shaped Lamps

DOE initially decided not to consider standards for 2-foot U-shaped lamps less than 28W, based on its understanding that no such products are commercially available. NEMA provided information, however, that such lamps have been introduced at 25W. Therefore, consistent with its approach just described for 4-foot medium bipin lamps, DOE evaluated for standards 2-foot U-shaped lamps of 25W or more, but less than 28W. 74 FR 16920, 16929–30 (April 13, 2009). As set forth below in section VII, DOE has now determined that standards for these lamps would save significant amounts of energy and are technologically feasible and economically justified, and includes such standards in today's rule. In addition, DOE has not pursued standards for 2-foot U-shaped lamps with a rated wattage below 25W, for the same reasons that it has declined to pursue standards for 4-foot medium bipin lamps with a rated wattage below 25W. Therefore, in this final rule, DOE extends coverage to 2-foot U-shaped lamps with a rated wattage greater than or equal to 25W and less than 28W.

c. Eight-Foot Recessed, Double-Contact Lamps

As indicated above, DOE examined 8-foot recessed double-contact (RDC) rapid-start HO lamps, including those not defined in ANSI Standard C78.1–1991 as well as those defined in ANSI Standard C78.1–1991, but with other than 0.800 nominal amperes. These are T8 8-foot lamps, and neither is currently subject to standards. DOE concluded that these lamps serve or could serve as substitutes for GSFL currently subject to standards, and, therefore, coverage of these lamps would maximize energy savings from standards. DOE also tentatively concluded that energy conservation standards for these T8 lamps would be: (1) Technologically feasible because they use technologies similar to the technologies used by their already-regulated T12 counterparts; and (2) economically justified because preliminary analysis indicated such standards would result in substantial economic savings. 73 FR 13620, 13630–31 (March 13, 2008) and 74 FR 16920, 16928 (April 13, 2009). As set forth below in section VII, DOE has now determined that standards for these lamps would save significant amounts of energy and are technologically feasible and economically justified, and includes such standards in today's rule. Therefore, in this final rule, DOE extends coverage to the following 8-foot recessed double contact, rapid start, HO lamps: (1) Ones other than those defined in ANSI Standard C78.1–1991; and (2) those defined in ANSI Standard C78.1–1991 with other than 0.800 nominal amperes.

d. Eight-Foot Single Pin Slimline Lamps

As with 8-foot recessed double contact, rapid start, HO lamps, DOE concluded that 8-foot, single pin, instant start, slimline lamps not included in ANSI Standard C78.3–1991, with a rated wattage greater than or equal to 52W, could serve as substitutes for GSFL currently subject to standards. Therefore, DOE tentatively concluded that regulation of these lamps has the potential to achieve substantial energy savings. DOE's preliminary analysis also indicated that energy conservation standards for these 8-foot single pin lamps would be: (1) Technologically feasible because they use technologies similar to the technologies used by their already-regulated T12 counterparts; and (2) economically justified because preliminary analysis indicated such standards would result in substantial economic savings. 73 FR 13620, 13631–32 (March 13, 2008) and 74 FR 16920, 16929 (April 13, 2009). As set forth below in section VII, DOE has now determined that standards for these lamps would save significant amounts of energy and are technologically feasible and economically justified, and includes such standards in today's rule. Therefore, in this final rule, DOE extends coverage to 8-foot single pin instant start slimline lamps, with a rated wattage greater than or equal to 52W that are not defined in ANSI Standard C78.3–1991.

e. Very High Output Straight-Shaped Lamps

Although individual VHO T12 lamps consume relatively large amounts of

energy, they are commonly used in outdoor applications where high-intensity discharge (HID) lamps are rapidly gaining market share, and shipments of VHO lamps are declining rapidly. Therefore, the total energy savings that would result from standards for these lamps would be small and would likely decrease over time. In response to the April 2009 NOPR, DOE received no adverse comment regarding its decision to not cover VHO lamps. Accordingly, DOE has not pursued standards for VHO lamps and does not extend them coverage in this final rule. 73 FR 13620, 13632 (March 13, 2008) and 74 FR 16920, 16928 (April 13, 2009). As emphasized above, DOE will vigilantly monitor the market shares and other relevant information for these lamps and consider whether to extend coverage in a future rulemaking.

f. T5 Lamps

DOE initially decided not to consider standards for T5 lamps because it believed that standards for these lamps would have limited potential to result in energy savings. First, these lamps have a relatively small market share. Second, although T5 lamps can substitute for T8 or T12 lamps, T5 lamps tend to have higher efficacies than T8s or T12s. Therefore, DOE inferred that a lack of standards for T5 lamps would be unlikely to undermine energy savings resulting from a T12 and T8 standard, even if the standard caused increased sales of T5 systems. 73 FR 13620, 13632 (March 13, 2008).

However, after receiving comments on this issue in response to the March 2008 ANOPR, including comments advocating energy conservation standards for T5 lamps, DOE decided it should reconsider whether such standards are warranted. Specifically, DOE concluded that, absent standards for T5 lamps, less-efficient T5 lamps could enter the market and be substituted for T8 and T12 lamps that are subject to standards. Thus, a lack of standards for T5 lamps could potentially reduce the energy savings that could result from the standards for T8 and T12 lamps. Accordingly, in the NOPR, DOE tentatively concluded that regulation of T5 lamps has the potential to achieve substantial energy savings. Furthermore, DOE research indicated that: (1) The primary driver of T5 market share growth is substitution for currently regulated 4-foot MBP lamps; (2) standard-output (approximately 28W) and high-output (approximately 54W) lamps are the highest volume T5 miniature bipin lamps; and (3) reduced-wattage versions of these lamps (26W and 51W, respectively) are available. Therefore, DOE evaluated for standards 4-foot nominal, straight-shaped, T5 miniature bipin standard output lamps with rated wattages ≥26W and 4-foot nominal, straight-shaped, T5 miniature bipin high output lamps with rated wattages ≥51W, as they present the greatest potential for energy savings. DOE also tentatively concluded that energy conservation standards for these T5 lamps would be: (1) Technologically feasible because higher-efficacy versions of some of these lamps are already present in the market; and (2) economically justified because preliminary analysis indicated such standards would result in substantial economic savings. 74 FR 16920, 16929 (April 13, 2009). Both NEMA and ACEEE supported the extension of coverage to T5 lamps. (NEMA, Public Meeting Transcript, No. 38.4 at p. 43; ACEEE, Public Meeting Transcript, No. 38.4 at p. 44; NEMA, No. 81 at p. 7)

Since the publication of the NOPR, DOE has learned that a 49W T5 miniature bipin high-output lamp has been introduced to the market. As this lamp is very similar to a 51W T5 miniature bipin high-output lamp, DOE concludes that standards for these lamps would be technologically feasible and economically justified for the reasons listed above. Therefore, as set forth in more detail in section VII, DOE has determined that standards for T5 lamps would save significant amounts of energy and are technologically feasible and economically justified. Thus, in this final rule, DOE extends coverage to 4-foot T5, miniature bipin, straight-shaped, standard output lamps with rated wattage greater than or equal to 26W and 4-foot T5, miniature bipin, straight-shaped, high output lamps with rated wattage greater than or equal to 49W.

g. Various Other Fluorescent Lamps

In addition to the GSFL already covered by standards and those just discussed, there exist straight-shaped and U-shaped fluorescent lamps that have, for example, alternate lengths, diameters, or bases, as well as fluorescent lamps with alternative shapes (*e.g.*, circline lamps and pin-based compact fluorescent lamps (CFL)). In this rulemaking, DOE has not pursued standards for these additional fluorescent lamps. The GSFL already covered and those DOE included in this rulemaking represent a significant majority of the GSFL market, and, thus, the bulk of the potential energy savings from amended or new standards. Furthermore, there is limited potential for lamps with miscellaneous lengths and bases to grow in market share, given the constraints of fixture lengths and socket compatibility. 73 FR 13620, 13632 (March 13, 2008) and 74 FR 16920, 16928 (April 13, 2009). Given the relatively low shipments and limited potential for growth in shipments, DOE does not extend coverage to GSFL with alternate lengths, diameters, bases, or shapes. DOE again emphasizes that it will vigilantly monitor the market shares and other relevant information for these lamps and consider whether to extend coverage in a future rulemaking.

Magnaray, a luminaire manufacturer, commented that the amended standards should not eliminate existing ''twin T5'' fluorescent lamps from the market. Magnaray stated that ''twin T5'' lamps have demonstrated significant energy savings relative to their replacements. The luminaire manufacturer further requested that DOE recommend these lamps for use in all outdoor lighting applications. (Magnaray, No. 58 at p. 1) DOE research indicates that ''twin T5'' lamps are actually high-lumen-output single-ended twin-tube T5 pin-based CFL. In general, these lamps are offered with wattages between 18W and 80W, CCTs between 3000K and 5000K, lengths between 9 and 22.6 inches, and CRIs of 82. As discussed above, based on their relatively low market-share and the low potential energy savings associated with their regulation, DOE is not extending coverage to pin-based CFL. DOE reiterates that it will vigilantly monitor the market shares and other relevant information for these lamps and consider whether to extend coverage in a future rulemaking. In addition, it should be noted that DOE does not endorse particular products or recommend that consumers adopt particular technologies in the energy conservation standards rulemaking.

3. Summary of GSFL for Which DOE Has Adopted Standards

DOE has determined that energy conservation standards are technologically feasible and economically justified, and would result in significant energy savings, for all of the ''additional'' GSFL for which DOE proposed standards in the April 2009 NOPR. Therefore, DOE is adopting standards today for the following additional GSFL:

- 2-foot, medium bipin U-shaped lamps with a rated wattage greater than or equal to 25 and less than 28;
- 4-foot, medium bipin lamps with a rated wattage greater than or equal to 25 and less than 28;
- 4-foot T5, miniature bipin, straight-shaped, standard output lamps with rated wattage greater than or equal to 26;

• 4-foot T5, miniature bipin, straight-shaped, high output lamps with rated wattage greater than or equal to 49;
• 8-foot recessed double contact, rapid start, HO lamps other than those defined in ANSI Standard C78.1–1991;
• 8-foot recessed double contact, rapid start, HO lamps (other than 0.800 nominal amperes) defined in ANSI Standard C78.1–1991; and
• 8-foot single pin instant start slimline lamps, with a rated wattage greater than or equal to 52, not defined in ANSI Standard C78.3–1991.

B. Incandescent Reflector Lamp Scope of Coverage

The April 2009 NOPR proposed amended energy conservations standards for incandescent reflector lamps with a rated wattage from 40W to 205W, other than those exempted from standards under 42 U.S.C. 6295(i)(1)(C). 74 FR 16920, 16924–25, 16930–31, 17017–18 (April 13, 2009) In response to the April 2009 NOPR, DOE received several comments regarding the proposed incandescent reflector lamp scope coverage. These comments are discussed below.

1. Covered Wattage Range

In response to the April 2009 NOPR, the Edison Electric Institute (EEI) expressed concern that the scope of coverage for IRL is too limited, specifically with regard to the proposed covered wattage range (*i.e.*, 40W–205W). EEI suggested that manufacturers could easily produce lamps at 39W or 206W to circumvent energy conservation standards. Because IRL exist in the market at wattages as low as 35W and as high as 500W, EEI recommended that the covered wattage range for IRL be extended to include lamps as low as 20W and as high as 505W. (EEI, No. 45 at p. 2)

In amending energy conservation standards for IRL, DOE is limited to the definition prescribed by EISA 2007, which defines IRL as a lamp that ''has a rated wattage that is 40 watts or higher.'' (42 U.S.C. 6291(30)(C), (C)(ii), and (F)) Given this definition, DOE does not have the authority to decrease the lower wattage limit of covered IRL below 40W. DOE does, however, have the authority to alter the upper limit of the wattage range for covered IRL. In response to EEI's comment, DOE analyzed commercially-available product in manufacturer catalogs to assess the prevalence of products with wattages greater than 205W. Based on this research, DOE believes that IRL with rated wattages greater than 205W comprise a very small portion of the market and, therefore, do not represent substantial potential energy savings. For these reasons, DOE has decided, in this final rule, to adopt standards for IRL with a rated wattage greater than or equal to 40W and less than or equal to 205W.

2. Exempted Incandescent Reflector Lamps

As discussed in more detail in the April 2009 NOPR, 74 FR 16920, 16930 (April 13, 2009), section 332(b) of EISA 2007 amended EPCA to expand its definition of ''incandescent reflector lamp'' to include lamps with a diameter between 2.25 and 2.75 inches, as well as ER, BR, BPAR, or similar bulb shapes (42 U.S.C. 6291(30)(C)(ii)) and also to exempt certain of these lamps from EPCA's standards for IRL (42 U.S.C. 6295(i)(1)(C)). As discussed in section II.B.2, DOE issued and posted on its Web site the January 2009 NOPR in which DOE adhered to its conclusion that these exemptions, read in conjunction with other language in 42 U.S.C. 6295(i)(1)(C) and 42 U.S.C. 6295(i)(3), precluded DOE from adopting energy conservation standards for lamps covered by the exemptions. DOE subsequently held a public meeting where stakeholders commented on the contents of the January 2009 NOPR.

At the February 3, 2009 NOPR public meeting, NEMA stated its agreement with DOE's interpretation of the statute regarding the exempted IRL. (NEMA, Public Meeting Transcript, No. 38.4 at p. 323) However, stakeholders presented comments disagreeing with DOE's conclusion and urging DOE to set standards for the exempted lamps. Several commenters stated that exempted lamps comprise a substantial portion of the market and, therefore, represent significant potential energy savings. (ASAP, Public Meeting Transcript, No. 38.4 at p. 27–28; EEI, No. 45 at p. 3; Woolsey, No. 46 at p. 1) Furthermore, ASAP argued that DOE's interpretation that these lamps are exempt from DOE regulation, does not accurately reflect what Congress intended when making these lamps covered products in EISA 2007. According to the commenter, because States are preempted from setting standards for covered products, these exempted IRL would remain beyond the reach of any energy conservation standards. Several stakeholders urged DOE to draft and publish a supplementary NOPR to address the exempted ER and BR lamps. (ASAP, Public Meeting Transcript, No. 38.4 at pp. 33, 52–53, 322–323; Woolsey, No. 46 at p. 2)

After carefully considering the testimony of the February 3, 2009 NOPR public meeting and reexamining the ANOPR public comments on this issue, DOE has reexamined its authority under EPCA to amend standards for ER, BR, and small-diameter lamps and concluded that its earlier view may have been in error. As discussed in more detail in the April 2009 NOPR, DOE is reconsidering whether, under 42 U.S.C 6295(i)(3), the directive to amend the standards in paragraph (1) encompasses both the statutory levels and the exemptions to those standards. Regardless of the outcome of that decision, DOE has not considered such lamps as part of the present rulemaking because it had not conducted the requisite analyses to adopt appropriate standard levels. At the same time, DOE did not wish to delay the present rulemaking (and the accompanying energy savings to the Nation) for the sole reason of considering this subset of ER, BR, and small-diameter lamps. Therefore, as explained in the April 2009 NOPR, DOE has decided to proceed with setting energy conservation standards for the lamps that are the subject of the present rulemaking and to commence a separate rulemaking for ER, BR, and small-diameter lamps. 74 FR 16920, 16930–31 (April 13, 2009).

Following the publication of the April 2009 NOPR, several stakeholders supported DOE's decision to address the exempted lamps in a separate rulemaking and urged DOE to act quickly to set these new standards. (Earthjustice, No. 60 at p. 2; NEEP, No. 61 at p. 5; Joint Comment, No. 62 at pp. 2–3; ACEEE, No. 76 at p. 5; NRDC, No. 82 at p. 4) Commenters encouraged DOE to establish energy conservation standards for the exempted lamps with the same effective date as those adopted in this rulemaking in order to minimize market distortions and potential shifting from regulated products to unregulated products. (EEI, No. 45 at p. 3; NEEP, No. 61 at p. 5; EEI, No. 78 at p. 2) DOE will consider these comments in its separate rulemaking assessing energy conservation standards for the exempted ER, BR, and small diameter lamps.

3. Museum Lighting

DOE received a comment from The J Paul Getty Museum requesting that museum lighting, and particularly art museum lighting, be exempt from standards. The comment stated that HIR lamps do not provide the same quality of light as the halogen lamps that would be eliminated by the proposed standard. (The J Paul Getty Museum, No. 56 at p. 1) In response, DOE is unaware of any

specific light quality of halogen lamps that would necessitate their usage instead of halogen infrared reflector lamps for museum applications. In addition, the commenter did not provide any further details on the unique utility of current lamps in museum settings that could not be provided by substitute lamps that would meet the requirements of the energy conservation standards under consideration. Although the infrared reflector coating causes a reduction in the infrared region of the electromagnetic spectrum, these wavelengths of light are largely invisible to the human eye. Therefore, DOE does not believe that halogen lamps represent a distinct utility. In addition, given the identical nature of halogen PAR lamps used in museum settings and non-museum settings, it would be potentially easy for any consumer to purchase and install a lamp meant for museum use. Accordingly, DOE is concerned that failure to regulate this type of lamp could significantly undermine the energy savings potential of the IRL standard. In light of this concern and the lack of information to substantiate a unique utility of halogen IRL, DOE has decided not to create an exemption from IRL standards for museum lighting.

C. Amended Definitions

1. ''Rated Wattage''

To implement the expanded scope of EPCA's coverage of GSFL and IRL, and of standards adopted for GSIL in EISA 2007, DOE proposed to revise its definitions of ''rated wattage'' and ''colored fluorescent lamp.'' 74 FR 16920, 16931–32 (April 13, 2009). As to ''rated wattage,'' one element of EPCA's definitions for both ''fluorescent lamp'' and ''incandescent reflector lamp'' is a lamp's rated wattage. (42 U.S.C. 6291(30)(A), (C)(ii), and (F)) Also, EPCA prescribes maximum rated wattages as part of its energy conservation standards for GSIL. (42 U.S.C. 6295(i)(1)) Although EPCA does not define the term ''rated wattage,'' DOE's regulations do, but the current DOE definition covers only 4-foot medium bipin T8, T10, and T12 fluorescent lamps. 10 CFR 430.2.

Therefore, DOE proposed a revised and updated definition of ''rated wattage.'' This definition included references to the current versions of applicable ANSI standards, clarified and improved the definition, and applied it to those lamps for which rated wattage is a key characteristic but to which DOE's current definition does not apply. 74 FR 16920, 16931 (April 13, 2009). DOE did not receive any comments in response to this proposed change. However, because ''electrical power'' is appropriately defined in paragraph 2.8 or Appendix R of Subpart B, DOE note that it has decided to replace the term ''wattage'' in parts (1)(ii) and (1)(iii) of the definition of ''rated wattage'' with ''electrical power.'' Therefore, for the reasons explained above and in the April 2009 NOPR, DOE adopts the definition of ''rated wattage'' as set out in the regulatory text of this final rule.

2. ''Colored Fluorescent Lamp''

With respect to the definition of ''colored fluorescent lamp,'' DOE first notes that EPCA defines general service fluorescent lamps as fluorescent lamps ''which can be used to satisfy the majority of fluorescent [lighting] applications,'' but which are not designed and marketed for certain specifically listed ''nongeneral lighting applications,'' including ''colored fluorescent lamps.'' (42 U.S.C. 6291(30)(B)) As with ''rated wattage,'' EPCA does not define the term ''colored fluorescent lamp,'' but DOE's regulations do. The DOE regulations currently define the term as ''a fluorescent lamp designated and marketed as a colored lamp'' and having a CRI less than 40 or a CCT less than 2500 K or greater than 6600 K. 10 CFR 430.2. Because lamps meeting this definition are not GSFL under EPCA, they are not covered by the standards applicable to GSFL.

After becoming aware of a lamp on the European market that is intended for general illumination applications but has a CCT of 17000 K and might meet DOE's definition of ''colored fluorescent lamp,'' DOE became concerned that some new products with general service applications might be excluded from the coverage of standards applicable to GSFL. 73 FR 13620, 13634 (March 13, 2008). To avoid this possibility, DOE considered adding the following phrase to its definition of ''colored fluorescent lamp'': ''* * * and not designed or marketed for general illumination applications.'' *Id.*

Following publication of the March 2008 ANOPR, DOE obtained information indicating that, instead, it should amend the definition of ''colored fluorescent lamp'' both to: (1) Exclude from the definition, and thereby place under energy conservation standards, lamps with CCTs from 6600 K to 7000 K; and (2) include in the definition, and thereby place outside the coverage of standards, *all* lamps with a CCT greater than 7000 K (*i.e.*, regardless of how the lamp is designated and marketed). Although lamps with CCTs greater than 6600 K and less than or equal to 7000 K are not prevalent in the market, such lamps are commercially available and becoming increasingly popular. Furthermore, manufacturers would likely be able to produce a lamp at 7000 K using the same materials as a 6500 K lamp (a commonly sold lamp). Thus, DOE tentatively concluded that covering such lamps would maintain the coverage under DOE's energy conservation standards of GSFL serving general application purposes, and that the technological similarity between 6500 K and 7000 K lamps makes it possible to establish technologically feasible efficacy levels for 7000 K lamps. However, very few lamps with a CCT greater than 7000 K exist in the market, and the inherently ''blue'' color of these high-CCT lamps appears to prevent their widespread adoption as substitutes for standard CCT lamps (*e.g.*, 4100 K). In addition, the materials used in the manufacture of such lamps, as well as the design trade-offs in developing them, would differ from those applicable to current products serving this market. Thus, DOE tentatively concluded that it could not determine whether a particular standard level would be technologically feasible for lamps with a higher CCT, and that these lamps would not be expected to be a potential loophole to standards it was considering in this rulemaking. For these reasons, which DOE discussed in greater detail in the April 2009 NOPR, DOE proposed to modify the definition of ''colored fluorescent lamp'' by raising the upper CCT limit for lamps excluded from that term from 6600 K to 7000 K, and including in that term all lamps (regardless how the lamp is designated and marketed) with a CCT greater than 7000 K. 74 FR 16920, 16931–32 (April 13, 2009).

Both EEI and NEMA agreed with the proposed definition of ''colored fluorescent lamp.'' (EEI, No. 45 at p. 2, NEMA, Public Meeting Transcript, No. 38.4 at p. 46–47; NEMA, No. 81 at p. 7) However, ACEEE pointed out that at an earlier stage of the rulemaking process, NEMA had identified an 8000 K lamp and claimed that lamps at high CCT values were capturing an increasing market share of general service applications. ACEEE argued that, if this is true, lamps with a CCT up through 8000 K should be included in coverage. (ACEEE, Public Meeting Transcript, No. 38.4 at p. 48). NEMA responded that it is not aware of an 8000 K lamp gaining market share in the general service lighting market because such a lamp would be too blue and not suitable for general service applications. (NEMA,

Public Meeting Transcript, No. 38.4 at pp. 49–50)

ACEEE also suggested that DOE should reinsert the phrase ''and not designed or marketed for general illumination applications'' in the definition of ''colored fluorescent lamp'' to ensure that only specialty lamps are excluded from the definition of ''general service fluorescent lamp.'' (ACEEE, Public Meeting Transcript, No. 38.4 at pp. 48–49; ACEEE, No. 76 at p. 4) In response, DOE agrees that the intention of the exemption for colored fluorescent lamps is to exclude only specialty lamps from standards. DOE believes that the amended definition of ''colored fluorescent lamp'' should not become a loophole for fluorescent lamps that are used in general service applications, and, therefore, should be subject to energy conservation standards. However, DOE also maintains that there are enough lamps available with CCTs greater than 7000 K to determine technologically feasible energy conservation standards. In addition, DOE believes that the inherently ''blue'' color of these lamps may prevent widespread adoption as substitutes for standard CCT lamps (*e.g.*, 4100 K).

Therefore, in this final rule, DOE is modifying the definition of ''colored fluorescent lamp'' as follows. DOE has decided to incorporate the phrase ''and not designed or marketed for general illumination applications'' into the definition of ''colored fluorescent lamp.'' This phrase will apply to those lamps with CCTs greater than 7000 K, as well as lamps with a CRI less than 40 and lamps with a CCT under 2500 K. However, because DOE believes that there are insufficient data to determine whether amended standards for lamps with CCTs greater than 7000 K would be technologically feasible, DOE is modifying the range of CCTs for which it is adopting standards. As a result, lamps referred to as possessing high CCTs in this standard-setting rulemaking are now being classified as those with a CCT greater than 4500 K and less than or equal to 7000 K (rather than simply greater than 4500 K).

DOE is implementing these changes in this manner because of the anti-backsliding provision in EPCA. Because lamps with CCTs greater than 7000K that are not designated and marketed as colored lamps are currently subject to energy conservation standards, exempting all lamps with a CCT above 7000 K through inclusion in the definition of ''colored fluorescent lamp'' would prescribe a standard which impermissibly ''decreases the minimum required energy efficiency, of a covered product.'' (42 U.S.C. 6295 (o)(1)) Thus, if lamps with CCTs greater than 7000 K are used in general service applications, they will not be covered by the standards adopted by this final rule, although they will continue to be subject to the existing energy conservation standards (which have not been eliminated, despite being superseded in terms of efficacy levels for most—but not all, as demonstrated here—of those lamps upon the effective date of the updated GSFL standards). In conclusion, DOE adopts the following definition for ''colored fluorescent lamp'' as set out in the regulatory text of this final rule.

D. Off Mode and Standby Mode Energy Consumption Standards

Section 310(3) of EISA 2007 amended EPCA to require energy conservation standards adopted for a covered product after July 1, 2010 to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Although the final rule in this standards rulemaking is scheduled for publication by June 2009 (*i.e.*, before this statutory deadline), DOE nonetheless did a preliminary analysis of the potential for energy savings associated with the regulation of standby mode and off mode energy use in covered lamps. DOE tentatively determined that current technologies for the GSFL and IRL that are the subjects of this rulemaking do not use a standby mode or off mode, so it is neither feasible nor necessary to incorporate energy use in these modes into the energy conservation standards for GSFL and IRL. Therefore, DOE did not propose amendments to the standards to address lamp operation in such modes. 73 FR 13620, 13627 (March 13, 2008); 74 FR 16920, 16932–33 (April 13, 2009). DOE did not receive any comments regarding this subject, so DOE concludes that standby mode and off mode are not applicable to these products. Therefore, in this final rule, DOE is not adopting provisions to address lamp operation in off mode or standby mode as part of the energy conservation standards that are the subject of this rulemaking.

E. Color Rendering Index Standards for General Service Fluorescent Lamps

EPCA specifies minimum levels of both lumens per watt and CRI that GSFL must meet. (42 U.S.C. 6295(i)(1)) However, EPCA authorizes DOE to consider and adopt only energy conservation standards that consist of energy performance requirements. (42 U.S.C. 6291(6)) In the March 2008 ANOPR, commenters suggested that it may be necessary for DOE to amend the existing CRI standards to prevent the possible emergence of loopholes in the product class structure and standards levels. In the April 2009 NOPR, DOE concluded that it does not have the authority to change the CRI standard because CRI is not a measure of energy consumption or efficacy, but rather a measure of the color quality of the light. 74 FR 16920, 16933 (April 13, 2009).

In written comments, Earthjustice argued that DOE has the authority to amend EPCA's Color Rendering Index (CRI) for GSFL, stating that DOE ignored the context of the duties that Congress imposed in 42 U.S.C. § 6295(i)(3). Earthjustice correctly noted that Congress included a table specifying both lamp efficacy and CRI standards for GSFL. (42 U.S.C. 6295(i)(1)(B)). The commenter also correctly stated that Congress provided that all GSFL ''shall meet or exceed the [specified] lamp efficacy and CRI standards'' (42 U.S.C. 6295(i)(1)(B)), and directed DOE to ''determine if the standards in paragraph (1) should be amended.'' (42 U.S.C. 6295(i)(3)). From there, Earthjustice took the position that Congress did not intend to require DOE to assess only the ''energy conservation standards'' established in 42 U.S.C. 6295(i)(1), but instead to review all ''standards'' established in that paragraph, which include both lamp efficacy and CRI standards. (Earthjustice, No. 60 at pp. 3–4) The Green Lighting Campaign also argued that DOE should place restrictions on the CRI of covered GSFL because CRI can be used to enhance a lamp's visual acuity, thereby enabling substitution of lower-wattage lamps in a given lamp application without sacrificing utility. Therefore, the commenter argued that CRI affects energy efficiency and that DOE should screen out lamps with a CRI below 80. (Green Lighting Campaign, No. 74 at p. 2, 4)

Furthermore, Earthjustice stated that the relevant discussion in the preamble of DOE's April 2009 NOPR did not clarify whether DOE believes that amendment of the CRI standards is foreclosed by EPCA's plain language (which Earthjustice disputed for the reasons above), or that is DOE's interpretation of an ''allegedly ambiguous provision'' (which Earthjustice asserted would be arbitrary and capricious). Earthjustice also commented that DOE's rationale on this point in the April 2009 NOPR explanation cannot be reconciled with the purposes of the statute and the intent of Congress, which enacted EPCA to ''conserve energy supplies through energy conservation programs'' and ''provide for improved energy efficiency of * * * consumer products.'' 42 U.S.C.

6201(4) and (5). Finally, Earthjustice argued that DOE must consider amending EPCA's CRI standards if an efficacy-only standard is not sufficient to capture all technologically feasible and economically justified energy savings. (Earthjustice, No. 60 at pp. 3–4)

In response, DOE disagrees with the Green Lighting Campaign and Earthjustice's interpretation of the relevant statutory language. Despite the overarching energy-savings purposes of EPCA, Congress promulgated a highly detailed statute (both initially and through subsequent amendments) with numerous provisions specifying (or restricting) DOE's authority. In general, Congress did not provide DOE unfettered discretion to set standards, but instead established detailed criteria, definitions, and other limitations on DOE's authority. Consequently, when DOE faces specific provisions which limit its authority, it seems clear that Congress did not intend the general energy-savings provisions of EPCA to override such limitations. Instead, DOE interprets its mandate as to maximize energy savings within the confines of its statutory authority. With that said, DOE continues to believe that it does not have the authority to regulate CRI standards for the reasons discussed in the NOPR. 74 FR 16920, 16933 (April 13, 2009). That is, the language in the statute does not provide DOE with the authority to amend the CRI standard because it is not an energy performance standard. In implementing the amended standards rulemaking required under 42 U.S.C. 6295(i)(3), DOE must abide by the criteria for prescribing new or amended standards set forth in 42 U.S.C. 6295(o). In relevant part, 42 U.S.C. 6295(o)(2)(A) provides that any new or amended ''energy conservation standard'' must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. More specifically, as discussed in the NOPR, according to 42 U.S.C. 6291(6), ''energy conservation standard'' means either: (1) A performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use; or (2) a design requirement (only for specifically enumerated products). Although CRI is a performance requirement, it is not an energy performance requirement within the meaning of the term ''energy conservation standard.'' Because, in the case of GSFL, DOE has the authority to regulate only energy conservation standards (*i.e.*, energy performance requirements), DOE is not amending the existing minimum CRI requirements in this final rule.

Even if DOE did have authority to amend the minimum CRI requirements, DOE does not believe any modification would have impacted the potential energy savings of this final rule. CRI does not affect energy consumption or efficacy and, therefore, would not affect any of the results of DOE's analysis that are summarized in section VII.

IV. General Discussion

A. Test Procedures

DOE's test procedures for fluorescent and incandescent lamps are set forth at 10 CFR part 430, subpart B, appendix R.[8] These test procedures provide detailed instructions for measuring GSFL and IRL performance, as well as performance attributes of GSIL, largely by incorporating several industry standards. As explained in the April 2009 NOPR (74 FR 16920, 16933 (April 13, 2009)), DOE published a test procedure NOPR that proposed to update the current test procedure's references to industry standards for fluorescent and incandescent lamps, as well as to propose adoption of test procedure amendments to address lamps to which coverage was extended by EISA 2007 or to which DOE was considering extending coverage through rulemaking. 73 FR 13465, 13467–68 (March 13, 2008)(the test procedure NOPR). The test procedure NOPR also proposed the following: (1) A small number of definitional and procedural modifications to the test procedure to accommodate technological migrations in the GSFL market and approaches DOE has considered in this standards rulemaking; (2) revision of the reporting requirements for GSFL, such that all covered lamp efficacies would be reported with an accuracy to the tenths decimal place; and (3) adoption of a testing and calculation method for measuring the CCT of fluorescent and incandescent lamps. *Id.* at 13472–74. The March 2008 ANOPR also contains a detailed discussion of these proposals and related matters. 73 FR 13620, 13627–28 (March 13, 2008).

In response to the test procedure NOPR, NEMA commented that it strongly opposed establishing test procedures for lamps to which coverage has not yet been extended by the energy conservation standards rulemaking. NEMA was concerned that specifying mandatory test conditions prior to inclusion of coverage would inadvertently prevent new, high-efficient lamp designs from entering the market. (NEMA, No. 25 at p. 6–8) [9] In response, in the June 2009 test procedure Final Rule previously published (hereafter the test procedure Final Rule)), DOE agreed with NEMA's suggestion and proceeded to finalize all other aspects of the lamps test procedure amendments but deferred consideration of test procedures for potentially new covered products until DOE establishes, by final rule, the lamps to which it is extending energy conservation standards coverage. Therefore, today's final rule simultaneously adopts both energy conservation standards and test procedures for these ''additional'' GSFL. In setting test procedures for these additional GSFL, DOE is also responding to the public comments on that topic submitted in response to the March 2008 test procedure NOPR, as discussed below.

As discussed in section III.A, DOE has decided to adopted standards for the following additional GSFL: (1) 2-foot U-shaped; (2) 4-foot MBP; (3) 8-foot SP slimline; (4) 8-foot RDC HO; (5) 4-foot MiniBP SO; and (6) 4-foot MiniBP HO lamps. For the additional 2-foot U-shaped and 4-foot MBP lamps, 10 CFR part 430, subpart B, appendix R already contains adequate test procedures (either through existing test procedures or those newly adopted in the test procedure final rule). Therefore, in this final rule, DOE is not adopting new test procedures for those lamps. However, for the added 8-foot SP slimline, 8-foot RDC HO, 4-foot MiniBP SO, and 4-foot MiniBP HO lamps, DOE has determined that several new provisions need to be added to the existing test procedures for GSFL.

These provisions pertain to the adoption of reference ballast settings for lamps not listed in ANSI C78.81–2005 nor in ANSI C78.901–2005, as proposed in the test procedure NOPR. In response to that test procedure proposal, NEMA stated that instituting generic test conditions, particularly reference ballast settings, without knowing the specific GSFL to which the conditions may apply could have unexpected consequences. In particular, NEMA argued that such test procedures could constrain innovation by affecting the introduction of new lamps into the market. NEMA also committed to developing standardized test conditions that DOE could consider for several covered lamp types for which no test

[8] ''Uniform Test Method for Measuring Average Lamp Efficiency (LE) and Color Rendering Index (CRI) of Electric Lamps.''

[9] Energy Conservation Program: Test Procedures for General Service Fluorescent Lamps, Incandescent Reflector Lamps, and General Service Incandescent Lamps; Docket No. EERE–2007–BT–TP–0013; RIN number 1904–AB72.

conditions currently exist. (NEMA, No. 25 at p. 6–8) [10]

DOE does not agree that imposing test conditions for future covered products would limit innovation in the lighting industry. DOE maintains a test procedure waiver process specifically for this reason. Under 10 CFR 430.27, DOE's regulations state, ''Any interested person may submit a petition to waive for a particular basic model any requirements of § 430.23, or of any appendix to this subpart, upon the grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics, or water consumption characteristics (in the case of faucets, showerheads, water closets, and urinals) as to provide materially inaccurate comparative data.'' (10 CFR 430.27(a)(1)) This waiver process exists to avoid constraining innovation in the industry. Thus, DOE believes it is not preventing the introduction of future products into the market by specifying generic test conditions in this final rule.

While DOE appreciates NEMA's offer to develop additional standardized test procedure provisions, the organization did not set a timeframe for developing the new test conditions, and DOE believes that this final rule needs to establish test conditions for all lamps subject to energy conservation standards. In addition, DOE believes that the test conditions set forth in the March 2008 NOPR are appropriate for most commercially-available lamps. DOE arrived at the ballast settings for these lamps by determining the appropriate lamp replacement that exists in the relevant industry standard and using the corresponding reference ballast settings for all lamps that fall into that category. However, if NEMA supplies test conditions for industry standards, DOE will consider incorporating them into its test procedure regulations in a subsequent rulemaking.

Thus, in this final rule, DOE is adopting the following reference ballast settings for those additional GSFL for which it is setting standards, as proposed in the test procedure NOPR:

For any 8-foot SP slimline lamp not listed in the updated ANSI C78.81–2005, the lamp should be tested using the following reference ballast settings:

T12 lamps: 625 volts, 0.425 amps, and 1280 ohms.

T8 lamps: 625 volts, 0.260 amps, and 1960 ohms.

For any 8-foot RDC HO lamp not listed in the updated ANSI C78.81–2005, the lamp should be tested using the following reference ballast settings:

T12 lamps: 400 volts, 0.800 amps, and 415 ohms. &

T8 lamps: 450 volts, 0.395 amps, and 595 ohms.

For any 4-foot MiniBP standard output or high output lamp that is not listed in ANSI C78.81–2005, the lamp should be tested using the following reference ballast settings:

Standard Output: 329 volts, 0.170 amps, and 950 ohms.

High Output: 235 volts, 0.460 amps, and 255 ohms.

B. Technological Feasibility

1. General

As stated above, any standards that DOE establishes for GSFL and IRL must be technologically feasible. (42 U.S.C. 6295(o)(2)(A) and (o)(3)(B)) DOE considers a design option to be technologically feasible if it is in use by the respective industry or if research has progressed to the development of a working prototype. ''Technologies incorporated in commercial products or in working prototypes will be considered technologically feasible.'' 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

This final rule considers the same design options as those evaluated in the April 2009 NOPR. 74 FR 16920, 16933–34 (April 13, 2009) As discussed in section VI.B.2.c, DOE additionally considers integrally-ballasted low voltage IRL as a design option to improve IRL efficacy. (*See* the final rule TSD accompanying this notice, chapter 3.) Except for trial standard level (TSL) 1 for IRL, products are commercially available in the market at all of the TSLs evaluated for today's rule. As to TSL1 for IRL, DOE used a design option (*i.e.*, higher-efficiency gas fills) to model the performance of lamps that would meet this TSL, and received input from manufacturers to verify that such a design option is technologically feasible. Therefore, DOE determined that all of the efficacy levels evaluated in this notice are technologically feasible.

2. Maximum Technologically Feasible Levels

As required under 42 U.S.C. 6295(p)(1), in developing the April 2009 NOPR, DOE identified the efficacy levels that would achieve the maximum improvements in energy efficiency that are technologically feasible (max-tech levels) for GSFL and IRL. 74 FR 16920, 16933–35 (April 13, 2009). (*See* chapter 5 of the TSD)

For GSFL, DOE considered five TSLs in the April 2009 NOPR, with TSL5 being the most stringent level for which DOE performed full analyses. 74 FR 16920, 16979–82 (April 13, 2009). It is noted that DOE also considered the potential for a standard level beyond TSL5 that would require GSFL to use a higher-efficiency gas fill composition, which would have been the maximum technologically feasible level. Although more-efficient fill gases (often including higher molecular weight gases) are appropriate for and are currently used in some lamp applications, DOE is also aware employing this technology can cause lamp instability resulting in striations or flickering in some circumstances. DOE's research indicated that a potential standard level that would require the use of higher-efficiency fill gases would significantly reduce (or in some cases eliminate) the utility and performance of the covered GSFL, DOE concluded on this basis that a level with such an adverse impact on product utility would not be economically justified.[11] (42 U.S.C. 6295(o)(2)(B)(i)(IV) and (3)(B)) Having made this determination, there was no need or benefits to performing additional analyses relevant to the other statutory criteria. (*See* section I.A.2 for additional detail.) Consequently, TSL5 represents the most-efficient level analyzed for GSFL.

For IRL, as explained in the April 2009 NOPR, DOE believes that the maximum technologically feasible efficacy level incorporates the highest-efficiency technologically feasible reflector, halogen infrared coating, and filament design. *Id.* Combining all three of these high-efficiency technologies simultaneously results in the maximum technologically feasible level. However, this level is dependent on the use of a silver reflector, which is a proprietary technology. Because DOE is unaware of any alternate technology pathways to achieve this efficacy level, DOE did not consider it in its analysis.

Instead, in the April 2009 NOPR, DOE based the highest efficacy level analyzed for IRL on a commercially-available IRL which employs a silver reflector, an improved (but not most efficient) IR

[10] Energy Conservation Program: Test Procedures for General Service Fluorescent Lamps, Incandescent Reflector Lamps, and General Service Incandescent Lamps; Docket No. EERE–2007–BT–TP–0013; RIN number 1904–AB72.

[11] DOE notes that it did not eliminate higher-efficiency fill gases from further consideration as a technology under the screening analysis, because that technology may be appropriate for low-wattage lamp applications.

coating, and a filament design that results in a lifetime of 4,200 hours. Although this commercially-available lamp uses silver technology, DOE believes that there are alternate pathways to achieve this level. A combination of redesigning the filament to achieve higher temperature operation (and thus reducing lifetime to 3,000 hours), employing other non-proprietary high-efficiency reflectors, and applying a higher-efficiency IR coating has the potential to result in an IRL that meets an equivalent efficacy level (for more information regarding these technologies, see chapter 3 of the TSD). Therefore, in the April 2009 NOPR, DOE concluded that TSL5 is the maximum technologically feasible level for IRL that is not dependent on the use of a proprietary technology. *Id.*

In response to the April 2009 NOPR, DOE received several comments on the efficiency levels analyzed and the maximum technologically feasible levels. For further discussion of these comments see section VI.B. For today's final rule, the max-tech levels are provided in Table IV.1 and Table IV.2 below.

TABLE IV.1—MAX-TECH LEVELS FOR GSFL

Lamp type	CCT	Max-tech efficacy lm/W
4-foot medium bipin	≤4,500K	93
	>4,500K and ≤7,000K	92
2-foot U-shaped	≤4,500K	87
	>4,500K and ≤7,000K	85
8-foot single pin slimline	≤4,500K	98
	>4,500K and ≤7,000K	94
8-foot recessed double contact HO	≤4,500K	95
	>4,500K and ≤7,000K	91
4-foot T5 miniature bipin SO	≤4,500K	90
	>4,500K and ≤7,000K	85
4-foot T5 miniature bipin HO	≤4,500K	76
	>4,500K and ≤7,000K	72

TABLE IV.2—MAX-TECH LEVELS FOR IRL

Lamp wattage	Lamp type	Diameter (in inches)	Voltage	Max-tech efficacy lm/W
40W–205W	Standard–spectrum	>2.5	≥125V	$7.4P^{0.27}$
			<125V	$6.4P^{0.27}$
		≤2.5	≥125V	$6.2P^{0.27}$
			<125V	$5.4P^{0.27}$
40W–205W	Modified-spectrum	>2.5	≥125V	$6.3P^{0.27}$
			<125V	$5.4P^{0.27}$
		≤2.5	≥125V	$5.3P^{0.27}$
			<125V	$4.6P^{0.27}$

Note 1: P is equal to the rated lamp wattage, in watts.
Note 2: Standard Spectrum means any incandescent reflector lamp that does not meet the definition of ''modified spectrum'' in 430.2.

C. Energy Savings

DOE forecasted energy savings in its national impact analysis (NIA) through the use of an NIA spreadsheet tool, as discussed in the April 2009 NOPR. 74 FR 16920, 16935, 16958–72 (April 13, 2009).

One of the criteria that governs DOE's adoption of standards for covered products is that the standard must result in ''significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B)) 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 this context to be savings that were not ''genuinely trivial.'' DOE's estimates of the energy savings for energy conservation standards at each of the TSLs considered for GSFL and IRL for today's rule indicate that the energy savings each would achieve are nontrivial. Therefore, DOE considers these savings ''significant'' within the meaning of Section 325 of EPCA.

D. Economic Justification

1. Specific Criteria

As noted earlier, EPCA provides seven factors to evaluate in determining whether an energy conservation standard for covered products is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)) The following sections discuss how DOE has addressed each of those seven factors in evaluating efficiency standards for GSFL and IRL.

a. Economic Impact on Consumers and Manufacturers

DOE considered the economic impact of potential standards on consumers and manufacturers of GSFL and IRL. For consumers, DOE measured the economic impact on consumers as the change in installed cost and life-cycle operating costs (*i.e.*, the LCC). (See sections V.C and VII.C.1.a, and chapter 8 of the TSD accompanying this notice.) DOE investigated the impacts on manufacturers through the manufacturer impact analysis (MIA). (See section VII.C.2, and chapter 13 of the TSD accompanying this notice.) The MIA is discussed in detail in the April 2009 NOPR. 74 FR 16920, 16972–77 (April 13, 2009).

b. Life-Cycle Costs

DOE considered life-cycle costs of GSFL and IRL, as discussed in the April 2009 NOPR. 74 FR 16920, 16950–58 (April 13, 2009). DOE calculated the sum of the purchase price and the operating expense—discounted over the lifetime of the equipment—to estimate the range in LCC benefits that consumers would expect to achieve due to standards.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA also requires DOE, in determining the economic justification of a proposed standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As in the April 2009 NOPR (74 FR 16920, 16936 (April 13, 2009)), for today's final rule DOE used the NIA spreadsheet results in its consideration of total projected savings that are directly attributable to the standard levels DOE considered.

d. Lessening of Utility or Performance of Products

In considering standard levels, DOE sought to avoid new standards for GSFL and IRL that would lessen the utility or performance of such products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)); 74 FR 16920, 16936 (April 13, 2009)).

e. Impact of Any Lessening of Competition

DOE considers any lessening of competition that is likely to result from standards. Accordingly, as discussed in the April 2009 NOPR (74 FR 16920, 16936 (April 13, 2009)) and as required under EPCA, DOE requested that the Attorney General transmit to the Secretary a written determination of the impact, if any, of any lessening of competition likely to result from the standards proposed in the April 2009 NOPR, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii)) Note also that the National Impact Analysis does not consider the possibility of lessened competition effects, and so, depending on their magnitude, such effects may negatively impact the Net Present Value of the standards.

To assist the Attorney General in making such a determination, DOE provided the Department of Justice (DOJ) with copies of the April 2009 NOPR and the TSD for review. The Attorney General's response is discussed in section VII.C.5 below, and is reprinted at the end of this rule. For IRLs, DOJ concluded that the proposed TSL 4 could adversely affect competition. DOJ requested that DOE consider the possibility of new technology for IRLs as it settles on standards in this field (DOJ, No. 77 at pp. 1–2). Although DOJ did not evaluate the impacts on competition of TSL 4 for GSFL, DOE believes that TSL 4 does not raise competitive issues.

f. Need of the Nation to Conserve Energy

In considering standards for GSFL and IRL, the Secretary must consider the need of the Nation to conserve energy. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The Secretary recognizes that energy conservation benefits the Nation in several important ways. The non-monetary benefits of standards are likely to be reflected in improvements to the security and reliability of the Nation's energy system. As discussed in the April 2009 NOPR and in section VII.C.6 of this final rule, DOE has considered these factors in considering whether to adopt standards for GSFL and IRL. 74 FR 16920, 16936 (April 13, 2009).

g. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, considers any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) In adopting today's standards, the Secretary considered the potential for GSFL and IRL standards to adversely affect low-income consumers, institutions of religious worship, historical facilities, institutions that serve low-income populations, and consumers of T12 electronic ballasts. In considering these subgroups, DOE analyzed variations on electricity prices, operating hours, discount rates, and baseline lamps. 74 FR 16920, 16936 (April 13, 2009). The impact on these subgroups is summarized in section VII.C.1.b.

2. Rebuttable Presumption

Section 325(o)(2)(B)(iii) of EPCA states that there is a rebuttable presumption that an energy conservation standard is economically justified if the increased installed cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard, as calculated under the applicable DOE test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) DOE's LCC and payback period (PBP) analyses generate values that calculate the payback period for consumers of potential energy conservation standards, which includes, but is not limited to, the three-year payback period contemplated under the rebuttable presumption test discussed above. However, DOE routinely conducts a full economic analysis that considers the full range of impacts, including those to the consumer, manufacturer, Nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification).

V. Methodology and Discussion of Comments on Methodology

DOE used several analytical tools that it developed previously and adapted for use in this rulemaking. One is a spreadsheet that calculates LCC and PBP. Another tool calculates national energy savings and national NPV that would result from the adoption of energy conservation standards. DOE also used the Government Regulatory Impact Model (GRIM), along with other methods, in its MIA to determine the impacts of standards on manufacturers in light of other cumulative regulatory requirements. Finally, DOE developed an approach using the National Energy Modeling System (NEMS) to estimate impacts of standards for GSFL and IRL on utilities and the environment. The April 2009 NOPR discusses each of these analytical tools in detail. 74 FR 16920, 16958, 16972, 16978–79, 16982 (April 13, 2009).

As a basis for this final rule, DOE has continued to use the spreadsheets and approaches explained in the April 2009 NOPR. DOE used the same general methodology as applied in the NOPR, but revised some of the assumptions and inputs for the final rule in response to public comments. The following paragraphs discuss these revisions.

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 products concerned, including the purpose of the products, the industry structure, and market characteristics. This activity includes both quantitative and qualitative assessments based primarily on publicly available information. DOE presented various subjects in the market and technology assessment for this rulemaking. (*See* chapter 3 of the NOPR TSD.) These include product definitions, product classes, manufacturers, quantities and types of products sold and offered for

sale, retail market trends, and regulatory and nonregulatory programs. As discussed below, commenters raised a variety of issues related to the market and technology assessment, to which DOE responds in the following sections.

1. Product Classes

In general, in evaluating and establishing energy conservation standards, DOE divides covered products into classes by the type of energy used, capacity, or other performance-related features that affect efficiency, and factors such as the utility of the product to users. (42 U.S.C. 6295(q))

a. General Service Fluorescent Lamps

In the April 2009 NOPR, DOE proposed to establish product classes for GSFL based on the following three attributes that have differential utility and affect efficacy: (1) Physical constraints of lamps (*i.e.*, lamp shape and length); (2) lumen package (*i.e.*, standard versus high output); and (3) correlated color temperature. 74 FR 16920, 16936 (April 13, 2009). Based on these criteria, DOE proposed to separate coverage into six lamp types: (1) 4-foot medium bipin; (2) 2-foot U-shaped; (3) 8-foot single pin slimline; (4) 8-foot recessed double contact high output; (5) 4-foot miniature bipin T5 standard output; and (6) 4-foot miniature bipin T5 high output. DOE also proposed to establish separate product classes for those lamps with CCT less than or equal to 4,500 kelvin (K) and lamps with CCT greater than 4,500 K. In total, therefore, DOE proposed 12 product classes for GSFL. In general stakeholders expressed overall agreement with the GSFL product class structure proposed in the April 2009 NOPR. However, DOE did receive several comments requesting additional product classes for specific lamps or lamp types, as discussed below.

i. Modified-Spectrum Fluorescent Lamps

In response to the April 2009 NOPR, GE commented that it is currently researching and developing a 4-foot MBP modified-spectrum fluorescent lamp that imitates the color quality of modified-spectrum incandescent lighting. Although not yet commercially-available, GE expects to release such a product before 2012, the effective date of the energy conservation standard that is being established by this final rule. Expecting that these lamps may not be able to meet minimum efficacy requirements as amended by this rulemaking, GE recommended that DOE either set separate lower efficacy standards for ''modified-spectrum fluorescent lamps'' or exempt these lamps from standards altogether. (GE, No. 80 at pp. 3–6)

In response, DOE believes that it does not have the authority to exempt modified spectrum fluorescent lamps from standards. Pursuant to 42 U.S.C. 6295(o)(1), DOE cannot prescribe an amended standard which ''decreases the minimum required energy efficiency, of a covered product.'' Although no such product currently exists, DOE notes that if they did, modified-spectrum fluorescent lamps fall under the definition of ''general service fluorescent lamp,'' so they would already be subject to the statutory minimum efficacy requirements. Therefore, if DOE were to exempt these lamps from any standards, this would constitute backsliding from the minimum efficacy requirements, which is impermissible, as noted above.

With regard to setting lower minimum efficacy requirements for modified-spectrum fluorescent lamps, DOE generally sets separate efficiency standards for products deemed to be in separate product classes. While these lamps may in the future provide a distinct utility to consumers (a basis on which product classes may be established under 42 U.S.C. 6295(q)), at this time, DOE has no evidence that this utility in fact exists or is even required of the general service fluorescent market, because there is no such product yet developed. Therefore, in this final rule, DOE is not establishing a separate product class for modified-spectrum fluorescent lamps. However, DOE notes that if the company successfully develops its modified-spectrum fluorescent lamp and believes that it warrants exemption from DOE's amended standards, it may be possible for GE to seek exception relief from DOE's Office of Hearings and Appeals (OHA) pursuant to 10 CFR Part 1003.

i. 25 Watt 4-Foot MBP Lamps

In the April 2009 NOPR, DOE established one product class for 4-foot MBP lamps (of a single CCT category) that spanned the full range of covered lamp wattages (*i.e.*, greater than or equal to 25W). The effects of doing this were such that at TSL5, as considered in the NOPR, the 25W 4-foot MBP T8 lamp was expected to be eliminated from the market, as it would not meet the minimum efficacy requirements. In response to the April 2009 NORP, the California Stakeholders and ACEEE suggested DOE should establish a separate product class for the 25W 4-foot T8 MBP because it represents a significant energy-savings opportunity. While DOE recognizes that the availability of the 25W 4-foot T8 MBP lamp provides additional energy savings opportunities to consumers, DOE does not believe that this alone is a basis to establish a separate product class for this lamp. As noted above, DOE establishes product classes only when a product type either: (1) Consumes a different type of energy, or (2) has a capacity or other performance-related feature which justifies a higher or lower standard level. In making such a determination, DOE considers whether there is a differential utility which affects efficacy. To DOE's knowledge, the 25W 4-foot MBP lamp does not provide any additional utility over that which its 32W full-wattage counterpart provides. Therefore, DOE has not established a different product classes for 25W lamps.

ii. Summary of GSFL Product Classes

Because DOE received no other comments on the GSFL product classes proposed in the April 2009 NOPR, DOE is not making any changes in this final rule related to GSFL product classes. Table V.1 summarizes the GSFL product classes for this final rule.

TABLE V.1—FINAL RULE PRODUCT CLASSES FOR GSFL

Lamp type	CCT
4-Foot Medium Bipin	≤4500 K
	>4500 K
2-Foot U-Shaped	≤4500 K
	>4500 K
8-Foot Single Pin Slimline	≤4500 K
	>4500 K
8-Foot RDC HO	≤4500 K
	>4500 K
4-Foot Miniature Bipin SO	≤4500 K
	>4500 K
4-Foot Miniature Bipin HO	≤4500 K
	>4500 K

b. Incandescent Reflector Lamps

For incandescent reflector lamps, in the April 2009 NOPR, DOE proposed to base its product class structure on: (1) Lamp spectrum (modified versus standard spectrum); (2) lamp diameter (greater than 2.5 inches or less than or equal to 2.5 inches); and (3) rated voltage (less than 125V or greater than or equal to 125V). DOE received several comments on these product classes. The following sections summarize and address those public comments.

i. Modified-Spectrum Lamps

Modified-spectrum lamps provide a unique performance-related feature to consumers, in that they offer a different spectrum of light from the typical incandescent lamp. These lamps offer

benefits such as ensuring better color discrimination and often appearing more similar to natural daylight, possibly resulting in psychological benefits. In addition to providing a unique performance feature, DOE also understands that the technologies that modify the spectral emission from these lamps also decrease their efficacy, because a portion of the light emission is absorbed by the coating. Therefore, in the April 2009 NOPR, DOE proposed to establish a separate product class for modified-spectrum lamps based on their unique performance feature and the impact of this performance feature on product efficacy. 74 FR 16920, 16938–39 (April 13, 2009).

NEMA supported DOE's proposal for separate product classes based on modified spectrum. (GE, Public Meeting Transcript, No. 38.4 at p. 60; NEMA, No. 81 at p. 12) Conversely, ASAP, ACEEE, and the California Stakeholders commented that separate product classes based on spectrum are unnecessary because existing technologies such as LEDs and phosphor-based lamps (*e.g.*, CFLs) can deliver the same utility to consumers that modified-spectrum IRL offer. ASAP stated that DOE should evaluate the unique utility of a product rather than the technology providing it. (ASAP, Public Meeting Transcript, No. 38.4, at pp. 68–69; California Stakeholders, No. 63 at pp. 2, 25)

In response, DOE agrees that other technologies could produce modified spectrum light. However, DOE reiterates the point it made in the NOPR that the governing statutory provision directs DOE to maintain performance-related features for a covered product type. (42 U.S.C. 6295(o)(4)) If DOE were to regulate modified-spectrum lamps within the same product class as standard-spectrum lamps, this could result in an energy conservation standard that would eliminate the modified-spectrum utility from the IRL market. Furthermore, DOE believes some consumers may find a unique utility in modified-spectrum IRL that does not exist in CFL or LED lamps that emit modified spectra. For example, modified-spectrum IRL have a higher CRI than many of their potential substitutes (*e.g.*, CFL), thereby providing a different, and in some cases a preferable, quality of light. In addition, DOE cannot confirm that a full range of lumen outputs are currently commercially available from LED reflector lamps. This could potentially eliminate the modified spectrum utility for some consumers requiring specific lumen packages (*e.g.*, high-lumen lamps).

PG&E, NRDC, ASAP, and the California Stakeholders also commented that no efficacy allowance is necessary for modified-spectrum lamps for two main reasons. First, they argued that incandescent reflector technology that results in modified-spectrum efficacies greater that the highest standard-spectrum standard level (TSL5) already exists. They demonstrated these efficacies in prototypes utilizing advanced IR coatings and silver reflectors. Second, the stakeholders argued that there are other means (beyond the use of absorptive elements within the glass cover) to produce modified-spectrum lamps. They suggested that reflective coatings, similar to the infrared ones that already exist, could, in principle, be used to create a modified spectrum in a much more efficient way. (California Stakeholders, No. 63 at pp. 2, 25; PG&E, NRDC, ASAP, No. 59 at p. 15–16; NRDC, No. 82 at pp. 2, 4)

DOE reiterates that it establishes product classes based on whether a given product has unique performance features that affect the efficacy of the product, not on whether it is technologically feasible for the product to meet another product class's efficacy levels. Therefore, the absolute efficacy of a given modified-spectrum IRL does not play a role in whether DOE should or should not establish a distinct product class. Then once it is determined that a separate class is appropriate under the statute, an appropriate level is set based upon examination of lamps within that class, rather than a comparison to different types of lamps. What is relevant is whether there is a change in efficacy that is caused by a unique performance feature. DOE maintains that at this time modified spectrum IRL cannot achieve an equivalent maximum technologically feasible level as standard-spectrum IRL. To this point, the stakeholders themselves acknowledge in their comments that lenses used to modify the spectrum of IRL result in at least a 10 percent decrease in efficacy as compared to standard-spectrum lamps. (PG&E, NRDC, ASAP, No. 59 at p. 2) Although the stakeholders have demonstrated that modified-spectrum IRL might potentially be able to achieve efficacies exceeding that of the highest efficacy level analyzed for standard-spectrum lamps, DOE believes that there is considerable uncertainty surrounding the efficacies of the prototypes provided. Therefore, DOE is not establishing minimum efficacy requirements based solely on these prototype efficacies. DOE further addresses its consideration of these prototype efficacies in section VI.B.2.

On the stakeholders' second point, DOE agrees that, in principle, there may be other means of producing modified-spectrum lamps. However, at present, DOE is unaware of any commercially-available IRL or working IRL prototype using the alternative methods suggested by stakeholders. For all of the above reasons, DOE has decided to establish a separate product class for modified-spectrum incandescent reflector lamps.

Also related to modified-spectrum IRL, Tailored Lighting, a specialty lighting company, commented that it produces specialty lamps that alter the spectrum, differently than modified-spectrum lamps, which the commenter claims better simulates daylight. Due to the different spectra of light that are filtered in Tailored Lighting's lamps relative to modified-spectrum lamps, Tailored Lighting argued that their product would not qualify under the statutory definition of ''modified spectrum.'' Therefore, Tailored Lighting recommended that DOE should either specifically exempt their product from regulation or amend the definition of ''modified spectrum'' so as to include their products, thereby allowing them to have reduced minimum efficacy requirements. (Tailored Lighting, No. 73 at p. 11) Eiko Ltd, a manufacturer of Tailored Lighting's products supported the same amendments to the definition of ''modified spectrum.'' (Eiko, No. 79 at p. 1)

While DOE acknowledges that many of Tailored Lighting's products may not fall under the definition of ''modified spectrum,'' DOE notes that ''modified spectrum'' is a statutory definition, defined by EISA 2007 for incandescent lamps, which includes both general service incandescent lamps and incandescent reflector lamps. (42 U.S.C. 6291(30)(W); 42 U.S.C. 6291(30)(F)) Therefore, DOE lacks the authority to amend the definition of ''modified spectrum.'' In addition, adopting Tailored Lighting's recommended amendment would not only affect minimum efficacy requirements for IRL, but would also result in an amendment to the general service incandescent lamp standards prescribed by Congress. For these reasons, DOE is leaving the definition of ''modified spectrum'' unchanged from that presented in the April 2009 NOPR.

In addition, DOE notes that according to the comment, even though Tailored Lighting also sells 12-volt MR–16 lamps with these special daylight qualities, these lamps do not fall under the definition of ''incandescent reflector lamp.'' Tailored Lighting requested an

exemption (or lowered minimum efficacy requirement) for its forthcoming PAR lamp, that would fall under the definition of ''incandescent reflector lamp'' and is currently under development. (Tailored Lighting, No. 73 at p. 4)) However, according to interviews and Tailored Lighting's Web site, this lamp is not yet for sale.

In response, DOE generally sets separate efficiency standards for products deemed to be in separate product classes. While PAR-shaped Tailor Lighting lamps may in the future provide a distinct utility to consumers (a basis on which product classes are established), at this time, because there is no product yet developed, DOE has no evidence that this utility in fact exists or is even required of the incandescent reflector lamp (or PAR-shaped) market. Therefore, in this final rule, DOE is not establishing a separate product class for Tailored Lighting's products. However, DOE notes that if Tailored Lighting successfully develops its PAR lamp and believes that it warrants exemption from DOE's amended standards, it may be possible for Tailored Lighting to seek exception relief from DOE's OHA pursuant to 10 CFR Part 1003.

ii. Lamp Diameter

As mentioned above, DOE also proposed separate product classes for smaller-diameter lamps (*i.e.*, lamps with a diameter less than or equal to 2.5 inches). Such lamps provide a distinct utility (such as the ability to be installed in smaller fixtures) which generally results in lower efficacy because they have an inherently lower optical efficiency than larger-diameter lamps of similar filament size. Both NEMA and the California Stakeholders supported DOE's proposal to establish a separate product class for small-diameter lamps. (NEMA, No. 81 at p. 7, p. 12; GE Lighting, Public Meeting Transcript, No. 38.4 at p. 60; California Stakeholders, No. 63 at p. 22) Because DOE received no other comments on this issue, DOE continues to set separate product classes for lamps of diameter less than or equal to 2.5 inches.

iii. Voltage

Current DOE test procedures provide for lamps rated at 130 volts (V) to be tested at 130 V and for lamps rated at 120 V to be tested at 120 V. However, DOE is aware that a large number of consumers actually operate 130 V lamps at 120 V, which results in longer lifetime but lower efficacy. With a single efficacy level for lamps rated at each voltage, this situation would effectively lead to a lower efficacy requirement for these 130 V lamps that are run at 120 V, compared to 120 V lamps run at 120 V. These 130V lamps would not require the same level of technology as 120 V-rated lamps to meet the same standard, and, thus, they would be cheaper to produce. Therefore, setting higher standards for IRL without accounting for voltage differences could result in increased migration to the 130 V lamps and possible lost energy savings. For these reasons, in the April 2009 NOPR, DOE proposed to set separate standards for 130 V lamps. Specifically, DOE proposed to establish two separate product classes: (1) Lamps with a rated voltage less than 125 V, and (2) lamps with a rated voltage greater than or equal to 125 V. 74 FR 16920, 16940 (April 13, 2009). DOE also requested comment on the alternative approach of having all IRL be tested at 120 V, the most common application voltage in the market. *Id.*

Philips commented that setting a 130 V-lamp efficacy level that was 15 percent higher than the level for 120 V lamps, as DOE proposed in the NOPR, would drive 130 V lamps from the market because such a level would be technologically infeasible. In addition, Philips and GE stated that it is not uncommon for consumers to run lamps at 130 V in certain regions of the country. Therefore, NEMA and Philips stated, with 130 V lamps gone from the marketplace, some consumers may be forced to run 120 V lamps at 130 V, which could cut lamp lifetime in half and cause a loss of utility for these consumers. For those reasons, manufacturers argued, there should be no separate product class for voltage. Instead, manufacturers argued that DOE should test IRL at their rated voltages and subject the lamps to the same standard. Supporting this idea, GE noted that even if one operates a 130 V lamp at 120 V, power is reduced proportionally, meaning there would be lower energy consumption. (GE and Philips, Public Meeting Transcript, No. 38.4 at pp. 61–62, 67; NEMA, No. 81 at pp. 4, 7–8)

Conversely, the California Stakeholders, EEI and ACEEE argued that 130 V lines are very rare. EEI stated that many utilities must follow agreements to maintain voltages in the residential sector within a 5 percent range of 120 V (114 V to 126 V) and agreed with DOE's approach. The California Stakeholders commented that utilities are trending toward lower line voltage to minimize transmission losses. In addition, they stated that FTC labeling requirements already require manufacturers to provide power and light output for 120 V, even if the lamps are designed to be run at 130 V. Therefore, the California Stakeholders argued, all lamps should be regulated based on testing at 120 V. (ACEEE and EEI, Public Meeting Transcript, No. 38.4 at pp. 63–64, 66; EEI, No. 45 at p. 3; California Stakeholders, No. 63 at p. 25–26)

GE argued that while utilities do face line voltage regulation, there are cases in which the voltage is higher than that prescribed in ANSI C–84.1, ''American National Standard for Electric Power Systems and Equipment-Voltage Ratings (60 Hertz),'' (the source of the prescribed voltage range that EEI referenced in the above comment). Therefore, the 130 V lamps have utility for consumers in these cases. (GE, Public Meeting Transcript, No. 38.4 at p. 67)

In response, DOE remains concerned that the operation of 130 V lamps at 120 V has the potential to significantly affect energy savings. As discussed above, when operated under 120 V conditions, lamps rated at 130 V and in compliance with existing IRL efficacy standards are generally less efficacious than lamps using equivalent technology rated at 120 V. Because of this inherent difference in efficacy, it may be less costly to manufacture a lamp rated and tested at 130 V that complies with a standard than a similar 120 V lamp complying with the same standard. If DOE does not establish a separate product class and standard for lamps rated at 130 V, more consumers may purchase 130 V lamps because they may be less expensive, as they would require less costly technology. When consumers operate these lamps at 120 V, in order to obtain sufficient light output, they may migrate to higher wattages and use more energy than standards-compliant 120 V lamps.

DOE also believes, as commenters pointed out, that 130 V conditions in the residential sector are very rare. Indeed, in many cases such sustained voltages would violate electrical codes. As NEMA commented earlier, 130 V lamps ''are almost always used by customers to achieve 'double life' by operating them at 120 V, resulting in performance below 1992 EPACT levels.'' (NEMA, No. 21 at p. 16) DOE acknowledges that in very rare cases, some consumers with 130 V power may be forced to realize shorter lifetimes. However, based on stakeholder comments and research into electrical codes, DOE does not believe the rare instances of consumers with 130 V power experiencing shortened lifetimes offsets the benefit in energy savings from closing this potential loophole. In addition, as discussed in the April 2009 NOPR, because DOE considers lifetime

an economic issue rather than a utility issue, DOE does not believe it is eliminating any unique utility of feature from the market by setting increased efficacy requirements for lamps rated greater than or equal to 125 V. 74 FR 16920, 16939 (April 13, 2009)

Finally, stakeholders have not provided any compelling arguments for why DOE should amend the test procedure to test all lamps at 120 V rather than set higher efficacy standards for these lamps. Therefore, in this final rule DOE is maintaining separate product classes for lamps with rated voltages less than 125 V and lamps with rated voltages greater than or equal to 125 V.

iv. IRL Summary

In summary, DOE is not making any changes in this final rule related to IRL product classes from those proposed in the April 2009 NOPR. 74 FR 16920, 17027 (April 13, 2009). Table V.2 summarizes the IRL product classes for this final rule.

TABLE V.2—FINAL RULE PRODUCT CLASSES FOR IRL

Spectrum	Diameter (in inches)	Voltage
Standard Spectrum ...	>2.5	≥125 V
		<125 V
	≤2.5	≥125 V
		<125 V
Modified Spectrum	>2.5	≥125 V
		<125 V
	≤2.5	≥125 V
		<125 V

B. Engineering Analysis

For each product class, the engineering analysis identifies potential, increasing efficacy levels above the level of the baseline model. Those technologies not eliminated in the screening analysis (design options) are inputs to this process. Design options consist of discrete technologies (*e.g.*, infrared reflective coatings, rare-earth phosphor mixes). As detailed in the April 2009 NOPR, to ensure that efficacy levels analyzed are technologically feasible, DOE concentrated its efforts in the engineering analysis on developing product efficacy levels associated with ''lamp designs,'' based upon commercially-available lamps that incorporate a range of design options. 74 FR 16920, 16941 (April 13, 2009). However, when necessary, DOE supplemented commercially-available product information with an examination of the incremental costs and improved performance attributable to discrete technologies so that a substitute lamp at each efficacy level would be available for each baseline lamp.

In energy conservation standard rulemakings for other products, DOE often develops cost-efficiency relationships in the engineering analysis. However, for this rulemaking, DOE derived efficacy levels in the engineering analysis and end-user prices in the product price determination. By combining the results of the engineering analysis and the product price determination, DOE derived typical inputs for use in the LCC and NIA. *See* chapter 7 of the TSD for further details on the product price determination.

1. Approach

For the final rule, DOE is using the same methodology for the engineering analysis that was detailed in the April 2009 NOPR. 74 FR 16920, 16941–47 (April 13, 2009). The following is a summary of the steps taken in the engineering analysis:

- Step 1: Select Representative Product Classes
- Step 2: Select Baseline Lamps
- Step 3: Identify Lamp or Lamp-and-Ballast Designs
- Step 4: Develop Efficacy Levels.

A more detailed discussion of the methodology DOE followed to perform the engineering analysis can be found in the engineering analysis chapter of the TSD (chapter 5).

2. Representative Product Classes

As discussed in section V.A.1 of this notice, DOE is establishing twelve product classes for GSFL and eight product classes for IRL. As detailed in the April 2009 NOPR, DOE did not analyze each and every product class. 74 FR 16920, 16941–42 (April 13, 2009). Instead, DOE selected certain product classes to analyze, and then scaled its analytical findings for those representative product classes to other product classes that were not analyzed. While DOE received several stakeholder comments regarding methods of scaling to product classes not analyzed (discussed in section V.C.7), DOE did not receive objections to the decision to scale to certain product classes or the representative product classes proposed in the April 2009 NOPR. *Id.* at 16941–42. Therefore, for this final rule, DOE analyzed the same product classes proposed for direct analysis in the April 2009 NOPR.

For GSFL, the analyzed product classes included 4-foot medium bipin, 8-foot single pin slimline, 8-foot recessed double-contact high output, 4-foot MiniBP standard output, and 4-foot MiniBP high output GSFL product classes, all with CCTs less than or equal to 4,500K. DOE did not explicitly analyze U-shaped lamps, but instead scaled the results of the 4-foot medium bipin class analysis, as discussed in section V.B.5.a. For IRL, the representative product class DOE analyzed was IRL with standard spectrum, voltage less than 125 V, and diameter greater than 2.5 inches. For further information on representative product classes, *see* chapter 5 of the TSD.

3. Baseline Models

Once DOE identified the representative product classes for analysis, DOE selected the representative units for analysis (*i.e.*, baseline lamps) from within each product class. These representative units are generally what DOE believes to be the most common, least efficacious lamps in their respective product classes. For further discussion on baseline lamps and lamp-and-ballast systems chosen for analysis, see the April 2009 NOPR (74 FR 16920, 16942–45 (April 13, 2009)) and Chapter 5 of the TSD.

In general, DOE decided to maintain the baseline models proposed in the April 2009 NOPR. However, DOE did receive a comment on its selection of the baseline model for 4-foot MiniBP lamps, as discussed and responded to below. In the April 2009 NOPR, DOE developed model T5 halophosphor lamps as the baselines for the 4-foot MiniBP SO and 4-foot MiniBP HO product classes. To create these model T5 lamps, DOE used efficacy data from short halophosphor fluorescent T5 lamps currently available and developed a relationship between length and efficacy. DOE validated this relationship by comparing it to previous industry research and efficacies of other halophosphor lamps. DOE then used this relationship to determine the efficacies of a halophosphor 4-foot miniature bipin standard output lamp and a halophosphor 4-foot halophosphor T5 miniature bipin HO lamp. The resulting baseline efficacies for 4-foot MiniBP SO and 4-foot MiniBP HO lamps were 86.0 lm/W and 76.6 lm/W. 74 FR 16920, 16943 (April 13, 2009)

In response to the April 2009 NOPR, NEMA and GE commented that baseline efficacies and efficacy levels for 4-foot MiniBP lamps should reflect testing at an ambient temperature of 25 °C rather than 35 °C, the temperature at which standards for 4-foot MiniBP lamps in the April 2009 NOPR were based. GE also stated that manufacturers test 4-foot

MiniBP lamps at 25 °C and then use a relative measurement to estimate performance at 35 °C. This additional information is provided in catalogs because many T5 lamps are operated in higher-temperature environments. (GE, Public Meeting Transcript, No. 38.4 at pp. 72–73, 76–78, NEMA, No. 81 at p. 3, 7, 8, 9, 22)

DOE has confirmed that test procedures for 4-foot MiniBP lamps in fact specify that the test should be performed at 25 °C. While DOE agrees that the minimum efficacy standards (and therefore efficacy levels) should be based on this testing condition, DOE believes that the efficacies and lumen outputs of lamps analyzed in the engineering analysis (and thus LCC and NIA) should reflect typical operating conditions. It is DOE's understanding that 4-foot MiniBP lamps most often operate at 35 °C. Therefore DOE bases all lamp efficacies and lumen outputs used in the engineering, LCC, and national impacts analyses on this operating condition. DOE discusses its approach to establishing 4-foot MiniBP efficacy levels based on testing at 25 °C in section V.B.4.b.

NEMA also commented that a more accurate and straightforward approach to modeling the 4-foot MiniBP halophosphor baseline lamp efficacies would be to base it on the ratio of halophosphor to triphosphor lamp efficacies in 4-foot T8 MBP lamps (0.78). (NEMA, No. 81 at p. 9) DOE believes that NEMA's suggested approach is valid. However, when using efficacies of commercially-available 4-foot MBP halophosphor lamps (77.9 lm/W) and triphosphor lamps (95.4 lm/W), DOE calculated an efficacy ratio of 0.82. Applying this ratio to 35 °C catalog lamp efficacies results in baseline efficacies of 4-foot MiniBP SO and 4-foot MiniBP HO lamps of 85.5 lm/W and 76.1 lm/W. Because these efficacies are within an acceptable margin of uncertainty relative to the baseline efficacies used in the April 2009 NOPR, DOE has not changed its 4-foot MiniBP baseline lamps.

For more information about these and other baseline lamps, see chapter 5 and appendix 5B of the TSD.

4. Efficacy Levels

a. GSFL Compliance Reports

For the March 2008 ANOPR, DOE developed candidate standards levels for GSFL by dividing initial lumen output by the ANSI rated wattages of commercially-available lamps, thereby resulting in rated lamp efficacies.[12] 74 FR 16920, 16945 (April 13, 2009). In response to the potential GSFL efficacy levels presented in the March 2008 ANOPR, NEMA commented on several reasons why the association believes that the efficacy levels need to be revised, including (1) the appropriateness of using ANSI rated wattages in the calculation of lumens per watt; (2) consideration of variability in production of GSFL; (3) manufacturing process limitations related to specialty products; (4) consideration of adjustments to photometry calibrations; and (5) the appropriateness of establishing efficacy levels to the nearest tenth of a lumen per watt. 74 FR 16920, 16945–46 (April 13, 2009).

After considering NEMA's comments, DOE agreed that tolerances incorporated into ANSI rated wattages and variability in production of GSFL warranted changes to the efficacy levels presented in the March 2008 ANOPR. Therefore, in the April 2009 NOPR, DOE revised the efficacy levels for GSFL by using lamp efficacy values submitted to DOE over the past 10 years for the purpose of compliance with existing energy conservation standards. Using compliance reports as a basis for efficacy standards allowed DOE to more accurately characterize the tested performance of GSFL, by accounting for the measured wattage effects and wattage and lumen output variability. 74 FR 16920, 16946–47 (April 13, 2009).

DOE received several comments on its proposed efficacy levels in the NOPR. NEMA commented that the range of efficacy levels considered was appropriate. (NEMA, No. 81 at p. 21) Both ACEEE and NEMA supported DOE's usage of compliance reports to establish efficacy levels. However, NEMA commented that it has additional data on variability that has been observed in lamp production. (ACEEE, Public Meeting Transcript, No. 38.4 at p. 79–80; NEMA, Public Meeting Transcript, No. 38.4 at pp. 89–90) NEMA recommended a slight lowering of certain GSFL efficacy levels so that an assessment of multiple lamps in a product line would find that the lamps were in conformance when tested under the DOE GSFL test procedure. (NEMA, Public Meeting Transcript, No. 38.4 at pp. 90–91) NEMA also claimed that required adjustments to photometry facilities used for NIST and NVLAP testing over time have resulted in a reduction of reported lumens for some products, which DOE did not account for in the April 2009 NOPR. NEMA therefore advised DOE to use only ''sufficiently current'' compliance data to determine efficacy levels. (NEMA, Public Meeting Transcript, No. 38.4 at pp. 75–76; NEMA, No. 81 at p.10–11) To account for all of these factors, NEMA stated that DOE should adopt the efficacy levels NEMA recommended in response to the March 2008 ANOPR. These levels recommended by NEMA achieve the desired technology goals as outlined by DOE. (NEMA, No. 81 at pp. 1–2, 10–11, 23) ACEEE opposed a further downward adjustment of the efficiency levels, as it would allow less-efficacious products to remain on the market. (ACEEE, Public Meeting Transcript, No. 38.4 at p. 80)

While DOE is aware that manufacturers may have additional data on production variability, NEMA has not provided such data to DOE. Therefore, DOE has maintained its approach (as presented in the April 2009 NOPR) to develop GSFL efficacy levels. Additionally, DOE believes that by using the compliance reports it is accounting for variability in production as it exists today, for the reasons that follow. First, the product efficacy reported for compliance purposes is related to the lower limit of the 95-percent confidence interval. As explained in DOE's May 1997 lamps test procedure final rule, this interval represents variation over the whole population of production, not only the sample size. 62 FR 29222, 29230 (May 29, 1997). In addition, regarding any changes in calibration requirements that may have occurred that could affect reported lamp efficacy, DOE has reevaluated its efficacy levels based on the latest compliance reports, many of which were submitted to DOE after the NOPR analysis had been completed. Following the same methodology as presented in the April 2009 NOPR, DOE compared the efficacy values for each product class to all available compliance report data and assessed whether the April 2009 NOPR levels achieved the technology goals outlined in chapter 5 of the TSD. For 4-foot MBP lamps, DOE determined that the efficacy levels proposed in the April 2009 NOPR must be revised to accurately represent those goals. For 4-foot MBP lamps with CCTs less than or equal to 4500K, DOE adjusted the efficacy values because new compliance reports: (1) Provided recent data for an existing basic model; (2) provided data for a new basic model; or (3) provided 12-month average production data whereas only initial data had been previously reported.

[12] DOE used rated wattages listed in ANSI C78.81–2005 to determine lamp efficacies. DOE proposed a definition of ''rated wattage'' in section III.C.1 that referred to an ANSI standard to prevent manufacturers from circumventing standards by rating lamps at artificially low wattages.

NEMA also did not believe it was necessary to raise EL3 for 4-foot MBP lamps from their recommended 83 lumens per watt to 84 lumens per watt as proposed in the April 2009 NOPR. NEMA stated that this increase was not required to achieve the technology goal specified for TSL3 and, furthermore, would have significant consequences for the residential consumer because it eliminated nearly all T12 lamps. (NEMA, No. 81 at p. 2)

In response, DOE reassessed its efficacy levels based compliance report data from 2008 and 2009. As a result of this analysis, DOE determined that the efficacy values for 4-foot MBP low CCT EL3 and EL5 required adjustments. DOE also does not believe that the value for EL3 will have significant consequences for the residential consumer. See section V.C.8 for a discussion of this topic.

For 8-foot SP slimline lamps and 8-foot RDC HO lamps, DOE analyzed recent compliance reports and determined that not enough data existed in those reports to maintain all of the levels proposed in the April 2009 NOPR. Therefore, DOE modified ELs 1, 2, and 5 for 8-foot SP Slimline lamps and EL2 for 8-foot RDC HO lamps to reflect the levels that NEMA recommended. The revised efficacy levels are shown in section VII.A.1.

b. 4-Foot MiniBP Efficacy Levels

As discussed in the April 2009 NOPR, DOE established efficacy levels for 4-foot MiniBP SO and 4-foot MiniBP HO lamps based on catalog rated efficacies. 74 FR 16920, 16947 (April 13, 2009). Then, in order to account for manufacturer variation, DOE used the average reductions in efficacy values due to manufacturer variation calculated for the highest-efficacy 4-foot T8 medium bipin lamps, and applied those same reductions to the 4-foot miniature bipin rated efficacy values. DOE was unable to directly use 4-foot MiniBP lamp compliance data because these products have not been regulated in the past.

As mentioned earlier, NEMA and GE commented that efficacy levels for these 4-foot MiniBP lamps should reflect testing at an ambient temperature of 25 °C rather than 35 °C, the temperature at which standards for 4-foot MiniBP lamps in the April 2009 NOPR were based. (NEMA, No. 81 at pp. 3, 7, 8, 9, 22; GE, Public Meeting Transcript, No. 38.4 at pp. 72–73) ACEEE agreed that 4-foot MiniBP lamps should be tested at 25 °C. (ACEEE, Public Meeting Transcript, No. 38.4 at p. 79) As stated earlier, DOE agrees that 4-foot MiniBP efficacy levels should be based on testing at 25 °C and notes that based on catalog data, efficacies at 25 °C are 10 percent lower than efficacies at 35 °C. Therefore, in this final rule, DOE has revised the efficacy levels for the 4-foot MiniBP product classes accordingly.

In addition, NEMA commented that reductions applied to the 4-foot MiniBP efficacy levels in the April 2009 NOPR were insufficient to fully account for variability in production. (NEMA, No. 81 at pp. 3, 9, 22) NEMA recommended that DOE adopt 86 lm/W and 76 lm/W as EL1 for the 4-foot MiniBP SO and HO product classes, respectively. DOE recognizes that because it does not have compliance report information for 4-foot MiniBP lamps, it may not be able to accurately assess the manufacturing tolerance required for these lamps. Based on DOE's calculations, NEMA's recommended efficacy levels represent manufacturer tolerances within the range required by other lamp types. Therefore, in this final rule, DOE has revised EL1 for 4-foot MiniBP SO and HO lamps to be 86 lm/W and 76 lm/W respectively. For consistency with those allowed manufacturer tolerances DOE has also revised EL2 for 4-foot MiniBP SO lamps to be 90 lm/W. For the purposes of comparison, DOE estimates that 4-foot MiniBP SO and HO halophosphor lamps would have efficacies of 77 lm/W and 69 lm/W when tested at 25 °C. See Chapter 5 of the TSD for further detail on 4-foot MiniBP efficacy levels.

c. IRL Manufacturing Variability

For incandescent reflector lamps, in the April 2009 NOPR, DOE established efficacy levels based on commercially-available and prototype IRL technologies. 73 FR 16920, 16944 (April 13, 2009). In response to those efficacy levels, Philips commented that DOE did not account for manufacturing variability when developing the efficacy levels for incandescent reflector lamps and stressed the importance of accounting for this variability when setting minimum efficacy standards. (Philips, Public Meeting Transcript, No. 38.4 at p. 102–103) Similarly, the International Association of Lighting Designers (IALD) wrote that there are currently IRL on the market that meet TSL4 but only by very small amounts; these products could be eliminated if TSL4 is not carefully set. (IALD, No. 71 at p. 2) Philips also wrote that it is in support of TSL4 for IRL once it is lowered to account for manufacturing variability. (Philips, No. 75 at pp. 1–2) DOE supports the consideration of manufacturing variability in the development of efficacy requirements. In response, DOE examined IRL compliance reports submitted by manufacturers and discovered that reported efficacies of IRL do in fact vary from the catalog efficacies. Similar to GSFL, the efficacy reported for IRL product compliance is related to the lower limit of the 95-percent confidence interval. 62 FR 29222, 29230 (May 29, 1997). Therefore, in some cases, given significant variability in production, the reported efficacy of IRL may be lower than the long-term mean efficacy presented in lamp catalogs. The compliance reports also indicated that different efficacy levels (or technologies) require different efficacy reductions. Thus, similar to the approach taken in developing revised GSFL efficacy levels, DOE used IRL compliance report data to adjust the efficacy levels presented in the April 2009 NOPR downward to better reflect the observed efficacies of commercially-available lamps that feature the described technologies of each EL as discussed in chapter 5 of the TSD. Table VII.2 shows the final rule coefficients A in the equation $A*P\wedge 0.27$, which represents the efficacy level requirement for IRL. P is the rated wattage of the lamp. See chapter 5 of the TSD for further detail on the compliance reports used in the analysis.

5. Scaling to Product Classes Not Analyzed

a. 2-Foot U-Shaped Lamps

For the April 2009 NOPR, DOE developed efficacy levels for 2-foot U-shaped GSFL by assessing the catalog efficacies of U-shaped lamps that utilize the same design options used for the 4-foot medium bipin GSFL lamps that DOE analyzed. 74 FR 16920, 16948 (April 13, 2009). To develop the April 2009 NOPR ELs for U-shaped lamps while taking into account manufacturing variability, DOE assessed compliance reports of U-shaped lamps. Where U-shaped lamp compliance report data was unavailable, DOE augmented its assessment of manufacturing variability with compliance report data for 4-foot medium bipin lamps due to the technological similarities between U-shaped and 4-foot medium bipin lamps. In the April 2009 NOPR, the maximum reduction in efficacy requirements for U-shaped lamps in comparison with the 4-foot medium bipin ELs was 7.7 percent at EL1 (the 4-foot medium bipin EL1 requirement of 78 lm/W vs. the U-shaped EL1 requirement of 72 lm/W).

At the public meeting, GE commented that it is in general agreement with the approach that DOE used to develop the efficacy levels for 2-foot U-shaped lamps for the April 2009 NOPR. (GE, Public Meeting Transcript, No. 38.4 at p.

119–120) GE indicated, however, that the reduction in efficacy for U-shaped lamps compared to 4-foot medium bipin lamps should be approximately 8 percent, as the production of the bend in U-shaped lamps adds additional manufacturing variability. (GE, Public Meeting Transcript, No. 38.4 at pp. 123–124) In writing, NEMA then commented that the assumptions that DOE used to develop U-shaped lamp reduction factors were incorrect; NEMA proposed that DOE set EL3 at 76 lm/W for U-shaped lamps with CCTs less than or equal to 4500K and 71 lm/W for U-shaped lamps with CCTs greater than 4500K. NEMA warned that an EL3 efficacy requirement higher than these would remove all T12 U-shaped lamps from the market and that the setting of EL4 or higher as a standard would negatively impact competition; according to comment, the setting of EL5 would eliminate from the market all energy-efficient U-shaped lamps that feature a 6-inch spacing and the ability to fit into 2x2-foot luminaires. (NEMA, No. 81 at pp. 2–3, 11)

In response, DOE grouped U-shaped lamp compliance data sent to DOE in 2007 and 2008 into efficacy levels based on the design options featured in the 4-foot medium bipin lamps that DOE analyzed for the April 2009 NOPR, as follows: 700-series U-shaped 40W T12 lamps were grouped into EL1, and 800-series U-shaped 32W T8 lamps were grouped into either EL3, EL4, or EL5 based on catalog efficacy. DOE did not have any compliance reports from 2007 and 2008 for U-shaped 34W T12 lamps. DOE found that it did not have enough data at ELs 1 through 5 to confidently assess the manufacturing variability of U-shaped lamps on the market. For EL1 through EL3, DOE thus selected the levels proposed by NEMA in response to the March 2008 ANOPR. (NEMA, No. 26 at p. 7) For EL4 and EL5, NEMA did not propose levels for U-shaped lamps. Thus, DOE used NEMA's suggested 8-percent value as a scaling factor from the linear 4-foot medium bipin efficacy levels. (NEMA, Public Meeting Transcript, No. 38.4 at pp. 123–124). The efficacy levels for low-CCT U-shaped lamps for this final rule are shown in chapter 5 of the TSD.

DOE notes that two manufacturers currently produce U-shaped lamps that meet the EL4 proposed in the April 2009 NOPR and retained by DOE in this final rule. DOE acknowledges that currently, only one manufacturer produces U-shaped lamps that meet EL5. DOE is not aware of technological barriers or legal barriers (such as the utilization of a proprietary technology by this manufacturer) that would prevent other manufacturers from producing U-shaped lamps at EL5. For this reason, DOE is using 87 lm/W as the EL5 efficacy level requirement for U-shaped lamps in this final rule.

b. Lamps With Higher CCTs

Because DOE received a number of comments related to its determination of efficacy levels based on compliance reports, DOE decided to reevaluate its efficacy levels at higher CCT levels using the latest compliance report data. For 4-foot MBP lamps with CCTs greater than 4500K, DOE discovered that the efficacy values proposed in the April 2009 NOPR required significant revision to achieve the technology goals outlined in chapter 5 of the TSD. Therefore, to determine efficacy values for these lamps, DOE employed the same methodology as was used to determine efficacy values for 4-foot MBP lamps with CCTs less than or equal to 4500K. Thus, as summarized in section V.B.4.a, DOE selected commercially available lamps for each efficacy level that represented that level's desired technology goal. These revised efficacy levels are supported by data contained in compliance reports submitted in 2008. The updated efficacy values for these lamps are shown in chapter 5 of the TSD.

DOE also compared NEMA's proposed efficacy levels for 8-foot lamps against its proposed efficacy levels in the April 2009 NOPR. For 8-foot SP Slimline lamps with CCTs greater than 4500 K, efficacy levels 1, 2, and 5 were higher than those levels proposed by NEMA. For 8-foot RDC HO lamps with high CCTs, only efficacy level 2 was greater than what NEMA proposed. DOE analyzed recent compliance reports submitted and determined that not enough data existed in those reports to maintain the levels proposed in the April 2009 NOPR for these lamps. Therefore, DOE modified ELs 1, 2, and 5 for 8-foot SP Slimline lamps and EL2 for 8-foot RDC HO lamps to reflect the levels that NEMA proposed. The revised efficacy levels are shown in section VII.A.1.

For U-shaped lamps, NEMA proposed that DOE set EL1, EL2, and EL3 at 65, 67, and 71 lm/W, respectively, for U-shaped lamps with CCTs greater than 4500K. (NEMA, No. 26 at p. 7; NEMA, No. 81 at p. 2) DOE did not have enough recent compliance report data for U-shaped lamps with CCTs above 4500K to accurately assess the manufacturing variability of U-shaped lamps on the market. For this reason, DOE adopted NEMA's proposed requirements for this final rule. NEMA did not propose efficacy level requirements at EL4 and EL5. To develop requirements at these levels for U-shaped lamps with CCTs above 4500K, DOE used NEMA's suggested 8-percent value as a scaling factor and applied the factor to the high-CCT linear 4-foot medium bipin efficacy levels. (NEMA, Public Meeting Transcript, No. 38.4 at pp. 123–124). The efficacy levels for high-CCT U-shaped lamps for the April 2009 NOPR and for this final rule are shown in section VII.A.1.

c. Modified Spectrum IRL

DOE received a number of comments on the reduction factor that DOE applied to the standard-spectrum IRL efficacy levels in order to develop efficacy levels for the modified-spectrum IRL product class. At the public meeting, NEMA commented that industry uses an efficacy reduction of 20 to 25 percent for modified-spectrum IRL (in comparison with standard-spectrum IRL of otherwise identical characteristics) and that the typical efficacy reduction is closer to 20 percent than 25 percent. (NEMA, Public Meeting Transcript, No. 38.4 at pp. 128–129) After publication of the April 2009 NOPR, however, NEMA commented in writing that DOE's April 2009 NOPR analysis was based only on 50W modified-spectrum lamps and that DOE should choose a reduction factor of 25 percent for the modified-spectrum IRL product class in order to retain a diversity of modified-spectrum products on the market. (NEMA, No. 81 at p. 12) On the other hand, PG&E, ASAP, ACEEE, and NRDC commented in writing that if DOE does retain a modified-spectrum IRL product class for the final rule, the class should feature an efficacy reduction of no greater than 10 percent from the standard-spectrum IRL efficacy requirements so that manufacturers cannot produce modified-spectrum IRL using technologies that are cheaper than technologies that would be needed to produced a standard-spectrum IRL of the same efficacy level, creating a loophole. (PG&E, ASAP, NRDC, No. 59 at p. 1–2; NRDC, No. 82 at pp. 2, 4–5; ACEEE, No. 76 at p. 5) DOE generally does not believe that a modified-spectrum IRL product class will be utilized by manufacturers as a loophole that ultimately undermines energy savings. This is because DOE expects that designers of modified-spectrum IRL will likely utilize the same design options featured in standard-spectrum IRL that meet a particular efficacy requirement (such as improved HIR technologies at EL4). Thus, in response to the comments of EEI, PG&E, ASAP, and NRDC, DOE expects modified-

spectrum IRL to have a similar cost as standard-spectrum IRL that comply with standards, minimizing migration to modified-spectrum IRL on a first-cost basis. In addition, modified-spectrum IRL are of lower lumen output than standard-spectrum IRL that otherwise have the same characteristics (particularly rated wattage) due to the subtractive filtering that is employed for spectrum modification. Consumers replacing standard-spectrum IRL with modified-spectrum IRL of the same rated wattage are likely to experience lower light levels, further discouraging migration.

DOE acknowledges, however, that some manufacturers may attempt to produce modified-spectrum IRL using cheaper technologies if the efficacy reduction for modified-spectrum IRL permits this to occur. For the April 2009 NOPR, DOE analyzed two modified-spectrum IRL and found an average efficacy reduction of approximately 19 percent, in general support of NEMA's comment concerning a 20 to 25 percent efficacy reduction utilized by industry. PG&E commented, however, that DOE should analyze more than two modified-spectrum IRL in order to determine an appropriate efficacy reduction for the product class. (PG&E, Public Meeting Transcript, No. 38.4 at p. 132–133) PG&E, ASAP, and NRDC commented in writing that it tested commercially-available modified-spectrum cover glasses with a variety of commercially-available IRL burner/reflector assemblies and found that one assembly produced a MacAdam step shift of more than six MacAdam steps, which is more than necessary to meet the modified-spectrum definition requirement of a four-MacAdam-step shift. The interested parties suggested that a smaller MacAdam-step shift would enable a more-efficacious lamp that still provides modified-spectrum utility. (PG&E, ASAP, NRDC, No. 59 at p. 2)

DOE supports the notion that additional information could enable a more accurate determination of the average efficacy reduction featured by modified-spectrum lamps and prevent a possible loophole. DOE also agrees that greater MacAdam-step shifts inherently reduce lamp efficacy by greater amounts, as more subtractive filtering is necessary to produce a larger shift in color point; the setting of a standard that can be met by commercially-available technologies that produce color points near the four-MacAdam-step boundary would thus preserve modified-spectrum utility on the IRL market while reducing the chance of a loophole. However, DOE was unable to find more modified-spectrum lamps on the market than those already found and utilized for the April 2009 NOPR analysis. Thus, to assess the impact of varying degrees of spectrum modification through neodymium (which DOE found to be the most common method of modifying IRL spectra) in IRL cover glasses, DOE developed a model that correlated cover glass neodymium concentration with cover glass light output reduction and MacAdam-step shift in color point. Increasing neodymium concentrations produce greater light output reduction. DOE found that a 15-percent light output reduction correlated with a MacAdam-step shift slightly greater than four steps. To validate the model, DOE then obtained five commercially-available HIR IRL capsules and then assembled reflector lamps utilizing the capsules in combination with either standard-spectrum or modified-spectrum commercially-available IRL cover glasses and reflectors. DOE then tested the lamps with the two cover glass types and determined their efficacies. The reduction in efficacy between the standard-spectrum and modified-spectrum lamps utilizing the five commercially-available HIR capsules obtained by DOE, averaged across the lamps, was approximately 16 percent. DOE believes that this value is in line with the output of the neodymium concentration model that it developed for the analysis. DOE also believes that manufacturers will be able to vary the neodymium concentration for cover glasses associated with a variety of lamp shapes such that modified-spectrum utility is preserved while standards are met. Thus, DOE is implementing a 15-percent reduction in efficacy levels for the modified-spectrum IRL product class in this final rule.

While PG&E, ASAP, and NRDC mentioned that no more than a 10 percent reduction would be necessary for a modified-spectrum product class, DOE believes that this value is specific to the IRL featuring prototype (not commercially-available) technologies that these interested parties tested with a modified-spectrum cover glass. In writing, the three interested parties acknowledged that commercially-available IRL burner/reflector assemblies tested with the same cover glass did not meet the modified-spectrum definition. (PG&E, ASAP, NRDC, Appendix 1, No. 63 at pp. 11–12) Because PG&E, ASAP, and NRDC did not indicate the filament temperature of the prototype IRL nor specify color point data, DOE could not determine the color of the IRL lumen output when operated with either the standard-spectrum or the modified-spectrum glasses. Thus, DOE has insufficient data to determine whether a 10-percent efficacy reduction could be achieved by manufacturers producing currently-available modified-spectrum lamps or if such a reduction would instead eliminate currently-available modified-spectrum lamps from the market. For this reason, DOE has chosen to use an efficacy reduction of 15 percent for the modified-spectrum IRL product class in this final rule, based on commercially-available IRL technologies.

d. Small Diameter IRL

In the April 2009 NOPR, DOE recognized that the size of small-diameter (PAR20) lamps vs. PAR30 and PAR38 lamps provides a specific utility to consumers (*e.g.* the ability to fit into smaller fixtures) but also results in an inherent efficacy reduction. Thus, DOE established a separate product class for small-diameter lamps in order to preserve the small-diameter utility in the IRL marketplace in the face of standards. 74 FR 16920, 16939 (April 13, 2009). Based on a comparison between the efficacies of commercially-available PAR20 lamps and their PAR30 and PAR38 counterparts, DOE selected an efficacy reduction factor of 12 percent vs. the large-diameter IRL product class and utilized this factor to develop the efficacy levels for the small-diameter IRL product class.

DOE received a number of comments on its choice of a 12-percent efficacy reduction factor for the small-diameter IRL product class. The California Stakeholders expressed that a 12-percent factor adequately describes the observed efficacy differences due to optics between PAR20 and larger-diameter lamps; the California Stakeholders also warned DOE that the selection of a larger reduction factor would allow small-diameter IRL to meet DOE's standards using less-efficient components, undermining DOE's energy savings goals. (California Stakeholders, No. 63 at pp. 2, 22) NEMA and GE, on the other hand, commented that the 12-percent reduction factor is inappropriate for the product class because 75W and 50W PAR20 lamps utilize single-ended halogen burner technologies and a double-ended burner (which is more efficacious than a single-ended burner) will not fit into a PAR20 lamp, thus eliminating PAR20 lamps from the market in the face of a TSL4 or TSL5 standard. (NEMA, No. 81 at p. 7, pp. 12–13; GE, No. 80 at p. 6–7; GE, Public Meeting Transcript, No. 38.4 at pp. 60–61) Philips acknowledged that a 12-percent factor describes the observed

efficacy differences between PAR20 lamps and larger-diameter lamps, but the interested party concurred with GE and NEMA concerning technical limitations that prevent double-ended burners from being installed into PAR20 lamps. (Philips, Public Meeting Transcript, No. 38.4 at p. 135–136, p. 138) NEMA also commented that the smaller envelope featured on small-diameter lamps limits heat dissipation, which would cause such lamps to run hotter and increase the susceptibility to early failure if the highest-efficacy halogen IR burners were installed. (NEMA, No. 81 at p. 13) In writing, NEMA recommended that DOE employ a reduction factor of 15 percent to 25 percent from the large-diameter efficacy levels for small-diameter lamps; the range represents the range of efficacies observed across small-diameter lamps on the market (considering a variety of manufacturers). (NEMA, No. 81 at p. 4) The California Stakeholders then commented in writing that PAR20 lamps will be able to accommodate double-ended burners by utilizing bent burner leads or cover glasses with a greater bulge and thus reach TSL5, as illustrated by two sources: A Philips MR16 lamp (which has a smaller diameter than a PAR20 lamp) on the European market that features a double-ended burner and bulged cover glass, and drawings from a lighting company that show the potential for a double-ended burner with a bent lead to be fitted into a PAR20 without a bulged cover glass. (California Stakeholders, No. 63 at pp. 22–24)

Based on comments, DOE acknowledges that the installation of double-ended burners into small-diameter lamps could be problematic. DOE notes that the outer dimensions of a PAR20 lamp, including the shape of the bulge, are dictated by ANSI Standard C78.21 (most recently updated in 2003). DOE notes that it is unaware of any standard dictating the inner dimensions of a PAR20 lamp, nor is DOE aware of a standard dictating the dimensions of double-ended burners. Thus, DOE believes that some technical innovations may make the installation of a double-ended burner into a PAR20 lamp feasible. Interested parties did not provide additional data to DOE indicating the efficacy impacts of bending the lead of a double-ended burner so that it can be installed into a PAR20 lamp, however; DOE also could not obtain other data addressing these impacts. Also, DOE believes that manufacturers would not be able to position a double-ended burner at the optimum position for maximum efficacy in a PAR20 lamp due to the lamp's reduced size; thus, DOE believes that a greater reduction factor than 12 percent is warranted for PAR20 lamps at EL4 and EL5 even if a double-ended burner could be fitted into a PAR20 lamp.

DOE acknowledges the Philips MR16 lamp that features a double-ended burner and also acknowledges that the MR16 format is smaller than the PAR20 format. The MR16 format, however, is a low-voltage format, and low-voltage lamps have different inherent characteristics than lamps designed for line-voltage operation. DOE thus does not believe that it can make assumptions about line-voltage small-diameter lamp designs by assessing low-voltage lamps. The California Stakeholders provided information showing a prototype low-voltage lamp with integrated transformer that can meet the April 2009 NOPR level of EL5 for IRL, but this interested party did not provide details about the lifetime of the lamp or the impacts of the transformer on efficacy. (CA Stakeholders, Appendix 4, No. 63 at pp. 1–5) While DOE is aware of low-voltage PAR20 lamps utilizing integrated transformers for direct connection to line-voltage sources, DOE does not have the data required to assess the impacts of such transformers on IRL efficacy; DOE thus could not confidently develop an efficacy level based on an IRL with an integrated transformer. See section VI.B.2.c for a further discussion of the integrated-transformer IRL design option. Because DOE cannot assess the effects of bent burner leads on lamp efficacy, acknowledges that double-ended burners cannot be optimally positioned in PAR20 lamps, cannot make design assumptions for line-voltage lamps based on low-voltage lamps, and cannot assess the impacts of an integrated transformer on lamp efficacy, DOE is revising its PAR20 EL4 and EL5 efficacy requirements in this final rule so that PAR20 lamps will not require double-ended burners to meet a standard established at EL4 or EL5.

In order to determine the efficacy reduction that would result from using a single-ended burner instead of a double-ended burner in a lamp, DOE obtained a commercially-available single-ended HIR capsule and measured the location and dimensions of the lead wire inside of the capsule, which prevents a certain amount of energy from reaching the capsule wall and being reflected back to the capsule filament. (A double-ended burner features a lead wire outside of the capsule, where it does not interfere with the reflectance of energy from the capsule wall back to the capsule filament.) DOE then created a model to determine the efficacy impacts of the lead wire's presence inside of the capsule. DOE also simulated manufacturing variability by modeling the effects of changing the capsule dimensions and lead wire positioning. With the resulting data from the model, DOE determined the reduction in efficacy that results from the presence of the lead wire inside of a single-ended HIR capsule in comparison with a double-ended capsule, which features an external lead wire. This reduction was determined to be approximately 3.5 percent. For EL4 and EL5, DOE is thus changing the reduction factor for small-diameter lamps from the April 2009 NOPR value of 12 percent to the value of 15.5 percent for this final rule. This is within the reduction factor range proposed by NEMA for small-diameter IRL. (NEMA, No. 81 at p. 4) The small-diameter IRL reduction factors in the April 2009 NOPR and in this final rule are shown in Table V.3. 74 FR 16920, 16950 (April 13, 2009).

TABLE V.3—SMALL-DIAMETER IRL REDUCTION FACTORS IN THE APRIL 2009 NOPR AND IN THIS FINAL RULE

Efficacy level	NOPR	Final rule
EL1	12%	12%
EL2	12%	12%
EL3	12%	12%
EL4	12%	15.5%
EL5	12%	15.5%

Concerning heat dissipation, DOE acknowledges that the smaller size of a PAR20 in comparison with larger-diameter lamps limits heat dissipation, which would cause a given filament to operate at a higher temperature if simply transplanted from a larger-diameter lamp to a PAR20 lamp without any other changes. DOE notes, however, that HIR R20 lamps currently exist on the market, thus proving that high temperature-HIR technology in small-diameter lamps is technologically feasible. In addition, in its research, DOE found no ANSI standard that indicated a required seal temperature. In fact on product specifications, DOE found that commercially-available lamps have a variety of seal temperatures. In consideration of all of these factors, DOE believes that the 15.5 percent reduction for EL4 and EL5 is appropriate for small-diameter lamps.

e. IRL With Rated Voltages Greater Than or Equal to 125 Volts

In the April 2009 NOPR, DOE proposed that covered IRL with rated

voltages greater than or equal to 125V must be 15 percent more efficacious than covered IRL with rated voltages less than 125V. At the public meeting, DOE received numerous comments on this proposal. NEMA commented that the proposed standard for 130V would not be technically feasible to achieve; 130V IRL are less efficacious than 120V IRL so that lifetime is preserved, and the effective elimination of 130V IRL would reduce utility for certain regions of the country with line voltages near 130V (since 120V IRL operated at 130V have reduced lifetimes). (NEMA, Public Meeting Transcript, No. 38.4 at pp. 60–62, 66–67, 139–140) NEMA instead requested the elimination of a 130V IRL product class and the development of standards based strictly upon lamps' rated voltages. (NEMA, Public Meeting Transcript, No. 38.4 at pp. 61–62, 67; NEMA, No. 81 at pp. 7, 24) On the other hand, EEI commented in writing on its support of higher efficacy standards for lamps with rated voltages higher than 125V, while ACEEE commented at the public meeting that many 130V IRL are used on 120V lines as longer-life lamps. (EEI, No. 39 at p. 3; ACEEE, Public Meeting Transcript, No. 38.4 at pp. 65–66) Philips acknowledged that 130V IRL lose 15 percent in efficacy when operated at 120V but commented that there were other ways apart from separate product classes to prevent the usage of 130V IRL on 120V lines. (Philips, Public Meeting Transcript, No. 38.4 at pp. 62, 139–140)

DOE shares ACEEE's concern that without a more-stringent 130V IRL product class, 130V IRL that meet a particular IRL efficacy requirement will be purchased and used on 120V lines as longer-life lamps that no longer meet the efficacy requirement. While DOE agrees with NEMA's comment that 130V lamps use less power than their rated power when operated at 120V, DOE also supports NEMA's comments that 130V lamps are less efficacious than 120V lamps. (NEMA, Public Meeting Transcript, No. 38.4 at p. 67; NEMA, No. 81 at p. 13) Specifically, a 130V lamp with a specific rated power, rated lumen output, efficacy, and rated lifetime will have lower power consumption, lower lumen output, lower efficacy, and longer lifetime when operated at 120V. By maintaining a separate product class for 130V IRL with a 15 percent increase in stringency relative to 120V IRL standards, DOE ensures that 130V IRL operated on 120V lines will be as efficacious during operation as 120V IRL that comply with standards. DOE acknowledges that designers of 130V IRL may have to make certain tradeoffs to meet the efficacy requirements, but DOE also believes that there are a number of ways to make compliant 130V IRL (such as by adjusting lamp lifetime). Therefore, DOE has kept the 130V IRL product class and its associated 15-percent stringency increase for the Final Rule.

In writing, EEI also asked for clarification that the efficacy requirements shown in the April 2009 NOPR for IRL with rated voltages greater than or equal to 125V apply when the IRL are tested at 120V. (EEI, No. 39 at p. 3) In response, DOE notes that IRL must be tested for compliance according to the test procedure in section 4.3 of Appendix R to Subpart B of 10 CFR 430, which states in part that ''[l]amps shall be operated at the rated voltage.'' Thus, IRL rated at 130V should be operated at 130V during the efficacy measurement process. DOE believes that IRL operated at 130V are generally 15 percent more efficacious than when they are operated at 120V; thus, retaining a separate product class for 130V IRL, with a 15-percent increase over 120V IRL standards, allows DOE to take into account the efficacy reduction that 130V IRL will experience when operated at 120V.

C. Life-Cycle Cost and Payback Period Analysis

This section describes the LCC and payback period analyses and the spreadsheet model DOE used for analyzing the economic impacts of possible standards on individual consumers. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 and appendix 8A of the TSD. 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 [13] to perform the analysis by incorporating uncertainty and variability considerations. For further details on the LCC and PBP Monte Carlo simulations, see the TSD appendix 8B, in which probable ranges of LCC results are presented.

The LCC analysis estimates the impact of a standard on consumers by calculating the net cost of a lamp (or lamp-and-ballast system) under a base-case scenario (in which no new energy conservation standard is in effect) and under a standards-case scenario (in which the proposed energy conservation regulation is applied). As part of the LCC and PBP analyses, DOE developed data that it used to establish product prices, sales taxes, installation costs, disposal costs, operating hours, product energy consumption, energy prices, product lifetime, and discount rates.

As discussed in the April 2009 NOPR, the life-cycle cost of a particular lamp design is a function of the total installed cost (which includes manufacturer selling price, sales taxes, distribution chain mark-ups, and any installation cost), operating expenses (due to purchases of energy as well as repair and maintenance costs), product lifetime, and discount rate. 74 FR 16920, 16950 (April 13, 2009). DOE also incorporated a residual value calculation to account for any remaining lifetime of lamps (or ballasts) at the end of the analysis period. 74 FR 16920, 16950 (April 13, 2009). The residual value is an estimate of the product's value to the consumer at the end of the life-cycle cost analysis period, which embodies the assumption that a lamp system continues to function beyond the end of the analysis period. DOE calculates the residual value by linearly prorating the product's initial cost consistent with the methodology described in the *Life-Cycle Costing Manual for the Federal Energy Management Program.*[14]

DOE also calculates a payback period for each standards-case lamp or lamp-and-ballast system. The payback period is the change in total installed cost of the more-efficient product compared to the baseline product, divided by the change in annual operating cost of that product compared to the baseline product. Stated more simply, the payback period is the time period for which a consumer must operate a more-efficient product to recoup the assumed increased total installed cost (compared to the baseline product) through savings from reduced operating costs. DOE expresses this period in years.

In addition, in the April 2009 NOPR and in today's final rule, DOE analyzes five types of events that would prompt a consumer to purchase a fluorescent lamp. These events account for the various economic impacts incurred by consumers depending upon the situations under which they are

[13] Monte Carlo simulations model uncertainty by utilizing probability distributions instead of single values for certain inputs and variables.

[14] Fuller, Sieglinde K. and Stephen R. Peterson, National Institute of Standards and Technology Handbook 135 (1996 Edition); Life-Cycle Costing Manual for the Federal Energy Management Program (Prepared for U.S. Department of Energy, Federal Energy Management Program, Office of the Assistant Secretary for Conservation and Renewable Energy) (Feb. 1996). Available at: *http://fire.nist.gov/fire/firedocs/build96/PDF/b96121.pdf.*

purchasing a lamp., Described in detail in the April 2009 NOPR, these events are: Lamp Failure (Event I), Standards-Induced Retrofit (Event II), Ballast Failure (Event III), Ballast Retrofit (Event IV), and New Construction and Renovation (Event V). 74 FR 16920, 16958 (April 13, 2009). Although described primarily in the context of GSFL, lamp purchase events can be applied to IRL as well. However, considering that IRL are generally not used with a ballast, the only lamp purchase events applicable to IRL are lamp failure (Event I) and new construction and renovation (Event V).

Table V.4 summarizes the approach and data that DOE used to derive the inputs to the LCC and PBP calculations for the April 2009 NOPR and the changes made for today's final rule. The following sections discuss the comments DOE received regarding its presentation of the LCC and PBP analyses in the April 2009 NOPR and the responses and changes DOE made to these analyses as a result.

TABLE V.4—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE NOPR AND FINAL RULE LCC ANALYSES

Inputs	April 2009 NOPR	Changes for the final rule
Consumer Product Price	Applied discounts to manufacturer catalog (''blue-book'') pricing in order to represent low, medium, and high prices for all lamp categories. Discounts were also applied to develop a price for ballasts.	No change.
Sales Tax	Derived weighted-average tax values for each Census division and four large States from data provided by the Sales Tax Clearinghouse.[2]	Updated the sales tax using the latest information from the Sales Tax Clearinghouse.[3] Updated population estimates using 2008 U.S. Census Bureau data.[4]
Installation Cost	Derived costs using the RS Means Electrical Cost Data, 2007[5] to obtain average labor times for installation, as well as labor rates for electricians and helpers based on wage rates, benefits, and training costs. For GSFL, included 2.5 minutes of installation time to the new construction, major retrofit, and renovation events in the commercial and industrial sectors to capture the time needed to install luminaire disconnects.	No change.
Disposal Cost	GSFL: Included a recycling cost of 10 cents per linear foot in the commercial and industrial sectors. IRL: Not included.	No change.
Annual Operating Hours	Determined operating hours by associating building-type-specific operating hours data with regional distributions of various building types using the 2002 U.S. Lighting Market Characterization[6] and the Energy Information Administration's (EIA) 2003 Commercial Building Energy Consumption Survey (CBECS),[7] 2001 Residential Energy Consumption Survey,[8] and 2002 Manufacturing Energy Consumption Survey.[9]	Updated the regional distribution of residential buildings using the 2005 Residential Energy Consumption Survey.[10]
Product Energy Consumption Rate.	Determined lamp input power (or lamp-and-ballast system input power for GSFL) based on published manufacturer literature. Used a linear fit of GSFL system power on several different ballasts with varying ballast factors in order to derive GSFL system power for all of the ballasts used in the analysis.	No change.
Electricity Prices	Price: Based on EIA's 2006 Form EIA–861 data.[11] Variability: Regional energy prices determined for 13 regions.	Updated with EIA's 2007 Form EIA–861.[12]
Electricity Price Trends	Forecasted with EIA's *Annual Energy Outlook (AEO) 2008.*[13]	Updated with EIA's April 2009 *AEO2009,* which includes the impacts of the American Recovery and Reinvestment Act of February 2009.[14]
Lifetime	Commercial and industrial sector ballast lifetime based on average ballast life of 49,054 from 2000 Ballast Rule;[15] developed separate ballast lifetime estimate for the residential sector using measured life reports. Lamp lifetime based on published manufacturer literature where available. DOE assumed a lamp operating time of 3 hours per start. Where manufacturer literature was not available, DOE derived lamp lifetimes as part of the engineering analysis. Residential GSFL: 4-foot medium bipin lamp lifetime is dependent on the fixture lifetime (*i.e.*, for average residential lamp operating hours, the fixture reaches end of life before the lamp reaches end of life, and, thus, the lamp is retired before it fails.)	DOE added residential sector GSFL LCC analysis scenarios where a consumer preserves the lamp during a fixture replacement and installs the preserved lamp on a new fixture. The analysis periods for these scenarios are based on the full lifetime of the baseline lamp.
Discount Rate	Residential: Approach based on the finance cost of raising funds to purchase lamps either through the financial cost of any debt incurred to purchase product or the opportunity cost of any equity used to purchase equipment, based on the Federal Reserve's Survey of Consumer Finances data[16] for 1989, 1992, 1995, 1998, 2001, and 2004. Commercial and industrial: Derived discount rates using the cost of capital of publicly-traded firms in the sectors that purchase lamps, based on data in the 2003 CBECS,[17] Damodaran Online,[18] Ibbotson's Associates,[19] the 2007 Value Line Investment survey,[20] Office of Management and Budget (OMB) Circular No. A–94,[21] 2008 State and local bond interest rates,[22] and the U.S. Bureau of Economic Analysis.[23]	For the residential sector, included data from the 2007 Survey of Consumer Finances and the Cost of Savings Index dataset covering 1984 to 2008.[24]

TABLE V.4—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE NOPR AND FINAL RULE LCC ANALYSES—Continued

Inputs	April 2009 NOPR	Changes for the final rule
Analysis Period	Commercial and industrial GSFL: Based on the longest baseline lamp life in a product class divided by the annual operating hours of that lamp. Residential GSFL: Based on the useful lifetime of the baseline lamp.	No change.
Lamp Purchasing Events.	Commercial and industrial sectors: DOE assessed five events: lamp failure, standards-induced retrofit, ballast failure (GSFL only), ballast retrofit (GSFL only), and new construction/renovation. Residential sector: DOE assessed three events: lamp failure, ballast failure (GSFL only), and new construction/renovation.	No change.

[1] U.S. Bureau of Labor Statistics, Table Containing History of CPI–U U.S. All Items Indexes and Annual Percent Changes from 1913 to Present (Last accessed Feb. 20, 2009). Available at: *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt.*

[2] The four large States are New York, California, Texas, and Florida.

[3] Sales Tax Clearinghouse, Aggregate State Tax Rates (2009) (Last accessed Feb. 20, 2009). Available at: *http://thestc.com/STrates.stm.* The February 20, 2009 material from this Web site is available in Docket # EE–2006–STD–0131. For more information, contact Brenda Edwards at (202) 586–2945.

[4] U.S. Census Bureau, Population change: April 1, 2000 to July 1, 2008 (NST–EST2008–popchg2000–2008). Last accessed February 20, 2009. Available at: *http://www.census.gov/popest/states/files/NST-EST2008-popchg2000-2008.csv.*

[5] R. S. Means Company, Inc., *2007 RS Means Electrical Cost Data* (2007).

[6] U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Final Report: U.S. Lighting Market Characterization, Volume I: National Lighting Inventory and Energy Consumption Estimate (2002). Available at: *http://www.eere.energy.gov/buildings/info/documents/pdfs/lmc_vol1_final.pdf.*

[7] U.S. Department of Energy, Energy Information Administration, Commercial Building Energy Consumption Survey: Micro-level data, file 2 Building Activities, Special Measures of Size, and Multi-building Facilities (2003). Available at: *http://www.eia.doe.gov/emeu/cbecs/public_use.html.*

[8] U.S. Department of Energy, Energy Information Administration, Residential Energy Consumption Survey: File 1: Housing Unit Characteristic (2006). Available at: *http://www.eia.doe.gov/emeu/recs/recs2001/publicuse2001.html.*

[9] U.S. Department of Energy, Energy Information Administration, Manufacturing Energy Consumption Survey, Table 1.4: Number of Establishments by First Use of Energy for All Purposes (Fuel and Nonfuel) (2002). Available at: *http://www.eia.doe.gov/emeu/mecs/mecs2002/data02/shelltables.html.*

[10] U.S. Department of Energy, Energy Information Administration, Residential Energy Consumption Survey: File 1: Housing Unit Characteristics (2008). Available at: *http://www.eia.doe.gov/emeu/recs/recspubuse05/datafiles/RECS05file1.csv.*

[11] U.S. Department of Energy, Energy Information Administration, Form EIA–861 for 2006 (2006). Available at: *http://www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

[12] U.S. Department of Energy, Energy Information Administration, Form EIA–861 for 2007 (2007). Available at: *http://www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

[13] U.S. Department of Energy, Energy Information Administration, *Annual Energy Outlook 2008 with Projections to 2030* (June 2008). Available at: *http://www.eia.doe.gov/oiaf/archive/aeo08/index.html.*

[14] U.S. Department of Energy, Energy Information Administration, *An Updated Annual Energy Outlook 2009 Reference Case Reflecting Provisions of the American Recovery and Reinvestment Act and Recent Changes in the Economic Outlook* (April 2009). Available at: *http://www.eia.doe.gov/oiaf/servicerpt/stimulus/index.html.*

[15] U.S. Department of Energy, Energy Efficiency and Renewable Energy, Office of Building Research and Standards, Technical Support Document: Energy Efficiency Standards for Consumer Products: Fluorescent Lamps Ballast Final Rule (Sept. 2000). Available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/gs_fluorescent_0100_r.html.*

[16] The Federal Reserve Board, Survey of Consumer Finances. Available at: *http://www.federalreserve.gov/PUBS/oss/oss2/scfindex.html.*

[17] U.S. Department of Energy, Energy Information Administration, Commercial Building Energy Consumption Survey (2003). Available at: *http://www.eia.doe.gov/emeu/cbecs/.*

[18] Damodaran Online, *The Data Page: Historical Returns on Stocks, Bonds, and Bills—United States* (2006) (Last accessed Sept. 12, 2007). Available at: *http://pages.stern.nyu.edu/~adamodar.* The September 12, 2007 material from this Web site is available in Docket # EE–2006–STD–0131. For more information, contact Brenda Edwards at (202) 586–2945.

[19] Ibbotson's Associates, Stocks, Bonds, Bills, and Inflation, Valuation Edition, 2001 Yearbook (2001).

[20] Value Line, Value Line Investment Survey (2007). Available at: *http://www.valueline.com.*

[21] U.S. Office of Management and Budget, Circular No. A–94 Appendix C (2008). Available at: *http://www.whitehouse.gov/omb/circulars/a094/a094.html.*

[22] Federal Reserve Board, Statistics: Releases and Historical Data—Selected Interest Rates—State and Local Bonds (2008). Available at: *http://www.federalreserve.gov/releases/h15/data/Monthly/H15_SL_Y20.txt.*

[23] U.S. Department of Commerce, Bureau of Economic Analysis, Table 1.1.9 Implicit Price Deflators for Gross Domestic Product (2008). Available at: *http://www.bea.gov/national/nipaweb/SelectTable.asp?Selected=N.*

[24] Mortgage-X, Mortgage Information Service. Cost of Savings Index (COSI), Index History. 2009. Last accessed, February 25, 2009. *http://mortgage-x.com/general/indexes/default.asp.*

1. Consumer Product Price

In the April 2009 NOPR, DOE used a variety of sources to develop consumer equipment prices, including lamp and ballast prices in manufacturers' suggested retail price lists (''blue books''), State procurement contracts, large electrical supply distributors, hardware and home improvement stores, Internet retailers, and other similar sources. DOE then developed low, medium, and high prices based on its findings. 74 FR 16920, 16952 (April 13, 2009).

At the public meeting, Philips commented that DOE's estimated costs of IRL in the residential sector reported in the proposed rule appear too low in comparison with the costs of commercial IRL. (Philips, Public Meeting Transcript, No. 38.4 at pp. 179–181) In response, DOE notes that the costs of all commercial IRL in the LCC and PBP analyses include $1.10 to account for the labor cost of a four-minute installation time at a labor rate of $16.55 per hour. (Using the consumer price index for 2008, the labor rate for this final rule was inflated to 2008 dollars, as compared to the April 2009 NOPR value of $15.94 per hour in 2007 dollars.) Conversely, DOE assumes that consumers in the residential sector will replace their own lamps and, therefore, does not model labor costs for IRL in the residential sector; this difference in

methodology contributes to the relative price difference between commercial and residential IRL. In addition, DOE acknowledges that lamps sold through various distribution chains may have differing end-user prices. For this reason, DOE conducts the LCC analysis on the high and low lamp prices as sensitivities, DOE believes that the sources and methodologies used to develop IRL prices for the April 2009 NOPR reflect the variety of IRL prices encountered by consumers in the residential and commercial sectors. The results of the IRL price sensitivities analysis can be found in Appendix 8B of the TSD.

Philips also commented that the incremental price differential for more-efficacious IRL appears too small. (Philips, Public Meeting Transcript, No. 38.4 at pp. 179–181) Additionally NEMA and Philips stated that the prices of IRL will be uncertain due to expected capacity constraints in 2012. (NEMA, Philips, Public Meeting Transcript, No. 38.4 at pp. 286–287)

DOE recognizes that the imposition of a standard will commoditize higher-efficacy IRL that may be sold today as premium products at higher markups (from manufacturing costs to end-user prices) than lower-efficacy IRL. Prices of IRL in DOE's analysis are meant to reflect commoditization of these higher-efficacy products in the face of standards. DOE assessed discounts between blue book prices and end-user prices of currently-available lower-efficacy IRL to obtain information about how commoditization affects IRL price. DOE took this information into account during the development of prices for the IRL that comply with each EL shown in today's final rule. Furthermore, although DOE recognizes that there may be uncertainty regarding future IRL prices, interested parties did not provide additional data to DOE as would cast doubt on its overall pricing methodology or as would support an alternative methodology. For these reasons, DOE has not changed the April 2009 NOPR IRL methodologies or prices for this final rule. For further information on the development of IRL prices, see chapter 7 of the final rule TSD.

2. Sales Tax

In the April 2009 NOPR, DOE obtained State and local sales tax data from the Sales Tax Clearinghouse. (April 2009 NOPR TSD chapter 7) The data represented weighted averages that include county and city rates. DOE used the data to compute population-weighted average tax values for each Census division and four large States (New York, California, Texas, and Florida). For the final rule, DOE retained this methodology and used updated sales tax data from the Sales Tax Clearinghouse [15] and updated population estimates from the U.S. Census Bureau.[16]

3. Annual Operating Hours

As discussed in the April 2009 NOPR, DOE developed annual operating hours for IRL and GSFL by combining building type-specific operating hours data from the 2002 U.S. Lighting Market Characterization (LMC) [17] with data in the 2003 Commercial Building Energy Consumption Survey (CBECS),[18] the 2001 Residential Energy Consumption Survey (RECS),[19] and the 2002 Manufacturing Energy Consumption Survey (MECS),[20] which describe the probability that a particular building type exists in a particular region. 74 FR 16920, 16954–55 (April 13, 2009). For this final rule, DOE updated the residential annual operating hours estimates using the 2005 RECS.[21] Residential-sector average operating hours changed from 789 to 791 hours per year for GSFL and from 884 hours per year in the April 2009 NOPR to 889 hours per year for this final rule for IRL. DOE did not receive any further comments on residential-sector operating hours. For further details on the annual operating hours used in the analyses, see chapter 6 of the TSD.

4. Electricity Prices and Electricity Price Trends

As explained in the April 2009 NOPR, DOE determined energy prices by deriving regional average prices for 13 geographic areas consisting of the nine U.S. Census divisions, with four large States (New York, Florida, Texas, and California) treated separately. 74 FR 16920, 16955–56 (April 13, 2009). For the April 2009 NOPR, DOE derived electricity prices based on data from the 2006 publication of EIA Form 861. *Id.* At the public meeting, ACEEE commented that DOE should use the latest available electricity prices and electricity price trends in its analysis for the final rule. (ACEEE, Public Meeting Transcript, No. 38.4 at pp. 154–155)

DOE agrees with ACEEE and has updated the related electricity price and electricity price trend sources for the final rule analysis. For electricity price data, the analysis now utilizes EIA's Form 861 electricity price data from the year 2007.[22] DOE obtained electricity price trend data from EIA's latest *AEO2009,*[23] which was published in April 2009 and is a special update of the March 2009 *AEO2009* (the initial release of EIA's *AEO2009*) [24] that includes the impacts of the American Recovery and Reinvestment Act (ARRA) of February 2009 (Pub. L. 111–5). To project electricity prices to the end of the LCC analysis period, DOE used the reference economic growth projection in the April *AEO2009.* As done for the April 2009 NOPR, DOE used the price trend average rate of change during 2020–2030 to estimate the price trends after 2030. See chapter 8 of the April 2009 NOPR TSD [25] as well as chapter 8 of the final rule TSD. The spreadsheet tools and LCC sensitivity scenarios featured in the April 2009 NOPR also included high-economic-growth and low-economic-growth electricity price trend

[15] Sales Tax Clearinghouse, ''Aggregate State Tax Rates'' (2009) (Last accessed February 20, 2009). Available at: *http://thestc.com/STrates.stm.* The February 20, 2009, material from this Web site is available in Docket #EE–2006–STD–0131. For more information, contact Brenda Edwards at (202) 586 2945.

[16] U.S. Census Bureau, ''Population Change: April 1, 2000 to July 1, 2008'' (July 2008). Available at: *http://www.census.gov/popest/states/files/NST-EST2008-popchg2000-2008.csv.*

[17] U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, ''U.S. Lighting Market Characterization. Volume I: National Lighting Inventory and Energy Consumption Estimate (2002).'' Available at: *http://www.netl.doe.gov/ssl/PDFs/lmc_vol1_final.pdf.*

[18] U.S. Department of Energy, Energy Information Agency, ''Commercial Building Energy Consumption Survey: Micro-Level Data, File 2 Building Activities, Special Measures of Size, and Multi-building Facilities (2003).'' Available at: *www.eia.doe.gov/emeu/cbecs/public_use.html.*

[19] U.S. Department of Energy, Energy Information Administration, Residential Energy Consumption Survey: File 1: Housing Unit Characteristic (2006). Available at: *http://www.eia.doe.gov/emeu/recs/recs2001/publicuse2001.html.*

[20] U.S. Department of Energy, Energy Information Agency, ''Manufacturing Energy Consumption Survey, Table 1.4: Number of Establishments by First Use of Energy for All Purposes (Fuel and Nonfuel) (2002).'' Available at: *www.eia.doe.gov/emeu/mecs/mecs2002/data02/shelltables.html.*

[21] U.S. Department of Energy, Energy Information Administration, Residential Energy Consumption Survey: File 1: Housing Unit Characteristic (2009). Available at: *http://www.eia.doe.gov/emeu/recs/recspubuse05/pubuse05.html.*

[22] U.S. Department of Energy, Energy Information Administration, Form EIA–861 for 2007 (2007). Available at: *http://www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

[23] U.S. Department of Energy, Energy Information Administration, *An Updated Annual Energy Outlook 2009 Reference Case Reflecting Provisions of the American Recovery and Reinvestment Act and Recent Changes in the Economic Outlook* (April 2009). Available at: *http://www.eia.doe.gov/oiaf/servicerpt/stimulus/index.html.*

[24] U.S. Department of Energy, Energy Information Administration, Annual Energy Outlook 2009 with Projections to 2030 (March 2009). Available at: *http://www.eia.doe.gov/oiaf/aeo/.*

[25] U.S. Department of Energy. Chapter 8: Life-Cycle Cost and Payback Period Analyses. Available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/ch_8_lamps_standards_nopr_tsd.pdf.*

cases from EIA. The April 2009 *AEO2009* did not include these cases, however. To generate them, DOE utilized the difference between the reference economic-growth case and the high- and low-economic-growth cases in the March 2009 *AEO2009* as scaling factors to produce high- and low-economic-growth estimates for the spreadsheet tools and LCC sensitivity scenarios addressed in this final rule.

The results of DOE's analysis using the reference economic-growth projections are presented in this notice, with a full set of results displayed in chapter 8 of the TSD. DOE also presents LCC and PBP results for the low-economic-growth and high-economic-growth cases from *AEO2009* in appendix 8B of the final rule TSD.

5. Ballast Lifetime

For the April 2009 NOPR, DOE used a commercial and industrial sector ballast lifetime of approximately 50,000 hours, which is the average ballast life used in the 2000 final rule for fluorescent lamp ballasts (2000 Ballast Rule).[26] 65 FR 56740 (Sept. 19, 2000). In the primary commercial sector LCC and PBP analysis, this is equivalent to a lifetime of approximately 14.2 years (based on an average of 3,435 operating hours per year in the commercial sector).

At the public meeting, Lutron Electronics agreed that a ballast lifetime of 50,000 hours is common, and a 14.2 year lifetime is appropriate for a ballast that is operated approximately 3,500 hours per year. However, Lutron Electronics also commented that the ballast service life (in years) will change as operating hours change. (Lutron Electronics, Public Meeting Transcript, No. 38.4 at pp. 152–153) DOE agrees with Lutron Electronics and verifies that in its commercial and industrial LCC analyses, for the Monte Carlo simulations (that analyze a distribution of operating hours) and for the consumer subgroup analyses, DOE varies ballast service life as operating hours change.

For the residential sector LCC and PBP analysis in the April 2009 NOPR, DOE used a ballast lifetime of 15 years, based on measure life reports that discuss ballast lifetime in terms of years.[27] [28] 74 FR 16920, 16959 (April 13, 2009). In other words, DOE assumed that a ballast installed in the residential sector would remain in place for an average of 15 years, regardless of its annual operating hours. The measure life reports, published in 2005 and 2007, incorporate both magnetic and electronic ballasts. DOE used the measure life reports because DOE believes they best capture the true service life of ballasts in the residential sector.

At the NOPR public meeting, ACEEE stated that in 2005, the vast majority of ballasts were magnetic, suggesting that the measure life that DOE assumed may not be appropriate. ACEEE also commented that the ballast lifetimes, when expressed in hours (15 years in place is equivalent to 11,869 hours of life based on average residential GSFL operating hours), appeared too low for the residential sector. (ACEEE, Public Meeting Transcript, No. 38.4 at pp. 154, 169–170) In response, DOE notes that it did not receive any data that indicate the measure life of electronic ballasts differs from magnetic ballasts. Thus, DOE does not believe there is a difference in the lifetimes of the two ballast types that is substantial enough to affect the results of the analyses. First, it is worth noting that the 2000 Ballast Rule assumes no difference between the two ballast lifetimes.[29] Second, manufacturer product literature does not generally suggest or market a difference in lifetimes between magnetic and electronic ballasts. Third, in interviews, manufacturers mentioned that there was no substantial difference in reliability (a proxy for service life) between magnetic and electronic ballasts. Finally, DOE understands that most ballasts are rated for longer lifetimes (in hours) than the lifetimes that DOE used in its analyses. DOE reiterates, however, that the measure life reports estimate the lifetimes of actual ballasts in the field, accounting for not only ballast failure at its rated life, but also premature failure, fixture removal, and replacement during renovation. For all of these reasons, DOE continues to use the measure life reports to determine ballast service life in the residential sector.

6. Lamp Lifetime

When possible, for the April 2009 NOPR, DOE used manufacturer literature to determine lamp lifetimes. 74 FR 16920, 16956–57 (April 13, 2009). When published manufacturer literature was not available—as was the case for some IRL—DOE derived lamp lifetimes as part of the engineering analysis. DOE also considered the impact of group re-lamping practices on GSFL lifetimes in the commercial and industrial sectors in this final rule. 74 FR 16920, 16954 (April 13, 2009). For details, see chapter 5 of the final rule TSD.

For GSFL, DOE based its lamp lifetimes on lamp start cycles of 3 hours per start. At the public meeting, Southern California Edison commented that residential GSFL may experience much shorter start cycles than 3 hours per start, thereby lowering their lifetimes from rated values. (Southern California Edison, Public Meeting Transcript, No. 38.4 at pp. 166–167) DOE acknowledges that some residential GSFL may indeed experience shorter start cycles than 3 hours per start, thereby reducing lamp lifetime due to increased electrode degradation. Research indicated to DOE that the effective lifetimes of lamps operated at start cycles other than 3 hours per start is highly variable and depends directly on the lamp type as well as the type of ballast (*i.e.*, program start, instant start, or rapid start) to which the lamp is connected. Southern California Edison did not provide data to illustrate the expected lifetimes of any of the residential GSFL (either base-case or standards-case) featured on any of the ballasts that DOE presents in the LCC analysis, nor did it provide data indicating the prevalence of various start cycles in the residential sector. In response to these comments, DOE conducted research but was unable to find data sources for the residential sector that specified any of this information. For this reason, DOE has chosen to maintain the usage of rated lamp lifetimes based on 3 hour start cycles for this final rule.

7. Discount Rates

In the April 2009 NOPR, DOE derived residential discount rates by identifying all possible debt or asset classes that might be used to purchase replacement products, including household assets that might be affected indirectly. DOE estimated the average proportions of the various debt and equity classes in the average U.S. household equity and debt portfolios using data from the Survey of Consumer Finances (SCF) sources from 1989 to 2004. DOE used the mean share of each class across the six sample years as a basis for estimating the effective financing rate for replacement equipment. DOE estimated interest or

[26] U.S. Department of Energy. April 2009 NOPR Technical Support Document. Chapter 4. Life-Cycle Costs and Payback Periods. Available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/chap4.pdf.*

[27] GDS Associates, Inc., Engineers and Consultants, *Measure Life Report: Residential and Commercial/Industrial Lighting and HVAC Measures* (The New England State Program Working Group) (2007).

[28] Economic Research Associates, Inc., and Quantec, LLC, Revised/Updated EULs Based On Retention And Persistence Studies Results (Southern California Edison) (2005).

[29] U.S. Department of Energy. Chapter 4. Life-Cycle Costs and Payback Periods. Available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/chap4.pdf.*

return rates associated with each type of equity and debt using SCF data and other sources. The mean real effective rate across the classes of household debt and equity, weighted by the shares of each class, was 5.6 percent for the April 2009 NOPR. 74 FR 16920, 16957 (April 13, 2009). For this final rule, DOE updated the sources used to compute the discount rate in the residential sector. The analysis now features data from the 2007 Survey of Consumer Finances and the Cost of Savings Index dataset covering 1984 to 2008. Based on these updates, the residential sector average discount rate for the final rule is 4.8 percent.

For the commercial sector and industrial sector, DOE derived the discount rate from the cost of capital of publicly-traded firms in the sectors that purchase lamps, as done for the April 2009 NOPR 74 FR 16920, 16957 (April 13, 2009). Because DOE received no comments on its commercial and industrial sector discount rates and all sources used remain the most current sources available, for this final rule, DOE has continued to use discount rates of 7.0 percent and 7.6 percent for the commercial and industrial sectors, respectively.

8. Residential Fluorescent Lamp Analysis

In the April 2009 NOPR, DOE produced a residential sector GSFL life-cycle cost and payback period analysis based upon measure life reports that indicated an average residential GSFL fixture lifetime of 15 years. 74 FR 16920, 16956 (April 13, 2009). Under average operating hours (791 hours per year), DOE determined that a 4-foot MBP lamp would live approximately 19 years. In the April 2009 NOPR LCC analysis, DOE assumed that consumers would discard their lamps during fixture replacement, effectively ending the life of the lamps, thus resulting in no lamp-only replacements in the residential sector under average operating hours. The 2.5-year analysis period used by DOE for the residential GSFL lamp failure events represented DOE's belief that under high operating hours (1,210 hours per year), if a baseline lamp and fixture were purchased at the same time, the baseline lamp would fail after approximately 12.5 years and the fixture would be replaced 2.5 years after the lamp failure (for a total fixture life of 15 years). Thus, after a lamp failure, the replacement lamp would have 2.5 years in which to operate before the fixture is replaced. DOE's analysis period for calculating the LCC savings for residential consumers responding to a lamp failure was therefore 2.5 years.

Both Southern California Edison and the California Stakeholders commented that the 2.5-year analysis period utilized by DOE in the NOPR to model the residential GSFL lamp failure events is too short and that the energy savings should be considered over the full life of the replacement lamp, in other words 12.5 years. In their suggested revisions to the LCC analysis, the stakeholders imply that upon fixture replacement, consumers will retain their previously-installed replacement lamp and reinstall it on a new fixture. According to the comments, analyzing such a scenario under high operating hours results in significant life-cycle cost savings for the residential lamp failure event when consumers are forced to retrofit their T12 systems with T8 systems. (Southern California Edison, No. 53 at p. 1–7; California Stakeholders, No. 63 at p. 9)

DOE acknowledges that in the residential sector, consumers may choose to preserve a lamp instead of discarding it upon fixture replacement, though in its research, DOE was unable to determine which situation was more likely. DOE recognizes that retaining a lamp beyond the fixture or ballast life would extend the useful lamp life, and, thus, the analysis period. Modeling this scenario would take into account operating cost savings over a longer period of time and additional equipment costs to the consumer, who in the base case is replacing their T12 lamp and will need to purchase a new ballast at some point in the future. Therefore, for this final rule, DOE has analyzed an additional scenario in the residential sector LCC analysis modeling this preservation of lamp behavior. This analysis shows that some residential consumers with T12 systems do in fact obtain LCC savings when forced to retrofit their T12 ballast with a T8 system. However, DOE also notes that the results of this analysis are highly dependent on the remaining years of lifetime left on the T12 ballast when the lamp is replaced. DOE presents the LCC results for this additional scenario in section VII.C.1.a of this final rule as well as in chapter 8 and appendix 8B of the TSD.

In contrast to Southern California Edison and the California Stakeholders who implied that DOE's analysis understated the consumer economic savings to the residential sector of retrofitting from a T12 to T8 system, GE commented that such a retrofit presents a best-case estimate of a 50-year payback period, and, therefore, is not economically justified. (GE, No. 80 at pp. 1–3; GE, Public Meeting Transcript, No. 38 at p. 81)

While DOE acknowledges that the standards presented in this final rule place some burden on some residential T12 GSFL users, DOE believes that the LCC analysis performed for this final rule accurately reflects this burden. DOE notes that as discussed below, payback period calculations do not account for expenses incurred by consumers who purchase new fixtures in the middle of the analysis period. In addition, DOE notes that the assumptions of electricity prices, labor rates, system energy savings, and operating hours that GE used to produce the payback estimate in its written comment do not align with the inputs that DOE presented in the April 2009 NOPR and updated for this final rule. DOE recognizes that there may be some variability in these inputs, but believes that DOE estimates represent those experienced for the average consumer. In addition, DOE notes that it did not receive specific adverse comments on these inputs themselves.

9. Rebuttable Payback Period Presumption

The payback period (PBP) is the amount of time it takes a consumer to recoup the assumed incremental costs of a more-efficient product through lower operating costs. In the April 2009 NOPR and today's final rule, DOE used a ''simple'' PBP, so named because the PBP does not take into account other changes in operating expenses over time or the time value of money. 74 FR 16920, 16957–58 (April 13, 2009). As inputs to the PBP analysis, DOE used the total installed cost of the product to the consumer for each efficacy level, as well as the first year annual operating costs for each efficacy level. The calculation requires the same inputs as the LCC, except for energy price trends and discount rates; only energy prices for the year the standard takes effect (2012 in this case) are needed.

At the public meeting, Earthjustice commented that there is a presumption that an energy conservation standard is economically justified if the payback period of products that comply with the standard is less than three years. (Earthjustice, Public Meeting Transcript, No. 38.4 at pp. 186–187) Earthjustice further stated that DOE did not calculate a rebuttable presumption payback period for each trial standard level presented in the April 2009 NOPR and that DOE cannot ignore the rebuttable presumption payback period out of preference for the seven-factor test described in 42 U.S.C. 6295(o)(2)(B)(i). ACEEE similarly commented in writing that ''[a] higher burden of proof is required to overcome the rebuttable

presumption.'' (Earthjustice, No. 60 at p. 6; ACEEE, No. 76 at p. 6) DOE is aware of the rebuttable presumption payback period test in 42 U.S.C 6295(o)(B)(iii), which states that ''[i]f the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified.'' While DOE acknowledges that the rebuttable presumption payback period computation can have value, DOE emphasizes that the presumption is rebuttable, specifically because DOE is required by law to consider the specific criteria in 42 U.S.C. 6295(o)(2)(B)(i) when prescribing new standards, such as impacts on utility, competition, and the Nation as a whole. Thus, DOE's analyses of these criteria serve to either support or rebut any initial determination that a standard is economically justified based on the rebuttable payback period presumption. There is no statutory provision that requires DOE to emphasize the rebuttable presumption payback period test over the specific criteria that must be considered according to 42 U.S.C. 6295(o)(2)(B)(i); thus, DOE disagrees that ''[a] higher burden of proof is required to overcome the rebuttable presumption.'' There is also no statutory requirement for DOE to present a single rebuttable presumption payback period for each trial standard level. DOE has conducted the full set of economic analyses required by 42 U.S.C. 6295(o)(B)(i) for this final rule. The results of this analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level.

The payback periods shown in chapter 8 and appendix 8B of the final rule TSD are ''simple payback periods'' computed using the same methodology that would be utilized to compute payback periods for a rebuttable presumption payback period test; DOE's seven-factor analysis serves to confirm or rebut any assumption of economic justification based on payback periods that are shorter than three years. DOE stresses, however, that there are several factors for which the LCC analysis accounts, but the payback period analysis does not. For example, the LCC analysis includes financing effects and utilizes energy costs that vary over time. In addition, DOE notes that the simple payback period values computed for some lamp purchase events and scenarios do not fully express the equipment costs experienced by consumers in these scenarios. Payback period calculations take into account only the installed costs incurred at the very beginning of the analysis period. Thus, the calculation excludes the economic impacts of any additional costs (*e.g.*, a new ballast purchase, recycling costs) that may be incurred in the middle or at the end of the analysis period. For these reasons, DOE believes that the LCC analysis and other analyses performed for this final rule serve as a higher-fidelity assessment of economic impacts than the computation of payback periods alone. In other words, the LCC results serve to support or rebut the results of the PBP analysis. Therefore, DOE is continuing to utilize these higher-fidelity analyses as a definitive evaluation of the economic impacts of the standards presented and chosen in this final rule.

D. National Impact Analysis—National Energy Savings and Net Present Value Analysis

DOE's NIA assesses the national energy savings (NES) and the national net present value (NPV) of total customer costs and savings that would be expected to result from new standards at specific efficacy levels.

For the final rule analysis, DOE used the same spreadsheet model (with updated inputs as discussed below) described and used in the NOPR to calculate the NES and NPV based on the annual energy consumption and total installed cost data employed in the LCC analysis. 74 FR 16920, 16958–71 (April 13, 2009). DOE forecasts energy savings, energy cost savings, equipment costs, and NPV for each product class from 2012 through 2042. The forecasts provide annual and cumulative values for all four output parameters. DOE also examines impact sensitivities by analyzing various lamp shipment scenarios (such as Roll-up and Shift).

To arrive at these output parameters, DOE first develops a base-case forecast for each analyzed lamp type. This forecast characterizes energy use and consumer costs (lamp purchase and operation) in the absence of new or revised energy conservation standards. To evaluate the impacts of such standards on these lamps, DOE compares this base-case projection with projections characterizing the market if DOE were to promulgate new or amended standards (*i.e.*, the standards case). In characterizing the base and standards cases, DOE considers historical shipments, its shipment projections, emerging technologies, the mix of efficacies sold in the absence of any new standards, and how that mix might change over time. Inputs and issues associated with the NIA and any changes made in this final rule are discussed in more detail immediately below.

1. Overview of NIA Changes in This Notice

Based on the comments it received regarding the April 2009 NOPR, DOE made a number of changes to the NIA. Table V.5 summarizes the approach and data DOE used to derive the inputs to the NES and NPV analyses for the April 2009 NOPR, as well as the changes it made for this final rule in response to comments and updated information. As demonstrated by the table, DOE changed several inputs due to the availability of updated sources. For example, DOE updated projected electricity prices from EIA's *AEO2008* estimates to *AEO2009.* In addition, DOE calculated new annual marginal site-to-source conversion factors based on the version of the National Energy Modeling System (NEMS) that corresponds to *AEO2009.* Following the table, DOE details additional inputs and changes, and summarizes and responds to each of the NIA-related comments it received at the public meeting and in written comments. *See* TSD chapters 10 and 11 for further details.

TABLE V.5—APPROACH AND DATA USED TO DERIVE THE INPUTS TO THE NATIONAL ENERGY SAVINGS AND NET PRESENT VALUE ANALYSES

Inputs	April 2009 NOPR description	Changes for the final rule
Shipments	Annual shipments from shipments model	*See* Table V.6 and Table V.7.
Effective date of standard	2012	No change.
Analysis period	2012 to 2042	No change.

TABLE V.5—APPROACH AND DATA USED TO DERIVE THE INPUTS TO THE NATIONAL ENERGY SAVINGS AND NET PRESENT VALUE ANALYSES—Continued

Inputs	April 2009 NOPR description	Changes for the final rule
Unit energy consumption (kWh/yr).	Established in the energy-use characterization, TSD chapter 6, by lamp or lamp-and-ballast design and sector.	Residential operating hours updated based on RECS 2005 (from RECS 2001).
Total installed cost	Established in the product price determination, TSD chapter 7 and the LCC analysis, chapter 8, by lamp-and-ballast designs.	No change.
Electricity price forecast	Based on *AEO2008* forecasts (to 2030) and an extrapolation for beyond 2030. (See TSD chapter 8).	Updated for *AEO2009* (used version informed by impacts of the American Reinvestment and Recovery Act).
Energy site-to-source conversion.	Conversion varies yearly and was generated by DOE/EIA's NEMS program (a time-series conversion factor; includes electric generation, transmission, and distribution losses). Conversion factors for beyond 2030 are held constant.	Updated for *AEO2009* (used version informed by impacts of the American Reinvestment and Recovery Act).
HVAC interaction savings	6.25% of total energy savings in all sectors	No change.
Rebound effect	1% of total energy savings in the commercial and industrial sectors. 8.5% of total energy savings in the residential sector.	No change.
Discount rate	3% and 7% real	No change.
Present year	Future costs and savings are discounted to 2007	Future costs and savings are discounted to 2009.

2. Shipments Analysis

Lamp shipments are an important input to the NIA. In the April 2009 NOPR, DOE explained how it developed separate shipment models for GSFL and IRL. 74 FR 16920, 16959–70 (April 13, 2009). In general, to forecast shipments for these two categories of lamps, DOE followed a four-step process. First, DOE used 2001-to-2005 historical shipment data from NEMA and other publicly-available sources to estimate the total historical shipments (*i.e.*, NEMA member and non-NEMA member shipments) of each lamp type analyzed. Second, based on these historical shipments and the average service lifetime of each lamp type, DOE calculated the installed stock of lamps for each lamp type in 2005. Third, by modeling lamp purchasing events, and applying growth rate, replacement rate, and emerging technologies penetration rate assumptions, DOE developed annual shipment projections from 2006 to 2042. (NEMA had not provided publically-available data for years after 2005). Specifically, DOE modeled lamp (and ballast for GSFL) shipments based on four lamp-purchasing market events: (1) New construction; (2) ballast failure (GSFL only); (3) lamp replacement; and (4) standards-induced retrofit (for the standards case). DOE also calibrated its shipments model to reflect confidential shipment data provided by NEMA for 2006 and 2007. Finally, because the shipments of lamp designs and lamp-and-ballast designs (for GSFL) often depend on their properties (*e.g.*, ballast factor and efficacy), DOE developed base-case and standards-case market-share matrices as another model input. The market-share matrices characterize the efficacy, power rating, light output, and lifetime of the lamp and lamp-and-ballast designs. The matrices input the percentage market share of each design into the shipment model. DOE used these market-share matrices to forecast lamp stock and shipments, taking into account each design's respective lifetime.

Table V.6 and Table V.7 summarize the approach and data DOE used for GSFL and IRL, respectively, to derive the inputs to the shipments analysis for the April 2009 NOPR, as well as the changes DOE made for the final rule. A discussion of comments DOE received on these inputs and of the changes implemented for the final rule follows.

TABLE V.6—APPROACH AND DATA USED TO DERIVE THE INPUTS TO GSFL SHIPMENTS ANALYSIS

Inputs	2009 NOPR description	Changes for the final rule
Historical shipments	2001–2005 shipment data provided publicly by NEMA (except for T5 lamps; see NOPR TSD chapter 10). Assumed NEMA data represented 90 percent of GSFL shipments. Calibrated 2006–2007 forecasted shipments based on confidential historical shipment data NEMA provided for those years.	No change.
Lamp inventory	Calculated stock in 2005. Then used growth, emerging technologies, and shipment assumptions to establish lamp inventory from 2006 to 2042.	No change.
Growth	Based commercial and residential growth on *AEO2008* estimates for future floor space growth. For the residential sector, modeled variations in number of lamps per new home. For the industrial sector, projected floor space growth using the 2002 Manufacturer Energy Consumption Survey (MECS 2002).	Updated commercial and residential growth for *AEO2009* (used version informed by impacts of the American Reinvestment and Recovery Act).
Base-case scenarios	Developed two base-case scenarios, one of which modeled the market penetration of LEDs based on projected payback period.	Updated LED prices and performance projections for DOE's Solid State Lighting Research and Development Multi-Year Program Plan FY'09–FY'15.

TABLE V.6—APPROACH AND DATA USED TO DERIVE THE INPUTS TO GSFL SHIPMENTS ANALYSIS—Continued

Inputs	2009 NOPR description	Changes for the final rule
Market-share matrices	Developed product distributions based on comments, interviews, and catalog research. Matrices apportion a share of shipments for each lamp-and-ballast design option.	Revised product distributions based on comments, NEMA survey data and further research.
Standards-case scenarios ...	Considered two sets of scenarios to characterize consumer behavior in response to standards: the Shift and Roll-up scenarios and the High and Market Segment-Based Lighting Expertise scenarios.	No change

TABLE V.7—APPROACH AND DATA USED TO DERIVE THE INPUTS TO IRL SHIPMENTS ANALYSIS

Inputs	2009 NOPR description	Changes for the final rule
Historical shipments	2001–2005 shipment data provided publicly by NEMA. Assumed NEMA data represented 85 percent of IRL shipments. Calibrated 2006–2007 projected shipments based on confidential historical shipment data NEMA provided for those years.	Received additional historical shipments (2004–2008) from NEMA with which DOE verified growth, projected shipments, and emerging technologies assumptions.
Lamp inventory	Calculated stock in 2005 based on average lifetime and historical shipments. Then used growth, replacement rate, and emerging technologies assumptions to establish lamp inventory from 2006 to 2042.	No change.
Growth	Shipment growth driven by socket growth. Socket growth based on *AEO2008* estimates for future commercial floor space and residential buildings. Also accounted for trend of increasing sockets per home.	Updated for *AEO2009* (used version informed by impacts of the American Reinvestment and Recovery Act).
Base-case R–CFL and emerging technologies.	Developed two base-case scenarios modeling the market penetration of light emitting diodes (LEDs), ceramic metal halides (CMH), and reflector compact fluorescent lamps (R-CFL) based on projected payback period.	Updated LED prices and performance projections for DOE's Solid State Lighting Research and Development Multi-Year Program Plan FY'09–FY'15.
Market-share matrices	Considered mix of technologies consumers select in the base case and standards case, as well as each of the scenarios analyzed.	No change.
Standards-case scenarios ...	Modeled both Roll-up and Shift scenarios. Revised BR lamp sensitivity scenario, creating two new standards-case scenarios also accounting for additional migration to R–CFL: ''Product Substitution'' and ''No Product Substitution.''	Modeled migration to only exempted BR lamps in the new ''BR Product Substitution'' scenario, which replaced the ''No Product Substitution'' scenario. Modeled migration to only R–CFL in the new ''R–CFL Product Substitution,'' which replaced the ''Product Substitution'' scenario. Added the ''Baseline Lifetime'' scenarios modeling sale of lamps with lifetimes similar to the baseline lamps in the standards case. (See section VI.C)

3. Macroeconomic Effects on Growth

In the April 2009 NOPR, as part of its shipments forecasts, DOE established commercial floor space and residential buildings growth based on *AEO2008.* Because *AEO2008* does not provide industrial floor space forecasts, DOE used historical MECS floor space values to establish a growth rate for the industrial sector. 74 FR 16920, 16961 (April 13, 2009). OSI stated that growth will be subject to economic shocks over time, and pointed to the current decline in the commercial market as evidence to that fact. (OSI, Public Meeting Transcript, No. 38.4 at p. 213–214) Southern California Edison commented that DOE should look at past economic dislocations to better forecast lamp shipments through 2042. (Southern California Edison, Public Meeting Transcript, No. 38.4 at p. 214) The California Stakeholders urged DOE not to change its NIA assumptions with respect to the recent macroeconomic downturn reasoning that such a modification would add no value to DOE's analysis because no one can accurately predict the timing and extent of an economic recovery. An attempt by DOE to do so would unduly burden its efforts to publish a final rule by the deadline. (California Stakeholders, No. 63 at p. 8)

While DOE agrees that future shipments will be subject to general economic shocks over time, DOE believes there is no practical way of projecting the timing of those shocks throughout the analysis period. DOE's projections (of sockets and thus shipment growth) incorporate *AEO2009*'s assumption of average gross domestic product (GDP) growth of 2.5 percent annually. That is consistent with historical growth, which has averaged 2.85 percent annually over the last 30 years, covering both recessionary and expansionary cycles.[30] Because of this consistency with historical trends and the incorporation of future economic growth considerations, DOE believes its approach of using *AEO*'s projections is superior to extrapolating from specific historical economic events.

[30] National Economic Accounts, Bureau of Economic Analysis, U.S. Department of Commerce (Last accessed on Feb. 28, 2009). Available at: *http://www.bea.gov/national/nipaweb/Index.asp.*

4. Reflector Market Growth

To establish IRL shipment forecasts in the April 2009 NOPR, DOE first modeled the projected growth in the total reflector lamp market. To do this, DOE utilized the year-to-year commercial floor space and residential building growth projections in *AEO2008.* DOE also accounted for a trend toward more fixtures in new and renovated homes. To do this, DOE obtained historical California data[31] on recessed cans per home, categorized by home age. Using this data, DOE estimated the average number of recessed cans per home to grow from 4.82 in 2005 to 8.52 in 2042. To estimate the growth rate in each year, DOE multiplied this growth in the number of recessed cans in homes by the projected stock of homes according to *AEO2008.* Combining these two sources, DOE predicted an average growth rate of sockets of 2.6 percent between 2006 and 2042. 74 FR 16920, 16961 (April 13, 2009).

In response to DOE's shipment forecasts, NEMA commented that DOE's stated average annual growth rate of 2.6 percent for IRL was not realistic. NEMA also provided additional historical IRL shipment data from 2004 to 2008 that show shipments of PAR38 lamps decreasing approximately 8 percent per year and shipments of PAR30 and PAR20 lamps only marginally increasing. (NEMA, No. 81 at p. 14–15) In response, DOE notes that the 2.6 percent growth rate in sockets presented in the April 2009 NOPR does not represent growth in overall IRL shipments. DOE used that growth in sockets and then applied varying penetrations of non-IRL technologies into those sockets to determine IRL shipment forecasts, as discussed in section V.D.5. In fact, after accounting for these non-IRL technologies, DOE's resulting 2004 to 2008 IRL shipments decline at a rate consistent with NEMA's historical shipments.

At the NOPR public meeting, EEI commented that data from RECS show that California homes historically have been smaller than the national average. Therefore, using the California study as a proxy for the nation as a whole may not be appropriate. Additionally, in recent years, EEI stated that new U.S. homes have stopped growing in terms of average floor space. EEI suggested that DOE research other State studies and regional studies from the National Association of Home Builders to obtain more values for growth rates of lighting fixtures. Philips agreed and stated a preference for much more pessimistic IRL growth projections than those used by DOE, due to the economic slowdown, houses getting smaller, and the penetration of CFLs and other emerging technologies. (EEI, Public Meeting Transcript, No. 38.4 at p. 196; Philips, Public Meeting Transcript, No. 38.4 at p. 197; EEI, No. 38.4 at pp. 3,4)

In response, DOE agrees that RECS data shows that the average home in California is smaller than the average home in the U.S. However, that fact does not mean DOE's extrapolation of the California trend (showing increasing number of light sources per home) to the nation is inappropriate. As discussed above and in TSD chapter 10, DOE used the growth rate of sockets per California home as an input into its national shipment projections, not the absolute number of sockets per home. It is the growth in the size of California homes relative to the growth of all U.S. homes that is important to the analysis, not the absolute size of the homes. Therefore, as long as the floor space growth rate of new homes in California is consistent with rest of the country, the trend toward more sockets in California is applicable in this instance to the country as a whole. To that point, Census data from 1973 to 2008 show that average floor space of new homes in the West has grown at roughly the same rate as in the nation overall—1.11 percent versus 1.20 percent. Therefore, DOE believes the application of the California data to the rest of the country is appropriate in this instance and has not changed its methodology for the final rule.

With regard to the comment that homes are no longer growing in size, DOE's analysis of census housing data shows positive annual single-family home floor space growth in each year from 1994 to 2007. In 2008, the overall U.S. average did indeed decline by 0.5 percent. However, while year-to-year average growth has varied over 35 years, the long-term trend is clearly upward—as mentioned above, the average floor space of new homes has grown at a compounded annual rate of 1.2 percent since 1973. *AEO2009* projections for average residential square footage, which incorporate macroeconomic effects, also predict a long-term trend of positive floor space growth. Therefore, DOE believes projecting continued growth in the number of sockets per home is appropriate and has not changed its methodology for the final rule. This enables DOE to continue to use *AEO* forecasts, which capture macroeconomic conditions—as many comments have urged DOE to do—in its socket and shipment growth projections. With regard to the comment suggesting DOE obtain more regional housing data, DOE notes that *AEO2009* projections for residential housing stock growth are based off Census data on the nine Census Divisions. *AEO* projects housing stocks separately for each Census Division. Given the purposes of this analysis and the nationwide applicability of standards, DOE believes this methodology incorporates a sufficient level of geographic granularity.

5. Penetration of R–CFLs and Emerging Technologies

As discussed in more detail in the April 2009 NOPR (74 FR 16920, 16962–63 (April 13, 2009)) DOE developed and analyzed two base-case shipment scenarios for IRL that estimated varying penetrations of non-IRL technologies into the reflector market. For the Existing Technologies scenario, DOE only considered the market penetration of technologies that are currently readily available and have reached maturation in terms of price and efficacy, namely R–CFL. In the Emerging Technologies scenario, DOE attempted to forecast the market penetration of mature technologies *and* those technologies that are still undergoing significant changes in price and efficacy. Specifically, DOE considered the market penetration of R–CFL, LED lamps, and CMH lamps in the Emerging Technologies scenario. Because the lamps employing emerging technologies are beyond the scope of the rulemaking, DOE did not consider them design options for improving IRL or GSFL efficacy. Instead, DOE considered these technologies potential substitutes for the lamps covered in this rulemaking. DOE assumed that the price of emerging technologies relative to covered technologies is related to the likelihood that a consumer will buy an emerging technology instead of a covered lamp.

DOE developed price, performance, and efficacy forecasts for each of the analyzed R–CFL and emerging technologies. For the LED forecasts, DOE used data from its Solid State Lighting Multi-Year Program Plan. (For this final rule, DOE updated its LED forecasts for DOE's latest Multi-Year Program Plan.)[32] With these inputs, DOE calculated the payback period (PBP) of each technology in the relevant

[31] RLW Analytics, Inc., ''California Statewide Residential Lighting and Appliance Efficiency Saturation Survey'' (August 2005) (Last accessed on Sept. 29, 2008). Available at: *www.calresest.com/docs/2005CLASSREPORT.pdf.*

[32] Multi-Year Program Plan FY'09 to FY'15: Solid-State Lighting Research and Development (March 2009). Available at: *http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/ssl_mypp2009_web.pdf.*

sector using the difference between its purchase price, annual electricity cost, and annual lamp replacement cost relative to the lamp it replaces. (See TSD chapter 10 for further details.) DOE then used a relationship between PBP and market penetration to predict the market penetration of each technology in the relevant sector in every year from 2006 to 2042. DOE received several comments on how it estimated R–CFL and emerging technologies penetrations into the IRL market, as discussed below.

At the public meeting, EEI commented that dimmable CFLs could dramatically impact IRL growth if the dimmable technology improves. (EEI, Public Meeting Transcript, No. 38.4 at p. 202) In contrast, ADLT commented that DOE overestimated the penetration of R–CFLs in the commercial market in its April 2009 NOPR analysis. ADLT stated that many commercial lighting applications require directional lighting for which R–CFLs are ineffective. (ADLT, No. 72 at p. 5)

In response to EEI's comment, DOE agrees that enhanced utility features of various emerging technologies may change the rate at which they are adopted. DOE also acknowledges that there is considerable uncertainty in predicting the penetration of non-IRL technologies into the IRL market. It is for this very reason that DOE models two base-case scenarios that encompasses a large range of potential penetrations. DOE believes that its Emerging Technologies forecast adequately captures the effects of any increased penetration of R–CFLs through advances in dimming technology. As discussed in TSD chapter 10, based on payback period calculations, in the Emerging Technologies forecast, DOE predicts that R–CFLs will have a significant impact on IRL shipments only in the first few years of the analysis period. Thereafter, LEDs, which have dimming capability (and thus can provide the utility at issue in the comment), become more cost-effective and dominate the emerging technologies forecast, despite any potential future improvement in R–CFL dimming capabilities.

With regard to ADLT's comment, DOE recognizes that there are several qualities of R–CFLs (such as form factor, beam spread, color quality, directionality, and dimming capability) which may result in consumers' unwillingness to purchase them for IRL applications. DOE has attempted account for these factors by reducing the penetration of R–CFLs by approximately 40 percent relative to the penetrations predicted by the payback period-penetration calculations. However, considering the significant uncertainty regarding these penetrations, DOE verified its R–CFL penetration by comparing its modeled shipments from 2005 to 2008 to NEMA's historical shipments. As discussed earlier, DOE found that during this time period, the rate of decline in historical IRL shipments (which is primarily due to R–CFL penetration) is consistent with DOE's modeled shipments. For this reason, DOE does not feel it necessary or that there is an analytical basis and data to modify its R–CFL penetration estimates.

Pertaining to the Emerging Technology forecasts, NEMA commented that the April 2009 NOPR analysis incorrectly projected IRL shipments to increase after reaching a minimum level. NEMA asserted that DOE should remodel its expected energy savings with a continued decline in IRL shipments after 2024. (NEMA, No. 81, p. 15) DOE believes that its IRL forecasts are reasonable. As emerging technologies continue to improve and their prices continue to decrease, DOE agrees that IRL shipments will further decline as market share shifts from IRL to LED. However, as these emerging technologies reach maturation, DOE believes that their relative market share will stabilize, consistent with their mature cost and performance features. Thus, as the total number of reflector lamp sockets continues to increase (due to new construction), it is reasonable to predict that IRL shipments will experience a moderate increase as well. However, as DOE acknowledges that there is considerable uncertainty regarding its forecasts, DOE performed a sensitivity analysis for the Emerging Technologies scenario in which IRL shipments continue to decline until emerging technologies reach a maximum market penetration, which is upheld for the rest of the analysis period. This sensitivity analysis results in approximately a 6 percent decrease in energy savings over the analysis period.

6. Building Codes

In response to the April 2009 NOPR, GE commented that increasingly-stringent building codes will most likely be phased in over time, causing IRL growth to slow and decline. (GE, Public Meeting Transcript, No. 38.4 at pp. 205–206) EEI also stated that the most recent model building codes would have an effect on lighting technologies and efficiencies. EEI added that the 2009 International Energy Conservation Code (IECC) for residential construction calls for 50 percent of lighting to be high-efficiency. Once DOE certifies the IECC, EEI stated, States have one year to update their codes to meet or exceed the IECC 2009, which will alter the growth of IRL. (EEI, Public Meeting Transcript, No. 38.4, pp. 206–207, 315; EEI, No. 45 at pp. 5–6).

In response, to evaluate the effects of more-stringent building codes being phased in over the analysis period, DOE identified and evaluated three of the most influential building codes across the country. These included: (1) California's Title 24,[33] which is mandatory in the State; (2) the latest International Energy Conservation Code (IECC 2009), which is a model energy code and which some States voluntarily incorporate by reference into their building codes, and (3) *ASHRAE/IESNA Standard 90.1–2004.* Each code has sections that pertain to residential and commercial lighting. For example, IECC 2009 requires that high-efficacy light bulbs be installed in at least 50 percent of permanent lighting fixtures in new residential homes. ''High-efficacy'' is defined as:

''A lighting fixture that does not contain a medium screw base socket (E24/E26) and whose lamps have a minimum efficacy of:

1. 60 lumens per watt for lamps over 40 watts,

2. 50 lumens per watt for lamps over 15 watts to 40 watts,

3. 40 lumens per watt for lamps 15 watts or less.'' [34]

The California Building Standards Code (Title 24) requires that all luminaires that are permanently installed via new construction, alterations, or additions (including replacements) be high-efficacy. Title 24's definition of ''high-efficacy'' is very similar to that in IECC 2009.

DOE also researched *ASHRAE/IESNA Standard 90.1–2004,* a commonly-referenced code for commercial buildings. Although it rarely references lumen-per-watt metrics directly, the code does impose lighting power density requirements and requires controls for many building types and sizes, while providing various allowances and exemptions for many applications.

When evaluating how such codes will affect lamp shipments, it is important to note that DOE does not have the authority to mandate that States enact

[33] California Energy Commission, ''Residential Compliance Manual For California's Energy Efficiency Standards,'' Chapter 6 (April 2005) (Last accessed: June 18, 2009). Available at: *http://www.energy.ca.gov/2005publications/CEC-400-2005-005/chapters_4/q/6_Lighting.pdf.*

[34] International Code Council, ''International Energy Conservation Code: Excerpt From the 2007 Supplement'' (July 2007) (Last accessed: June 18, 2009). Available at: *http://www.iccsafe.org/cs/codes/2007-08cycle/2007Supplement/IECC07S.pdf.*

residential building codes, as EEI suggested (although for commercial codes DOE can require the adoption of a certain code it determines will improve the energy efficiency of the nation's commercial building stock). (42 U.S.C. 6833(b)(2)(A)) To clarify, EPCA requires DOE to determine whether updates to IECC's residential energy efficiency code will improve the energy efficiency of the nation's residential housing stock. When DOE makes such a positive determination, States are required to review (but not necessarily adopt) the energy provisions of the code and to determine whether it would be appropriate to revise residential building codes to meet or exceed the model code on which DOE made a positive determination. (42 U.S.C. 6833(b)(1)). States must complete their review within two years of DOE's positive determination. Given a variety of policy considerations and the absence of a direct mandate under EPCA that States adopt such building codes, currently, the stringency of residential codes adopted varies widely throughout the country.[35] The most recent and stringent codes are not necessarily adopted by States. Furthermore, in some States, local governments have authority over their building codes (known as ''Home Rule''), making it even more likely that the stringency of building codes will vary widely throughout the country. For these reasons, DOE does not believe that it should explicitly assume that new, more stringent codes will necessarily be adopted, implemented, and enforced. Furthermore, building codes are informed by product capabilities, IESNA recommended light levels, and lamp and ballast efficiencies, rather than vice versa. With that said, however, while not a driver of development of more efficient technology, DOE agrees that increasingly-stringent residential building codes are likely to contribute to a greater share of shipments being higher-efficacy lamps by the end of the analysis period as compared to the start of the period. Consistent with this trend, DOE's market share matrices show migration to higher-efficacy lamps in the base case, which allow for the effects of more-energy-efficient building codes, although DOE did not directly analyze those effects. *See* chapter 10 of the TSD for the full market-share matrices in 2012 and 2042.

[35] *See: http://www.energycodes.gov/implement/state_codes/index.stm.*

7. GSFL Shipments Growth

NEMA also commented on several aspects of the GSFL shipment forecasts. NEMA commented that DOE should forecast shipments that account for a migration to GSFL with longer lifetimes. NEMA argued that this phenomenon, currently occurring through both the increased shipments of T8 lamps relative to T12 lamps and through a movement from short-life T8 lamps to long-life T8 lamps, will result in a decline of overall GSFL shipments. NEMA stated that such an effect would materially affect DOE's economic justification of GSFL standard levels. (NEMA, No. 81 at p. 14) In response to NEMA's concern, DOE agrees that it is important to account for the economic effects of consumers purchasing longer-life GSFL and has done so. In its NOPR analyses and in chapter 11 of the TSD, DOE has fully accounted for this migration toward longer-life lamps in its calculations of consumer equipment costs and industry revenues, which are inputs into its calculations of NPV and INPV. According to the NIA model, the average commercial sector 4-foot MPB T8 shipped in 2012 has a lifetime of approximately 6 years; in 2042, the average lifetime is approximately 7 years.

NEMA also commented that DOE overlooked the trend toward more lighting controls and occupancy sensors in the commercial sector and, therefore, did not account for this effect in slowing shipment growth and reducing potential energy savings. NEMA asserted that this highlights the flaw in the current rulemaking approach (*e.g.,* considering lamps instead of lighting systems). (NEMA, No. 81 at p. 14)

In response, DOE researched the issue of lighting controls and how their deployment may affect the potential energy savings from more-efficient lamps. DOE agrees that lighting controls are penetrating the commercial buildings sector and as these technologies advance, building managers seek to control costs, and more recent commercial building energy codes are adopted. DOE's research suggested this trend is almost entirely in the new construction and major renovation market segments. A 2003 study suggested such controls are already common to roughly 60 percent of newly-constructed commercial square footage.[36] DOE has determined that the impacts of lighting controls are captured by the operating-hours data derived from CBECS and employed in DOE's analysis. However, as NEMA pointed out, given the additional time for the continued market penetration of these controls throughout the analysis period and the fact that buildings larger than 5,000 square feet require automatic shutoff controls to be in compliance with the most recent versions of the most referenced energy codes,[37] higher penetration rates are possible in the future. Therefore, to evaluate the potential increased penetration of lighting controls, DOE conducted a sensitivity analysis in which it estimated that all new commercial building floor space after 2012 featured automated lighting controls, such as occupancy sensors and scheduling systems.

Next, DOE estimated the reduced operating hours due to these lighting controls based on industry references. A Lighting Research Center study on savings potential from occupancy sensors found a range of 17 percent to 60 percent, depending on the application and tenant behavior.[38] This finding was in line with other industry estimates. For its analysis, DOE assumed the midpoint of these findings (38.5 percent) as the energy savings achieved by new commercial buildings employing lighting controls. DOE then reduced commercial operating hours by the product of the energy savings, increase in commercial square footage with lighting controls, and the average proportion of the lighting market serving newly-constructed commercial buildings over the analysis period. Based on these inputs, DOE calculated approximately a 0.5 percent decline in national energy savings and an average reduction in shipments of 0.5 percent over the analysis period. Although this reflects a relatively small impact, DOE considered this information in weighing the economic justification of the final rule. See TSD chapter 11 for more details on the lighting controls sensitivity analysis.

8. Residential Installed GSFL Stock

In the April 2009 NOPR, DOE allotted a portion of the 4-foot MBP installed stock in 2012 to the residential sector. To model this, DOE chose the representative system as a 40W T12, 4-foot MBP lamp on a magnetic low-ballast-factor ballast. 74 FR 16920, 16942–16943 (April 13, 2009). DOE

[36] DiLouie, Craig, ''Lighting Controls: Current Use, Major Trends and Future Direction,'' Lighting Controls Association (2003).

[37] *See,* for example, *http://resourcecenter.pnl.gov/cocoon/morf/ResourceCenter/article/1566.* (Last accessed June 16, 2009).

[38] VonNeida, Bill; Maniccia, Dorene; Tweed, Alan, An Analysis of the Energy and Cost Savings Potential of Occupancy Sensors for Commercial Lighting Systems, Lighting Research Center and Environmental Protection Agency (August 2000).

received comments on its residential sector analysis for the GSFL NIA. These comments are discussed below.

NEMA stated that DOE's analysis overlooked the fact that a small portion of the residential installed base is already composed of T8 lamps, thereby resulting in an overstatement of energy savings. NEMA stated that fixture manufacturers have begun to sell more T8 fixtures for the residential sector and that one luminaire manufacturer reported sales in the sector are currently split evenly between T8 and T12 fixtures. (NEMA, No. 81 at p. 8)

DOE acknowledges that in there is some present migration to T8 lamps in the residential sector. However, DOE also believes that the vast majority of the installed GSFL stock in the residential sector is T12 lamps. This view was communicated in public meetings, comments, and manufacturer interviews, as noted in the April 2009 NOPR. 74 FR 16920, 16942 (April 13, 2009). For example, in earlier comments, NEMA stated that the residential sector is projected to use more than 75 percent of all 4-foot medium bipin T12 lamps sold by 2012 and this level would be expected to persist, given that the 2000 Ballast Rule allows continued use of the most common residential magnetic ballast. (NEMA, No. 21, at p. 20; OSI, Public Meeting Transcript, No. 20 at p. 276) DOE's estimates are roughly in line with this estimate. Furthermore, DOE's approach is consistent with a 2008 PG&E study that assumed, based on discussions with fixture manufacturers and distributors, all current residential fixtures were T12 systems.[39] Based on these comments, interviews, and its own research, DOE chose to analyze the 4-foot medium bipin T12 lamp as the representative system in the residential sector. Taken together, PG&E's study and the public comments DOE received do not compel a change in this approach. However, DOE does assume and account for rapid migration to T8 lamps in the residential sector in the base case, reflecting the trend noted by NEMA. For example, in the base case, DOE assumes the stock of 4-foot medium bipin T8 lamps in the residential sector will grow more than 10-fold in the first decade after the effective date, or roughly at a 28-percent compounded annual growth rate. Therefore, DOE has retained its methodology in this respect.

EEI commented that 34W T12 lamps are being sold now in hardware stores for the residential market, and, therefore, DOE should not assume that the entire residential market is composed of 40W T12 lamps. Southern California Edison commented that only about 25 percent of T12 lamps are 40W (DOE's baseline lamp) in California. On the other hand, GE commented that the overwhelming majority of GSFL in the residential market are 40W lamps. (EEI, Public Meeting Transcript, No. 38.4 at p. 222; Southern California Edison, Public Meeting Transcript, No. 38.4 at pp. 188–189; GE, Public Meeting Transcript, No. 38.4 at p. 189)

DOE acknowledges that some 34W T12 lamps may be sold to residential consumers. Therefore, DOE has revised its residential 4-foot T12 market-share matrix to reflect this effect. In addition, DOE revised its 4-foot T12 market-share matrices in both the commercial and residential markets to better reflect confidential manufacturer survey data, as it relates to triphosphor and halophosphor shipment categories. As a result of these two changes, DOE now assumes that in the 2012 base case, 8 percent of 4-foot T12 lamp shipments in the residential sector are 34W, and 92 percent are 40W (down from 100 percent in the April 2009 NOPR). Overall, for this final rule, DOE allocated 90 percent (up from 67 percent) of the commercial 4-foot T12 market to 34W lamps and 10 percent to 40W.

9. GSFL Lighting Expertise Scenarios

In the April 2009 NOPR, DOE considered two sets of standards-case scenarios for GSFL shipments: (1) Roll-up and Shift scenarios; (2) High and Market Segment-Based Lighting Expertise scenarios. 74 FR 16920, 16967–16968 (April 13, 2009). The Roll-up and Shift scenarios address the issue of whether consumers who currently purchase lamps with efficacies that exceed (not just meet) the minimum standard would be likely to shift to even higher efficacy lamps in the face of amended standards. These scenarios and the comments DOE received on them are described below. For further details on the scenarios DOE analyzed and developed, see TSD chapter 10.

For the April 2009 NOPR, DOE modeled the Lighting Expertise scenarios that analyzed the lamp and ballast purchase decisions consumers are likely to make when required to purchase higher-efficacy lamps. DOE analyzed these scenarios because how consumers respond to this situation could substantially affect the potential energy savings and NPV that will result from amended standards. For example, to maintain lumen output with a new higher-efficacy lamp, some consumers may select a reduced-wattage lamp to replace a less-efficacious predecessor. Others may simply replace the lamp with one of the same wattage, not make any other adjustments, and accept higher light output. For GSFL, which operate on ballasts, consumers may also choose to run the higher-efficacy lamps on lower-ballast-factor ballasts. To the extent that lower ballast factors (BF) can achieve the appropriate lumen output, DOE incorporated them into the technology choices facing consumers.

The Lighting Expertise scenarios estimate the extent to which consumers in the standards case may migrate to energy-saving, reduced-wattage lamps, or, when reduced-wattage lamps are not available or feasible, pair the new lamps with a lower-BF ballast (*i.e.*, ballast factor ''tuning''). With the results of this analysis, DOE developed two standards-case scenarios called the ''High'' and ''Market Segment-Based'' Lighting Expertise scenarios. This set of scenarios characterizes the likelihood consumers will maintain equivalent light output upon the purchase of a new higher-efficacy lamp or accept higher lighting levels. In the High Expertise scenario, consumers who can maintain lumen levels, do so. Conversely, in the Market Segment-Based scenario, DOE assumes only a percentage of consumers will have the expertise, based primarily on their market segment and purchase event, to make this energy savings decision.

In general, NEMA supported the modeling of the Market Segment-Based Lighting Expertise scenario as the more realistic outcome of amended energy conservation standards. NEMA stated that despite an increase in efficacy, triphosphor lamps (particularly those at TSL4 and TSL5) will not save consumers any energy, because the lamps will be the same wattage as those they replace (with consumers simply realizing higher lighting levels). (Philips, Public Meeting Transcript, No. 38.4 at pp. 253–254; GE, Public Meeting Transcript, No. 38.4 at pp. 256–7; NEMA, No. 81 at p. 19) NEMA also commented that original equipment manufacturer (OEM) sales data indicates that roughly 90 percent of OEM luminaires (used in the fixture replacement, renovation, and new construction markets), are shipped with ballasts with a normal ballast factor. Therefore, NEMA commented, DOE's estimate of consumers with high expertise for new construction and

[39] ''Codes and Standards Enhancement (CASE) Initiative for PY2008: Title 20 Standards Development,'' *Analysis of Standards Options for Linear Fluorescent Fixtures* (Prepared for PG&E by ACEEE, Lighting Wizards, and Energy Solutions). (Last modified May 14, 2008)

renovation in the commercial sector (69 percent and 78 percent, respectively) are likely overstated and should probably be closer to what it estimates for the fixture replacement (34 percent) market. (OSI, Public Meeting Transcript, No. 38.4 at pp. 233–235, NEMA, No. 81, pp. 15–16)

In response to the comments it received, DOE conducted further research and interviews on this issue. Specifically, DOE reevaluated its assumptions based on confidential sales channel data on instant-start electronic T8 ballast sales that DOE received. The data were categorized by ballast type (standard or high-efficiency), ballast factor, and sales channel. OEM sales, which represent ballasts generally sold to fixture manufacturers, best match the fixture replacement, renovation, and new construction purchase events in DOE's analysis.

While the OEM sales data suggest, as NEMA noted, that most ballasts shipped for new fixtures have normal ballast factors, DOE does not believe such a distribution will necessarily characterize the lamp/ballast market in the standards case for the following reasons. First, the current distribution of ballast factors cannot be assumed to be predictive of the standards-case distribution. As more efficient lamps are introduced, a key variable—lumen output—in the utility of fixtures will have changed, all other things being equal. If, in the standards case, fixture OEMs were agnostic to ballast factor and continued to purchase the same distribution of high, normal, and low ballast factors, they would be altering and perhaps jeopardizing this utility the consumer derives from their product. Because fixtures are often designed and marketed for a typical lumen output, DOE does not believe it is likely that OEMs would be disinterested in the light output of their product in the standards case. This is reinforced by the emphasis on the cost of ownership estimates provided by fixture manufacturers in their specifications sheets and marketing materials. Given higher-efficacy lamps, DOE believes fixture manufacturers will continue to market energy savings as before, which will require pairing reduced-wattage lamps (if sold with the fixture) or low BF ballasts with their fixtures.

Next, discussions with fixture manufacturers and DOE's product research indicate fixture manufacturers have the flexibility to meet the demand of their end-users. There are no inherent substitutability issues that would pose obstacles in migrating from normal ballast factor to a low ballast factor. In interviews, fixture manufacturers communicated their desire and that of their customers to ''match'' lumens—*i.e.*, not over-light or under-light relative to the system being replaced. For example, one fixture manufacturers noted that it was common for them to replace three-lamp fixtures with two-lamp fixtures.

Manufacturers stated during the public meeting that the commercial sector is mostly characterized by a high level of lighting sophistication. (Philips, Public Meeting Transcript, No. 38.4 at pp. 239–240) For all of these reasons, DOE believes that fixture OEMs would be likely to consider lower BF ballasts, if more-efficacious lamps were required due to standards. Therefore, DOE decided not to change its lighting expertise assumptions for this final rule and continues to use the results of its analysis to characterize the Market-Segment-Based Lighting Expertise scenario. However, whereas DOE believes it has modeled market behavior which is consistent with the available research, DOE acknowledges the uncertainty in these estimates, and, therefore, modeled a sensitivity scenario in which it assumed that 34 percent (as recommended by NEMA) of consumers in the new construction and renovation markets migrate to lower-ballast-factor ballasts or low-wattage lamps. Generally, this sensitivity scenario reduces energy savings and NPV by approximately 20 percent and 25 percent, respectively (depending on the TSL and scenario). NPV and NES remain highly positive. See TSD chapter 11 for results of this sensitivity analysis.

In the April 2009 NOPR, DOE characterized residential consumers as having low lighting expertise in the Market-Segment-Based Lighting Expertise scenario and assumed 0 percent of these consumers would migrate to lower-BF ballasts or lower-wattage lamps in this standards-case scenario. 74 FR 16920, 16968 (April 13, 2009). ASAP commented that the residential consumer's expertise, or lack thereof, is not as relevant as what is on the store shelf and what is on sale. Therefore, ASAP argued, 0 percent choosing a lower BF ballast or reduced wattage is likely not accurate for fixture replacement in the residential sector. (ASAP, Public Meeting Transcript, No. 38.4 at pp. 236–237)

DOE reiterates that how consumers behave in this respect is highly uncertain. What is on sale in the store clearly has an effect, but to assert that it is the only determinate would be to disregard the impact of consumer choice. Additionally, what is on sale depends largely on the expertise of the agent deciding what the store should stock, and how responsive this agent is to consumer demand. As discussed in the April 2009 NOPR, because of the uncertainty around this issue DOE decided to consider both the High and Market Segment-Based Lighting Expertise scenarios. 74 FR 16920, 16967–68 (April 13, 2009). With these scenarios, DOE attempts to capture this range of potential impacts, with the Market Segment-Based scenario characterizing the lower bound. DOE decided for this final rule to continue to assume, in the Market Segment-Based lighting expertise scenario, that 0 percent of residential fixture replacement purchases will pair lower ballast factors with higher-efficacy lamps, or purchase reduced-wattage lamps. In contrast, the High Lighting Expertise scenario is meant to represent the upper bound of impacts and assumes that 100 percent of residential decision-makers have high lighting expertise.

10. IRL Product Substitution Scenarios

In the April 2009 NOPR, DOE modeled two sets of standards-case scenarios for IRL: Shift/Roll-up and Product Substitution/No Product Substitution. 74 FR 16920, 16969–70 (April 13, 2009). Similar to GSFL, the Shift/Roll-up scenarios consider whether consumers purchasing lamps with efficacies that exceed (not just meet) the minimum standard would be likely to shift to even higher efficacy lamps in the face of amended standards. In the Product Substitution scenario, DOE assumed consumers purchasing covered IRL in the base case do not necessarily continue to purchase regulated IRL in the standards case. Accordingly, DOE modeled a shift to both exempted BR lamps (namely the 65W BR30 lamp) and to R–CFL in the standards case. In the ''No Production Substitution'' scenario, DOE assumed consumers who purchase covered IRL technology in the base case continue to purchase covered IRL technology in the standards case (i.e., the total number of installed covered IRL in the base case is the same as that in the standards case throughout the analysis period). In this scenario, DOE did not model any additional shift in the standards case to non-regulated reflector technologies. For more information about the IRL standards-case scenarios, see chapter 10 of the NOPR TSD.

DOE received several comments on the merits of modeling the Product Substitution and No Product Substitution scenarios. ASAP and the Alliance to Save Energy commented that DOE should model migration to R–CFL and migration to exempt BR lamps

separately in order to better determine the effects of standards. ASAP suggested that DOE's decision to simultaneously model R–CFL and BR lamps obscured standards-case impacts because it combined two offsetting effects-migration to BR lamps, which would decrease energy savings, and migration to R–CFL, which would increase energy savings. (ASAP, Public Meeting Transcript, No. 38.4. at p. 241; *Alliance to Save Energy,* Public Meeting Transcript, No 38.4. at pp. 243–244). ACEEE and ADLT commented that because DOE intends to cover previously-exempted lamps in a separate rulemaking, it should eliminate or greatly reduce modeled migration to these lamps in the standards case. (ACEEE, No. 76 at p. 6, ADLT, No. 72 at p. 4) Philips also commented that DOE's assumption in the No Product Substitution scenario—that consumers who purchase covered IRL in the base case will continue to do so in the standards case—is incorrect because standards will increase the cost of covered IRL. This increase will tend to accelerate the penetration of competing technologies, which the No Product Substitution scenario fails to incorporate. (Philips, Public Meeting Transcript, No. 38.4 at p. 239)

First, DOE notes that currently exempted BR lamps, which are not included in the current rulemaking but are largely at issue in this discussion, *may* be analyzed for energy conservation standards in a separate rulemaking. At this time, DOE cannot predict what minimum efficacy requirements, if any, may be established for BR lamps. Therefore, it is impossible to determine how lamps exempted from this rulemaking (BR lamps) will compare in cost and efficacy to those IRL covered by today's final rule. As a result, there is a great deal of uncertainty in estimating the number of consumers likely to migrate to BR lamps. For this very reason, DOE maintains the following two scenarios. In the first scenario, no migration to the exempted 65W BR lamp is modeled (representative of a situation in which the exempted lamps are regulated at the same efficacy level as those IRL in this rulemaking) and only migration to R–CFL occurs. In the second scenario, DOE models the same migration to the 65W BR lamp as in the NOPR (representative of a situation in which the exempted lamps remain unregulated).

However, DOE agrees that modeling the two separate offsetting standards-case impacts (migration to R–CFL and migration to the 65W BR lamp together) conflates two variables that may be more illustrative when modeled separately. Therefore, for this final rule, DOE is modifying what was called the Product Substitution scenario in the April 2009 NOPR and by dividing it into two scenarios and renaming them the ''R–CFL Product Substitution'' and ''BR Product Substitution'' scenarios, respectively. In the R–CFL Product Substitution scenario, DOE models migration to only R–CFL in response to standards (for the reasons addressed in the comments and responses above). Similarly, in the BR Product Substitution scenario, DOE models migration only to BR lamps. DOE believes this approach best isolates the potential energy savings impacts of migration to the two different technologies. DOE has maintained its approach of modeling incrementally greater migration to R–CFL and BR lamps for higher TSLs in these scenarios; it also maintained the magnitude of these increases. In consideration of Philips's comment, DOE is no longer analyzing the ''No Product Substitution Scenario.'' DOE received several comments on the merits of modeling the ''No Product Substitution'' scenario for determining manufacturer impacts due to standards. These comments are discussed in section V.F.

Philips commented that it would be unlikely for the commercial sector to migrate to BR lamps in the standards case because the sector is driven by life-cycle costs (which are generally higher for BR lamps) and because most commercial entities have high lighting knowledge. As for the residential sector, Philips noted that BR lamps are not suitable for outdoor applications, limiting the pool of applications for which BR lamps are suitable to be potential replacements for covered IRL in the standards case. (Philips, Public Meeting Transcript, No. 38.4 at p. 239)

DOE agrees that PAR lamps may be more suitable for outdoor applications than the exempted BR lamps. However, as noted in the April 2009 NOPR and based on residential estimates that 40 percent of all residential IRL are PAR lamps,[40] DOE believes that a considerable portion of residential PAR lamps are used in non-outdoor applications that are suitable for both PAR and the exempted BR lamps. 74 FR 16920, 16970 (April 13, 2009). Thus, DOE maintains for this final rule that some residential consumers may move to exempted IRL in the standards case, although a great deal of uncertainty remains. For this reason DOE models a separate scenario which reflects no migration to the 65W BR lamps. Regarding NEMA's assertion that commercial consumers are more sensitive to life-cycle cost, DOE agrees that the penetration rates of less-cost-effective lamps will be lower in the commercial sector than the residential sector. In the April 2009 NOPR, DOE took this factor into account in its analysis by using separate payback period-penetration relationships for each sector. 74 FR 16920, 16963 (April 13, 2009). For the reasons discussed above, for this final rule, DOE maintains the same migration to the 65W BR lamp as modeled in the April 2009 NOPR in the Product Substitution scenario.

IALD commented that DOE did not consider all the possible substitution scenarios in the April 2009 NOPR. For example, consumers may switch to fixtures with exempted AR (aluminum reflector) and MR (multi-faceted reflector) lamps because of the lower upfront cost, or lamp manufacturers may choose to produce 39W lamps (outside the scope of coverage of DOE's regulations). (IALD, No. 71 at p. 2, 3) In response, DOE believes that a migration to AR and MR lamps is unlikely to have a material impact on energy savings due to the unique characteristics (*e.g.*, lamp size, voltage, or socket) of these lamps and because they generally cannot be interchanged with other reflectorized lamps.[41] In addition, DOE does not expect a significant migration to 39W lamps as a result of standards for the following reason. If these lamps were manufactured at lower efficacies without halogen technology (thereby circumventing the standard), they would likely have much lower lumen output than needed to meet the demand of consumers of the existing lamp, thereby making it an unacceptable replacement.

For more information about the R–CFL Product Substitution and BR Product Substitution standards-case scenarios, *see* chapter 10 of the TSD.

11. Discount Rates

In its analyses, DOE multiplies monetary values in future years by a discount factor in order to determine its present value. DOE estimated national impacts using both a 3-percent and a 7-percent real discount rate as the average real rate of return on private investment

[40] New York State Energy Research and Development Authority, Incandescent Reflector Lamps Study of Proposed Energy Efficiency Standards for New York State (2006) (Last accessed Oct. 7, 2006). Available at: *http://www.nyserda.org/publications/Report%2006-07-Complete%20report-web.pdf.*

[41] Lighting Resource Center, NLPIP Lighting Answers: Volume 6, Issue 2 (Sept. 2002) (Last accessed: June 21, 2009). Available at: *http://www.lrc.rpi.edu/programs/nlpip/lightingAnswers/mr16/reflectorizedLamps.asp.*

in the U.S. economy. NRDC argued that DOE should use a 2-percent or 3-percent discount rate and should not apply it to the value of carbon emissions. (NRDC, No. 82 at p. 5).

In response, DOE notes that it follows the guidelines on discount factors set forth by the Office of Management and Budget (OMB). Specifically, DOE uses these discount rates in accordance with guidance that OMB provides to Federal agencies on the development of regulatory analysis (OMB Circular A–4 [42] (Sept.17, 2003), particularly section E, ''Identifying and Measuring Benefits and Costs''). Accordingly, DOE is continuing to use 3-percent and 7-percent real discount rates for the relevant calculations for this final rule. Furthermore, DOE continues to report both undiscounted and discounted values of carbon emission reductions. DOE believes this allows for consideration of a range of policy perspectives, one of which is the view that a reduction in emissions today is more valuable than one in thirty years.

E. Consumer Sub-Group Analysis

In analyzing the potential impact of new or amended standards on commercial customers, DOE evaluates the impact on identifiable groups (*i.e.*, sub-groups) of customers, such as different types of businesses that may be disproportionately affected by a National standard level. In the April 2009 NOPR, DOE identified low-income consumers, institutions of religious worship, and institutions that serve low-income populations, and consumers of T12 electronic ballasts as lamp consumer sub-groups that could be disproportionately affected, and examined the impact of proposed standards on this group. 74 FR 16920, 16971–72 (April 13, 2009). DOE determined the impact on this consumer sub-group using the LCC spreadsheet model. DOE did not receive comments on sub-groups chosen to analyze nor on the assumptions applied to those sub-groups. DOE relied on the same methodology outlined in the April 2009 NOPR for the final rule analysis. The results of DOE's LCC sub-group analysis are briefly summarized in section VII.C.1.b and described in detail in chapter 12 of the TSD.

F. Manufacturer Impact Analysis

DOE performed a manufacturer impact analysis (MIA) to estimate the financial impact of energy conservation standards on manufacturers of GSFL and IRL, and to assess the impact of such standards on employment and manufacturing capacity. DOE's MIA methodology is discussed in detail in the April 2009 NOPR (74 FR 16920, 16972–77 (April 13, 2009)) and in chapter 13 of the TSD. DOE conducted the MIA for GSFL and IRL 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 Analysis) focused on the industries as a whole. In this phase, DOE used the Government Regulatory Impact Model (GRIM) to prepare an industry cash-flow analysis for each industry (GSFL and IRL). Using publicly-available information developed in Phase 1, DOE adapted the GRIM's generic structure to perform an industry cash flow analysis for manufacturers of GSFL and IRL both with and without energy conservation standards. In Phase 3 (Sub-Group Impact Analysis) DOE conducted interviews with manufacturers representing the majority of domestic GSFL and IRL sales. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics specific to each company and obtained each manufacturer's view of the industries. The interviews provided valuable information DOE used to evaluate the impacts of an energy conservation standard on manufacturer cash flows, manufacturing capacities, and employment levels. DOE then finalized its assumptions for the cash flow analysis and described the qualitative impacts on manufacturers due to amended energy conservation standards.

The GRIM inputs consist of data regarding the cost structures for GSFL and IRL industries, shipments, and revenues. These include information from many of the analyses described above, such as retail prices from the product price determination analysis and shipments forecasts from the NIA.

For the final rule, DOE incorporates a number of changes to GRIM inputs that were made in the other analyses for this rulemaking. The GRIM uses the medium prices in the product price determination analysis to calculate the manufacturer production costs (MPCs) for each equipment class at each TSL. By multiplying the production costs by different sets of markups, DOE derives the manufacturer selling prices used to calculate industry revenues. Following the NOPR, DOE updated its product price determination analysis using the CPI. DOE uses these updated prices in the GRIM for the final rule.

The GRIM estimates manufacturer revenues based on total-unit-shipment forecasts and the distribution of these shipments by efficacy. Changes in the efficacy mix at each standard level are a significant driver of manufacturer finances. For the final rule analysis, DOE updated the GSFL and IRL MIA results based on the total shipments and efficacy distribution estimated in the final rule NIA.

As described in section V.D.10, DOE updated the substitution scenarios in the IRL GRIM. For the April 2009 NOPR, DOE modeled a set of standards-case IRL scenarios called the ''Product Substitution'' and ''No Product Substitution'' scenarios. 74 FR 16920, 16969–70 (April 13, 2009). In the Product Substitution scenario, DOE assumed consumers purchasing covered IRL in the base case do not necessarily purchase covered IRL in the standards case. DOE modeled a shift to both exempted BR R–CFL in the standards case. In the ''No Production Substitution'' scenario, DOE assumed consumers who purchase covered IRL technology in the base case continue to purchase covered IRL technology in the standards case.

In response to comments by ASAP, for today's final rule, DOE modified the IRL shipments scenarios. The Product Substitution is modified by dividing it into two and renaming them the ''R–CFL Product Substitution'' and ''BR Product Substitution'' scenarios. In the R–CFL Product Substitution scenario, DOE models migration to only R–CFL in response to standards. Similarly, in the BR Product Substitution scenario, DOE models migration only to BR lamps. For further detail in DOE's modification of the Product Substitution scenarios and its response to ASAP's comments regarding this issue, see section V.D.10 of today's notice.

For the April 2009 NOPR, DOE determined the total capital conversion costs that would be required for the IRL industry to convert existing production to meet demand at each TSL. For the NOPR, DOE scaled the IRL capital conversion costs using the Existing Technologies base-case shipments to account for the decline in shipments before standards become effective. DOE used the same capital conversion costs for all scenarios. For today's final rule, DOE updated the capital and product conversion costs to 2008$ using the PPI for NAICS code 335110 (electric lamp bulb and part manufacturing) for both GSFL and IRL. Additionally, for the final rule, DOE is using two sets of capital conversion costs. For all IRL scenarios in the Existing Technologies base case, DOE scales its updated

[42] Available at: *http://www.whitehouse.gov/omb/assets/regulatory_matters_pdf/a-4.pdf.*

estimate of the capital conversion costs using the Existing Technologies base-case shipments. For all IRL scenarios in the Emerging Technology base case, DOE scales its updated estimate of the capital conversion costs using the Emerging Technologies base-case shipments. Scaling the IRL capital conversion costs for each base case results in lower capital conversion costs in the Emerging Technologies base case than in the Existing Technologies base case. DOE believes this approach to scaling capital conversion cost with shipments more accurately captures the capital costs that the IRL industry could incur in each scenario.

For today's final rule and in response to comments, DOE developed a shortened lifetime scenario for IRL to investigate the effects of shorter lamp lifetime at higher TSLs. In this sensitivity scenario, DOE changes the lifetime and prices of the higher-efficacy representative lamps at TSL 4 and TSL 5. These changes in characteristics also simulate certain lamps becoming a commodity product in response to energy conservation standards. These alterations cause higher shipments in the standards case and result in reduced negative impacts on the industry. See section VI.C.1 of today's final rule for an explanation of the lifetime sensitivity scenario. For the INPV results in the lifetime sensitivity scenario, see section VII.C.2.a of today's notice and chapter 13 of the TSD.

For the April 2009 NOPR, DOE used a set of markup scenarios to calculate manufacturer selling prices in order to estimate industry revenues in its cashflow analysis. 74 FR 16920, 16977 (April 13, 2009). In both the IRL and GSFL GRIM, DOE modeled a Flat Markup scenario. This scenario assumed that the cost of goods sold for each lamp is marked up by a flat percentage to cover standard selling, general, and administrative (SG&A) expenses, research and development (R&D) expenses, and profit. To derive this percentage, DOE evaluated publicly-available financial information for manufacturers of lighting equipment. For today's final rule, DOE continues to model a Flat Markup scenario in both the IRL and GSFL GRIM.

For GSFL only, DOE also modeled a Four-Tier markup scenario for the April 2009 NOPR. 74 FR 16920, 16977 (April 13, 2009). In this scenario, DOE assumed that the markup on lamps varies by efficacy in both the base case and the standards case. DOE used information provided by manufacturers, the medium prices in its product price determination, and industry average gross margins to estimate markups for GSFL under a four-tier pricing strategy in the base case. In this scenario premium products have a higher markup at each increasing tier of efficacy (i.e., a higher markup for each increasing phosphor series). In the standards case, DOE modeled the situation in which a reduction in product portfolios squeezes the margins of higher-efficacy products as they are ''demoted'' to lower-relative-efficacy-tier products.

For today's final rule, DOE incorporates additional assumptions in its Four-Tier markup scenario for both the base case and standards case. For the final rule, DOE continues to model a base-case pricing strategy in which each phosphor series earns a separate markup. However these mark-ups are changing over time during the analysis period to take into account commoditization of more-efficient lamps as they gain market share. Depending on the product class of GSFL, the market share of either 800 or 800 plus series lamps overtakes the market share of 700 series lamps. This capture of market share is fully realized at later dates (between 2035 and 2040, depending on the base-case scenario and product class). The original markups for 700, 800, and 800 plus series lamps converge to a single, lower markup over time. The Four-Tier markup standards case continues to ''squeeze'' the margins of commoditized lamps, but the impacts are reduced because the margins are already lowered in the base case. For an extensive explanation of the revised Four-Tier markup scenario, see chapter 13 of the TSD.

During the NOPR public meeting OSI commented that the INPV results for GSFL show that the manufacturer impacts were taken into consideration in DOE's arrival at the appropriate proposed energy conservation standard. However, the negative INPV results for IRL, especially at the proposed TSL 4, indicated that the impact on manufacturers was not considered in DOE's proposed energy conservation standard for IRL (OSRAM/Sylvania, Public Meeting Transcript, No. 38 at pp 284–286). Similarly, NEMA commented that DOE failed to give adequate consideration to the negative INPV at TSL4 (NEMA, No. 81 at p. 4). Philips added that the analysis for IRL showed a large increase in NPV at TSL 3, the first TSL to require exclusively infrared technology. The benefit to consumers moving past TSL 3 was incremental whereas the impacts on manufacturers were worse at TSL 4 than TSL 3 (Philips, Public Meeting Transcript, No. 38 at pp 292–293).

For the April 2009 NOPR, DOE presented the results of the MIA and its determination of proposed energy conservation standard levels for GSFL and IRL based on the EPCA criteria. Specifically, EPCA provides that any such standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified and that results in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A) and (3)(B)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens, to the greatest extent practicable, considering the seven factors. (42 U.S.C. 6295(o)(2)(B)(i)) DOE believes that the industry commenters took a contrasting approach to the agency's analysis under the relevant statutory criteria by attempting to frame the issue as one of comparing incremental benefits to consumers relative to impacts on manufacturers at in moving from TSL3 to TSL 4. Instead, DOE interprets the proper application of statutory criteria, to require atop-down approach, which implies DOE must first analyze the TSL that would save the maximum amount of energy. If that TSL is not economically justified (i.e., the benefits do not exceed the burdens), DOE must then analyze the TSL with the next greatest energy savings until it reaches a TSL that it determines is economically justified and technologically feasible. Impacts on manufacturers and consumers are specific criteria that DOE must consider in its analysis. (42 U.S.C. 6295 (o)(2)(B)(i)(I)) In the April 2009 NOPR, DOE found that TSL 5 was not economically justified for IRL. DOE then analyzed TSL 4 and found that it was economically justified and technologically feasible. 74 FR 16920, 17018 (April 13, 2009).

For the April 2009 NOPR, DOE considered the negative impacts on INPV for IRL manufacturers at TSL 4. However, the Secretary reached the initial conclusion that the benefits of energy savings, emissions reductions, the positive net economic savings to the Nation, and positive life-cycle cost savings at TSL 4 would outweigh the potentially large reduction in INPV for manufacturers. 74 FR 16920, 17018 (April 13, 2009). For the final rule, DOE continues to base its determination of whether a standard level is economically justified using all seven EPCA factors. While the impacts on consumers and manufacturers are both considered in making this

determination, none of these factors are reviewed in isolation. Although DOE gathers information on each of the seven statutory factors individually, the Secretary must ultimately consider the seven factors collectively in determining whether a standard is economically justified.

In its comments on DOE's April 2009 NOPR, ADLT stated that DOE's use of longer lifetimes at TSL 4 and TSL 5 is counter to manufacturer interviews. According to ADLT, because longer lamp lifetimes would have a significant impact on IRL shipments, the MIA overstates the impact on manufacturers. (ADLT, No. 72 at p. 3)

DOE acknowledges that lifetimes of analyzed lamps have a significant impact on IRL shipments. For the April 2009 NOPR, DOE presented its assumptions for lamp lifetimes and shipment projections. 74 FR 16920, 16956–57, 16959–65 (April 13, 2009). DOE also acknowledges that shipments are a significant driver of INPV results, especially in the IRL industry. To analyze the effects of lower lifetimes on IRL shipments at TSL 4 and TSL 5, DOE included a lifetime sensitivity analysis for today's final rule. The INPV results for the sensitivity scenario show that reduced lamp lifetimes at TSL 4 and TSL 5 significantly reduce the negative impacts on IRL manufacturers. DOE agrees with ADLT that the impacts on the IRL industry would be lower if manufacturers reduced lamp lifetimes in response to the energy conservation standards. See section VI.C.1 of today's final rule for an explanation of the lifetime sensitivity scenario. For the INPV results in the lifetime sensitivity scenario, see section VII.C.2.a of today's notice and chapter 13 of the TSD.

The CA Stakeholders are concerned that DOE's analysis of the burden on the GSFL industry may have focused primarily on the worst case scenario, rather than on the more likely combination of scenarios. The CA Stakeholders argue that if DOE were to average the impacts on GSFL manufacturers in the 16 possible scenarios, the industry losses would be less than half of the losses associated with the worst case scenario (CA Stakeholders, No. 63 at p. 11).

In arriving at the energy conservation standards in this final rule, DOE considered the full range of potential impacts on GSFL manufacturers. To determine the range of potential impacts on GSFL manufacturers, DOE performed an analysis which included 16 different industry cash flow scenarios. These scenarios considered numerous variables which influence the analysis (level of emerging technologies, markup strategies, product substitution, consumer lighting expertise, and product mix). To better explain the basis of its decision DOE describes how it balanced the likelihood of the scenarios and the range of uncertainty in arriving at today's standards. For a more detailed explanation of how DOE arrived at its decision for today's final rule, see section VII.D of today's notice.

All manufacturers expressed the view that the supply of standards-compliant lamps would be constrained. OSI commented that the large, negative INPV impacts for IRL manufacturers show that after the effective date of the standard, only the current volumes of standards-compliant lamps will be produced by manufacturers. (OSI, Public Meeting Transcript, No. 38 at p. 286). Philips stated that there is not an opportunity to invest in IRL because of negative impacts on manufacturers at the proposed level and the limited time horizon of the investment due to emerging technology. According to Philips, these factors could cause the IRL industry to experience a capacity constraint of HIR lamps (Philips, Public Meeting Transcript, No. 38 at pp. 287–288). GE agreed that this rulemaking forces a decision upon manufacturers in terms of whether to invest in a technology whose market is expected to decline over time. This limited investment will lead to a constrained IRL HIR lamp market (GE, Public Meeting Transcript, No. 38 at pp. 292–293). Similarly, NEMA commented that TSL 4 or above is essentially unthinkable for the industry and would cause capacity issues. NEMA added that TSL 3 or above for IRL would require manufacturers to over-invest to increase capacity of HIR lamps that will no longer be needed in a few years. NEMA believes these investments, which may never be recovered, cannot be justified financially and economically because of the diminishing market of covered IRL as a result of emerging technology. (NEMA, No. 81 at pp. 5, 10)

In the April 2009 NOPR, DOE included the capital conversion costs that would be required to meet the entire industry demand at each TSL. 74 FR 16920, 17001–02 (April 13, 2009). DOE based these estimates on interviews with manufacturers that produce the vast majority of IRL for sale in the United States. DOE obtained financial information through these manufacturer interviews and aggregated the results to mask any proprietary or confidential information from any one manufacturer. These estimates were found to be consistent with financial ratios for plant, property, and equipment reported in manufacturer financial statements. For TSL 5, because some manufacturers did not provide capital costs since they had no access to the needed technology, DOE supplemented manufacturer information with information provided by a supplier of coating technology. Therefore, DOE believes that the large capital conversion costs identified are representative of the expenditures that would be required for the industry to increase the production of higher-efficacy lamps at each TSL. DOE also cited these large capital conversion costs as a primary driver of the large, negative impacts on INPV. 74 FR 16920, 17002–03 (April 13, 2009).

In the April 2009 NOPR, DOE acknowledged manufacturers' concern about the potential for emerging technologies to further erode the IRL market. 74 FR 16920, 17002–03 (April 13, 2009). DOE also noted that an IRL standard would be unique because it would force investments in a market that could shrink over the entire lifetime of the investment. These large capital conversion costs continue to be a significant driver of the large, negative INPV values.

DOE believes that the large, negative INPV results compared to the industry value using the Emerging Technologies base case accurately captures manufacturer concerns about the lack of a financial return from large capital conversion in a shrinking market.

Philips commented that the capacity constraint would be worse at TSL 4 than at TSL 3, even though both these TSLs involve HIR technology. According to Philips, the additional time needed for the manufacturing processes associated with IRL lamps that meet TSL 4 could lead to additional capacity constraints because fewer products can be produced after the effective date of the standards. (Philips, Public Meeting Transcript, No. 38 at pp. 292–293)

DOE agrees that the INPV impacts at TSL 4 are larger than at TSL 3. The production of improved infrared capsules is more time consuming than the production of standard HIR lamps. The improvements to standard HIR lamps lower the output of each coating machine because production run would require additional cycle time for the coating process and quality control. The additional capital conversion costs at TSL 4 include the additional production equipment required to meet industry demand with a lower production output rate. DOE believes that there is sufficient lead time for manufacturers to convert their existing facilities to meet market demand with standards-compliant lamps. Manufacturers could mitigate possible capacity constraints by

installing additional coaters, purchasing infrared burners from a supplier, and using existing excess capacity.

The CA Stakeholders and ACEEE commented that DOE's capital conversion and product conversion costs for IRLs should have addressed the fact that massive investments in advanced IR technologies will likely be happening absent standards. According to the CA Stakeholders, due to great potential improvements and consumer preferences, IRL manufacturers will already be making investments in advanced burner technology to meet the EISA 2007 requirement for general service incandescent lamps. These investments include coating machines and coating technology that can be applied to both general service lamp burners and reflector lamp burners. (CA Stakeholders, No. 63 at p. 27) (ACEEE, No. 76 at p. 5)

DOE believes that the energy conservation standards set by today's final rule are more stringent than the EISA 2007 requirements for general service incandescent lamps in 2012, and, therefore, these GSIL investments are not pertinent to the IRL analysis. The EISA 2007 GSIL standards that are effective in 2020 are similar to the IRL energy conservation standards for today's final rule. If manufacturers use the same technology in 2020, improved capsule technology could be used to reach prescribed GSIL efficacy levels. However, it is uncertain that a similar pathway for GSIL will be used to reach the prescribed efficacy levels in 2020 since emerging technologies may offer a better solution. Because the GSIL regulation is effective eight years after the effective date for today's IRL energy conservation standard and because manufacturers will have already made investments for IRL, any GSIL investments to meet the 2020 requirements will not impact the magnitude of investments needed by the IRL industry to meet today's final rule.

OSI stated that an additional concern about the declining market share of IRL due to emerging technology is that IRL are manufactured mostly in the United States, whereas the alternative technologies are not. The commenter argued that a standard that hastens the shift to alternative technologies would have negative impacts on domestic employment in the IRL industry. (OSI, Public Meeting Transcript, No. 38 at p. 286)

In response, DOE notes that in the April 2009 NOPR, DOE includes two base-case scenarios which examine the employment impacts of energy conservation standards. The Emerging Technologies base case models the situation in which emerging technologies such as LED and CMH lamps take an increasing share of covered IRL. Shipments of IRL are eroded in both the Existing Technologies and Emerging Technologies scenarios by R–CFL (a fully mature technology). In the Emerging Technology base case, IRL shipments are replaced by CMH, LEDs, and other emerging technologies that have the potential to replace a greater percentage of recessed can fixtures. DOE treats the erosion of the IRL market as a base-case issue, since the market decline is occurring without standards. In the April 2009 NOPR and in today's final rule, DOE acknowledges that the differential between employment levels in the Existing Technologies and Emerging Technologies base cases is large. However, the impact caused by standards is much less than the difference in employment between the two base cases. In any scenario, energy conservation standards have a small impact on the average employment levels in the IRL industry.

At the NOPR public meeting, GE expressed concern that the GSFL energy conservation standards could shift production overseas. (GE, Public Meeting Transcript, No. 38 at pp. 278–279)

DOE agrees that energy conservation standards will require significant capital conversion costs that could cause manufacturers to consider sourcing decisions, but DOE believes that many other factors could mitigate the decision to relocate production facilities abroad in response to amended standards. For example, the majority of GSFL are produced domestically on high-speed lines. The large capital conversion costs required at higher TSLs involve converting these existing high-speed lines to ones capable of producing smaller-diameter lamps. While these capital conversion costs are large, moving production outside the United States would require additional costs to transport existing production lines and to build a green field facility, none of which would eliminate the cost to convert the lines for smaller-diameter lamps. Furthermore, the highly-capitalized production process causes the labor content of GSFL to be a relatively small portion of the overall cost of each lamp. Because the vast majority of GSFL production costs are material costs, the labor cost savings from moving abroad would be relatively low. Most of the GSFL labor cost results from skilled workers that monitor and control the production process. There are relatively few unskilled workers in the production process, which further reduces the labor cost savings from relocation. Instead, the labor content of GSFL represents intellectual capital for GSFL production, so this would present another hurdle that would need to be addressed with relocation. A final mitigating factor that could prevent relocation of domestic production is increased shipping costs. Higher shipping costs, especially if production required oceanic freight, would likely outweigh any labor cost savings. For further information of conversion costs and possible employment impacts due to today's energy conservation standards, see chapter 13 of the TSD.

While DOE describes the factors that could mitigate a decision by U.S. manufacturers to relocate production facilities abroad due to amended energy conservation standards, DOE also recognizes that access to rare earth phosphors could also impact sourcing decisions. As described in section VI.G, most of the current supply of rare earth phosphors is controlled by China. A drastic change to export quotas or tariffs could influence the sourcing decision of U.S. manufacturers more significantly than amended energy conservation standards. If export quotas continue to decrease, companies could decide to relocate to China in order to gain access to the available rare earth phosphors supply, regardless of the energy conservation standard. However, DOE's direct employment conclusions do not account for the possible relocation of domestic manufacturing to other countries as a result of changes in export quotas or tariffs on materials used (*e.g.,* rare earth phosphors) because the potential for relocation is uncertain.

During the public meeting, Energy Solutions inquired if the IRL analysis considered that emerging technology and other IRL replacements are often made by the same manufacturers (Energy Solutions, Public Meeting Transcript, No. 38, at pp. 288–289). The CA Stakeholders, ACEEE, and NRDC commented that DOE's INPV analyses should consider the positive impacts to lamp manufacturers associated with the increased sales of the non-covered products resulting from standards. (CA Stakeholders, No. 63 at p. 4) (ACEEE, No. 76 at p. 6) (NRDC, No. 82 at pp. 4–5) The CA Stakeholders, ACEEE, and NRDC claimed the MIA impacts are overstated because the IRL and GSFL products that might see a reduction in shipment volume are generally made by the same manufacturers who sell the emerging technologies that may see a resulting increase in shipment volume. (CA Stakeholders, No. 63 at p. 7) (ACEEE, No. 76 at p. 6) (NRDC, No. 82 at pp. 4–5) Accordingly, the CA

Stakeholders agreed with the petitioners'[43] argument in appealing that the Secretary must fully consider, ''the economic impact of the standard on the manufacturers * * * of the products subject to such standard.'' (42 U.S.C. 6295(o)(2)(B)(i)I). The CA Stakeholders stated that because one of the impacts ''of the standard on the manufacturers'' of IRL and GSFL products will be increased sales (at higher markups) of exempt or non-covered lamps made by the same manufacturers, the statutory language requires that these positive impacts also be taken into account. Similarly, EEI commented that manufacturer impacts should account for the lost sales of baseline products as well as increased sales of high-efficiency products. (EEI, No. 39 at p. 4)

In response, the Emerging Technologies scenario describes how emerging technologies may erode the market for covered products in the base case, absent standards. The penetration of emerging technology reduces the number of covered lamps sold in future years in the same manner as a reduction in commercial floor space over time might reduce demand for covered IRL and GSFL lamps. The level of base-case reduction in lamp sales is independent of the energy conservation standard. The Emerging Technologies base case has lower energy savings in the NIA and lower base-case INPV in the GRIM, as compared to the Existing Technologies scenario.

The situation described for the furnaces and boilers rulemaking only exists for IRL in this rulemaking. In the furnaces and boilers rulemaking, the MIA analysis captured the product switching from gas furnaces to electric heat pumps induced by amended energy conservation standards. 72 FR 65136, 65158–61 (Nov. 19, 2007). The analogous situation for IRL occurs when the higher prices of covered lamps induce sales of non-covered BR lamps and R–CFLs. This migration from covered IRL to non-covered products was modeled in the April 2009 NOPR in the Product Substitution scenario. 74 FR 16920, 16969–70 (April 13, 2009). For the final rule, this situation was modeled in both the BR Product Substitution scenario and the R–CFL Product Substitution scenario. Thus, DOE modeled the impacts on the IRL industry from reduced sales of covered IRL due to price effects. The difference in INPV of including or excluding the sales of non-covered products was found to be small. Including these sales in the GRIM is not a major driver of the INPV results.

Instead, the larger declines in INPV in the Emerging Technologies scenario (compared to the Existing Technologies scenario) are not due to the exclusion of emerging technology sales from the analysis or to the declining sales of covered products, since the covered products are also declining in the base case. Instead, the larger impacts are caused by the overinvestment in the standards-compliant technology. In the Emerging Technologies scenario, manufacturers must invest in production levels anticipated for 2012, but the sales of covered products immediately begin to fall. In the base case, sales of covered products also decline, but manufacturers do not need to make extraordinary capital expenses. These extraordinary capital expenses cause the industry's cash flow to decrease significantly in comparison to the base case, causing an overall decrease of estimated INPV.

The CA Stakeholders claimed that by focusing on decreased sales of the specific technology being regulated, DOE is interpreting the statute to favor the *status quo* over more-efficient alternative technologies that are not being specifically regulated. According to the CA Stakeholders, there is nothing in the statue that limits DOE's review to only consider the impacts on regulated IRL and GSFL. (CA Stakeholders, No. 63 at p. 8) The CA Stakeholders recommended that DOE should focus its analysis on the economic impact on lighting manufacturers as a whole, rather than on the impacts of the specific technology being regulated. (CA Stakeholders, No. 63 at p. 8) Similarly, Earthjustice commented that the INPV results shown in the MIA should be bounded around the corporation, not the profit center that makes the covered products (Earthjustice, Public Meeting Transcript, No. 38, at p. 295). Agreeing with Earthjustice, the Appliance Standards Awareness Project stated that INPV impacts shown in the MIA should be bounded around the corporation and added that the difficulty in analyzing the impacts at the corporation level does not remove DOE's obligation to do so (ASAP, Public Meeting Transcript, No. 38, at pp. 290–291 and pp. 295–297). EEI also commented that DOE should not try to analyze the impacts of the lighting standard on all operations of manufacturers, especially those with multiple product lines and multiple global production facilities. EEI stated that such an analysis would take too much time and could possibly delay the issuance of a standard. (EEI, No. 39 at p. 4)

In response, DOE recognizes that the energy conservation standards may induce sales of non-covered products which are in whole or in part manufactured by the same manufacturers as the products covered by this rulemaking. These sales will increase the revenues and possibly increase the profits of the manufacturers that make covered IRL and GSFL. To include these revenues and profits in the GRIM analysis requires the same level of information about the product costs, required investments to increase sales, and the profitability as covered products. This information greatly increases both the complexity and uncertainty of the analysis of the products covered by this rulemaking. Much of this analysis is also outside the scope of this rulemaking. However, understanding that this can be a major driver of the GRIM results for some rulemakings, DOE attempted to bound the potential impact of the product substitutions on the industry value. For this reason, in the April 2009 NOPR, DOE ran the No Product Substitution scenario in the GRIM analysis. For today's final rule, DOE ran both the BR Substitution and the R–CFL Substitution scenarios. The difference in impacts between the Product Substitution and No Product Substitution scenarios represented the lost sales and profits to manufacturers. The difference in industry value from including the revenue from induced sales of BR lamps in the BR Product Substitution scenario and excluding the revenue represents the potential benefits of these sales to manufacturers of covered IRL. The difference in industry value from including the revenue from induced sales of R–CFL lamps in the R–CFL Product Substitution scenario and excluding the revenue represents the potential benefits of these sales to manufacturers of covered IRL. DOE reports these differences and qualitatively describes those factors which might mitigate the impact on those firms which produce both types of produces. The analysis shows that the inclusion of the additional revenues has minimum impacts on the estimated INPVs. For further qualitative and quantitative information on the scenarios and results for the MIA, see chapter 13 of the TSD.

Although IRL manufacturers may receive revenue from additional sales of R–CFL and exempted BR lamps, it is not certain that this would be a net benefit to manufacturers. In both the R–CFL

[43] (States of New York, Connecticut, New Jersey, and California, Commonwealth of Massachusetts, City of New York, and California Energy Commission) in the United States Court of Appeals in a petition regarding DOE's Furnace Rulemaking (*State of New York* v. *U.S. Dep't of Energy,* No. 08–0311 (2d Cir. filed January 17, 2008))

Substitution and BR Substitution scenarios, covered IRL sales are not completely replaced by the additional sales of R–CFL and exempted BR lamps.. To provide an upper bound of the potential benefit to IRL manufacturers, DOE includes the revenue from R–CFL and exempted BR lamps but does not consider any capital conversion costs to increase sales of these products. In any scenario, the potential benefits of these sales to IRL manufacturers have far less impact on INPV than the capital and product conversion costs needed to reach higher TSLs for covered IRL. In any of the April 2009 NOPR and today's final rule substitution scenarios, the large capital conversion costs are the biggest driver of the large, negative impacts on INPV. Thus, any additional benefit from sales of non-covered IRL products are not enough to mitigate the impacts on INPV due to the necessary estimated capital and product conversion costs.

The CA Stakeholders, ACEEE, and NRDC commented that the American Recovery and Reinvestment Act of 2009 (ARRA) has tax provisions that could possibly mitigate the impacts on manufacturers due to energy conservation standards. Specifically, the commenters cited provisions in ARRA offer low-interest ''industrial development bonds'' for expanding manufacturing capabilities, as well as an advanced energy project tax credit for manufacturers of covered products. According to the commenters, these provisions would help manufacturers cover possible conversion costs associated with energy conservation standards. (CA Stakeholders, No. 63 at p. 7) (ACEEE, No. 76 at pp. 5–6) (NRDC, No. 82 at p. 3)

DOE acknowledges that manufacturers of GSFL and IRL may qualify for the industrial development bonds and advanced energy project tax credit programs. If GSFL and IRL manufacturers do apply and receive the bonds and/or tax credit, these benefits could help mitigate some of the impacts of energy conservation standards. However, structures for the industrial development bonds and advanced energy project tax credit programs have not been finalized, and there is insufficient information available to do a thorough analysis of their potential impacts. Accordingly, DOE cannot determine with certainty that manufacturers of covered IRL and GSFL are eligible for either program. Any quantitative analysis of the industrial development bonds program or the advanced energy project tax credit program and their possible impacts on the GSFL and IRL industry would be highly speculative. Therefore, DOE did not include the bonds or tax credit in its analysis of potential impacts on the GSFL and IRL industries.

According to the CA Stakeholders and ACEEE, the MIA does not consider pending legislation that could help mitigate the impacts due to energy conservation standards. Specifically, the CA Stakeholders cite three examples of pending legislation that could help to mitigate the impacts on GSFL and IRL manufacturers due to amended energy conservation standards: (1) Restoring America's Manufacturing Leadership through Energy Efficiency Act of 2009; (2) 21st Century Energy Technology Deployment Act of 2009; and (3) American Clean Energy and Security Act of 2009. (CA Stakeholders, No. 63 at p. 7) (ACEEE, No. 76 at p. 6)

If adopted in present form, DOE acknowledges that the proposed legislation cited by the CA Stakeholders could potentially mitigate the impacts of energy conservation standards on GSFL and IRL manufacturers if they were to qualify for the benefits in the proposed legislation. However, because the legislation is pending and has not become public law, passage of such proposed legislation or the final form of those provisions are the matters of speculation. Therefore, DOE does not include the proposed legislation's potential to mitigate the impacts on GSFL and IRL manufactures in its analysis nor has it considered the pending legislation in its decision for today's rule.

The CA Stakeholders commented that energy conservation standards have consistently spurred innovation, resulting in even higher-efficiency products. However, in its analysis, DOE assumes that high-lumen T8 lamps represent the only opportunity for manufacturers to maintain profit margins through 2042. (CA Stakeholders, No. 63 at p 13) Additionally, the CA Stakeholders and ACEEE argued that DOE did not consider that GSFL manufacturers at TSL 4 and TSL 5 will be able to maintain high margins on a variety of other covered and non-covered products in their portfolio. These other covered products include T5s and extremely-high-lumen T8s, while non-covered products include solid state lighting such as LEDs. According to the CA Stakeholders, ACEEE, and NRDC, GSFL have other characteristics that could command higher margins besides efficacy, including long life, low wattage, resistance to high and low temperature, and low mercury content. If any of these upsell opportunities commanded higher markups, the positive impacts on INPV would be significant and should be reflected in DOE's analysis. (CA Stakeholders, No. 63 at pp. 13–14) (ACEEE, No. 76 at p. 4) (NRDC, No. 82 at p. 3).

In response, DOE recognizes that manufacturers will attempt to devise product differentiation strategies to compensate for a compression of the efficacy range of their product lines as a result of energy conservation standards. These strategies may include redefining efficacy tiers to more narrow bands, introducing more efficacious lamps than are currently offered, or stressing product attributes other than efficacy. The great number of assumptions required to model all possible markup strategies in the GRIM would not add to DOE's qualitative description of how these upsells would impact INPV. As described previously, the Flat Markup scenario captures the INPV effects, assuming that manufacturers fully compensate for a reduced range of efficacy values in their product portfolio. Thus, DOE's consideration of the factors evoked by the CA Stakeholders and ACEEE is encompassed in the inclusion of a Flat Markup scenario and in its discussion of the relative weight it places on the markup scenarios for each of the TSLs.

In comments on DOE's April 2009 NOPR, the CA Stakeholders stated that based on a sensitivity analysis of the GSFL GRIM, DOE's concern that standards could eliminate higher margins currently earned by more-efficacious products was a significant driver in determining the total impacts on the GSFL industry. The CA Stakeholders pointed out that the Four-Tier markup scenario had the greatest effect in determining the INPV impacts on the GSFL industry. (CA Stakeholders, No. 63 at p. 12)

For the April 2009 NOPR, DOE modeled two different markup scenarios to capture potential pricing schemes manufacturers apply to their products. 74 FR 16920, 16977 (April 13, 2009). The Flat Markup scenario applies a single markup to all products regardless of their efficacy. This scenario also assumes that manufacturers maintain their gross margin as a constant percentage throughout the analysis period, regardless of standards. The Four-Tier markup scenario applied a different markup to four different tiers of products (that correspond to the four phosphor series). As higher efficacies are required by energy conservation standards, manufacturers' product portfolios are reduced, squeezing the gross margins of higher-efficacy products as they are ''demoted'' to lower-relative-efficacy-tier products.

DOE agrees with the CA Stakeholders that the markup strategy is the primary driver of INPV for GSFL manufacturers. Therefore, to capture the full range of potential impacts of energy conservation standards on the GSFL INPV, DOE used the two markup scenarios for the April 2009 NOPR. For today's final rule, DOE continues to use both the Flat Markup and the Four-Tier markup scenarios to bound the potential impacts of energy conservation standards on the GSFL INPV.

The CA Stakeholders and ACEEE commented that the base cases overestimated the margins that manufacturers will be able to maintain for high-lumen T8 lamps as the market naturally shifts to more-efficient products. (CA Stakeholders, No. 63 at p. 4) (ACEEE, No. 76 at p. 4) Additionally, the CA Stakeholders commented that as products become more efficient, absent standards and in a competitive market, higher-efficacy products will not maintain their current margins. (CA Stakeholders, No. 63 at p. 12) The CA Stakeholders also argued that DOE's Four-Tier markup analysis for the four-foot medium bi-pin lamps appears to show manufacturers will maintain the estimated markup for 800 series high-lumen T8 lamps meeting TSL 5 indefinitely. According to the CA Stakeholders, high-lumen T8s have been available for several years and are already being commoditized. However, DOE's own analysis has shown that the market is shifting to higher-efficacy products without energy conservation standards. (CA Stakeholders, No. 63 at p. 12)

For the April 2009 NOPR, DOE modeled two different markup scenarios. 74 FR 16920, 16977 (April 13, 2009). The first scenario applies a single markup to all products regardless of their efficacy. The second markup scenario applies a different markup to four tiers of product efficacies that correspond to the four phosphor series. As the CA Stakeholders correctly stated, DOE assumed these two markup structures would be maintained throughout the analysis period. The CA Stakeholders also correctly stated that markups are the primary driver of INPV for GSFL. The CA Stakeholders believe that higher-efficacy lamps are already being commoditized and that non-covered, emerging technology will command high margins for manufacturers. While this assumption is not certain, DOE agrees that the premium GSFL covered in this rulemaking will likely follow a typical product life cycle, in which the average margins decrease over time in the base case, thereby resulting in a lower INPV than quantified by the Four-Tier markup scenario presented in the April 2009 NOPR. DOE also agrees that it is likely that as more-efficacious lighting products enter or replace GSFL in the market, premium products which currently command higher markups will become commoditized over time, and margins will erode. As non-covered emerging technologies reduce the size of the GSFL market, the overall margins of the GSFL market will also be reduced. Based on these additional assumptions, DOE has revised the Four-Tier markup scenario for today's final rule as previously described. DOE estimates that this commoditization reduces the base-case industry value and, to a lesser degree, the INPV impacts in the standards case. For further explanation of the Four-Tier markup scenario and the revised INPV results, see chapter 13 of the TSD.

NRDC commented that commoditization of features and margin reduction will occur regardless of the standard set for the GSFL industry, but technological innovation will result in the introduction of new premium products as well. NRDC added that DOE has forecasted two scenarios and compared them to determine the manufacturer impact. According to NRDC's comments, the reality will certainly be somewhere in between a no-standards situation and the product commoditization scenario. NRDC concluded that the MIA results are likely to be significantly overstated because the true impacts will be in between these two situations (NRDC, No. 82 at p. 3).

In the April 2009 NOPR, DOE requested comment on the ability of GSFL manufacturers to maintain margins through differentiation by other means and how the ability to differentiate products might vary over time. 74 FR 16920, 17001 (April 13, 2009). At TSL 5, DOE believes that the ability for manufacturers to differentiate products by means other than efficacy by the year 2012 is limited. Currently, only the most efficient lamps available meet this efficacy level. This ability could improve in later years as other features and higher efficacy products are introduced. However, given the discounting of future cash flows, the effect of this gradual improvement will be small. For this reason, DOE believes that the INPV results would be greater than the midpoint of the range of impacts. At TSL 4, manufacturers maintain some ability to create tiers of efficacy, which will mitigate some of the effects of commoditization of premium GSFL. However, DOE disagrees with the statement that the impacts on manufacturers are likely to be significantly overstated. DOE believes the revisions to the Four-Tier markup scenario have addressed the Advocates' concerns regarding an unrealistic change in profitability in the standards cases.

The CA Stakeholders commented that DOE should conduct its own research and/or seek alternate sources of information to calculate the manufacturer margins and conversion costs for T12 and T8 lamps. The CA Stakeholders argued that because manufacturer margins and conversion costs are two of the most significant GRIM inputs, to preserve the transparency of its analysis, DOE should not rely primarily on confidential data provided by one set of stakeholders (CA Stakeholders, No. 63 at p. 14).

In response, DOE understands the need for transparent and accurate data on which to base its analysis. Profit margin data at the product-line level are possibly the most sensitive data for any company, and therefore, are not readily available to the public. DOE attempts to validate any sensitive data provided by manufacturers, including information about profit margins, by first requesting any documentary evidence. DOE also compares the data submittals for each manufacturer for consistency. To the extent possible DOE has developed and will continue to develop its own estimates of key parameters for the MIA, such as manufacturing costs and pricing, by researching published sources, contacting tooling suppliers, and retaining the services of industry consultants. To maintain confidentiality and transparency at the same time, DOE makes its estimates of manufacturer margins and conversion costs available for public comment in an industry-aggregated form. This process allows DOE to further refine its assumptions and estimates based on the responses provided by interested parties.

The CA Stakeholders commented that the MIA's assumptions should not be revised to consider the current economic recession. The CA Stakeholders argued that such revisions would not add any practical value, given that it is impossible to accurately predict the direction of short-term economic cycles. (CA Stakeholders, No. 63 at p. 8)

As previously stated, for today's final rule, DOE has updated the GSFL and IRL GRIMs with revised NIA shipments and scenarios and used the updated product price determination inputs. DOE also revised the conversion costs using the appropriate PPI. These changes are typical revisions for energy conservation rulemakings and are not

specifically attributable to current economic conditions. DOE agrees with CA Stakeholders and has not made revisions to the MIA specifically in response to the current near-term economic downturn. For additional information on the updates to the NIA and product price determination, see section V.D of today's notice, respectively. For further explanation of inputs and updates to the GSFL and IRL GRIMs, see chapter 13 of the TSD.

The CA Stakeholders commented that the effective date of today's final rule for GSFL and IRL energy conservation standards has a significant impact on the reported INPVs, and that any prorogation of the effective date would help mitigate impacts on the industry due to energy conservation standards. The CA Stakeholders recommended that DOE should establish an effective date for GSFL for their proposed Tier 1 standards (TSL4) in 2012 and for Tier 2 (TSL5) in 2016. (CA Stakeholders, No. 63 at p. 2, 14). Similarly, ACEEE argued that a phase-in standard would allow additional lead time for manufacturers and capture maximum energy savings. However, ACEEE requested expedited phase-in dates for GSFL standards at Tier 1 (July 2012) and Tier 2 (July 2015) (ACEEE, No. 76 at p. 2). ACEEE presented the alternative of a later effective date for choosing TSL 5 for all covered GSFL (2013 or 2014), because it provides manufacturers additional time to spread conversion cost, thereby minimizing the impacts on INPV (ACEEE, No. 76 at pp. 2–3). Similar to ACEEE's alternative effective date, OSI requested a one-year extension of the effective date for IRL products only. OSI commented that the extension would allow sufficient time to replace its capital base for covered IRL and allow for manufacturing of the higher-efficacy products to stabilize (OSI, No. 84 at p. 1).

DOE agrees that the effective date of energy conservation standards (*i.e.*, compliance date) has a significant impact on INPV. In the GRIM cashflow analyses, the conversion costs are implemented in the years between the announcement of the final rule and the effective date of the standards. By delaying the effective date and the required capital and product conversion costs, it would in theory be possible to reduce the negative impacts on INPV calculated for the proposed standards case, due to discounting the negative cash flows for conversion costs in later years. However, for the reasons discussed in section VI.I, for today's final rule, DOE is not using a tiered approach to set energy conservation standards. Similarly, for the reasons discussed in section VI.I, DOE is not considering a later effective date for either the GSFL or the IRL energy conservation standard. The implications of a later effective date on the GSFL and IRL INPV are not being considered.

For a detailed discussion of the MIA, see chapter 13 of the TSD accompanying this notice.

G. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in setting energy conservation standards. Employment impacts include direct and indirect impacts. Direct employment impacts are changes in the number of employees for manufacturers of the appliance products that are subject to standards, their suppliers, and related service firms. The MIA addresses these impacts. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, due to: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased consumer spending on the purchase of new products; 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 the short term.

In developing the April 2009 NOPR and today's final rule, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies (ImSET [44]). ImSET is a spreadsheet model of the U.S. economy that focuses on 188 sectors most relevant to industrial, commercial, and residential building energy use. ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model with structural coefficients to characterize economic flows among the 188 sectors. ImSET's national economic I–O structure is based on a 1997 U.S. benchmark table, especially aggregated to those sectors. For further details, *see* chapter 15 of the TSD accompanying this notice.

As described in section V.G, DOE uses ImSet to consider indirect employment impacts when evaluating alternative standard levels. Direct employment impacts on the manufacturers that produce IRL and GSFL are analyzed in the manufacturer impact analysis, as discussed in section V.F.

H. Utility Impact Analysis

The utility impact analysis determines the changes to energy supply and demand (and forecasted power generation capacity) that result from the end-use energy savings due to new or amended energy conservation standards. DOE used a version of EIA's National Energy Modeling System (NEMS) for this utility impact analysis. NEMS, which is available in the public domain, is a large, multisectoral, partial-equilibrium model of the U.S. energy sector. EIA uses NEMS to produce its *AEO,* a widely-recognized baseline energy forecast for the United States. The version of NEMS used for appliance standards analysis is called NEMS–BT [45] and is primarily based on the April Update of the *AEO 2009* [46] with minor modifications. The analysis output includes a forecast of the total electricity generation capacity at each TSL.

DOE obtained the energy savings inputs associated with electricity consumption savings from the NIA. These inputs reflect the effects on electricity of efficiency improvements due to the deployment of GSFL and IRL that would meet the energy conservation standards set forth in this rulemaking. Chapter 14 of the TSD accompanying this notice presents details on the utility impact analysis.

DOE received comments to the ANOPR requesting that DOE report gas and electricity price impacts, and the economic benefits of reduced need for new electric power plants and infrastructure. The expectation is that lower electricity demand will lead to

[44] Roop, J. M., M. J. Scott, and R. W. Schultz, *ImSET: Impact of Sector Energy Technologies* (PNNL–15273 Pacific Northwest National Laboratory) (2005). Available at *http://www.pnl.gov/main/publications/external/technical_reports/PNNL-15273.pdf.*

[45] EIA approves the use of the name NEMS to describe only an official *AEO* version of the model without any modification to code or data. Because the present analysis entails some minor code modifications and runs the model under various policy scenarios that deviate from AEO assumptions, the name NEMS–BT refers to the model as used here. (''BT'' stands for DOE's Building Technologies Program.) For more information on NEMS, refer to ''The National Energy Modeling System: An Overview,'' DOE/EIA–0581 (98) (Feb. 1998). Available at *http://tonto.eia.doe.gov/ftproot/forecasting/058198.pdf.*

[46] An Updated Annual Energy Outlook 2009 Reference Case Reflecting Provisions of the American Recovery and Reinvestment Act and Recent Changes in the Economic Outlook, April 2009.

lower prices for both electricity and natural gas that would benefit consumers.

DOE considered reporting gas and electricity price impacts but found that the uncertainty of price projections, together with the fairly small impact of the standards relative to total electricity demand, makes these price changes highly uncertain. As a result, DOE believes that they should not be weighed heavily in the decision concerning the standard level. Given the current complexity of utility regulation in the United States (with significant variances among States), it does not seem appropriate to attempt to measure impacts on infrastructure costs and prices where there is likely to be significant overlap.

I. Environmental Assessment

Pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) 42 U.S.C. 6295(o)(2)(B)(i)(VI), DOE prepared an environmental assessment (EA) of the potential impacts of the proposed standards it considered for today's final rule which it has included as chapter 16 of the TSD for the final rule. DOE found the environmental effects associated with the standards for GSFL and IRL to be insignificant. Therefore, DOE is issuing a Finding of No Significant Impact (FONSI), pursuant to NEPA, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with NEPA (10 CFR part 1021). The FONSI is available in the docket for this rulemaking.

In the EA, DOE estimated the reduction in total emissions of CO_2 and NO_X using the NEMS–BT computer model. DOE also calculated a range of estimates for reduction in mercury (Hg) emissions using power sector emission rates. The EA does not include the estimated reduction in power sector impacts of sulfur dioxide (SO_2), because DOE has determined that any such reduction resulting from an energy conservation standard would not affect the overall level of SO_2 emissions in the United States due to the presence of national caps on SO_2 emissions. These topics are addressed further below; see chapter 16 of the TSD for additional detail.

EEI commented that DOE should consider the environmental impacts of the production processes especially if higher efficiency standards would result in more manufacturing overseas. (EEI, No. 45 at p. 4) As discussed in the manufacturer impact analysis (see section V.F), DOE does not expect a migration of production of IRL overseas as a result of this rule. In addition, as the migration of GSFL production overseas is highly speculative, DOE does not feel it appropriate to incorporate the environmental impacts of production processes if moved overseas.

Earthjustice stated that DOE must calculate the amount of reductions in emissions of particulate matter (PM) that will result from standards for GSFLs and IRLs (and monetize the value). Earthjustice stated that even if DOE believes that the impacts on secondary PM emissions were physically impossible to estimate due to their complexity, it would not justify DOE ignoring the impact of standards on primary emissions of PM from power plants. (Earthjustice, No. 60 at pg 8) PM emissions reductions are much more difficult to estimate than other emissions due to the wide range of power plant controls and individual plant operations that impact PM emissions. DOE is not currently able to run a model that can make these estimates reliably at the national level.

NEMS–BT is run similarly to the *AEO2009* NEMS, except that lighting energy use is reduced by the amount of energy saved (by fuel type) due to the trial standard levels. The inputs of national energy savings come from the NIA analysis. For the EA, the output is the forecasted physical emissions. The net benefit of a standard is the difference between emissions estimated by NEMS–BT and the Updated *AEO2009* Reference Case. The NEMS–BT tracks CO_2 emissions using a detailed module that provides results with broad coverage of all sectors and inclusion of interactive effects.

The Clean Air Act sets an emissions cap on SO_2 for all affected Electric Generating Units. The attainment of the emissions cap is flexible among generators and is enforced through the use of emissions allowances and tradable permits. In other words, with or without a standard, total cumulative SO_2 emissions will always be at or near the ceiling, and there may be some timing differences among yearly forecasts. Thus, it is unlikely that there will be reduced overall SO_2 emissions from standards as long as the emissions ceilings are enforced. Although there may be no actual reduction in SO_2 emissions, 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, which can lessen the need to purchase SO_2 emissions allowance credits, and thereby decrease the costs of complying with regulatory caps on emissions.

NO_X emissions from 28 eastern States and the District of Columbia (DC) are limited under the Clean Air Interstate Rule (CAIR), published in the **Federal Register** on May 12, 2005.[47] Although CAIR has been remanded to EPA by the DC Circuit, it will remain in effect until it is replaced by a rule consistent with the Court's July 11, 2008 opinion in *North Carolina* v. *EPA*.[48] Because all States covered by CAIR opted to reduce NO_X emissions through participation in cap-and-trade programs for electric generating units, emissions from these sources are capped across the CAIR region.

For the 28 eastern States and D.C. where CAIR is in effect, no NO_X emissions reductions will occur due to the permanent cap. Under caps, physical emissions reductions in those States would not result from the energy conservation standards under consideration by DOE, but standards might have produced an environmentally-related economic impact in the form of lower prices for emissions allowance credits, if they were large enough. However, DOE determined that in the present case, such standards would not produce an environmentally-related economic impact in the form of lower prices for emissions allowance credits, because the estimated reduction in NO_X emissions or the corresponding allowance credits in States covered by the CAIR cap would be too small to affect allowance prices for NO_X under the CAIR. In contrast, new or amended energy conservation standards would reduce NO_X emissions in those 22 States that are not affected by CAIR. As a result, the NEMS–BT does forecast emissions reductions from the proposed amended standards considered in today's final rule.

In the April 2009 NOPR, however, DOE provided a different estimate of NO_X reductions, because DOE assumed that the CAIR had been vacated. 74 FR 16920, 17009–14 (April 13, 2009). This is because the CAIR rule was vacated by the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) in its July 11, 2008 decision in *North Carolina* v. *Environmental Protection Agency*.[49] Although the DC Circuit, in a December 23, 2008 opinion,[50] decided to allow the CAIR rule to remain in effect until it is replaced by a rule consistent with the

[47] 70 FR 25162 (May 12, 2005).

[48] 531 F.3d 896 (D.C. Cir. 2008); see also *North Carolina* v. *EPA*, 550 F.3d 1176 (D.C. Cir. 2008).

[49] 531 F.3d 896 (D.C. Cir. 2008).

[50] *See* 550 F.3d 1176 (D.C. Cir. 2008).

Court's earlier opinion, DOE retained its analysis of NO_X emissions reductions based on an assumption that the CAIR rule was not in effect, because: (1) The NOPR was so advanced at the time that the December 23, 2008 opinion was issued that revisiting the analysis would have caused undue delay; and (2) neither the July 11, 2008, nor the December 23, 2008 decisions of the D.C. Circuit changed the standard-setting proposals offered in the NOPR.

Thus, for the April 2009 NOPR, DOE established a range of NO_X reductions based on low and high emissions rates (in metric kilotons of NO_X emitted per terawatt-hour (TWh) of electricity generated) derived from the *AEO2008.* DOE anticipated that, in the absence of the CAIR's trading program, the new or amended energy conservation standards would reduce NO_X emissions nationwide, not just in 22 States.

Similar to SO_2 and NO_X, future emissions of Hg would have been subject to emissions caps under the Clean Air Mercury Rule [51] (CAMR), which would have permanently capped emissions of mercury for new and existing coal-fired plants in all States by 2010, but the CAMR was vacated by the DC Circuit in its decision in *New Jersey* v. *Environmental Protection Agency* [52] prior to publication of the April 2009 NOPR. However, the NEMS–BT model DOE initially used to estimate the changes in emissions for the proposed rule assumed that Hg emissions would be subject to CAMR emission caps.

After CAMR was vacated, DOE was unable to use the NEMS–BT model to estimate any changes in the quantity of mercury emissions (anywhere in the country) that would result from standard levels it considered for the proposed rule. Instead, DOE used an Hg emissions rate (in metric tons of Hg per energy produced) based on the AEO2008 for the April 2009 NOPR. Because virtually all mercury emitted from electricity generation is from coal-fired power plants, DOE based the emissions rate on the metric tons of mercury emitted per TWh of coal-generated electricity. To estimate the reduction in mercury emissions, DOE multiplied the emissions rate by the reduction in coal-generated electricity associated with the standards considered. Because the CAMR remains vacated, DOE continued to use the approach it used for the April 2009 NOPR to estimate the Hg emission reductions due to standards for today's final rule.

[51] 70 FR 28606 (May 18, 2005).

[52] 517 F 3d 574 (D.C. Cir. 2008).

EEI commented that, ''if the standard leads to more use of compact fluorescent technology as replacements for incandescent reflector lamps, there will be an increase in mercury use and disposal issues compared to the baseline technologies.'' (EEI, No. 45 at p. 4). DOE estimates that any increase in use of CFLs, as compared to having no new or amended GSFL and IRL standards, would be minimal and any related mercury releases would be environmentally insignificant and speculative, particularly since only a fraction of CFLs are improperly disposed of and only a small fraction of the mercury in those CFLs leaches into the environment.

Earthjustice and NRDC argue that DOE should incorporate the value of CO_2 emissions reductions into the LCC and NPV analyses because the value of CO_2 emissions reductions affects the economic justification of standards, DOE must incorporate these effects into the LCC and NPV analyses. (Earthjustice, No. 60, at pgs 7–8 and (NRDC and Earthjustice, Issue Paper, No. 82 at p. 1)) New York, *et al.* also recommended that DOE prioritize energy savings and reduced CO_2 emissions and allocate at least as much weight to the monetary value of reduced carbon emissions as it does to other monetary impacts. (NY *et al.*, No. 88 at p. 1)[53] On the other hand, NEMA expressed support of the approach used by DOE in the NOPR to reflect a range for monetized values and report environmental benefits separately from the net benefits of energy savings. (NEMA, No. 81 at p. 21)

DOE notes that neither EPCA nor NEPA requires that the economic value of emissions reduction be incorporated in the LCC or NPV analysis of energy savings. DOE has chosen to report these benefits separately from the net benefits of energy savings. A summary of the monetary results is shown in section VII.C.6 of this notice. DOE considered both values when weighing the benefits and burdens of standards.

J. Monetizing Carbon Dioxide and Other Emissions Impacts

DOE also calculated the possible monetary benefit of CO_2, NO_X, and Hg reductions. Cumulative monetary benefits were determined using discount rates of 3 and 7 percent. DOE monetized reductions in CO_2 emissions due to the standards in this final rule based on a range of monetary values drawn from studies that attempt to estimate the present value of the marginal economic benefits (based on the avoided marginal social costs of carbon) likely to result from reducing greenhouse gas emissions. The marginal social cost of carbon is an estimate of the monetary value to society of the environmental damages of CO_2 emissions.

Several parties provided comments regarding the economic valuation of CO_2 for the April 2009 NOPR. NRDC commented that New England now has a CO_2 trading price that could be used by DOE (NRDC, Public Meeting Transcript, No. 38.4 at p. 311–312) NRDC and Earthjustice argue that DOE should incorporate an assumption of a mandatory cap on CO_2 emissions or at the very least revise the range of CO_2 valuation. (NRDC and Earthjustice, Issue Paper, No. 82, p. 1–14) NY *et al.* also criticized the range of CO_2 values used in the NOPR and recommended the use of a long-run marginal abatement cost of CO_2 for monetizing CO_2 emission reductions, rather than the damage costs given the highly uncertain nature of the latter (NY *et al.*, No. 88, p. 9–10). As discussed in section VII.C.6, DOE has updated the approach described in the April 2009 NOPR (74 FR 16920, 17009 (Apr. 13, 2009)) for its monetization of environmental emissions reductions for today's rule.

Although this rulemaking does not affect SO_2 emissions or NO_X emissions in the 28 eastern States and D.C. where CAIR is in effect, there are markets for SO_2 and NO_X emissions allowances. The market clearing price of SO_2 and NO_X emissions allowances is roughly the marginal cost of meeting the regulatory cap, not the marginal value of the cap itself. Further, because national SO_2 and NO_X emissions are regulated by a cap-and-trade system, the cost of meeting these caps is included in the price of energy. Thus, the value of energy savings already includes the value of SO_2 and NO_X control for those consumers experiencing energy savings. The economic cost savings associated with SO_2 and NO_X emissions caps is approximately equal to the change in the price of traded allowances resulting from energy savings multiplied by the number of allowances that would be issued each year. That calculation is uncertain because the energy savings from new or amended standards for IRL and GSFL would be so small relative to the entire electricity generation market that the resulting emissions savings would have almost no impact on price formation in the allowances market. These savings would most likely be outweighed by uncertainties in the

[53] A joint comment by the States of New York, California, Connecticut, Delaware, Illinois, Massachusetts, New Hampshire, New Jersey, Ohio, Vermont, and Washington.

marginal costs of compliance with SO_2 and NO_X emissions caps.

EEI commented that the cost of remediating emissions such as CO_2, NO_X, SO_2, and mercury were already included in electricity rates paid by consumers and therefore emission reductions should not be ''monetized'' because it would lead to double counting. (EEI, No. 78 at p. 4–5). As described above, DOE has only monetized the value of emissions not covered by existing caps, such as NO_X in regions not covered by CAIR. The monetization of these emissions is based on estimates of their damage costs (*i.e.*, health effects) that are not included in economic prices.

EEI also commented that DOE should consider the most recent trends in electricity generation, including reductions in emissions, the rise of renewable portfolio standards, and the possibility of an upcoming CO_2 cap-and-trade program which would reduce the amount of CO_2 produced per kWh generated. (EEI, No. 45 at p. 5) Earthjustice stated that Federal caps will likely be in place by the time new standards become effective, so DOE should increase its electricity prices to reflect the cost of complying with emission caps. Earthjustice also noted that there are regional cap-and-trade programs in effect in the Northeast (Regional Greenhouse Gas Initiative (RGGI)) and the West (Western Climate Initiative (WCI)) that will affect the price of electricity but are not reflected in the *AEO* energy price forecasts. (Earthjustice, No. 60 at p. 6–7) NY *et al.* also recommended including some level of CO_2 pricing in its modeling. (NY *et al.*, No. 88, at p. 25)

In response, DOE incorporated current trends in its analysis, but expressly did not include possible future legislation in this rulemaking. The current NEMS–BT model used in projecting the environmental impacts includes the CAIR rule, as described above, which is projected to reduce SO_2 and NO_X emissions. NEMS–BT also takes into account the current set of State level renewable portfolio standards, the effect of the RGGI, and utility investor reactions to the possibility of future CO_2 cap and trade programs, all of which impact electricity prices and reduce the projected carbon intensity of generation.[54]

[54] For more information, see the Update to the *AEO2009* and the *AEO2009* Assumptions documentation [add proper cites].

VI. Discussion of Other Key Issues and Comments

A. Sign Industry Impacts

The CA Stakeholders supported the adoption of TSL3 for the 8-foot SP Slimline and 8-foot RDC HO product classes partially due to concern for the outdoor sign industry. Based on communication with the Director of Technical & Regulatory Affairs for the International Sign Association, the CA Stakeholders believed that the outdoor sign industry would experience significant negative impacts if covered 8-foot T12 lamps were eliminated by DOE proposing TSL4. (CA Stakeholders, No. 63 at p. 10) However, DOE does not believe that such an impact exists. The definition of ''general service fluorescent lamp'' exempts any fluorescent lamp designed and marketed for cold temperature applications. 10 CFR 430.2. Because outdoor signs typically require lamps and ballasts designed for cold temperature operation, they should be minimally impacted by an energy conservation standard. If owners of outdoor signs are in fact using covered 8-foot T12 lamps, they have the option to replace those lamps with either a covered 8-foot T8 lamp or an exempted 8-foot T12 lamp designed for use in cold temperature applications. Thus, the outdoor sign industry will not be negatively impacted by DOE adopting TSL4.

B. Max-Tech IRL

As required under 42 U.S.C. 6295(p)(1) and described in the April 2009 NOPR, DOE identified the efficacy levels that would achieve the maximum improvements in energy efficiency that are technologically feasible (max-tech levels) for GSFL and IRL. 74 FR 16920, 16933–35 (April 13, 2009). For IRL, DOE tentatively determined that the maximum technologically feasible efficacy level would incorporate the highest-efficiency technologically feasible reflector, halogen infrared coating, and filament design. *Id.* Combining all three of these high-efficiency technologies simultaneously results in the maximum technologically feasible level. However, because the only technology pathway to this level is dependent on a proprietary technology, DOE did not consider this level further in its analyses. In the April 2009 NOPR, DOE analyzed TSL5, which is the most efficient commercially-available IRL and employs a silver reflector, an improved (but not most-efficient) IR coating, and a filament design that results in a lifetime of 4,200 hours. Although this commercially-available lamp uses the patented silver technology, DOE believes that there are alternate pathways to achieve this level. A combination of redesigning the filament to achieve higher temperature operation (and thus reducing lifetime to 3,000 hours), employing other non-proprietary high-efficiency reflectors, and applying a higher-efficiency IR coating has the potential to result in an IRL that meets an equivalent efficacy level (for more information regarding these technologies, see chapter 3 of the TSD). Therefore, in the April 2009 NOPR, DOE concluded that TSL5 is the maximum technologically feasible level for IRL that is not dependent on the use of a proprietary technology. *Id.*

1. Treatment of Proprietary Technologies

Several stakeholders commented that DOE did not analyze the max-tech level for IRL as required by EPCA because IRL can achieve efficacies even higher than TSL5. (ASAP, Public Meeting Transcript, No. 38.4 at p. 96; ADLT, Public Meeting Transcript, No. 38.4 at p. 113; Earthjustice, No. 60 at pp. 2–3; CA Stakeholders, No. 63 at p. 14; ACEEE, No. 76 at p. 5; NRDC, No. 82 at p. 2) Commenters disagreed with DOE's conclusion that it could not establish a TSL that required the use of a proprietary technology. (Earthjustice, No. 60 at pp. 3–4; CA Stakeholders, No. 63 at p. 14; ACEEE, No. 76 at p. 5) These stakeholders claimed that DOE must either analyze the economic impacts of the true max-tech level, which would incorporate the proprietary technology, or show that standards based on the proprietary silverized reflector are not technologically feasible. (Earthjustice, No. 60 at p. 4; CA Stakeholders, No. 63 at pp. 14–15)

DOE agrees with the stakeholders that max-tech level for IRL is different than TSL5. While TSL5 is the highest efficiency level on which DOE performed the full range of economic analyses (including LCC, national impacts, and manufacturer impacts), DOE maintains that it did in fact consider and analyze the max-tech level consistent with EPCA. According to EPCA, DOE is required to establish energy conservation standards that ''shall be designed to achieve the maximum improvement in energy efficiency * * * which the Secretary determines is technologically feasible and economically justified.'' (42 U.S.C. 6295(o)(2)(A)) To determine economic justification, DOE considers (among other factors) ''the economic impact of the standard on the manufacturers'' and ''the impact of any lessening of competition * * * that is likely to result

from the imposition of a standard.'' (42 U.S.C. 6295(o)(2)(B)(i)(I) and (V))

The observation that DOE did not label the max tech level as TSL6 does not mean that DOE did not consider this efficiency level. As noted in the April 2009 NOPR and further explained below, DOE rejected this level because it required the use of a proprietary technology. However, DOE is not broadly screening out proprietary technologies or otherwise eliminating them from its analysis. In contrast to the present case, most patents do not convey market power to their owners because close substitutes for these inventions exist. Licensors will pay no more for these technologies than the cost advantage they provide over the next best alternative pathway to compliance with the efficiency standard. Ultimately the availability of cost-effective alternate technology pathways is what limits the ability of the owner of a proprietary technology to extract high fees for its use.

However, it is DOE's opinion that a standard level which can only be met with a single proprietary technology which comes without assurances of open and free technology access should be rejected because it carries great risk of resulting in an anti-competitive market, a principle consistently applied in past DOE rulemakings. In such a situation, the standards-setting process itself would convey great market power because there would be no alternative means to satisfy the standard. DOE believes that this is sufficient cause to conclude that the max-tech level in question is not economically justified. Having made this determination, there was no need or benefit to performing additional analyses relevant to the other statutory criteria. In fact, in *Natural Resources Defense Council* v. *Herrington*, the DC Circuit recognized that a complete analysis of all factors in not always required: '' If no standard could have been based on prototypes without requiring manufacturers to accomplish the impossible, we agree that DOE could reasonably deem all such standards economically unjustified without trudging through the remaining statutory factors.'' 768 F.2d 1355, 1396–97 (D.C. Cir. 1985).

At the NOPR public meeting, ASAP suggested that DOE should consider cross-licensing as a vehicle for manufacturers to access proprietary technologies if such technologies might comprise the only pathway to compliance with a certain standard level. (ASAP, Public Meeting Transcript, No. 38.4 at p. 97) While DOE acknowledges that manufacturers of proprietary technologies can create cross-licensing agreements with other organizations, DOE continues to reject the notion that a standard requiring a specific proprietary technology can be established under the EPCA criteria, for several reasons. First, the availability and the price of the proprietary technology could change after the efficiency standards are established, if the patent owner attempts to extract the value added by the standard-setting process in royalty fees for the technology required to meet the max-tech level. Second, DOE believes that the terms of cross-licensing agreements are generally not made public, so it is difficult to assess historical trends as to the impact of such agreements on the market. Thus, DOE cannot assess the cost implications of current or future cross-licensing agreements made in the industry; by extension, DOE cannot assess the manufacturer, consumer, or nationwide impact of a standard that requires the usage of a proprietary technology.

In consideration of all of these factors, DOE maintains that it considers a standard level which can be met by only one proprietary design to be economically unjustified. Thus, DOE has rejected the max-tech level for IRL, and conducted the full range of economic analyses on what it believes to be the next highest efficiency level (not dependent on a proprietary design), TSL5.

2. Other Technologies

In response to the April 2009 NOPR, DOE received a number of comments suggesting that even without the use of a proprietary technology, several existing technologies could be utilized to produce IRL with efficacies that meet or exceed TSL5. (ADLT, Public Meeting Transcript, No. 38.4 at pp. 107–110, 113; CA Stakeholders, No. 63 at pp. 16–17; ADLT, No. 72 at p. 2; ACEEE, No. 76 at p. 5; NRDC, No. 82 at p. 4) Manufacturers also commented on the burdens and barriers associated with implementing some of these technologies. Comments received regarding alternate technologies that could be used to meet or exceed TSL5 are summarized below.

a. High-Efficiency IR Coatings

DOE analyzed advanced IR coatings in the April 2009 NOPR as a possible technology pathway to achieving TSL5 without the use of the proprietary silverized reflector. 74 FR 16920, 16944–45 (April 13, 2009). As part of its analysis (documented in the Appendix 5D of the TSD), DOE obtained several halogen burners on which advanced IR coatings were deposited.[55] Using a combination of testing and engineering calculations, DOE determined the maximum lamp efficacy that could result from implementing an advanced IR coating and non-proprietary aluminum reflector, while maintaining a lamp lifetime similar to the baseline lamp lifetime.

In response to the April 2009 NOPR, several stakeholders noted that DOE's maximum lamp efficacy as presented in Appendix 5D of the TSD, far exceeds that of TSL5 and, thus, should have been considered as a higher TSL6. (PG&E, Public Meeting Transcript, No. 38.4 at p. 99; CA Stakeholders, No. 63 at p. 15) The CA Stakeholders further agreed with DOE's statement in appendix 5D that advanced IR coatings are not a developmental product. (CA Stakeholders, No. 63 at p. 17) ADLT confirmed that the uncoated burner tested by DOE for appendix 5D has been used in products for several years in the United States and that the coating applied to this burner has been in production in Europe on 12V burners for several years. (ADLT, No. 72 at p. 3)

In contrast, NEMA commented that because DOE's lamp efficacies calculated in Appendix 5D are based on prototype burners, and not on product that is currently in production, these values overestimate the final performance that would be achieved after making all design and process tradeoffs necessary to implement a complete high-speed, high-volume assembly process. (NEMA, No. 81 at pp. 28–29) In addition, both Philips and ADLT agreed that there is a difference between the efficacy that can be attained in a laboratory production process and that which can be attained in an industrial environment. ADLT acknowledged that this difference is more pronounced when employing higher-efficiency IR coatings. (Philips, Public Meeting Transcript, No. 38.4 at p. 111; ADLT, Public Meeting Transcript, No. 38.4 at pp. 112–113)

While DOE considers advanced IR coatings to be a valid design option for increasing IRL efficacy and has not screened it out of the analysis, DOE also

[55] Halogen infrared (HIR) lamps that are commercially available today typically use infrared (IR) coatings with alternating layers of two materials (*i.e.,* SIO_2 and a second material of either Ta_2O_5 or Nb_2O_5) and have layer counts ranging from 45 to 75. In contrast, the most-efficient HIR lamps have a coating made of three materials: SiO_2, Ta_2O_5, and TiO_2, the latter in the high-index rutile phase. This three-material coating, described as a Hybrid™ by Advanced Lighting Technologies, Inc. (hereafter referred to as ''advanced IR coating ''), has an effective IR reflectance significantly higher than that of the two-material coatings used in the commercially-available examples, thereby resulting in enhanced lumen-per-watt (lm/W) values.

recognizes that it lacks the data to accurately estimate the performance of lamps utilizing this design option when manufactured at the production volumes needed to service the IRL market. Although all individual components of the prototype have been produced in high volume for separate products, that alone does not prove that a lamp with that combination of parts would have the same efficacy when manufactured on a large scale. In addition, as the analysis performed in appendix 5D of the TSD was based on an IR coating deposited in a laboratory environment, it is reasonable to assume that the efficacy of similar burners when manufactured in an industrial environment will be lower. While DOE recognizes that advanced IR coatings will likely produce higher-efficacy IRL, because DOE does not have adequate data to accurately estimate this efficacy, DOE is no longer considering the tested burners in establishing the max-tech level or alternate technology pathways to achieving other TSLs.

b. Silverized Reflectors

Commenters stated that in addition to the patent for GE's silverized reflector, two other patents exist for manufacturing coatings of reflective silver. Another company possesses a provisional patent for a silverized lamp reflector (''Reflector A''), a technology (currently in development) that has been demonstrated in prototypes that have tested performances at least equal to that of the patented technology. A third entity has a patent for a ''durable silver reflective coating'' (''Reflector B'') that could be used for lamp applications. (CA Stakeholders, No. 63 at p. 19–20; ADLT, No. 72 at p. 2)

While recognizing the promise of these reflective silver technologies, DOE notes that significant uncertainty remains as to the successful implementation of both of these designs in commercial products at the scale needed to service the IRL market. In addition, DOE has no data on the performance of Reflector A. Although stakeholder have provided tested efficacies of lamps utilizing Reflector B, similar to the discussion regarding advance IR coatings, DOE is unable accurately estimate the performance of these lamps when produced at high volumes in industrial environments. For this reason, although DOE considers silverized reflectors as an IRL design option, DOE has concluded that it cannot base its establishing of max-tech or adoption of any other TSL on the potential performance of these reflectors.

c. Integrally-Ballasted Low-Voltage IRL

In the April 2009 NOPR, DOE screened out integrally-ballasted low-voltage IRL as a technology option, because it was unaware of any IRL with integrated transformers that stepped down voltage from 120V line voltage. 74 FR 16920, 16940 (April 13, 2009). Therefore, DOE could not conclusively determine if this technology option was technologically feasible. (See the Chapter 4 of the NOPR TSD). To demonstrate technological feasibility, the California Stakeholders contracted a consulting company to combine existing lamp components to make several prototypes of 120V IRL utilizing low-voltage capsules. The tested efficacies of these prototype indicated that low-voltage capsules could be used as a technology pathway to meeting TSL4 and TSL5. (California Stakeholders, No. 63 at pp. 20–21) Regarding the technological feasibility of low-voltage IRL, Philips commented that higher mains voltages found in Europe (such as 220V and 240V) allow greater improvements in efficiency to be obtained by IRL with integrated transformers, but such improvements could not be obtained as easily in the U.S., where a mains voltage of 120V is used. (Philips, Public Meeting Transcript, No. 38.4 at pp. 318–319)

In response, because the California Stakeholders have demonstrated that an integrally-ballasted low-voltage IRL operating on 120V mains is technologically feasible, DOE is no longer screening out this technology option in its screening analysis. However, because one of the tested prototypes (in particular, the only one claimed to meet TSL5) combined the low-voltage capsule with a developmental silverized reflector (see section V.B.5.d), DOE believes that there is significant uncertainty regarding the actual efficacies when such a product is manufactured on large scales. In addition, as stakeholders did not provide the lifetime of their tested prototypes, DOE cannot confirm that the resulting efficacies represent products with lifetimes similar to the baseline lamps DOE analyzed. Therefore, although DOE recognizes the potential of integrally-ballasted low-voltage IRL to reach high efficacies, due to the lack of definitive data DOE cannot base the establishing of max tech or the adoption of any other TSL on the test data provided.

3. Lamp Lifetime

Because lamp lifetime affects lamp efficacy, certain commenters suggested that the max-tech level should reflect a typical baseline lamp with a lifetime of between 1,000 and 2,000 hours. (CA Stakeholders, No. 63 at p. 15) ADLT acknowledged that a relationship exists between lamp lumens and lifetime in which, all other things remaining equal, one cannot be changed without affecting the other. ADLT suggested that DOE should analyze lamps with lifetimes between 2,000 and 3,000 hours, which represents lifetimes commonly found in the commercial and residential markets. (ADLT, No. 72 at p. 3)

DOE agrees that the max-tech level should be based on a lamp with a lifetime typical to the baseline lamp, and it conducted its rulemaking analyses accordingly. As discussed in Chapter 5 of the TSD and consistent with ADLR's recommendation, DOE believes typical lifetimes of IRL regulated by this rulemaking are currently 2,500 to 3,000 hours. As discussed in section I.A.2, DOE has already considered that the maximum technologically feasible level would incorporate the highest-efficiency filament design, and such a filament would increase operating temperature (and efficacy) to a point that would result in a lifetime equivalent to the baseline lamp lifetime. However, because this level requires the use of the proprietary silverized reflector, DOE rejected this level as not economically-justified.

In addition, DOE has reevaluated whether TSL5 represents the maximum technologically feasible level not dependent on a single proprietary technology. In the April 2009 NOPR, DOE based TSL5 on a commercially-available IRL which employs a proprietary silver reflector, an improved (but not most-efficient) IR coating, and a filament design that results in a lifetime of 4,200 hours. However, DOE also stated that it believed that other technology pathways (not dependent on the proprietary technology) may exist. This belief was largely based on advanced IR coated capsules DOE tested (as documented in Appendix 5D). However, as discussed in section VI.B.2.a, DOE does not have the required certainty regarding these tested efficacies, and, therefore, is not considering them in establishing standard levels for this final rule. To verify that an alternate technology pathway exists to achieving TSL5, DOE evaluated commercially-available lamps at TSL4 (that generally have lifetimes of 4,000 hours) and modeled their efficacies at a reduced life-time similar to the baseline (2,500 hours). Using the 9th edition of the IESNA Lighting Handbook and by developing a relationship between lifetime, lumens,

and wattage, DOE determined that a reduced lifetime TSL4 lamp (not using the proprietary silver reflector) would in fact just meet the efficacy requirements of TSL5. Therefore, DOE believes that TSL5 represents the maximum technologically feasible level not dependent on a single proprietary technology, taking into account all lifetime considerations.

C. IRL Lifetime

1. Baseline Lifetime Scenario

As discussed earlier, DOE's NOPR analyses were primarily based on commercially-available lamps, modeling 4,000-hour-lifetime and 4,200-hour-lifetime lamps at TSL4 and TSL5. DOE received a number of comments on the anticipated availability of IRL of various lifetimes under amended standards. Specifically, NEMA stated that it is possible to achieve higher efficacy levels (*e.g.*, TSL4 and TSL5), but that only shorter-lifetime lamps are likely to be offered at those levels. NEMA also argued that PAR halogen lamps must have lifetimes of at least 2,000 hours (and more typically 3,000 hours) in order to be economically viable to consumers. (NEMA, No. 81 at pp. 5, 31) In addition, ADLT commented that the market determines the appropriate combination of efficacy and lifetime, it predicted that, in the future, higher-efficacy lamps would have shorter lifetimes than those proposed by DOE at TSL4 and TSL5 in the April 2009 NOPR. (ADLT, No. 72 at p. 3–4) The CA Stakeholders also disagreed with DOE's selection of longer-lifetime lamps at TSL4 and TSL5. They stated that on a technology basis, lamp lifetime does not necessarily increase with the use of improved halogen technology. The CA Stakeholders believed that because manufacturers will be able to produce lamps with different combinations of lamp life and efficacy at TSL4 and TSL5, DOE's shipment analysis should not assume any change in average lamp life at those levels. (CA Stakeholders, No. 63 at p. 28)

Although DOE acknowledges that there is a technology trade-off between IRL lifetime and efficacy, based on the current stock of commercially-available product, DOE has concluded that lamp lifetimes of 4,000 hours and 4,200 hours are technologically feasible at TSL4 and TSL5, respectively. However, DOE also recognizes that given the issues regarding proprietary technologies, some manufacturers may choose to meet these higher efficacy levels by reducing lifetime to 2,500 hours and 3,000 hours. In addition, DOE also agrees with the CA Stakeholders, that beyond issues regarding proprietary technologies, given their ability to provide similar offerings of lamp lifetime, manufacturers will likely choose to offer lamps at lifetime similar to the baseline lamps (2,500 to 3,000 hours). Finally, DOE agrees with stakeholders that such an assumption will likely change the impacts of amended standards on consumers and manufacturers from those presented in the April 2009 NOPR.

For this reason, DOE developed a Baseline Lifetime scenario (in which it analyzed LCC savings, NPV, and manufacturer impacts) to investigate the effects of shorter lamp lifetime at TSL4 and TSL5. DOE determined it was not necessary to apply this scenario to TSL1 through TSL3, because at those levels, DOE already analyzes lamps with lifetimes similar to those of the baseline lamp lifetimes. However, for this scenario at TSL4, for each of the three baseline lumen packages, DOE analyzed an additional IRL with a lifetime equivalent to the baseline lamp's lifetime (2500 hours for the 90W lumen package, 2500 hours for the 75W lumen package, 3000 hours for the 50W lumen package). The efficacy and wattages of the additional IRL were the same as those analyzed at TSL4 in the April 2009 NOPR. In addition, as DOE had no indication that a less-costly technology could be utilized to meet TSL4 at these lower lifetimes, DOE modeled that the price of these additional lamps would be the same as the long-lifetime TSL4 lamps.

For the Baseline Lifetime scenario at TSL5, as discussed in section VI.B.3, DOE's calculations indicate that the operating temperature of the 4,000 hour TSL4 lamp could be increased so as to result in a 2,500 hour lifetime lamp with an efficacy that would just meet TSL5. Therefore, at TSL5, DOE models three additional lamps (one for each baseline lumen package) which have lifetimes of 2,500 hours, the same prices of the TSL4 lamps (since these lamps would use the same technologies), and the same wattages and efficacies of the previously analyzed TSL5 lamps. The results of this Baseline Lifetime scenario are presented with the Commercial Product Lifetime scenario in sections VII.B, VII.C.1, VII.C.2 and VII.C.3.

2. Minimum Lamp Lifetime Requirement

Some stakeholders expressed concern regarding the possibility of extremely low lifetime lamps entering the market if DOE were to adopt TSL4 or TSL5. As mentioned above, NEMA stated that a PAR halogen lamp must have a lifetime of at least 2,000 hours, and more typically 3,000 hours, to be economically viable. (NEMA, No. 81 at p. 31) NEMA stated that shorter-lifetime lamps are unacceptable for long-life applications and negatively impacted the environment, because more lamps must be manufactured, transported, and disposed of. (NEMA, No. 81 at pp. 5, 31) Thus, NEMA commented that DOE should have considered a minimum lamp life when setting efficacy standards. (NEMA, Public Meeting Transcript, No. 38.4 at pp. 104, 111–112) Edison Electric Institute recommended that DOE should consider setting a minimum lifetime standard for IRL, as was done for CFL via the Energy Policy Act of 2005 (EPACT 2005). (EEI, Public Meeting Transcript, No. 38.4 at p. 117)

While DOE acknowledges that EPACT 2005 set a minimum lifetime standard for CFL based on the August 9, 2001 version of the Energy Star Program Requirements for Compact Fluorescent Lamps (42 U.S.C. 6295(bb)), DOE does not have the authority to set minimum lifetime standards for incandescent reflector lamps, because lamps lifetime is not an energy efficiency metric. Under 42 U.S.C. 6291(6), ''energy conservation standard'' is defined as: (1) A performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use; or (2) a design requirement (only for specifically enumerated products, which do not include incandescent reflector lamps). Because a standard for lamp lifetime would not fall under the definition of ''energy conservation standard'' as defined by 42 U.S.C. 6291(6), DOE cannot adopt a minimum lifetime requirement for IRL in this final rule.

3. 6,000-Hour-Lifetime Lamps

In response to these comments, DOE notes that it selected IRL designs for its Commercial Product Lifetime scenario that would preserve the lifetime of the baseline IRL analyzed in this rulemaking, even though DOE understands that manufacturers can increase IRL efficacy by reducing IRL lifetime. 73 FR 13620, 13650 (March 13, 2008). DOE notes that improved HIR lamps, as well as lamps introduced to meet TSL5 in the April 2009 NOPR have lifetimes greater than 4,000 hours, demonstrating that longer-life lamps can meet higher standard levels. DOE also believes that the life-cycle cost analysis results presented in this rulemaking accurately indicate the economic benefits to consumers, as the life-cycle cost analysis inherently considers lamp lifetime as well as the time value of money. Furthermore, in the April 2009

NOPR, DOE expressed its belief that lamp lifetime is an economic issue rather than a utility issue because lifetime does not change the light output of the lamp. 74 FR 16920, 16939 (April 13, 2009). Nevertheless, DOE analyzed whether long-life lamps would be available at higher TSLs. At TSL5, DOE has determined that manufacturers can provide lamps with a lifetime of at least 4,200 hours, but is unable to confirm that they could offer lamps with a lifetime of 6,000 hours. However, at TSL4, DOE believes that manufacturers can achieve lifetimes of 6,000 hours by decreasing the efficacy of a lamp compliant with TSL5. Thus, 6,000-hour-lifetime lamps would not be eliminated at this standard level.

In summary, DOE understands that lifetime and IRL efficacy are related, but believes that the selection of an IRL lifetime by a lamp designer does not automatically determine the efficacy of the lamp. There are a variety of methods that lamp designers can utilize to meet DOE's standard levels, and these methods are analyzed in this rulemaking. DOE considers how lamp lifetime affects consumers in its LCC analysis.

D. Impact on Competition

1. Manufacturers

DOE received several comments related to the impact of IRL standards on industry competition. Philips believed that because most technologies employed to manufacture advanced IR coatings were proprietary, the adoption of IRL standards that required such a technology would adversely affect competition among lamp manufacturers. (Philips, Public Meeting Transcript, No. 38.4 at pp. 111–112)

ADLT disagreed that advanced IR coatings required proprietary technology. (ADLT, Public Meeting Transcript, No. 38.4 at p. 112) The CA Stakeholders also disagreed and instead supported DOE's assertion in appendix 5D that advanced IR coatings were not a developmental product, and were presently not patented and were available to all lamp manufacturers. (CA Stakeholders, No. 63 at p. 17) ADLT confirmed that the uncoated burner tested by DOE for appendix 5D has been in production for several years in the United States. Furthermore, the coating applied to this burner has been in production in Europe on 12V burners for several years. (ADLT, No. 72 at p. 3)

The California Stakeholders asserted that adoption of a high standard level for IRL would not cause a significant lessening of competition. They commented that because manufacturers invest in new technologies at different times in competition with rivals, manufacturers currently offer products of different efficacies. The California Stakeholders added further that manufacturers have already invested significant capital to develop efficient burners and reflectors, which is reflected by the fact that they offer products currently meeting TSL 4 and TSL 5. (California Stakeholders, No. 63 at pp. 24–25)

In response, DOE does not believe that the adoption of a high standard level will adversely affect competition between lamp manufacturers. Consumers purchase lamps for a variety of utility features (size, color, dimming capability, directional light, lifetime, etc.) other than efficacy. Because consumer choice among these many features will remain unrestricted by this final rule, manufacturers have many grounds on which to compete. Furthermore, continued innovation in incandescent technology—driven, in part, by the desire to maintain a schedule of margins based on efficiency (as opposed to simply the utility features noted above)—is likely to maintain or even promote competition. DOE also acknowledges the proprietary silverized reflector technology at issue. As discussed in section VI.A, DOE believes there are alternative technologies to meeting higher efficacy levels and therefore believes that this final rule does not provide for any technological advantage that doesn't already exist in the marketplace. A more detailed discussion of the impact of the adopted IRL standard on industry competition is contained in section VII.C.5.

DOE also received comment regarding the impact of the effective date for IRL standards on industry competition. To DOE's knowledge, two of the three major manufacturers of IRL currently sell a full product line (across common wattages) that meet TSL4. However, it is DOE's understanding that OSI employs a technology platform that, due to the positioning of the filament in the HIR capsule, is inherently less efficient. Therefore, it is likely that in order to meet TSL4, OSI would have to make considerably higher investments than the other manufacturers, placing it at a competitive disadvantage. OSI commented that they required one additional year to obtain the requisite approval, design, build, and install equipment, and stabilize high volume production if DOE were to adopt TSL4. (OSI, No. 84 at p. 1)

While DOE recognizes the challenges inherent in gaining access to technology and building capacity needed to begin production, as detailed in section VI.I of this notice DOE does not have the statutory authority to extend the implementation period. OSI did not provide the detailed information which DOE would need to appreciate why what is achievable in 4 years cannot be accomplished in the 3 years lead time specified by EPCA. For example DOE believes that proprietary technologies are not required to meet TSL 4 and that suppliers could provide HIR capsules if these could not be manufactured in-house. Furthermore it is unclear how it might be possible to stabilize high volume production without producing high volumes of lamps. For this reason DOE believes that a 3 year lead time will be sufficient to ensure that the IRL market is supplied.

2. Suppliers

DOE also received several comments related to the potential impact of the adopted IRL standard on the competition between technology suppliers. The Applied Coatings Group (ACG) expressed concern regarding the adoption of an IRL standard that could only be met using an advanced IR coating manufactured by ADLT (this coating is described in appendix 5D of the TSD). ACG believed that such an action may create a monopoly for DSI, a subsidiary of ADLT, which would be detrimental for the lighting industry and consumers. (ACG, No. 52 at p. 2)

Conversely, the CA Stakeholders believed that there is already competition to manufacture advanced coatings for lamps. They provided a list of companies that had either already invested in the technology or were considering such an investment. (CA Stakeholders, No. 63 at p. 18) DSI, a U.S. company which is owned by ADLT, applies coatings using a sputtering process in a vacuum chamber. Auer Lighting, a German company also owned by ADLT, manufactures a similar coating of comparable efficiency and price using plasma impulse chemical vapor deposition (PICVD). Furthermore, a patent is pending on a third process to apply an IR coating to improve lamp efficacy (CA Stakeholders, No. 63 at pp. 17–18) The CA Stakeholders believe that the IRL standards adopted by this rulemaking and the GSIL standards imposed by EISA 2007 will only increase the level of competition in the advanced coatings industry. (CA Stakeholders, No. 63 at pp. 18–19)

DOE agrees with the CA Stakeholders that the adopted standard for IRL will not create a monopoly for DSI because sufficient competition exists in the advanced coatings industry. As

discussed above, other companies are currently investing in advanced IR coating technology or are considering such an investment prior to DOE adopting revised IRL standards in this final rule. Furthermore, technology pathways exist other than advanced IR coatings that can meet or exceed the highest efficacy level. Thus, it is extremely unlikely for one company to become a monopoly as a result of DOE's adopted standards because there is more than one technology pathway to meet the most efficient level. For these reasons, DOE believes that the IRL standards adopted in today's final rule will not adversely impact competition among technology suppliers.

E. Xenon

In response to the March 2008 ANOPR, DOE received comments regarding the price and availability of xenon. Manufacturers believed that because of xenon's high price and limited supply, it should not be considered for use as a higher efficiency inert fill gas. (NEMA, No. 21 at p. 9) Although price is not considered in the screening analysis, DOE did conduct an in-depth market assessment of the supply of xenon, and the potential impact of xenon supply limitations on IRL standard levels. DOE determined that although xenon is a rare gas, its supply is sufficiently large to incorporate into all IRL and that the xenon supply would not affect IRL product availability (see appendix 3B of the TSD for more details). As such, in the April 2009 NOPR, DOE believed that the use of xenon as a higher efficiency inert fill gas satisfied the screening criteria and considered it as a design option when developing efficacy levels.

The CA Stakeholders agreed with DOE's analysis and conclusions in appendix 3B of the TSD that xenon is not likely to impact manufacturers' ability to produce IRL at higher standard levels. (CA Stakeholders, No. 63 at p. 22) NEMA agreed with DOE's observations regarding the fluctuating demand for xenon and its price being affected by demand in other industries. However, NEMA reiterated that DOE must consider the increased cost of xenon in its LCC analysis because NEMA estimates these costs to be substantial ($0.50 to $0.75 per lamp). (NEMA, No. 81 at p. 20)

In response, DOE did consider the impact of the price of xenon on LCC savings in the April 2009 NOPR and has updated its analysis with NEMA's inputs. DOE performed an analysis, described in appendix 3B, in which it calculated how much the price of xenon would have to increase before LCC savings became negative. DOE concluded that, in general, the price of xenon could approximately triple before it significantly negatively impacted LCC savings. However, DOE notes that when examining LCC savings for lamps modeled in the Baseline Lifetime scenario (see section VI.C.1), the economic benefits of moving to higher efficacy lamps is much reduced. Therefore, increases in the price of xenon could in fact turn LCC savings to LCC increases for some consumers. DOE also maintains its conclusion that the availability of xenon will not be impacted by this final rule because historical evidence shows that supply slowly increases until it meets demand. For more details, *see* appendix 3B of the TSD.

F. IRL Hot Shock

In interviews, manufacturers of IRL expressed concern that halogen and HIR IRL are susceptible to a premature failure mode known as ''hot shock'' when installed in energized sockets, which could reduce LCC savings for consumers. The hot shock condition occurs when the lamp filament contacts another part of itself due to vibration or torque, causing an electrical short within the lamp. In written comments, both NEMA and GE expressed that hot shock is a significant concern for efficacious IRL, especially in the residential sector, where IRL in recessed ceiling cans of multi-floor houses may experience hot shock due to vibrations caused by the movement of people on the upper floors shared by the ceilings where IRL are installed. (NEMA, No. 81 at p. 6, p. 10, pp. 27–28; GE, No. 80 at p. 7–8) In contrast, the California Stakeholders provided three reasons why they believed that the hot shock failure mode is not prevalent enough to prevent DOE from selecting a standard level that may require higher efficiency technologies. (California Stakeholders, No. 63 at pp. 21–22) Firstly, the California Stakeholders stated that in product documentation, manufacturers describe simple ways to avoid hot shock, primarily by avoiding installing or directing lamps while circuits are on. Secondly, the California Stakeholders stated that a patented technology (specifically a voltage reduction circuit) exists that claims to eliminate the risk of hot shock. Lastly, the California Stakeholders argued that as manufacturers have been selling halogen and HIR lamps for many years, if hot shock was a significant concern, there would be a noticeable adverse market response and mentioning of consumer dissatisfaction (of which their research found neither).

DOE acknowledges that halogen and HIR IRL are susceptible to hot shock during installation in energized sockets or due to vibration that occurs during operation. DOE cannot set standards that necessitate the usage of a proprietary technology due to the adverse impacts on manufacturers and industry competition that may result. Thus, DOE is not considering the patent described by the California Stakeholders as a feasible way of preserving LCC savings. See section VI.B.1 for further details. DOE does agree, however, that halogen and HIR products are readily available on the market despite the risk of hot shock. DOE was unable to determine the prevalence of hot shock in the commercial or residential sectors due to a lack of available data, so DOE determined at what lifetime a standards-compliant lamp purchased by a commercial or residential consumer would experience negative LCC savings. The results are shown in Table VI.1 for commercial consumers and Table VI.2 for residential consumers. Entries of ''N/A'' represent lamps that already give negative LCC savings to consumers. DOE also notes, as discussed in the April 2008 NOPR, during interviews manufacturers stated hot shock could decrease lifetime by 25 to 30 percent.

TABLE VI.1—IRL LIFETIME FOR NEGATIVE LCC SAVINGS IN THE COMMERCIAL SECTOR

Efficacy level	IRL lifetime (hours)		
	90W baseline	75W baseline	50W baseline
EL1	N/A	N/A	N/A
EL2—6,000 hr	2587	2587	3277
EL2—3,000 hr	2242	2242	N/A
EL3	1897	1897	2932
EL4	1897	2242	3277

TABLE VI.1—IRL LIFETIME FOR NEGATIVE LCC SAVINGS IN THE COMMERCIAL SECTOR—Continued

Efficacy level	IRL lifetime (hours)		
	90W baseline	75W baseline	50W baseline
EL5	1897	1897	3277

TABLE VI.2—IRL LIFETIME FOR NEGATIVE LCC SAVINGS IN THE RESIDENTIAL SECTOR

Efficacy level	IRL lifetime (hours)		
	90W baseline	75W baseline	50W baseline
EL1	2443	N/A	N/A
EL2—6,000 hr	2355	2532	3233
EL2—3,000 hr	1999	2177	2977
EL3	1644	1821	2621
EL4	1733	1910	2977
EL5	1644	1910	3243

G. Rare Earth Phosphors

During manufacturer interviews, manufacturers asserted that higher TSLs for GSFL would require substantially larger amounts of triphosphor to attain those efficiency levels. As compared to halophosphor, triphosphor is composed of more expensive rare earth elements that increase many performance features of GSFL, including efficacy, lumen maintenance, and color rendition. Manufacturers commented that a standards-induced increase in triphosphor demand would drive up prices for the rare earth elements used to make triphosphor, and might potentially exceed what the market could supply. In response, for the April 2009 NOPR, DOE conducted a market assessment of the rare earth phosphor industry (see April 2009 NOPR TSD Appendix 3C). DOE focused on the key rare earth elements used in high-efficacy GSFL—yttrium, terbium, and europium—because they are major cost drivers of triphosphor and were the subject of manufacturer concerns over availability. After completing the assessment, DOE did not believe it had sufficient information to project phosphor prices by modeling future supply and demand curves. Instead, DOE compared the LCC savings of consumers purchasing high-efficacy lamps to potential increases in the incremental first cost of rare-earth-based 800-series lamps that would result from higher rare earth phosphor prices. In general, DOE found that in most commercial and residential purchase events, consumer LCC savings was sufficiently high to remain positive even in the face of potentially dramatic increases in phosphor prices. DOE also stated that higher prices were likely to attract mining firms into the market and make less-concentrated rare earth deposits economically viable. 74 FR 16920, 16974 (April 13, 2009)

NEMA disagreed with DOE's analysis in the April 2009 NOPR and conclusion on four major points: First, DOE underestimated the increase in standards-induced triphosphor demand; second, DOE did not appropriately consider the problems with supply in the industry; third, higher efficacy levels will have a negative environmental impact due to the required increase in mining operations; fourth, the cumulative effect of the above factors would lead to dramatic increases in costs to manufactures and consumers.

Specifically, on the magnitude of standards-induced triphosphor demand, NEMA argued that TSL 1 or TSL 2 would prohibit halophosphor lamps, which would double manufacturer triphosphor demand. NEMA commented that shifting all lamps to TSL 4 or TSL 5 would increase the industry's triphosphor needs by an additional factor of three. In sum, NEMA estimated TSL 1, TSL 2, TSL 3, TSL 4, and TSL 5 would require 175 percent, 200 percent, 230 percent, 250 percent, and 350 percent of current triphosphor usage, respectively. (Philips, Public Meeting Transcript, No 38.4 at pp. 247–248, 251–252; NEMA, No. 81 at pp. 3, 18–19) Conversely, NRDC argued that the conversion of T12 lamps to T8 and T5 lamps would mitigate the increase in phosphor demand. (NRDC, No. 82 at p. 3)

In response to all comments, DOE conducted additional research on the rare earth industry, including several interviews with agents along the triphosphor value chain and other industry experts. Based on these interviews, manufacturer comments, further research and analysis of additional data obtained, DOE reevaluated its rare earth phosphor market analysis and assumptions.

To determine how much trisphosphor demand would increase at each TSL, DOE determined the amount of triphosphor required in each lamp type at each TSL, using assumptions from manufacturer interviews and industry interviews. For example, DOE used Philips' estimate that high performance 800-series lamps require three to four times as much triphosphor as standard 700-series lamps to establish the difference in triphosphor weight between the two phosphor series. DOE then multiplied these amounts by its shipments projections (*see* section V.D.2) for each phosphor series. (*See* TSD appendix 3C for a more detailed discussion of DOE's methodology.)

Based on this analysis, DOE agrees with the industry commenters that amended standards will lead to significant increases in manufacturers' need for triphosphor, and by extension, europium (Eu), terbium (Tb), and yttrium (Y). DOE estimates that at TSL 3, TSL 4, and TSL 5, manufacturer demand for triphosphor in covered products in 2012 would be 171 percent, 183 percent, and approximately 230 percent of base-case usage, respectively. These ranges reflect DOE's upper-bound and lower-bound energy savings scenarios, which DOE used to capture the effect of consumers selecting different phosphor series lamps in response to standards. In the lower-bound scenario, triphosphor usage actually declines from TSL 3 to TSL 4, as the increase in triphosphor usage due to higher-efficacy lamps is offset by the decline in usage from the elimination of high-efficacy T12 lamps. At TSL 5, there is a large incremental jump in usage under any scenario.

DOE believes its own estimate of the standards-induced triphosphor demand differs from NEMA's estimate for several reasons. First, DOE's estimate is relative to the 2012 market as opposed to current usage. DOE's analysis attempts to isolate the impact on triphosphor usage from the energy conservation standards under consideration in this rulemaking, net of the expected increase between now and the effective date. As such, DOE accounts for a currently-ongoing trend toward triphosphor lamps in the base case due to the increased penetration of triphosphor T8 lamps relative to halophosphor T12 lamps. Supporting this base-case increase in triphosphor usage, one industry supplier told DOE it expected triphosphor demand for linear GSFL to double in five to six years in the base case. Another said it expects continued double-digit growth in terbium demand. Second, DOE's estimate does not assume that all T8 lamps are 700-series in the 2012 base case. For example, 22 percent of 4-foot medium bipin lamps T8 are 800-series or high-performance 800-series lamps.

Regarding NEMA's second point regarding the total available supply of rare earth phosphors, Philips commented that Rhodia, a major phosphor supplier, told them in 2006 that there was only a 14-year terbium supply left in the ground, meaning that if demand doubled due to standards, the lamp industry would struggle to obtain sufficient amounts of terbium in six to seven years. NEMA commented that Rhodia predicted that even without changes to DOE's energy conservation standards, terbium, and europium would be in short supply within five years. (Philips, Public Meeting Transcript, No 38.4 at pp. 254–255, 258–259, 263)

NEMA also highlighted China's monopolistic position in the rare earth market as a threat to supply. NEMA stated that China, in an attempt to move manufacturing of products such as GSFL to their country, is setting production caps, reducing export quotas and licenses, and placing taxes on exports of rare earth commodities. According to NEMA, Chinese mine operators will not flood the market with the more abundant elements because that would depress their value. (NEMA, No. 81 at pp. 16–18)

NEMA also rejected the notion that mines outside China, induced by higher phosphor prices, could augment supply by the amount China is restricting it. NEMA asserted that DOE should focus not on rare earths in general but rather those that are important to GSFL, particularly terbium and europium, because they represent only a tiny fraction of the rare earth mined. NEMA stated that DOE's list of potential mines in the April 2009 NOPR TSD (appendix 3b) does not indicate the presence of significant phosphor elements needed for GSFL manufacturing. For example, one mine DOE had listed as a potential source is in Mountain Pass, California. However, NEMA stated that its ore contained only 0.2 percent europium and no measure of terbium, according to the U.S. Geological Survey. (NEMA, No. 81 at p. 16–19) Even if other mines eventually go into production, Philips argued, they will not come online quickly enough to meet standards-induced demand. (Philips, Public Meeting Transcript, No 38.4 at pp. 253, 259) NEMA commented that DOE's conclusion that higher rare earth prices will attract additional mining operations is not supported by the record or anyone with knowledge of the subject. (NEMA, No. 81 at p. 19)

As it relates to the physical availability of Y, Tb, and Eu, DOE reevaluated its analysis on the supply and demand of the key rare earths to the lighting industry given manufacturer comments. DOE agrees that the availability of rare earth phosphors (particularly with regard to terbium and europium) is a serious issue. As stated above, DOE agrees that manufacturers will most likely require large increases in rare earth phosphors to meet the standard established by this final rule. DOE interviewed industry experts and suppliers along the triphosphor value chain about the quantity of the key elements likely to be available over the near, intermediate, and long term. DOE received conflicting reports from those within the field regarding future supplies of these key materials. Many factors obscure the amount of recoverable rare earth that will be available to manufacturers, including future Chinese policy and strategic priorities, policies of countries outside China, demand from other applications, reclamation efforts, and lack of transparency in the industry. Industry experts have suggested there are sufficient amounts available to meet expected demand for anywhere from 15 years to indefinitely. That is not to say that a supply shortage of these key elements and other rare earths is unlikely. Indeed, many of those experts that DOE interviewed expect shortages of most rare earths—not because of this rulemaking, but because of Chinese policy. Based on its interviews and research, DOE has concluded that the pivotal issue governing the risk to the physical availability of rare earths is Chinese policy. China currently supplies some 95 percent of the rare earth market and has taken steps to restrict the exportation of rare earths resources. Many in the field, as noted by manufacturers, consider this to be more a reflection of China's strategic decision to compel rare earth-dependent industries (which tend to be burgeoning high-technology fields) to host operations in China,[56] rather than an indication of limitation in terms of the physical availability of the resource.[57] DOE does not dispute such a strategy could restrict rare earth phosphor supplies. However, DOE again notes this is substantially not a function of this final rule, but of external factors that may or may not affect industry in the base case as well as the standards case.

In terms of other mining operations outside China, DOE found differing opinions on whether such operations have the potential to appreciably increase the supply of the key rare earths. DOE understands the key difference between those elements critical to the lighting industry and rare earths in general (discussed below) and agrees with NEMA that simply increasing production of rare earths is not sufficient to meet the specific needs of lamp manufacturers. While DOE also agrees that new projects outside of China could take years to come online, industry experts related that part of the reason for this is the threat of China increasing supply, thereby reducing prices, just as other facilities embark on the large capital costs required to develop mines. While this does imply a limited role for non-Chinese suppliers, it necessarily also implies an increase in rare earth phosphor supply.

DOE continues to believe that any sharp increase in demand over the long term will send strong price signals to rare earth suppliers and potential suppliers around the globe, thereby increasing investment in the exploration and recovery of rare earths, as discussed in appendix 3B of the TSD. Another view common to the industry is that nations outside China will be forced to view rare earths as a strategic resource and take steps to secure access. The United States Geological Survey estimates that 58 percent of rare earth reserves base are in China,[58] meaning

[56] Latimer, Cole; Kim, Jieun, Kim; Tahara-Stubbs, Mia; Wang, Yumin, ''China's Rare Earth Monopoly Threatens Global Suppliers, Rival Producers Claim,'' Financial Times (May 29, 2009).

[57] Richardson, Ed, Thomas & Skinner, ''High Performance Magnets,'' Strategic Minerals Conference (April 2009).

[58] Hedrick, James B., *Mineral Commodity Summaries*, United States Geological Survey (Jan. 2009).

there could be other sources of rare earths, although reserves of those specific rare earth elements key to lighting use may be more highly concentrated in China than all rare earths. (Please see appendix 3C of the TSD for a list of potential rare earth development projects.) Two potential domestic rare earth sources are the Mountain Pass, California site and the Pea Ridge iron ore mine in Missouri. NEMA and Philips noted that while 20,000 tons of rare earths could potentially be mined at Mountain Pass, only 0.2% was europium. Regardless of the likelihood of the mine in Mountain Pass reopening, DOE notes that that amount equates to 40 tons of europium annually, a figured DOE confirmed by interviews with the mine's operators. Production could in fact be higher, and such an amount is not insignificant amount given that estimated total worldwide demand for europium was 300 tons in 2007 and was projected to be 420 tons in 2012.[59] While estimates vary, a Rhodia presentation estimates terbium demand to be 420 tons in 2012, not the 600 tons NEMA noted. The company also told DOE that it expects supply and demand to be in balance in the near term for terbium and europium. Reports of the Pea Ridge resource indicate it is relatively rich in the rare earths key to the lighting industry, including terbium.[60] Molycorp, the company that owns the Mountain Pass site, also told DOE that it is currently exploring four other sites outside China that have significant concentrations of the heavy rare earths (the group to which the critical rare earths such as terbium belong).

NEMA also commented on phosphor reclamation as another source of rare earth supply. Philips stated that Rhodia has said there physically will not be enough phosphor beyond 2015 without reclamation. NEMA argued that while reclamation could augment supply, it would require significant infrastructure investment and still bring issues such as mercury contamination into play with regard to international transport (as many phosphor manufacturers are overseas). Such infrastructure and systems of collection and handling currently do not exist. Therefore, NEMA argued, while it expects recycling to emerge in response to the impending shortage, it is ''entirely speculative'' to assume reclamation can impact the rare earth phosphor shortage in this decade. Philips stated that only one of the two types of the green phosphor can currently be recycled; the type commonly used in CFLs cannot. In addition, GE stated that at TSL 4 and TSL 5, reclamation will not enlarge supply because reclaimed phosphor does not perform well enough to meet those levels. (Philips, Public Meeting Transcript, No 38.4 at pp. 261, 262; NEMA, No. 81 at p. 18)

Based on interviews, DOE believes that reclamation efforts can play a significant role in augmenting supply, but only in the longer term. Rhodia estimates that by 2015 there will be more than 250 tons of rare earth oxide in recycled lamps.[61] Rhodia already has reclamation ability and is ramping up its capacity, but technical and economic challenges of commercial-scale operations remain. First, the infrastructure to collect recycled GSFL must be in place. With this infrastructure, a commercial-scale, technically-viable process for distilling the rare earths from the other lamp materials—glass, alumina, halophosphate, etc.—must be established. This will have to include chemical treatments, mercury removal, and waste disposal.

While DOE agrees that reclaimed phosphor is too degraded to be used at TSL 4 or TSL 5, DOE notes that Rhodia stated that it can still meet the needs of high-performance lamps because the company refines the triphosphor back down into its original elements (*e.g.*, terbium, europium) and then remanufactures the triphosphor. Because this process clearly adds cost to the reclaimed triphosphor, it is likely only higher price points will trigger additional supply via reclamation.

The attractiveness of reclamation will depend not only on the cost of the process versus the price of normal rare earth acquisition, but also the amount of rare earth available for recovery in the retiring lamp stock. Currently, the universe of retiring lamps was installed several years ago; they are mostly halophosphor lamps. Therefore, the yield of rare earth oxides from recycling these lamps would be unlikely to make commercial-scale reclamation economically attractive in the very near future. As such, in light of the other details, DOE agrees that large-scale reclamation is unlikely to occur before 2015. However, in several years, Rhodia expects the amount of recoverable useful rare earth to grow significantly as high-performance GSFL become commonplace.[62] Just as energy conservation standards will increase the demand for rare earth phosphor in 2012, they will provide larger volumes available for reclamation when they retire. At such time, it is entirely possible that reclamation eventually could augment supply.

On its third point regarding the impact of rare earth mining, NEMA argued that those who think TSL 5 is environmentally sound are not considering the environmental impact that will arise from such an increase in demand. Philips argued that the goal of the U.S. should not be to quadruple strip mining operations around the world. According to Philips, TSL 5 would increase mining by 300 percent relative to TSL 3, depleting natural resources more rapidly and increasing the cost to the consumer. (Philips, Public Meeting Transcript, No 38.4 at pp. 253, 259; NEMA, No. 81 at p. 19)

DOE agrees with NEMA and Philips that increased demand could require additional mining operations. However, mining for rare earths reflects a small portion of all global mining operations. DOE does not believe that the increase in global demand resulting from this final rule will come close to requiring the mining increase suggested by Philips as industry experts also noted that rare earths in many instances could be mined as byproducts and, therefore, not create the same footprint as an entirely new project.

On its fourth point, NEMA and Philips argued that a massive price spike in rare earth phosphors will occur in 2012 when manufacturers supplying the U.S. market have to double their requirements as China continues to reduce quotas. GE commented that this would lead to very expensive lamps for consumers. (GE, Public Meeting Transcript, No 38.4 at pp. 256; Philips, Public Meeting Transcript, No 38.4 at pp. 248–249; NEMA, No. 81 at p. 18) Conversely, the California Stakeholders commented that they agreed with DOE's April 2009 NOPR analysis related to rare earth phosphors, stating that rare earth phosphor prices and availability would not affect product availability or consumers' life cycle cost savings. (California Stakeholders, No. 63 at p. 11) ACEEE commented that it does not expect the availability of rare earth phosphors to result in excessive price volatility. (ACEEE, No. 76 at p. 2)

In response, as discussed in the April 2009 NOPR, DOE believes that the standards case, all other things being

[59] Cuif. Jean-Pierre, Rhodia Silcea—Electronics BU, ''Is there enough rare earth for the ''green switch'' and flat Tvs?'', Phosphor Global Summit 2008 (March 2008).

[60] Available at: *http://www.wingsironore.com/data/wings_enterprises_reo_quick_summary.pdf*

[61] Rhodia, ''Phosphor Recycling: Dream or New Source of Rare Earths?'' Presentation at Phosphor Global Summit 2009 (March 2009).

[62] Rhodia, ''Phosphor Recycling: Dream or New Source of Rare Earths?'', Presentation at Phosphor Global Summit 2009 (March 2009).

equal, will result in higher prices for yttrium, europium, and terbium. (74 FR 16920, 16974 (April 13, 2009) As in the April 2009 NOPR, DOE does not believe is it possible to generate reasonable price forecasts, particularly given the historical volatility in rare earth prices, trade restrictions, trade policies, lack of publically-available data from China, and potential supply sources coming online. As an example of the price volatility, terbium prices on May 20, 2009 were roughly half what they averaged in 2008,[63] this after increasing dramatically in previous years.

However, given that DOE believes standards-induced demand increase has the potential to affect the worldwide demand of europium, terbium, and yttrium, DOE has concluded that it is possible prices will rise for these elements, all other things being equal. To broadly gauge the potential impact of standards on prices, DOE assessed the standards-induced increase of their demand in the context of the international market for these materials, as these key rare earths have many applications and are transacted in a global market. DOE estimates that this final rule will increase worldwide demand for terbium and europium relative to the 2012 base case by roughly 10 percent. DOE used Rhodia estimates for the 2012 base case.[64]

DOE's interviews and research showed that there are many value-added processes in the supply chain of triphosphor. Some of the cost attendant to these processes is not directly driven by the demand (and scarcity) of these rare earth elements themselves, but by the mining, chemical processing and concentrating, and blending costs that are inherent to triphosphor production. According to interview participants, these processes are highly driven by energy costs, which will be mostly equivalent in the base case and standards cases. This is supported by the fact that despite the prospect of increasing demand, the prices of the key rare earths declined significantly from summer 2008 to spring 2009, more in line with oil and other commodity prices. Other important cost drivers to manufacturers include a 25-percent tariff on the export of key rare earths from China, which will also be the same in the base case and standards cases.

As it did in the April 2009 NOPR, DOE conducted a sensitivity analysis for this final rule to address the potential increases in end-user lamp prices attributable to higher rare earth input costs. And despite the fact that price increases in the key rare earth elements are unlikely to be equal to triphosphor costs (because of the many other cost inputs), to be conservative, DOE assumed that such a relationship existed. That is, if Eu, Y, and Tb prices—weighted for their proportional use in triphosphor—doubled, DOE assumed the price of triphosphor also doubled. DOE used the analysis to determine how robust consumer LCC savings are at TSL 3, TSL 4, and TSL 5. DOE compares the LCC savings due to purchasing higher-efficacy GSFL (as calculated in chapter 8) to LCC savings under scenario with higher phosphor prices. As discussed in appendix 3C of the TSD, DOE determined the quantity of each rare earth phosphor required to manufacture each phosphor series of GSFL. DOE then estimated how a range of prices for the key rare earth phosphors would affect manufacturing lamp costs. Next, by applying manufacturer and retail markups, DOE analyzed how increases in rare earth phosphor prices may affect LCC savings for a consumer of each lamp type.

DOE found that for most commercial and residential purchase events, consumer LCC savings were sufficiently high to remain positive even if there were dramatic increases in triphosphor prices and manufacturers were forced to pass those cost increases on to the consumer with current markup levels. In fact, all events that yield positive LCC savings at TSL 4 at current triphosphor prices would maintain positive LCC savings despite dramatic increases in trisphosphor prices (as a result of rare earth price increases). By the same token, DOE calculated that the dramatic decline in rare earths prices since the summer of 2008 likely did not significantly affect consumer LCC savings.

In conclusion, regardless of the differences between DOE and NEMA's phosphor usage estimates, it is worth noting that moving from TSL 3 to TSL 4 results in a much smaller increase in triphosphor usage than any other incremental step up in efficacy levels, according to each estimate. As noted above, NEMA estimates a relatively small increase in usage at TSL 4 relative to TSL 3 (250 percent vs. 230 percent) and both show a much larger increase in moving to TSL 5 (350 percent). Given that NEMA commented that TSL 3 could be implemented in terms of triphosphor, despite more than doubling domestic usage, DOE believes the relatively small incremental demand increase of moving to TSL 4 works to justify the latter, higher efficacy level. (NEMA, No. 81 at p. 2; GE, Public Meeting Transcript, No 38.4 at pp. 254–255) Similarly, while it is impossible to guarantee the amount of recoverable rare earth in the ground, or predict the supply impacts of Chinese policy, DOE does not believe the slight incremental impact of TSL 4 relative to TSL 3 significantly exacerbates these concerns. However, given the large increases in rare earth phosphor required at TSL 5 relative to TSL 4, DOE is concerned about the impact of TSL 5 on product availability as well as the potential environmental impact of producing the necessary rare earth resources.

For all of these reasons—a relative small increase in triphosphor needs at TSL4 relative to TSL 3, which industry acknowledged was acceptable; continued LCC savings for the consumer even with higher triphosphor prices and tariffs; greater potential for additional supply resources and reclamation with higher rare earth prices; and, significantly, the fact that the major factors in rare earth availability and prices are largely independent of this rulemaking—DOE concludes that TSL 1 through TSL 4 are appropriate with respect to rare earth phosphor availability, prices, and environmental impact.

H. Product and Performance Feature Availability

1. Dimming Functionality

NEMA expressed concern about the loss of dimming capability as IRL consumers migrate to other technologies. NEMA acknowledged that although no data exists to characterize the dimming market, industry believes there is ''considerable overlap'' between dimmer and IRL installations. Thus, for both the commercial and residential sector, NEMA believes that a significant number of installed halogen lamps are used in combination with dimmers. NEMA commented that at TSL4 and TSL5 specifically, the high price of covered IRL will likely force consumers to buy lower cost, but non-dimmable technologies. NEMA argued this would disappoint end-users, especially those in the residential sector, as they are more likely to purchase a lamp based on its first cost. Furthermore, NEMA argued that because a significant percentage of installed halogen lamps are used in dimming applications (and therefore consume less energy when dimmed), the energy saving benefit of an alternative non-dimmable replacement is reduced. (NEMA, No. 81 at p. 29–30) Lutron also urged DOE to account for this functional loss in its

[63] *See http://lynascorp.com/page.asp?category_id=1&page_id=25.*

[64] Cuif. Jean-Pierre, Rhodia Silcea—Electronics BU, ''Is there enough rare earth for the ''green switch'' and flat Tvs?'', Phosphor Global Summit 2008 (March 2008).

analysis. (Lutron, No. 38.4 at p. 316) Similarly, IALD commented that IRL provide utility, such as high CRI and dimming capability, that is unlikely to be met with emerging technologies and used in special applications, such as auditorium and art gallery lighting. (IALD, No. 71 at p. 2)

In response, DOE believes that it has already accounted for dimming functionality in its analysis. First, DOE's efficacy levels do not eliminate any dimming capability from the market. Thus, DOE is not assuming this functionality must be met with emerging technologies. Covered IRL are available at every TSL for use in dimming applications. Second, DOE's emerging and existing scenarios already incorporate the effect of consumers who make purchasing decisions based only on a lamp's first cost. Third, DOE disagrees that the percentage of covered lamps used in dimming applications would affect DOE's projected energy savings. While DOE agrees with NEMA that when lamps are dimmed they consume less energy, DOE expects the usage of dimmers to remain the same in both the base and standards case. It is unlikely that a consumer would dim a lamp more or less only because he/she is using a standards-compliant lamp. Lastly, DOE believes consumers who would be ''greatly disappointed'' without dimming functionality would not be deterred from an incrementally higher first cost associated with retaining that functionality. For these reasons, DOE has already accounted for dimming functionality in its analysis.

2. GSFL Product Availability

NEMA wrote that TSL4 and TSL5 cannot be economically justified, partly because these efficacy levels would preserve T8 lamps that are mostly incompatible with today's installed base of T8 ballasts; NEMA also stated that higher standards for U-shaped lamps would negatively impact competition and eliminate energy-efficient U-shaped lamps with 6-inch spacing. (NEMA, Public Meeting Transcript, No. 38.4 at pp. 24, 38, NEMA, No. 81 at pp. 2–3)

DOE disagrees with NEMA that TSL 3 would remove nearly all T12 lamps from the market by the effective date. Certain T12 lamps still meet TSL 3, as presented in NOPR, a point that NEMA does not dispute. Moreover, given the magnitude of the current T12 shipments, particularly in the residential sector, where, as NEMA has noted, the most common residential magnetic ballast is exempted, DOE believes that T12 lamps will remain on the market at TSL 3.

Next, DOE has accounted for compatibility with existing ballasts, as well as the need for a new ballast purchases (when applicable), in all its analyses, as discussed in the April 2009 NOPR. While DOE agrees TSL 4 or higher may eliminate T12 lamps from the market, as presented in DOE's market share matrices, at least five T8 lamps meet TSL 4, and two providing residential consumers with product options. Therefore, DOE does not believe this final rule presents a possibility of product shortages.

I. Alternative Standard Scenarios

In the April 2009 NOPR, DOE noted that although it was proposing TSL3, serious consideration would be given to a more stringent standard level for GSFL in the final rule. Accordingly, DOE requested comment on alternative scenarios for GSFL standards that could achieve greater energy savings than the proposed TSL3. In addition to consideration of a standard that would eliminate T12 lamps as presented in TSL4 and TSL5, DOE also provided two examples of alternative standard scenarios that may be considered: (1) A standard with a delayed implementation date (*i.e.*, extended lead time); and (2) a standard with differentiated residential and commercial levels. 74 FR 16920, 17017, 17025 (April 13, 2009). In response, DOE received several comments on these example scenarios.

1. Tiered Standard

ACEEE, the California stakeholders, NEMA, and NEEP all recommended various forms of tiered standards. (ACEEE, No. 55 at pp. 1–3; NEEP, No. 61 at p. 4; NEMA, No. 81 at p. 23, 24; California Stakeholders, No. 2 at p. 2) ACEEE and the California Stakeholders also argued that DOE set a precedent for such a tiered, phased-in standard in 2001 with residential clothes washers, when DOE issued a final rule making one efficiency level effective in 2004 and second level effective in 2007. (California Stakeholders, No. 61 at p. 9; ACEEE, No. 55 at p. 2)

DOE analyzed the impacts of a tiered, phased-in standard, as suggested by many stakeholders. Under such approach, DOE's analysis showed a mitigation of manufacturer INPV, similar to a delayed effective date alternative scenario but to a lesser extent. Again, the lower capital costs (due to more time for the base-case migration away from T12s), time value of money effects, and longer retention of higher-margin sales, all mitigate the negative INPV impacts. DOE, however, again carefully reviewed the governing statute and has determined that it does not have the authority to implement tiered, phased-in standards under EPCA.

DOE carefully evaluated the legality of tiered standards based on the language in EPCA. 42 U.S.C. 6295(i)(3) requires amended standards for GSFL and IRL to apply to products manufactured ''on or after'' the 36-month period beginning on the date such final rule is published. DOE interprets this provision to mean that the standard will be in place for covered lamps that are manufactured precisely three years after publication of the final rule and prospectively thereafter. DOE reasoned that it would be illogical to give separate meaning to the terms ''on'' and ''after'', an interpretation that could conceivably allow for a second-tier standard effective at some point subsequent to the date 36 months after the publication date of the rule, because this interpretation would also allow for a rule that requires compliance with the established standards on only the exact date 36 months from the publication date. Therefore, DOE concluded that section 6295(i)(3) of EPCA does not allow tiered standards for the final GSFL and IRL rule. This is in contrast to EPCA's general service lamps provisions at 42 U.S.C. 6295(i)(6)(A)(iv), where Congress explicitly directed DOE to consider phased-in effective dates. DOE notes that 42 U.S.C. 6295(i)(5), relating to ''additional'' GSFL lamps, contains a different formulation providing that the standards shall apply to products manufactured ''after'' a date that is 36 months after the date the rule is published. However, it is DOE's understanding that the ''additional'' GSFL covered by subsection (i)(5) are not those products which significantly alter INPV or consumer LCC savings in this rulemaking. In light of the above, DOE chose not to adopt tiered standards for these lamps.

2. Delayed Effective Date

ACEEE and the California Stakeholders, as well as NEMA and Osram Sylvania, stated that DOE should consider various delayed effective dates, although the California Stakeholders suggested that this should be a last resort. (California Stakeholders, No. 61 at p. 4; ACEEE, No. 55 at p. 2; NEMA, No. 81 at pp. 2, 24–26; Osram Sylvania, No. 84 at p. 2)

DOE carefully evaluated the legality of delayed implementation dates based on the language in EPCA. DOE concluded that a delayed effective date which sets no standards for compliance on or about June 30, 2012, which is the anticipated date ''on or after the 36-month period beginning on the date

such final rule is published,'' would not be permissible under EPCA (42 U.S.C. 6295(i)(3)). As in the discussion above for tiered standards, DOE interprets the language of 42 U.S.C. 6295(i)(3) to mean that a standard will be in place for covered lamps that are manufactured precisely three years after publication of the final rule and prospectively thereafter. This is again in contrast to EPCA's general service lamps provisions at 42 U.S.C. 6295(i)(6)(A)(iv), where Congress explicitly directed DOE to consider phased-in effective dates. DOE also carefully considered 42 U.S.C. 6295(i)(5), which provides that the final rule for ''additional'' GSFL shall apply to products ''manufactured after a date which is 36 months after the date such rule is published'' and could potentially support a later effective date for ''additional'' GSFL. However, it is DOE's understanding that ''additional'' GSFL are not those products which significantly alter INPV or consumer LCC savings in this rulemaking. In light of the above, DOE chose not to use delayed effective dates for those lamps as recommended by commenters.

3. Residential Exemption

NEEP, GE and NEMA recommended various forms of residential exemptions and/or labeling for T12 lamps as alternate standard scenarios. (NEEP, No. 61 at p. 4; NEMA, No. 81 at pp. 2, 24–26; (GE, No. 80 at pp. 1–3) ACEEE and the California Stakeholders opposed separate treatment for the residential sector through a bifurcated standard. (California Stakeholders, No. 61 at p. 9; ACEEE, No. 55 at p. 3; NEMA, No. 81 at pp. 2, 24–26)

DOE considered the option of having differentiated standards for residential consumers and commercial consumers. Absent a specific statutory directive (*e.g.*, one conveying product labeling or packaging authority), it has long been DOE's position that it regulates equipment, rather than product use. In general, DOE has sought to avoid interfering with manufacturing decisions related to product use, marketing, or packaging. This approach is also reflective of the inherent difficulties in enforcing product usage requirements and the potential loopholes that may be created.

In the present case, DOE notes that in contrast to situations where it sets product classes whose efficiency-related differences (*e.g.*, in terms of utility, capacity, type of energy use) warrant different standard levels, the lamps under consideration here have no significant technical differences as would support different standard levels. Given the identical nature of T12 lamps used in residential and commercial settings, it would be potentially easy for commercial customers to purchase and install T12 lamps marketed for residential use. DOE is concerned that this option could significantly undermine the energy savings potential to the Nation of the lamps standard. Therefore, DOE has decided not to consider such an approach further.

4. Conclusions Regarding Alternative Standard Scenarios

In considering whether to adopt a more stringent standard for GSFL than the proposed TSL3, DOE sought to explore various approaches (*e.g.*, tiered standards, delayed effective dates) to mitigate the impacts on manufacturers and certain consumers. However, after careful examination of the relevant provisions of EPCA, for the reasons explained above, DOE has determined that none of these options is available. Accordingly, the effective date of this final rule for all covered product classes will be three years from the date of publication.

J. Benefits and Burdens

Since DOE opened the docket for this rulemaking, it has received more than 80 written comments, with hundreds of signatories, from a diverse set of parties, including manufacturers and their representatives, state attorney generals, members of Congress, energy conservation advocates, consumer advocacy groups, private citizens, and electric and gas utilities. DOE also received more than 20,000 email form letter submissions recommending DOE strengthen the proposed energy conservation standards. All substantive comments on the analytic methodologies DOE used are discussed heretofore in sections of this final rule notice. DOE also received many comments related to the relative merits of various TSLs. Generally, these comments either stated a certain TSL was economic justified, technologically feasible, and maximized energy, or they argued how DOE should weight the various factors that go into making that determination. See section VII for a discussion of DOE's analytic results and how it weighed those factors in establishing today's final rule.

PSI stated that DOE should adopt GSFL and IRL standards that align with or surpass the European Union's ''Eco-Design Standards for Energy-Using Product (EuP) Directive.'' On the other hand, a private citizen wrote to DOE expressing that DOE's proposed standards for GSFL and IRL will not save significant energy, will negatively impact the work of lighting designers, and may have a negative impact on the quality of work and living spaces; the citizen expressed that conservation in other areas could yield greater reduction in energy usage. (Private Citizen, No. 48 at pp. 1–3)

VII. Analytical Results and Conclusions

A. Trial Standard Levels

DOE analyzed the costs and benefits of five TSLs each for the GSFL and IRL covered in today's final rule. Table VII.1 and Table VII.2 present the TSLs and the corresponding product class efficacy requirements for GSFL and IRL. See the engineering analysis in section V.B.4 of this final rule for a more detailed discussion of the efficacy levels. In this trial standard levels section, DOE presents the analytical results for the TSLs of all product classes that DOE analyzed, including scaled product classes. See chapter 5 of the final rule TSD for further information on representative and scaled product class efficacy levels.

1. General Service Fluorescent Lamps

As discussed in section V.B.2, the following lamps with a CCT less than 4,500K compose the five representative GSFL product classes: (1) 4-foot medium bipin; (2) 8-foot single pin slimline; (3) 8-foot recessed double contact HO lamps; (4) 4-foot miniature bipin T5 SO; and (5) 4-foot miniature bipin T5 HO lamps. U-shaped lamps with a CCT less than 4,500K are a scaled product class. The six lamp types (including U-shaped lamps) with CCTs greater than or equal to 4500K compose six additional product classes, which are also scaled product classes. DOE developed TSLs that generally follow a trend of increasing efficacy by using higher-quality phosphors. The TSLs also represent a general move from higher-wattage technologies to lower-wattage, lower-diameter lamps with higher efficacies. Table VII.1 shows the TSLs for GSFL. DOE composed each TSL utilizing the same methodology employed in the April 2009 NOPR. TSL5 represents all maximum technologically feasible GSFL efficacy levels, as in the April 2009 NOPR. 74 FR 16920, 16980 (April 13, 2009).

For this final rule, DOE revised the efficacy levels for 4-foot T5 MiniBP standard-output and high-output lamps to reflect testing at 25° C as well as manufacturing variability. The April 2009 NOPR EL1 requirements for T5 standard-output lamps have thus been revised from 103 lm/W to 86 lm/W, and the April 2009 NOPR EL2 requirements have been revised from 108 lm/W to 90 lm/W. The April 2009 NOPR EL1

requirements for T5 high-output lamps have been revised from 89 lm/W to 76 lm/W. 74 FR 16920, 16980 (April 13, 2009). The EPCA standard for GSFL in the representative product classes of this final rule are shown in Table I.3. Trial standard levels for all GSFL product classes in this final rule are shown in Table VII.1.

TABLE VII.1—TRIAL STANDARD LEVELS FOR GSFL—EFFICACY LEVELS FOR ALL GSFL PRODUCT CLASSES

CCT	Lamp type	Trial standard level				
		1	2	3	4	5
≤4,500K	4-foot medium bipin (representative)	78	81	85	89	93
	2-foot U-shaped	70	72	76	84	87
	8-foot single pin slimline (representative)	86	92	95	97	98
	8-foot recessed double contact HO (representative).	83	86	88	92	95
	4-foot T5 miniature bipin SO (representative).	86	86	86	86	90
	4-foot T5 miniature bipin HO (representative).	76	76	76	76	76
>4,500K and ≤7,000K	4-foot medium bipin	77	79	82	88	92
	2-foot U-shaped	65	67	71	81	85
	8-foot single pin slimline	83	87	91	93	94
	8-foot recessed double contact HO	80	83	84	88	91
	4-foot T5 miniature bipin SO	81	81	81	81	85
	4-foot T5 miniature bipin HO	72	72	72	72	72

2. Incandescent Reflector Lamps

As discussed in section V.B.4, DOE has established five efficacy levels based on an equation relating efficacy to lamp wattage. As also discussed in section V.B.2, DOE only directly analyzed the standard-spectrum IRL with a diameter greater than 2.5 inches and voltage less than 125 volts; DOE then scaled minimum efficacy requirements to other product classes. This is consistent with what DOE did for the April 2009 NOPR. 74 FR 16920, 16981 (April 13, 2009).

The EPCA standard for IRL is shown in Table I.4. The efficacy levels for all IRL product classes are shown as coefficients for the efficacy level requirement equation $A*P\wedge 0.27$ in Table VII.2 for the TSLs to which they correspond, where A is the coefficient shown in the table for a specific product class and TSL, and P represents the rated wattage of the lamp. TSL5 represents the maximum technologically feasible level, as in the April 2009 NOPR. 74 FR 16920, 16981–2 (April 13, 2009). For this final rule, DOE revised the April 2009 NOPR efficacy levels for the representative IRL product class in order to account for IRL manufacturing variability, as described in chapter 5 of the TSD.

TABLE VII.2—TRIAL STANDARD LEVELS FOR IRL-COEFFICIENTS OF EFFICACY LEVELS FOR ALL IRL PRODUCT CLASSES

Lamp wattage	Lamp type	Diameter (in inches)	Voltage	Trial standard level				
				1	2	3	4	5
40W–205W	Standard-spectrum	> 2.5	≥125V	5.3	5.5	6.2	6.8	7.4
			<125V[1]	4.6	4.8	5.4	5.9	6.4
		≤2.5	≥125V	4.7	4.9	5.5	5.7	6.2
			<125V	4.0	4.2	4.8	5.0	5.4
40W–205W	Modified-spectrum	>2.5	≥125V	4.5	4.7	5.3	5.8	6.3
			<125V	3.9	4.1	4.6	5.0	5.4
		≤2.5	≥125V	4.0	4.1	4.6	4.9	5.3
			<125V	3.4	3.6	4.0	4.2	4.6

[1](Representative.)

At the public meeting, Energy Solutions suggested that DOE present efficacy levels for IRL in terms of lumen output rather than wattage because lumen output is a more appropriate measure of the functional performance of a lamp. (Energy Solutions, Public Meeting Transcript, No. 38.4 at pp. 94–95) DOE understands that the primary function of a lamp is to provide light for the consumers' applications. Market research indicated that the most common IRL baselines on the market today provide three distinct levels of initial lumen output: 1,310 lumens from a 90W baseline, 1,050 lumens from a 75W baseline, and 630 lumens from a 50W baseline, respectively. Based on this understanding, DOE utilized a ''lumen package'' perspective in the April 2009 NOPR to select and analyze more-efficacious replacements for these three IRL baselines such that their lumen output is no greater than 10% below the baseline lumen output. 74 FR 16920, 16944 (April 13, 2009). DOE believes that the usage of lumen classes allows DOE to take into account consumers' interests in light output when developing efficacy levels based on IRL wattage. Thus, DOE has not changed its presentation of efficacy levels for the final rule.

B. Significance of Energy Savings

To estimate the energy savings through 2042 due to potential standards, DOE compared the energy consumption of GSFL and IRL under the base case (no standards) to energy consumption of these products under each standards case (each TSL that DOE has considered). Table VII.3 and Table VII.4 show the forecasted national energy savings (including rebound effect and HVAC interactions where applicable) in

quads (quadrillion BTU) at each TSL for GSFL and IRL. As discussed in section V.D.1, DOE models two base-case shipment scenarios and several standards-case shipment scenarios. For each lamp type, these scenarios combined produce eight possible sets of NES results. The tables below present the results of the two scenarios that represent the maximum and minimum energy savings resulting from all the scenarios analyzed.

For GSFL, DOE presents ''Existing Technologies, High Lighting Expertise, Shift'' and ''Emerging Technologies, Market Segment-Based Lighting Expertise, Roll-Up'' in Table VII.3 as the scenarios that produce the maximum and minimum energy savings, respectively. Due to a larger reduction in the installed stock of lamps affected by standards, the Emerging Technologies base-case forecast results in lower energy savings than the Existing Technologies base-case forecast. In addition, because a portion of consumers purchasing non-energy-saving, higher-lumen-output systems in the Market Segment-Based Lighting Expertise scenario, it results in lower energy savings than the High Lighting Expertise scenario. Finally, because in the Shift scenario more consumers move to higher-efficacy lamps than in the Roll-Up scenario, the Shift scenario results in higher energy savings than the Roll-Up scenario.

Table VII.3 presents total national energy savings for each TSL (labeled as ''Total'' savings). The table also reports national energy savings due to individually regulating each type of GSFL (presented next to the lamp type names), assuming no amended standard on all other lamp types. However, it is important to note that individual lamp type energy savings (due to separate regulation) do not sum to equal total energy savings achieved at the trial standard levels due to standards-induced substitution effects between lamp types. Instead, these savings are provided merely to illustrate the approximate relative energy savings of each lamp type under a TSL. Please see the NOPR for a discussion of the affect of various TSLs on NES. 74 FR 16920, 17005–06 (April 13, 2009).

TABLE VII.3—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR GSFL

TSL/EL	Lamp type	National energy savings (quad btu)	
		Existing technologies, high lighting expertise, shift	Emerging technologies, market segment-based lighting expertise, roll-up
1	4-foot MBP	0.89	0.61
	8-foot SP Slimline	0.25	0.25
	8-foot RDC HO	0.17	0.02
	4-foot MiniBP SO	0.69	0.11
	4-foot MiniBP HO	0.96	0.53
	2-foot U-Shaped	0.04	0.03
	Total	3.01	1.54
2	4-foot MBP	0.99	0.75
	8-foot SP Slimline	0.28	0.27
	8-foot RDC HO	0.22	0.19
	4-foot MiniBP SO	0.69	0.11
	4-foot MiniBP HO	0.96	0.53
	2-foot U-Shaped	0.05	0.03
	Total	3.19	1.88
3	4-foot MBP	4.17	1.81
	8-foot SP Slimline	0.32	0.32
	8-foot RDC HO	0.23	0.19
	4-foot MiniBP SO	0.69	0.11
	4-foot MiniBP HO	0.96	0.53
	2-foot U-Shaped	0.19	0.08
	Total	6.59	3.06
4	4-foot MBP	6.96	2.30
	8-foot SP Slimline	0.37	0.23
	8-foot RDC HO	0.56	0.56
	4-foot MiniBP SO	0.69	0.11
	4-foot MiniBP HO	0.96	0.53
	2-foot U-Shaped	0.32	0.10
	Total	9.94	3.83
5	4-foot MBP	8.79	3.32
	8-foot SP Slimline	0.37	0.24
	8-foot RDC HO	0.62	0.57
	4-foot MiniBP SO	0.82	0.26
	4-foot MiniBP HO	0.96	0.53

TABLE VII.3—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR GSFL—Continued

TSL/EL	Lamp type	National energy savings (quad btu)	
		Existing technologies, high lighting expertise, shift	Emerging technologies, market segment-based lighting expertise, roll-up
	2-foot U-Shaped	0.40	0.15
	Total	12.00	5.08

For IRL, DOE presents ''Existing Technologies, R–CFL Production Substitution, Shift'' and ''Emerging Technologies, BR Product Substitution, Roll-Up'' in Table VII.4 as the scenarios that produce the maximum and minimum energy savings, respectively. Similar to GSFL, the Existing Technologies base-case forecast results in higher energy savings than the Emerging Technologies base-case forecast due to the greater installed stock of IRL affected by standards. The BR Product Substitution scenario, which includes migration to exempted BR lamps but not to R–CFL, results in lower energy savings than the R–CFL Product Substitution scenario, which accounts for the reverse effect. In addition, while the effect is greater for GSFL than for IRL, the Shift scenario (only affecting commercial consumers because DOE assumes residential consumers always purchase the lowest first-cost lamp) also represents higher energy savings than the Roll-Up scenario for IRL. As seen in the table below, TSL 5 achieves maximum energy savings for both scenarios. As discussed in section VI.C.1, DOE also analyzed a ''Baseline Lifetime Scenario.'' Although this scenario considers shortened lifetimes as TSL 4 and TSL 5, national energy savings do not change because shipments remain the same as the normal lifetime scenario.

TABLE VII.4—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR INCANDESCENT REFLECTOR LAMPS

TSL	National energy savings (quads)	
	Existing technologies, R–CFL product substitution, shift	Emerging technologies, BR product substitution, roll-up
1	0.45	0.16
2	1.09	0.40
3	1.91	0.81
4	2.39	0.94
5	2.72	1.12

C. Economic Justification

1. Economic Impact on Consumers

a. Life-Cycle Costs and Payback Period

Consumers affected by new or amended standards usually experience higher purchase prices and lower operating costs. Generally, these impacts are best captured by changes in life-cycle costs. DOE designed the LCC analysis around lamp purchasing events and calculated the LCC savings relative to the baseline for each lamp replacement event separately in each lamp product class, as done for the April 2009 NOPR. 74 FR 16920, 16982 (April 13, 2009). The separate computation of the impacts on each event and each product class allowed DOE to view the results of many subgroup populations in the LCC analyses. The following discussion presents salient results from the LCC analysis. When a standard results in ''positive LCC savings,'' the life cycle cost of the standards-compliant lamp or lamp-and-ballast system is less than the life cycle cost of the baseline lamp or lamp-and-ballast system, and the consumer benefits economically. When a standard results in ''negative LCC savings,'' the life cycle cost of the standards-compliant lamp or lamp-and-ballast system is higher than the life cycle cost of the baseline lamp or lamp-and-ballast system, and the consumer is adversely affected economically. The results at some efficacy levels are presented as ranges, which reflect the results of multiple systems (*i.e.*, multiple lamp-ballast pairings) that consumers could purchase to meet those specific efficacy levels.

The LCC results shown in this notice reflect a subset of all of the lamp purchasing events analyzed by DOE, although they represent the most prevalent purchasing events. As done in the April 2009 NOPR, DOE is also presenting the installed prices of the lamp-and-ballast systems in order to allow comparisons of the up-front costs that consumers must bear when purchasing baseline or standards-case systems. 74 FR 16920, 16982 (April 13, 2009). All of the LCC results shown in this notice were generated using the April 2009 *AEO2009* reference case electricity price trend (which includes the impact of ARRA) as well as medium-range lamp and ballast prices. In many cases, DOE omitted Events IB (Lamp Failure: Lamp & Ballast Replacement) and IV (Ballast Retrofit) in this notice, because DOE believes these lamp purchase events to be relatively less frequent. In addition, DOE has chosen not to present detailed PBP results by efficacy level in this final rule notice because DOE believes that LCC results are a better measure of cost-effectiveness. However, a full set of both LCC and PBP results for the systems DOE analyzed is available in chapter 8 and appendix 8B of the TSD. Chapter 8 presents LCC results for all lamp

purchasing events analyzed by DOE. Furthermore, chapter 8 includes the LCC results presented in this notice along with additional presented details, such as system design option details, start-year operating cost savings, and payback periods. Appendix 8B presents Monte Carlo simulation results performed by DOE as part of the LCC analysis and also presents sensitivity results, such as LCC savings under the *AEO2009* high-economic-growth and low-economic-growth cases.

i. General Service Fluorescent Lamps

Table VII.5 through Table VII.12 present the results for the baseline lamps in each of the five GSFL product classes DOE analyzed (*i.e.*, 4-foot medium bipin, 4-foot miniature bipin SO, 4-foot miniature bipin HO, 8-foot single pin slimline, and 8-foot recessed double contact HO). Not all baselines have suitable replacement options for every lamp purchasing event at every efficacy level. For instance, because DOE assumed that consumers wish to purchase systems or lamp replacements with a lumen output within 10 percent of their baseline system output, in some cases, the only available replacement options produce less light than this. Thus, the replacement options are considered unsuitable substitutions. These cases are marked with ''LL'' (less light) in the LCC results tables below. In some cases, when consumers who currently own a T12 system need to replace their lamps, no T12 energy saving lamp replacements are available. In these cases, in order to save energy, the consumers must switch to other options, such as a T8 lamp and appropriate ballast. These cases are marked with ''NER'' (no energy-saving replacement) in tables.

Because some baseline lamps already meet higher efficacy levels (*e.g.*, the baseline 32W 4-foot T8 MBP lamp achieves EL2), LCC savings at the levels below the baseline are zero. In these cases, ''BAE'' (baseline above efficacy level) is listed in the tables to indicate that the consumer makes the same purchase decision in the standards-case as they do in the base-case. Also, not all lamp purchase events apply for all baseline lamps or efficacy levels. For example, DOE assumed that the standards-induced retrofit event does not apply to the 32W T8 system, because it is already the most efficacious 4-foot medium bipin GSFL system. For these events, an ''EN/A'' (event not applicable) exists in the table. Finally, because LCC savings are not relevant when no energy conservation standard is established, ''N/A'' (not applicable) exists in the LCC savings column for the baseline system.

Overall, based on the NIA model, DOE estimates that at TSL4 and TSL5 in 2012, approximately 2 percent of 4-foot MBP shipments result in negative LCC savings, and 9 percent of shipments are associated with the high installed price increases due to forced retrofits. At TSL5, all 4-ft T5 miniature bipin standard output shipments result in positive LCC savings; For 8-foot SP slimline at TSL4 and TSL5, approximately 24 percent of 2012 shipments would result in negative LCC savings, and 65 percent of shipments would be associated with the high installed price increases due to forced retrofits. DOE estimates that at TSL5 in 2012, approximately 33 percent of 8-foot RDC HO shipments would result in negative LCC savings, and 86 percent of shipments would be associated with the high installed price increases due to forced retrofits.

For 4-foot MiniBP T5 standard-output lamps, TSL4 would require these lamps to meet EL1, resulting in positive LCC savings of $1.10 for lamp replacement and $43.30 for new construction or renovation (seen in Table VII.9). At TSL5 (EL2 for standard output T5 lamps), all consumers have available lamp designs which result in positive LCC savings of $1.10 (for lamp replacement) and $45.67 to $47.49 (for new construction or renovation).

For 4-foot MiniBP T5 high-output lamps, TSL4 and TSL5 have identical life-cycle cost impacts: Consumers of high-output lamps who need only a lamp replacement would experience negative LCC savings of −$3.03 (approximately 44 percent of shipments, according the NIA model). However, purchasing a T5 high-output system for new construction or renovation would result in positive LCC savings of $65.69 to $67.06.

Table VII.5 presents the findings of an LCC analysis on various 3-lamp 4-foot medium bipin GSFL systems operating in the commercial sector. The analysis period (based on the longest-lived baseline lamp's lifetime) for this product class in the commercial sector is 5.5 years. As seen in the table, DOE analyzes three baseline lamps: (1) 40W T12; (2) 34W T12; and (3) 32W T8. For a complete discussion of the 4-foot MBP LCC results, see chapter 8 of the TSD and the April 2009 NOPR. 74 FR 16920, 16984 (April 13, 2009).

BILLING CODE 6450–01–P

Table VII.5 LCC Results for a 3-Lamp Four-Foot Medium Bipin GSFL System Operating in the Commercial Sector

Baseline	Efficacy Level	LCC Savings 2008$			Installed Price 2008$		
		Event IA: Lamp Replacement*	Event II: Standards-Induced Retrofit (Lamp and Ballast Replacement)*	Event III: Ballast Failure*†	Event IA: Lamp Replacement	Event II: Standards-Induced Retrofit (Lamp and Ballast Replacement)	Event III: Ballast Failure†
40 Watt T12	Baseline	N/A	N/A	N/A	14.50	14.50	68.44
	EL1	LL	EN/A	-7.66 to -5.88	LL	EN/A	75.31 to 80.14
	EL2	LL	EN/A	-7.94	LL	EN/A	80.45
	EL3	22.09	EN/A	13.07 to 14.79	26.10	EN/A	70.85 to 80.04
	EL4	NR	12.95 to 25.60	22.11 to 34.76	NR	65.71 to 78.48	63.31 to 76.08
	EL5	NR	18.73 to 24.16	27.89 to 33.32	NR	67.33 to 73.94	64.93 to 71.55
34 Watt T12	Baseline	N/A	N/A	N/A	11.65	11.65	65.59
	EL1	NER	-18.98	-1.85	15.49	71.82	69.42
	EL2	NER	-24.30 to -4.84	-9.15 to 10.30	12.43 to 22.79	62.04 to 79.12	59.64 to 76.72
	EL3	NER	-24.58 to 4.85	-9.43 to 20.00	15.65 to 26.10	65.26 to 82.44	62.87 to 80.04
	EL4	NR	10.20 to 21.14	25.35 to 36.29	NR	65.71 to 70.50	63.31 to 68.10
	EL5	NR	13.93 to 16.20	29.08 to 31.35	NR	65.96 to 67.33	63.57 to 64.93
32 Watt T8	Baseline	N/A	N/A	N/A	12.43	12.43	59.64
	EL1	BAE	EN/A	BAE	BAE	EN/A	BAE
	EL2	BAE	EN/A	BAE	BAE	EN/A	BAE
	EL3	NER	EN/A	9.69	NER	EN/A	62.87
	EL4	4.76 to 25.98	EN/A	15.05 to 25.98	16.98 to 20.89	EN/A	63.31 to 68.10
	EL5	9.70	EN/A	9.70 to 13.60	16.35	EN/A	63.57 to 64.93

†For 32 Watt T8 baseline, includes Event V (New Construction and Renovation).

*Analysis period is 5.5 years.

N/A: Not Applicable; NER: No Energy-Saving Replacement; LL: Available Options Produce Less Light; EN/A: Event Not Applicable; BAE: Baseline Above Efficacy Level; NR: No Replacement

BILLING CODE 6450–01–C

Table VII.7 presents the LCC results for a 4-foot medium bipin system operating in the residential sector under average operating hours. Under average operating hours, only the ballast failure event (Event III) applies because the ballast and fixture reach the end of their 15 year life before the baseline lamp (which would otherwise have a lifetime of 19 years when operated for 791 hours per year) fails. DOE uses a 15-year analysis period, based on the effective service life of the lamp (limited by the fixture or ballast life). 74 FR 16920, 16985 (April 13, 2009).

TABLE VII.6—LCC RESULTS FOR A 2-LAMP FOUR-FOOT MEDIUM BIPIN GSFL SYSTEM OPERATING IN THE RESIDENTIAL SECTOR WITH AVERAGE OPERATING HOURS

Baseline	Efficacy level	LCC savings	Installed price
		2008$	2008$
		Event III: Ballast failure*	Event III: Ballast failure
40 Watt T12	Baseline	N/A	51.38.
	EL1	7.03 to 10.25	49.04 to 56.19.
	EL2	6.82 to 19.17	50.51 to 56.39.
	EL3	1.06 to 18.86	52.66 to 60.19.
	EL4	18.57 to 24.36	52.96 to 56.15.
	EL5	20.21 to 22.32	53.13 to 54.04.

*Analysis period is 15.0 years.
N/A: Not Applicable.

In addition to conducting the LCC analysis under average operating hours, DOE also computed residential LCC results under high operating hours (1,210 hours per year) in order to analyze the economic impacts of the lamp failure event (Event I). Table VII.7 presents these LCC and installed-price results for a 2-lamp four-foot medium bipin GSFL system under the lamp failure event and high operating hours. As seen in Table VII.7, DOE divides the residential GSFL lamp failure event into Events IA (Lamp Failure: Lamp Replacement) and IB (Lamp Failure: Lamp and Ballast Replacement). Event IA, presented also in the commercial sector analysis, solely models a lamp purchase (in response to lamp failure) in both the base case and standards case. With high operating hours, DOE calculates that the baseline lamp initially purchased with a ballast fails after 12.4 years. Thus, a replacement lamp will operate for only 2.6 additional years before the fixture is removed. To compute the results shown in Table VII.7, DOE assumes that residential-sector GSFL consumers will discard their replacement lamp when the fixture is removed and therefore uses a 2.6 year analysis period.

TABLE VII.7—LCC RESULTS FOR A 2-LAMP FOUR-FOOT MEDIUM BIPIN GSFL SYSTEM OPERATING IN THE RESIDENTIAL SECTOR WITH HIGH OPERATING HOURS

Baseline	Efficacy level			Installed price	
	LCC savings	2008$		2008$	
		Event IA: Lamp replacement*	Event IB: Lamp and ballast replacement*	Event IA: Lamp replacement	Event IB: Lamp and ballast replacement
40 Watt T12	Baseline	N/A	N/A	4.13	4.13.
	EL1	LL	EN/A	LL	EN/A.
	EL2	LL	EN/A	LL	EN/A.
	EL3	−5.53	EN/A	12.94	EN/A.
	EL4	NR	−4.13 to −2.04	NR	52.96 to 56.15.
	EL5	NR	−3.52 to −2.87	NR	53.13 to 54.04.

*Analysis period is 2.6 years.
N/A: Not Applicable; LL: Available Options Produce Less Light; EN/A: Event Not Applicable; NR: No Replacement.

As discussed in section V.C.8, DOE analyzed additional residential-sector GSFL lamp failure LCC scenarios for this final rule based on the understanding that some residential-sector GSFL consumers may preserve their lamps during fixture end-of-life and then install those lamps on a new fixture instead of discarding them. Consumers exhibiting this behavior can operate lamps for their full lifetimes and thus will eventually experience a lamp failure even when operating with average operating hours. When operated for average operating hours, the baseline lamp has a lifetime of 19 years; therefore, DOE uses 19 years as the analysis period. This analysis shows that some residential consumers with T12 systems do in fact obtain LCC savings when forced to retrofit their T12 ballast with a T8 system at EL4 and EL5. However, DOE also notes that the results of this analysis are highly dependent on the remaining years of lifetime left on the T12 ballast when the lamp is replaced. Therefore, as seen in Table VII.8 DOE computes LCC savings for several scenarios of remaining ballast life at the time of lamp replacement. At EL3, under the scenario where consumers retain their lamp upon ballast replacement, consumers obtain LCC savings. At EL4, consumers can achieve positive LCC savings if their ballast have less than 8 years of life remaining at the point of lamp failure. In other words, consumers who would need to purchase a ballast within 8 years after replacing their lamp would benefit from a standard at EL4. At EL5, standards-case consumers can achieve positive LCC savings if their fixtures have less than 7 years of life remaining.

Table VII.8 LCC Savings at Various Values of Remaining Fixture Life for Residential-Sector GSFL Consumers with Lamp Preservation, Average Operating Hours

Event	Efficacy Level	LCC Savings (2008$) Remaining Ballast Life (years)					
		1	3	6	9	12	15
IA: Lamp Repl.	EL 1	LL	LL	LL	LL	LL	LL
	EL 2	LL	LL	LL	LL	LL	LL
	EL 3	4.78	4.78	4.78	4.78	4.78	4.78
IB: Lamp & Ballast Repl.	EL 4	18.69 to 27.06	10.06 to 18.43	-0.14 to 8.23	-8.69 to -0.33	-16.62 to -8.26	-24.02 to -15.65
	EL 5	20.98 to 22.62	12.35 to 13.99	2.15 to 3.79	-6.40 to -4.77	-14.33 to -12.70	-21.72 to -20.09

LL: Available Options Produce Less Light

Table VII.9 presents the results for an electronically-ballasted 4-foot T5 miniature bipin standard-output, baseline system operating in the commercial sector. Table VII.10 presents the results for an electronically-ballasted 4-foot T5 miniature bipin high-output baseline system operating in the industrial sector. For further discussion on the 4-foot MiniBP LCC results see the April 2009 NOPR and Chapter 8 of the TSD. 74 FR 16920, 16987 (April 13, 2009).

TABLE VII.9—LCC RESULTS FOR A 2-LAMP FOUR-FOOT MINIATURE BIPIN STANDARD OUTPUT GSFL SYSTEM OPERATING IN THE COMMERCIAL SECTOR

Baseline	Efficacy level	LCC savings 2008$		Installed price 2008$	
		Event IA: Lamp replacement*	Event V: New construction/renovation*	Event IA: Lamp replacement	Event V: New construction/renovation
28 Watt T5	Baseline	N/A	N/A	9.75	71.87.
	EL1	NER	43.30	13.66	75.78.
	EL2	1.10	45.67 to 47.49	15.44	77.56 to 78.06.

*Analysis period is 5.5 years.
N/A: Not Applicable; NER: No Energy-Saving Replacement.

TABLE VII.10—LCC RESULTS FOR A 2-LAMP FOUR-FOOT MINIATURE BIPIN HIGH OUTPUT GSFL SYSTEM OPERATING IN THE INDUSTRIAL SECTOR

Baseline	Efficacy level	LCC savings 2008$		Installed price 2008$	
		Event IA: Lamp replacement*	Event V: New construction/renovation*	Event IA: Lamp replacement	Event V: New construction/renovation
54 Watt T5	Baseline	N/A	N/A	10.84	74.09.
	EL1	−3.03	65.69 to 67.06	20.61	79.31 to 83.87.

*Analysis period is 3.9 years.
N/A: Not Applicable; NER: No Energy-Saving Replacement.

Table VII.11 presents the results for an 8-foot single-pin slimline GSFL system operating in the commercial sector. The analysis period is 4 years. For this product class, DOE analyzes three baseline lamps: (1) 75W T12; (2) 60W T12; and (3) 59W T8. For further discussion on the 8-foot SP slimline LCC results, see the April 2009 NOPR and chapter 8 of the TSD. 74 FR 16920, 16988 (April 13, 2009).

Table VII.11 LCC Results for a 2-Lamp Eight-Foot Single-Pin Slimline GSFL System Operating in the Commercial Sector

Baseline	Efficacy Level	LCC Savings 2008$			Installed Price 2008$		
		Event IA: Lamp Replacement*	Event II: Standards-Induced Retrofit (Lamp and Ballast Replacement)*	Event III: Ballast Failure*†	Event IA: Lamp Replacement	Event II: Standards-Induced Retrofit (Lamp and Ballast Replacement)	Event III: Ballast Failure†
75 Watt T12	Baseline	N/A	N/A	N/A	16.79	16.79	92.37
	EL1	LL	EN/A	-4.91	LL	EN/A	98.99
	EL2	LL	EN/A	-0.78	LL	EN/A	100.97
	EL3	36.57	EN/A	LL	20.19	EN/A	LL
	EL4	NR	LL	LL	NR	LL	LL
	EL5	NR	9.68	28.43	NR	98.80	96.40
60 Watt T12	Baseline	N/A	N/A	N/A	11.77	11.77	87.35
	EL1	BAE	BAE	BAE	BAE	BAE	BAE
	EL2	NER	-26.73	-2.73	16.63	94.61	92.22
	EL3	NER	-25.89 to -25.83	-1.83	13.23 to 20.19	92.46 to 98.17	95.77
	EL4	NR	-16.72	7.28	NR	97.01	94.62
	EL5	NR	-15.81 to -13.89	8.18 to 10.11	NR	97.41 to 98.80	95.02 to 96.40
59 Watt T8	Baseline	N/A	EN/A	N/A	13.23	EN/A	90.07
	EL1	BAE	EN/A	BAE	BAE	EN/A	BAE
	EL2	BAE	EN/A	BAE	BAE	EN/A	BAE
	EL3	BAE	EN/A	BAE	BAE	EN/A	BAE
	EL4	NER	EN/A	-0.44	NER	EN/A	94.62
	EL5	6.45 to 10.28	EN/A	8.12 to 10.28	17.33 to 18.18	EN/A	94.17 to 96.40

†For 59-Watt T8 baseline, includes Event V (New Construction and Renovation).
*Analysis period is 4.0 years.
N/A: Not Applicable; NER: No Energy-Saving Replacement; LL: Available Options Produce Less Light; EN/A: Event Not Applicable; BAE: Baseline Above Efficacy Level; NR: No Replacement

Table VII.12 shows LCC results for an 8-foot recessed double-contact GSFL system operating in the industrial sector. The analysis period for this product class is 2.3 years. DOE analyzes 110W T12 and 95W T12 baseline lamps on magnetic ballasts. For further discussion on the 8-foot RDC HO LCC results see the April 2009 NOPR and chapter 8 of the TSD. 74 FR 16920, 16990 (April 13, 2009).

Table VII.12 LCC Results for a 2-Lamp Eight-Foot Recessed Double-Contact High Output GSFL System Operating in the Industrial Sector

Baseline	Efficacy Level	LCC Savings 2008$			Installed Price 2008$		
		Event I: Lamp Replacement*	Event II: Standards-Induced Retrofit (Lamp and Ballast Replacement)*	Event III: Ballast Failure*	Event I: Lamp Replacement	Event II: Standards-Induced Retrofit (Lamp and Ballast Replacement)	Event III: Ballast Failure
110 Watt T12	Baseline	N/A	N/A	N/A	20.51	20.51	101.36
	EL1	LL	EN/A	9.43	LL	EN/A	117.60
	EL2	LL	EN/A	LL	LL	EN/A	LL
	EL3	10.75 to 11.40	EN/A	10.75 to 21.86	33.64 to 34.29	EN/A	114.49 to 119.40
	EL4	NR	LL	LL	NR	LL	LL
	EL5	NR	13.07	51.60	NR	131.38	128.99
95 Watt T12	Baseline	N/A	N/A	N/A	14.46	14.46	95.31
	EL1	BAE	LL	LL	BAE	LL	LL
	EL2	NER	-27.63	7.87	20.83	108.34	105.95
	EL3	NER	-37.95 to -37.30	-2.46 to -1.81	33.64 to 34.29	121.15 to 121.80	118.75 to 119.40
	EL4	NR	-12.35 to -9.07	23.14 to 26.42	NR	128.03 to 128.38	125.64 to 125.98
	EL5	NR	-7.97	27.52	NR	131.38	128.99

*Analysis period is 2.3 years.
N/A: Not Applicable; NER: No Energy-Saving Replacement; LL: Available Options Produce Less Light; EN/A: Event Not Applicable; BAE: Baseline Above Efficacy Level; NR: No Replacement

ii. Incandescent Reflector Lamps

Table VII.13 shows the commercial and residential sector LCC results for IRL. The results are based on the reference case April 2009 *AEO2009* electricity price forecast (which includes the impact of the ARRA) and medium-range lamp prices. The analysis period is 3.4 years for the residential sector and 0.9 years for the commercial sector. In general, the results of the LCC analysis are consistent with those presented in the April 2009 NOPR. 74 FR 16920, 16991 (April 13, 2009). As discussed in section VI.C.1, DOE analyzed an additional scenario, called the Baseline Lifetime scenario, for the LCC analysis, NIA and MIA that modeled lamps at EL4 and EL5 with similar lifetimes to that of the baseline lamp lifetimes. The LCC results for both the Baseline Lifetime scenario and the Commercial Lifetime scenario (in which lamps at EL4 and EL5 have lifetimes of 4,000 hours and 4,200 hours, respectively) are shown as ranges at EL4 and EL5. As seen in Table VII.13, the lower range of LCC savings, representing the Baseline Lifetime scenario lamps, are negative for the 50W baseline in both sectors at EL5 and only in the commercial sector at EL4.

TABLE VII.13—LCC RESULTS FOR INCANDESCENT REFLECTOR LAMPS

Baseline	Efficacy level	LCC savings (2008$)		Installed price (2008$)	
		Event I: Lamp replacement/event V: New construction and renovation			
		Commercial *	Residential **	Commercial	Residential
90 Watt PAR38	Baseline	N/A	N/A	6.43	5.33.
	EL1	−0.12	0.14	7.41	6.31.
	EL2	3.72 to 6.12	3.19 to 4.94	7.88 to 8.06	6.78 to 6.96.
	EL3	6.01	5.81	8.06	6.96.
	EL4	2.61 to 7.95	3.78 to 7.45	9.43	8.33.
	EL5	4.26 to 9.14	5.65 to 9.10	9.43 to 10.02	8.33 to 8.92.
75 Watt PAR38	Baseline	N/A	N/A	6.43	5.33.
	EL1	−0.40	−0.17	7.41	6.31.
	EL2	3.17 to 5.76	2.57 to 4.54	7.88 to 8.06	6.78 to 6.96.
	EL3	4.64	4.25	8.06	6.96.
	EL4	1.51 to 6.85	2.54 to 6.20	9.43	8.33.
	EL5	2.42 to 7.30	3.56 to 7.01	9.43 to 10.02	8.33 to 8.92.
50 Watt PAR30	Baseline	N/A	N/A	5.80	4.70.
	EL1	−0.37	−0.29	6.78	5.68.
	EL2	−0.07 to 2.74	0.11 to 2.36	7.25 to 7.43	6.15 to 6.33.
	EL3	0.63	0.92	7.43	6.33.
	EL4	−0.25 to 1.81	0.11 to 1.75	8.80	7.70.
	EL5	−3.17 to 1.36	−1.64 to 1.51	8.80 to 9.39	7.70 to 8.29.

* Analysis period is 0.9 years.
** Analysis period is 3.4 years.

b. Consumer Subgroup Analysis

Certain consumer subgroups may be disproportionately affected by standards. As done for the April 2009 NOPR, DOE performed LCC subgroup analyses as part of its proposal for low-income consumers, institutions of religious worship, and institutions that serve low-income populations. 74 FR 16920, 16991 (April 13, 2009). See section V.C for a review of the inputs to the LCC analysis. DOE found the impacts on these consumer subgroups to be generally consistent with those presented in the April 2009 NOPR with one exception: for institutions that serve low-income populations, with updates to electricity prices in this final rule, consumers who in the base case purchase a 75W T12 replacement lamp, no longer obtain LCC savings. 74 FR 16920, 16996 (April 13, 2009). For further detail on the consumer subgroup analysis, see chapter 12 of the TSD.

2. Economic Impact on Manufacturers

DOE estimated the impact of amended energy conservation standards for covered products on the INPV of the industries that manufacture the products. The impact of amended standards on INPV consists of the difference between the INPV in the base case and the INPV in the standards case. INPV is the primary metric used in the MIA and represents one measure of the fair value of the GSFL and IRL industries in 2008$. For each industry affected by today's rule, DOE calculated INPV by summing all of the net cash flows, discounted at the industry's cost of capital or discount rate.

Table VII.14 through Table VII.17 show the changes in INPV that bound the range of impacts that DOE estimates would result from the TSLs considered for this final rule.

TABLE VII.14—MANUFACTURER IMPACT ANALYSIS FOR GSFL WITH THE FLAT MARKUP SCENARIO UNDER THE EXISTING TECHNOLOGY BASE CASE—HIGH LIGHTING EXPERTISE—SHIFT IN EFFICIENCY DISTRIBUTIONS

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	(2008$ millions)	639	697	695	721	635	671
Change in INPV	(2008$ millions)		58	56	82	−4	33
	(%)		9.11%	8.83%	12.82%	−0.64%	5.09%
Amended Energy Conservation Standards Product Conversion Costs.	(2008$ millions)		3.3	8.8	8.8	11.6	29.6
Amended Energy Conservation Standards Capital Conversion Costs.	(2008$ millions)		38.5	60.5	104.5	181.5	181.5
Total Investment Required	(2008$ millions)		41.8	69.3	113.3	193.1	211.1

TABLE VII.15—MANUFACTURER IMPACT ANALYSIS FOR GSFL WITH THE FOUR-TIER MARKUP SCENARIO UNDER THE EMERGING TECHNOLOGY BASE CASE—MARKET SEGMENT LIGHTING EXPERTISE—ROLLUP IN EFFICIENCY DISTRIBUTIONS

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	(2008$ millions)	527	662	629	432	365	316

TABLE VII.15—MANUFACTURER IMPACT ANALYSIS FOR GSFL WITH THE FOUR-TIER MARKUP SCENARIO UNDER THE EMERGING TECHNOLOGY BASE CASE—MARKET SEGMENT LIGHTING EXPERTISE—ROLLUP IN EFFICIENCY DISTRIBUTIONS—Continued

	Units	Base case	Trial standard level				
			1	2	3	4	5
Change in INPV	(2008$ millions)		134	102	−95	−162	−211
	(%)		25.47%	19.29%	−18.08%	−30.74%	−40.04%
Amended Energy Conservation Standards Product Conversion Costs.	(2008$ millions)		3.3	8.8	8.8	11.6	29.6
Amended Energy Conservation Standards Capital Conversion Costs.	(2008$ millions)		38.5	60.5	104.5	181.5	181.5
Total Investment Required	(2008$ millions)		41.8	69.3	113.3	193.1	211.1

TABLE VII.16—MANUFACTURER IMPACT ANALYSIS FOR IRL UNDER THE EXISTING TECHNOLOGIES BASE CASE—NO PRODUCT SUBSTITUTION SCENARIO—SHIFT IN EFFICIENCY DISTRIBUTION

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	(2008$ millions)	301	293	233	221	199	190
Change in INPV	(2008$ millions)		(8)	(68)	(81)	(102)	(111)
	(%)		−2.80%	−22.71%	−26.78%	−34.02%	−36.90%
Amended Energy Conservation Standards Product Conversion Costs.	(2008$ millions)		$3	$3	$2	$3	$7
Amended Energy Conservation Standards Capital Conversion Costs.	(2008$ millions)		$32	$83	$134	$167	$185
Total Investment Required	(2008$ millions)		$35	$87	$137	$170	$192

TABLE VII.17—MANUFACTURER IMPACT ANALYSIS FOR IRL UNDER THE EMERGING TECHNOLOGY BASE CASE—PRODUCT SUBSTITUTION—ROLL-UP IN EFFICIENCY DISTRIBUTIONS

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	(2008$ millions)	221	205	158	139	123	117
Change in INPV	(2008$ millions)		(15)	(63)	(81)	(98)	(104)
	(%)		−6.87%	−28.58%	−36.80%	−44.36%	−47.18%
Amended Energy Conservation Standards Product Conversion Costs.	(2008$ millions)		$3	$3	$2	$3	$7
Amended Energy Conservation Standards Capital Conversion Costs.	(2008$ millions)		$29	$77	$125	$155	$172
Total Investment Required	(2008$ millions)		$33	$81	$127	$158	$179

The April 2009 NOPR provides a detailed discussion of the estimated impact of amended standards for GSFL and IRL on INPVs. 74 FR 16920, 16999–17003 (April 13, 2009). This qualitative discussion on the estimated impacts of amended GSFL and IRL standards in INPVs for the final rule can be found in chapter 13 of the TSD.

a. Industry Cash Flow Analysis Results for the IRL Lifetime Sensitivity

For the final rule, DOE analyzed the effects of the Baseline Lifetime scenario as a sensitivity. The impacts of this scenario on INPV are presented below. For a full description of the scenario, *see* section VI.C.1 of today's final rule.

TABLE VII.18—MANUFACTURER IMPACT ANALYSIS FOR IRL UNDER THE EXISTING TECHNOLOGIES BASE CASE—BR SUBSTITUTION SCENARIO—ROLL-UP IN EFFICIENCY DISTRIBUTION—BASELINE LIFETIME SCENARIO*

	Units	Base case	Trial standard level	
			4	5
INPV	(2008$ millions)	301	281	258
Change in INPV	(2008$ millions)		(21)	(43)
	(%)		−6.81%	−14.24%
Amended Energy Conservation Standards Product Conversion Costs.	(2008$ millions)		$3	$7

TABLE VII.18—MANUFACTURER IMPACT ANALYSIS FOR IRL UNDER THE EXISTING TECHNOLOGIES BASE CASE—BR SUBSTITUTION SCENARIO—ROLL-UP IN EFFICIENCY DISTRIBUTION—BASELINE LIFETIME SCENARIO*—Continued

	Units	Base case	Trial standard level	
			4	5
Amended Energy Conservation Standards Capital Conversion Costs.	(2008$ millions)		$167	$167
Total Investment Required	(2008$ millions)		$170	$174

* The scenarios that bound the INPV results in the sensitivity scenario are different than the scenarios that bound the INPV results in the normal standards cases.

TABLE VII.19—MANUFACTURER IMPACT ANALYSIS FOR IRL UNDER THE EMERGING TECHNOLOGY BASE CASE—R–CFL PRODUCT SUBSTITUTION—SHIFT IN EFFICIENCY DISTRIBUTIONS—BASELINE LIFETIME SCENARIO*

	Units	Base case	Trial standard level	
			4	5
INPV	(2008$ millions)	221	160	171
Change in INPV	(2008$ millions)		(61)	(49)
	(%)		−27.52%	−22.35%
Amended Energy Conservation Standards Product Conversion Costs.	(2008$ millions)		$3	$7
Amended Energy Conservation Standards Capital Conversion Costs.	(2008$ millions)		$155	$155
Total Investment Required	(2008$ millions)		$158	$162

* The scenarios that bound the INPV results in the sensitivity scenario are different than the scenarios that bound the INPV results in the normal standards cases.

The sensitivity results show that decreasing the lifetime of the standards-compliant lamps at TSL 4 and TSL 5 lowers the estimated range of INPV impacts relative to the no sensitivity results. In the base case, the lamps that meet TSL 4 and TSL 5 are premium products with longer life than standard HIR lamps. If manufacturers decreased the lifetime of the lamps in response to the energy conservation standards, the industry revenues in the standards case are greater due to higher total shipments at TSL 4 and TSL 5. The higher revenues help to mitigate the impacts of the significant capital conversion costs required to comply with the energy conservation standards.

b. Cumulative Regulatory Burden

The April 2009 NOPR notes that one aspect of DOE's assessment of manufacturer burden is the cumulative impact of multiple regulatory actions that affect manufacturers. 74 FR 16920, 17003 (April 13, 2009). In addition to DOE's energy conservation regulations for GSFL and IRL, DOE identified other requirements that manufacturers face for these and other products and equipment they manufacture in the three years before and after the anticipated effective date of the amended DOE regulations. *Id.* DOE believes that the EISA 2007 requirements for GSIL are significant and could have the greatest cumulative burden on manufacturers, but that they will not pose insurmountable challenges. *Id.*

Chapter 13 of the TSD addresses in greater detail the issue of cumulative regulatory burden.

c. Impacts on Employment

As discussed in the April 2009 NOPR, and for today's final rule, DOE believes that amended energy conservation standards will not alter domestic employment levels of the GSFL industry. 74 FR 16920, 17003 (April 13, 2009). During interviews with manufacturers, DOE learned that GSFL are produced on high-speed, fully-automated lines. Production workers are not involved in the physical assembly of the final product (*e.g.*, in inserting components, transferring partly assembled lamps, soldering lamp bases). The employment levels required for these tasks are a function of the total volume of the facility, not the labor content of the product mix produced by the plant. Since higher TSLs involve using more-efficient phosphors, employment will not be impacted because standards will not change the overall scale of the facility.

As discussed in the April 2009 NOPR, and for today's final rule, DOE believes that amended energy conservation standards will not significantly impact IRL direct employment. 74 FR 16920, 17004 (April 13, 2009). The impact that new standards will have on employment is far less significant than the potential impact from emerging technologies. Both scenarios show that the absolute magnitudes of employment impacts due to standards are small. Whether standards have a positive or negative impact on employment is largely determined by the extent to which consumers elect to substitute IRL with other lamp technologies (such as R–CFL or exempted IRL) in the standards case.

Further support for these conclusions is set forth in chapter 13 of the TSD.

d. Impacts on Manufacturing Capacity

DOE stated its view in the April 2009 NOPR, 74 FR 16920, 17004 (April 13, 2009), that amended standards would not significantly affect GSFL production capacity. Over the long-term, any redesign of GSFL needed to meet standards would largely be a materials issue that would not affect manufacturing capacity. In the short term, although higher are expediting the shift from T12 shipments to T8 shipments and require shutting down and retooling production lines, manufacturers are able to temporarily ramp up production before shutdowns occur to maintain shipments during retooling. For today's final rule, DOE maintains its belief that amended energy conservation standards for GSFL will

not significantly impact manufacturing capacity.

In the NOPR, DOE stated it did not believe there would be a capacity constraint at the proposed standard level. DOE stated that manufacturers could install additional coaters, purchase infrared burners from a supplier, and use existing excess capacity. These options would allow IRL manufacturers to maintain production capacity levels and continue to meet market demand. 74 FR 16920, 17004 (April 13, 2009). In response to the April 2009 NOPR, manufacturers did raise concerns that the energy conservation standards in today's final rule could result in a constrained market. However, none of the comments DOE received indicated that that the energy conservation standards would result in the unavailability of standards-compliant products. At worst, the energy conservation standards could result in a short-term disruption in which the one manufacturer that requested additional time in between the announcement and effective date does not supply covered IRL. DOE did not receive comment that would indicate the other manufacturers would not have the necessary volume of standards-compliant lamps by the effective date of the final rule. For today's final rule, DOE maintains its belief that manufacturers will be able to maintain production capacity of covered IRLs and will be able to meet market demand.

e. Impacts on Manufacturers That Are Small Businesses

As discussed in the April 2009 NOPR, 74 FR 16920, 17004 (April 13, 2009), DOE identified no small manufacturers of IRL but did identify one small manufacturer that produces covered GSFL and is unlikely to be significantly affected by today's final rule.[65] In response to the April 2009 NOPR, one small business requested it be included in DOE's small business manufacturer impact analysis. For today's final rule, DOE re-analyzed its list of potential small business manufacturers, including those that submitted comments. DOE still has not identified any small manufacturer of covered IRL. However, DOE continues to identify the one small manufacturer that produces covered GSFL. For a discussion of the impacts on small business manufacturers, see chapter 13 of the TSD and section VIII.B of today's notice.

3. National Net Present Value and Net National Employment

The NPV analysis is a measure of the cumulative benefit or cost of standards to the Nation, discounted to $2008 dollars. In accordance with the OMB's guidelines on regulatory analysis,[66] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. The 7-percent rate is an estimate of the average before-tax rate of return to private capital in the U.S. 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 because recent OMB analysis has found the average rate of return to capital to be near this rate. DOE also used the 3-percent rate to capture the potential effects of standards on private consumption (*e.g.*, through higher prices for equipment and the 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 (*i.e.*, 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.

The tables below show the forecasted net present value at each trial standard level for GSFL and IRL. As shown above for NES results, Table VII.20 presents the ''Existing Technologies, High Lighting Expertise, Shift'' scenario and the ''Emerging Technologies, Market Segment-Based Lighting Expertise, Roll Up'' scenario as the maximum and minimum NPVs for GSFL, respectively. In general, the NPV results at each trial standard level are a reflection of the life-cycle cost savings at the corresponding efficacy levels. As seen in section VII.C.1.a, for most lamp purchasing events and most baseline lamps, increasing efficacy levels generally result in increased LCC savings. *See* the April 2009 NOPR and chapter 11 of the TSD for a description of the effect of various TSLs on NPV. 74 FR 16920, 17006–07 (April 13, 2009).

TABLE VII.20—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR GSFL

TSL/EL	Product class	NPV (billion 2008$)			
		Existing technologies, high lighting expertise, shift		Emerging technologies, market segment-based lighting expertise, roll-up	
		7% Discount	3% Discount	7% Discount	3% Discount
1	4-foot MBP	3.30	6.86	1.11	2.88
	8-foot SP Slimline	0.55	1.40	0.51	1.34
	8-foot RDC HO	0.54	0.88	−0.19	−0.24
	4-foot MiniBP SO	1.47	3.37	0.08	0.26
	4-foot MiniBP HO	2.22	4.81	1.19	2.63
	2-foot U-Shaped	0.15	0.31	0.05	0.13
	Total	8.24	17.63	2.75	7.00
2	4-foot MBP	2.63	5.99	0.75	2.60
	8-foot SP Slimline	0.60	1.53	0.58	1.50
	8-foot RDC HO	0.68	1.09	0.77	1.20
	4-foot MiniBP SO	1.47	3.37	0.08	0.26
	4-foot MiniBP HO	2.22	4.81	1.19	2.63

[65] As discussed in the April 2009 NOPR, 74 FR 17004–05, DOE identified only manufacturer of covered GSFL or IRL that met the criteria to be classified as a small business. For further detail on DOE's inquiry regarding small manufacturers, *please see* section VIII.B on the review under the Regulatory Flexibility Act.

[66] OMB Circular A–4, section E (Sept. 17, 2003).

TABLE VII.20—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR GSFL—Continued

TSL/EL	Product class	NPV (billion 2008$)			
		Existing technologies, high lighting expertise, shift		Emerging technologies, market segment-based lighting expertise, roll-up	
		7% Discount	3% Discount	7% Discount	3% Discount
	2-foot U-Shaped	0.12	0.27	0.03	0.12
	Total	7.73	17.07	3.41	8.31
3	4-foot MBP	9.40	20.06	2.68	7.05
	8-foot SP Slimline	0.82	1.82	0.82	1.82
	8-foot RDC HO	0.32	0.59	0.22	0.39
	4-foot MiniBP SO	1.47	3.37	0.08	0.26
	4-foot MiniBP HO	2.22	4.81	1.19	2.63
	2-foot U-Shaped	0.43	0.91	0.12	0.32
	Total	14.81	31.80	5.18	12.60
4	4-foot MBP	18.66	37.88	6.34	14.22
	8-foot SP Slimline	0.84	1.97	0.24	0.91
	8-foot RDC HO	1.87	3.17	1.87	3.17
	4-foot MiniBP SO	1.47	3.37	0.08	0.26
	4-foot MiniBP HO	2.22	4.81	1.19	2.63
	2-foot U-Shaped	0.85	1.72	0.29	0.65
	Total	26.31	53.53	10.02	21.84
5	4-foot MBP	22.79	45.79	6.12	14.24
	8-foot SP Slimline	0.84	1.97	0.33	1.07
	8-foot RDC HO	1.98	3.36	1.81	3.10
	4-foot MiniBP SO	1.91	4.29	0.32	0.91
	4-foot MiniBP HO	2.22	4.81	1.19	2.63
	2-foot U-Shaped	1.04	2.08	0.28	0.65
	Total	30.93	62.55	10.05	22.57

For IRL, DOE presents the ''Existing Technologies, R–CFL Product Substitution, Shift'' and ''Emerging Technologies, BR Product Substitution, Roll-Up'' scenarios as the maximum and minimum NPVs, respectively. As seen in Table VII.21, NPV increases with TSL, consistent with LCC savings generally increasing with efficacy level. In particular, for the BR Product Substitution scenario, the negative NPV at TSL1 results because the life-cycle cost savings at EL1 (the associated EL) are primarily negative. However, as seen in the R–CFL Product Substitution scenario, TSL1 achieves positive NPV due to primarily the increased movement to highly cost-effective R–CFLs. For further discussion of the NPV results see the April 2009 NOPR and chapter 11 of the TSD. 74 FR 16920, 17006–07 (April 13, 2009).

TABLE VII.21—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR INCANDESCENT REFLECTOR LAMPS

TSL	NPV (billion 2008$)			
	Existing technologies, R–CFL product substitution, shift		Emerging technologies, BR product substitution, roll-up	
	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate
1	0.45	1.11	−0.09	−0.04
2	4.59	8.94	2.08	3.93
3	6.34	12.50	3.04	5.84
4	9.06	17.81	4.20	8.02
5	10.16	20.01	4.90	9.38

As discussed in section VI.C, DOE developed a Baseline Lifetime scenario (which it analyzed the LCC savings, NPV, and manufacturer impacts) to investigate the effects of shorter lamp lifetime at TSL4 and TSL5. DOE did not feel it necessary to apply this scenario to TSL1 through TSL3 because DOE already analyzes lamps with lifetimes similar to that of the baseline lamp lifetimes. Relative to the normal lifetime scenario, NPV decreases due to the significant increase in incremental equipment costs, since more lamps need

to be shipped as they have shorter lifetimes.

TABLE VII.22—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR INCANDESCENT REFLECTOR LAMPS—''BASELINE LIFETIME SCENARIO''

TSL	NPV (billion 2008$)			
	Existing technologies, R–CFL product substitution, shift		Emerging technologies, BR product substitution, roll-up	
	7% Discount rate	3% Discount rate	7% Discount rate	3% Discount rate
4	5.22	10.81	1.83	3.78
5	4.86	10.13	2.53	5.12

DOE also estimated the national employment impacts that would result from each TSL. In addition to considering the direct employment impacts for the manufacturers of products covered in this rulemaking (discussed above), DOE also developed estimates of the indirect employment impacts of energy conservation standards on the economy in general. As Table VII.23 and Table VII.24 show, DOE estimates that any net monetary savings from GSFL and IRL standards would be redirected to other forms of economic activity. DOE also expects these shifts in spending and economic activity would affect the demand for labor. DOE estimated that net indirect employment impacts from energy conservation standards for GSFL and IRL would be positive (*see* Tables below), but very small relative to total national employment. This increase would likely be sufficient to fully offset any adverse impacts on employment that might occur in the lamp products industries. Earthjustice commented that the value of this additional employment should be monetized using a wage rate and included in the justification of the TSL selected. (Earthjustice, No. 60 at pg 6) However, this would double count the consumer savings that are the source of the job creation. DOE believes it more appropriate to consider job benefits separately from the direct benefits of energy savings similar to DOE's approach for considering environmental emissions benefits. For details on the employment impact analysis methodology and results, see chapter 15 of the TSD accompanying this notice.

TABLE VII.23—NET NATIONAL CHANGE IN INDIRECT EMPLOYMENT FOR GSFL, JOBS IN 2042

Trial standard level	Net national change in jobs (thousands)	
	Existing technologies, shift, high expertise	Emerging technologies, roll-up, market segment based expertise
1	12.0	6.5
2	12.2	5.5
3	15.1	10.7
4	18.4	13.3
5	19.6	15.5

TABLE VII.24—NET NATIONAL CHANGE IN INDIRECT EMPLOYMENT FOR IRL, JOBS IN 2042

Trial standard level	Net national change in jobs (thousands)	
	Existing technologies, shift, R–CFL substitution	Emerging technologies, roll-up, BR lamp substitution
1	1.7	0.7
2	4.3	2.5
3	6.9	4.8
4	9.5	6.0
5	10.4	6.8

4. Impact on Utility or Performance of Products

As indicated in sections IV.D.d and VI.B.4 of the April 2009 NOPR, DOE has concluded that TSLs it considered for GSFL and IRL would not lessen the utility or performance of any GSFL or IRL covered by this rulemaking. 74 FR 16920, 17009 (April 13, 2009)

5. Impact of Any Lessening of Competition

As discussed in the April 2009 NOPR, 74 FR 16920, 16936, 17009 (April 13, 2009), and in section IV.D.e of this preamble, DOE considers any lessening

of competition likely to result from standards; the Attorney General determines the impact, if any, of any such lessening of competition.

The DOJ concluded that the GSFL standards contained in the proposed rule would not likely lead to a lessening of competition. DOJ has not determined the impact on competition of more stringent standards than those proposed in the April 2009 NOPR (DOJ, No. 77 at p. 1). Although DOJ did not evaluate the impacts on competition of TSL 4 for GSFL, DOE believes that TSL 4 does not raise competitive issues. For all product classes analyzed DOE found that all manufacturers offered product at TSL 4. Further, the product modifications needed to reach TSL 4 involve the use of more efficient phosphor blends which do not entail proprietary barriers.

For IRL, DOJ concluded that the proposed TSL 4 could adversely affect competition. IRL standards proposed in the April 2009 NOPR would increase the minimum efficiency levels to the second highest level under consideration in this rulemaking. DOJ commented that the IRL market is highly concentrated, with three domestic manufacturers. Based on its review, DOJ stated that it appears that only two of the large manufacturers identified may currently manufacture IRLs that would meet the new standard and that these firms produce only limited quantities of such products for high-end applications. The current producers may not have the capacity to meet demand. In addition, one of these manufacturers uses proprietary technology currently unavailable to other manufacturers. Given the capital investments new entrants or providers would be required to make, and the potential that manufacturers may have to obtain proprietary technology, there is a risk that one or more IRL manufacturers will not produce products that meet the proposed standard. Note also that the National Impact Analysis does not consider the possibility of lessened competition effects, and so, depending on their magnitude, such effects may negatively impact the Net Present Value of the standards. DOJ requested that DOE consider the possibility of new technology in this area as it settles on standards in this field. (DOJ, No. 77 at pp. 1–2)

DOE agrees with DOJ that the IRL market is highly concentrated, with three major manufacturers supplying the vast majority of the U.S. market. However, for the April 2009 NOPR, DOE stated that all manufacturers produced at least one lamp that met TSL 4, even though one manufacturer did not produce a full line of product at this efficacy. 74 FR 16920, 17003 (April 13, 2009).

In the NOPR, DOE indicated that it believed manufacturers could maintain production capacity levels and continue to meet market demand at the proposed IRL standard (TSL 4). DOE noted that the current volume of these improved HIR lamps is many times lower than the volume of standard halogen lamps for all three major manufacturers. DOE used market research and analysis of HIR capsule production, and interviews with manufacturers of lamps and suppliers of HIR capsules and coating decks to analyze if manufacturers of IRL would be able to supply the market if lamp manufacturers outsourced all or part of their capsule production. In the NOPR, DOE stated it did not believe there would be a capacity constraint at the proposed standard level. DOE stated that manufacturers could install additional coaters, purchase infrared burners from a supplier, and use existing excess capacity. All these stated options would allow IRL manufacturers to maintain production capacity levels and continue to meet market demand for all IRL standard levels. 74 FR 16920, 17004 (April 13, 2009).

For today's final rule, DOE did not receive comments that indicated that the energy conservation standards would result in the unavailability of standards-compliant products. DOE did receive comments about the potential for a short-term market disruption. One major manufacturer requested additional time in between the announcement and effective date to allow more time to stabilize improved HIR manufacturing before the regulation mandates the improved technology. (OSI, No. 84 at p. 1) Another major manufacturer responded to April 2009 NOPR by commenting that TSL 4 allows the continued manufacture and sale of energy efficient products to the market and that these products have also been proven manufacturable by at least two major lighting companies. (Philips, No. 75 at p. 1) In its individual comment, the third major manufacturer did not comment on its intention to make the required capital investments. DOE believes that this manufacturer will not have difficulty supplying at least part of the market at the proposed standards because this manufacturer currently has a full line of products at both TSL 4 and TSL 5. Although DOE received comments that there could be a constrained market, other comments suggest that this constraint will at worst be a short-term problem. However, since all three large manufacturers currently manufacture product at the efficacies required by today's final rule, a short-term constraint would not be a competitive issue.

DOE does not believe manufacturers will have to obtain proprietary technology to meet the energy conservation standards set forth by today's rule. As stated in section VI.B.2, all major manufacturers have access to alternative technology pathways to meet TSL 4 without the use of proprietary technology. In the April 2009 NOPR, DOE stated that all major manufacturers produce two or more lamps that exceed TSL 4, some of which are not dependent on proprietary technology. DOE listed alternative technologies to meet TSL 4 including other non-patented types of improved reflectors and higher-efficiency IR coatings. 74 FR 16920, 16945 (April 13, 2009). DOE did not receive additional information or comments that would indicate that the identified alternative technologies necessary to meet energy conservation standards set forth by today's final rule will lead to any lessening of competition. Section VI.B of today's final rule further discusses alternative technology pathways and proprietary technology.

The Attorney General's response is reprinted at the end of today's rulemaking.

6. Need of the Nation To Conserve Energy

Improving the energy efficiency of GSFL and IRL, where economically justified, would likely improve the security of the Nation's energy system by reducing overall demand for energy, thus reducing the Nation's reliance on foreign sources of energy. Reduced demand might also improve the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, DOE expects the energy savings from the adopted standards to eliminate the need for approximately 1.8 to 6.2 gigawatts (GW) of generating capacity for GFSL and up to 200 to 1,100 megawatts (MW) for IRL by 2042.

Enhanced energy efficiency also produces environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production. Table VII.25 and Table VII.26 provide DOE's estimate of cumulative CO_2, NO_X, and Hg emissions reductions that would result from the TSLs considered in this rulemaking. The expected energy savings from these GSFL and IRL standards may also reduce the cost of maintaining nationwide emissions standards and constraints. In the environmental assessment (EA; chapter

16 of the TSD accompanying this notice), DOE reports estimated annual changes in CO_2, NO_X, and Hg emissions attributable to each TSL.

TABLE VII.25—SUMMARY OF EMISSIONS REDUCTIONS FOR GSFL

[Cumulative reductions for products sold from 2012 to 2042]

		TSL1	TSL2	TSL3	TSL4	TSL5
(i) Existing Technologies, Shift, High Lighting Expertise						
CO_2 (MMT)	.....	130.3	133.9	296.6	487.6	552.0
NO_X (kt)	.....	11.7	10.0	17.0	36.8	58.1
Hg (t)	low	0.0	0.0	0.0	0.0	0.0
Hg (t)	high	2.0	2.4	4.8	7.3	8.8
Emerging Technologies, Roll Up, Market Segment Based Lighting Expertise						
CO_2 (MMT)	.....	66.4	86.0	148.3	174.6	262.0
NO_X (kt)	.....	1.9	5.1	7.3	11.0	12.9
Hg (t)	low	0.0	0.0	0.0	0.0	0.0
Hg (t)	high	1.2	1.4	2.3	2.8	4.0

TABLE VII.26—SUMMARY OF EMISSIONS REDUCTIONS FOR IRL

[(Cumulative reductions for products sold from 2012 to 2042)]

		TSL1	TSL2	TSL3	TSL4	TSL5
Existing Technologies, Shift, R–CFL Substitution						
CO_2 (MMT)	.....	19.8	48.9	85.1	105.7	118.1
NO_X (kt)	.....	1.9	5.5	7.6	8.4	9.3
Hg (t)	low	0.0	0.0	0.0	0.0	0.0
Hg (t)	high	0.3	0.7	1.3	1.7	1.8
Emerging Technologies, Roll Up, BR Lamp Substitution						
CO_2 (MMT)	.....	7.5	19.1	37.8	44.0	53.3
NO_X (kt)	.....	1.3	3.2	5.4	6.4	8.1
Hg (t)	low	0.0	0.0	0.0	0.0	0.0
Hg (t)	high	0.1	0.3	0.6	0.7	0.8

MMt = million metric tons.
kt = thousand metric tons.
t = metric tons.
NOTE: The derivation for the emission ranges are described below.

As discussed in section IV.I of this final rule, DOE does not report SO_2 emissions reductions from power plants because reductions from an energy conservation standard would not affect the overall level of SO_2 emissions in the United States due to the emissions caps for SO_2.

NO_X emissions from 28 eastern States and the District of Columbia (DC) are limited under the Clean Air Interstate Rule (CAIR), published in the **Federal Register** on May 12, 2005.[67] Although CAIR has been remanded to EPA by the D.C. Circuit, it will remain in effect until it is replaced by a rule consistent with the Court's December 23, 2008, opinion in *North Carolina* v. *EPA*.[68] Because all States covered by CAIR opted to reduce NO_X emissions through participation in cap-and-trade programs for electric generating units, emissions from these sources are capped across the CAIR region.

For the 28 eastern States and D.C. where CAIR is in effect, no NO_X emissions reductions will occur due to the permanent cap. Under caps, physical emissions reductions in those States would not result from the energy conservation standards under consideration by DOE, but standards might have produced an environmentally related economic impact in the form of lower prices for emissions allowance credits, if they were large enough. However, DOE determined that in the present case, such standards would not produce an environmentally related economic impact in the form of lower prices for emissions allowance credits, because the estimated reduction in NO_X emissions or the corresponding allowance credits in States covered by the CAIR cap would be too small to affect allowance prices for NO_X under the CAIR. In contrast, new or amended energy conservation standards would reduce NO_X emissions in those 22 States that are not affected by CAIR. As a result, the NEMS–BT does forecast emission reductions from the proposed amended standards considered in today's final rule.

In the April 2009 NOPR, however, DOE provided a different estimate of NO_X reductions because DOE assumed that the CAIR rule had been vacated. This is because the CAIR rule was vacated by the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) in its July 11, 2008 decision in *North Carolina* v. *Environmental Protection Agency*.[69] Although the D.C. Circuit, in a December 23, 2008, opinion,[70] decided to allow the CAIR rule to remain in effect until it is replaced by a rule consistent with the

[67] 70 FR 25162 (May 12, 2005).

[68] *North Carolina* v. *EPA*, 550 F.3d 1176 (DC Cir. 2008).

[69] 531 F.3d 896 (D.C. Cir. 2008).

[70] *See North Carolina* v. *EPA*, 550 F.3d 1176 (DC Cir. 2008).

court's earlier opinion, DOE retained its analysis of NO_X emissions reductions based on an assumption that the CAIR rule was not in effect because: (1) The NOPR rulemaking was sufficiently advanced at the time that the December 23, 2008, opinion was issued that revisiting the analysis would have caused undue delays; and (2) neither the July 11, 2008, nor the December 23, 2008, decisions of the D.C. Circuit changed the standard-setting proposals offered in the NOPR.

Thus, for the April 2009 NOPR, DOE established a range of NO_X reductions based on low and high emission rates (in metric kilotons of NO_X emitted per terawatt-hour (TWh) of electricity generated) derived from the *AEO2008*. DOE anticipated that, in the absence of the CAIR Rule's trading program, the new or amended conservation standards would reduce NO_X emissions nationwide not just in 22 statues.

As noted in section IV.I, DOE was able to estimate the changes in Hg emissions associated with an energy conservation standard as follows. DOE notes that the NEMS–BT model used for the NOPR, used as an integral part of today's rulemaking, does not estimate Hg emission reductions due to new energy conservation standards, as it assumed that Hg emissions would be subject to EPA's CAMR.[71] CAMR would have permanently capped emissions of mercury for new and existing coal-fired plants in all States by 2010. As with SO_2 and NO_X, DOE assumed that under such a system, energy conservation standards would have resulted in no physical effect on these emissions, but might have resulted in an environmentally related economic benefit in the form of a lower price for emissions allowance credits if those credits were large enough. DOE estimated that the change in the Hg emissions from energy conservation standards would not be large enough to influence allowance prices under CAMR.

On February 8, 2008, the DC Circuit issued its decision in *New Jersey* v. *Environmental Protection Agency*[72] to vacate CAMR. In light of this development and because the NEMS–BT model could not be used to directly calculate Hg emission reductions, DOE used the Hg emission rates discussed below to calculate emissions reductions in the NOPR. This same methodology is used for the Final Rule as well due to the continued fluid environment ''* * * with many States planning to enact new laws or make existing laws more stringent.''[73] The NEMS–BT has only rough estimates of mercury emissions, and it was felt that the range of emissions used in the NOPR remain appropriate given these circumstances.

Therefore, rather than using the NEMS–BT model, DOE established a range of Hg rates to estimate the Hg emissions that could be reduced through standards. DOE's low estimate assumed that future standards would displace electrical generation only from natural gas-fired power plants, thereby resulting in an effective emission rate of zero. (Under this scenario, coal-fired power plant generation would remain unaffected.) The low-end emission rate is zero because natural gas-fired power plants have virtually zero Hg emissions associated with their operation. Earthjustice stated that basing the low end of the range on the displacement of only gas-fired power plants was inconsistent with DOE's utility impact analysis (Earthjustice, No. 60 at pg. 8–9). DOE believes that the estimate should provide the full range of possible outcomes and has selected the low and high values to bracket the uncertainties associated with estimating mercury emission reductions.

DOE's high estimate, which assumed that standards would displace only coal-fired power plants, was based on an estimate of the 2006 nationwide mercury emission rate from *AEO2008*. (Under this scenario, DOE assumed that gas-fired power plant generation would remain unaffected and that no future reductions in the rate of mercury emissions from such sources would occur.) Because power plant emission rates are a function of local regulation, scrubbers, and the mercury content of coal, it is extremely difficult to identify a precise high-end emission rate. Therefore, the most reasonable high estimate is based on the assumption that all displaced coal generation would have been emitting at the 2006 average emission rate for coal generation as specified by the April Update to *AEO2009*. This is viewed as a high estimate because it is likely that future emission controls will be installed at coal-fired power plants which will reduce their average emission rate. As noted previously, because virtually all mercury emitted from electricity generation is from coal-fired power plants, DOE based the emission rate on the tons of mercury emitted per TWh of coal-generated electricity. Based on the emission rate for 2006, DOE derived a high-end emission rate of 0.0255 tons per TWh. To estimate the reduction in mercury emissions, DOE multiplied the emission rate by the reduction in coal-generated electricity due to the standards considered in the utility impact analysis. These changes in Hg emissions are small, ranging from 0.2 to 1.0 percent of the national base-case emissions forecast by NEMS–BT for GFSL, depending on the TSL and scenario, and less than 0.2 percent for all IRL levels.

In the April 2009 NOPR, DOE considered accounting for a monetary benefit of CO_2 emission reductions associated with standards. To put the potential monetary benefits from reduced CO_2 emissions into a form that would likely be most useful to decision makers and interested parties, DOE used the same methods it used to calculate the net present value of consumer cost savings. DOE converted the estimated yearly reductions in CO_2 emissions into monetary values that represented the present value, in that year, of future benefits resulting from that reduction in emissions, which were then discounted from that year to the present using both 3-percent and 7-percent discount rates.

In the April 2009 NOPR, DOE proposed to use the range $0 to $20 per ton for the year 2007 in 2007$. 74 FR 16920, 17012 (April 13, 2009). These estimates were originally derived to represent the lower and upper bounds of the costs and benefits likely to be experienced in the United States. The lower bound was based on an assumption of no benefit and the upper bound was based on an estimate of the mean value of worldwide impacts due to climate change that was reported by the Intergovernmental Panel on Climate Change (IPCC).[74] DOE expected that such domestic values would be 10% or less of comparable global values; however, there were no consensus estimates for the U.S. benefits likely to

[71] 70 FR 28606 (May 18, 2005).

[72] 517 F.3d 574 (DC Cir. 2008).

[73] Energy Information Administration, Annual Energy Outlook 2009 (March 2009), page 18.

[74] During the preparation of its review of the state of climate science, the IPCC identified various estimates of the present value of reducing CO_2 emissions by 1 ton over the life that these emissions would remain in the atmosphere. The estimates reviewed by the IPCC spanned a range of values. Absent 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 CO_2 reductions likely to result from standards considered in this rulemaking. According to IPCC, the mean social cost of carbon (SCC) reported in studies published in peer-reviewed journals was $43 per ton of carbon. This translates into about $12 per ton of CO_2. The literature review (Tol 2005) from which this mean was derived did not report the year in which these dollars were denominated. However, DOE understands this estimate was for the year 1995 denominated in 1995$. Updating that estimate to 2007$ yields a SCC for the year 1995 of $15 per ton of CO_2.

result from CO_2 emission reductions. Because U.S.-specific estimates were unavailable, DOE used the global mean value as an upper bound U.S. value.

Given the uncertainty surrounding estimates of the social cost of carbon, DOE previously concluded that relying on any single estimate may be inadvisable because that estimate will depend on many assumptions. Working Group II's contribution to the ''Fourth Assessment Report'' of the IPCC notes the following:

> The large ranges of SCC are due in the large part to differences in assumptions regarding climate sensitivity, response lags, the treatment of risk and equity, economic and non-economic impacts, the inclusion of potentially catastrophic losses, and discount rates.[75]

Because of this uncertainty, DOE used the SCC value from Tol (2005), which was presented in the IPCC's ''Fourth Assessment Report'' and provided a comprehensive meta-analysis of estimates for the value of SCC. 74 FR 16920, 17012 (April 13, 2009).

NRDC and Earthjustice and NY et al. commented that DOE should use global, rather than U.S. based estimates for CO_2 values (NRDC, Issue Paper, No. 82 at p. 13 and NY et al., Attachment, No. 88 at p. 3). NY *et al.* recommended DOE use $80 per short ton CO_2 ($88 metric) in 2009$ based on recent meta-analysis of GHG abatement cost analyses published by international agencies and multinational consultancies. NY *et al.*, also criticized the range of CO_2 values used in the NOPR and recommended the use of a long-run marginal abatement cost of CO_2 for monetizing CO_2 emission reductions, rather than the damage costs given the highly uncertain nature of the latter (NY *et al.*, No. 88, p. 9–10).

DOE continues to use SCC values in today's final rule. DOE has not adopted using an abatement cost because the actual costs of reducing CO_2 emissions are highly variable. They range from negative costs, such as energy efficiency improvement measures that produce net economic benefits, to hundreds of dollars per ton of CO_2, such as emission reductions that might require the early abandonment of large capital investments in power plants, industrial facilities or buildings. In order to identify a specific marginal cost per ton of CO_2 reduced usually requires the establishment of key parameters, such as the scope of the emissions covered, the quantity of emission reductions to be achieved and the timeframe for the achievement of these reductions. These parameters must be determined through legislative or regulatory processes. Moreover, the use of SCC is consistent with the IPCC Fourth Assessment Report. However, if a nationwide regulatory mandate is established to limit or reduce U.S. greenhouse gas emissions, the marginal costs of reducing emissions that are imposed by such a mandate might be the basis for valuing such emission reductions in the future.

For today's final rule, DOE is relying on an updated range of values consistent with that presented in the Model Year 2011 fuel economy standard final rule issued by the National Highway Traffic Safety Administration (NHTSA): $2, $33 and $80 per ton. In the MY 2011 fuel economy standard final rule, NHTSA relied on a range of estimates representing the uncertainty surrounding global values of the SCC, while also encompassing, at the low end, possible domestic values. These three values encompass much of the variability in the estimates of the global value of the SCC. The lower end of this range, $2, also approximates possible mean value for domestic benefits. The middle of the range, $33, is equal to the mean value in Tol (2008) and the high end of the range, $80, represents one standard deviation above the mean global value. 74 FR 14196, 14346 (March 30, 2009).

The global value of $33 is based on Tol's (2008) expanded and updated survey of 211 estimates of the global SCC.[76] Tol's 2008 survey encompasses a larger number of estimates for the global value of reducing carbon emissions than its previously-published counterpart, Tol (2005), and continues to represent the only recent, publicly-available compendium of peer-reviewed estimates of the SCC that has itself been peer-reviewed and published.

The domestic value ($2) was developed by NHTSA by using the mean estimate of the global value of reduced economic damages from climate change resulting from reducing CO_2 emissions as a starting point; estimating the fraction of the reduction in global damages that is likely to be experienced within the U.S.; and applying this fraction to the mean estimate of global benefits from reducing emissions to obtain an estimate of the U.S. domestic benefits from lower GHG emissions. NHTSA constructed the estimate of the U.S. domestic benefits from reducing CO_2 emissions using estimates of U.S. domestic and global benefits from reducing greenhouse gas emissions developed by EPA and reported in EPA's Technical Support Document accompanying its advance notice of proposed rulemaking on motor vehicle CO_2 emissions.[77]

A complete discussion of NHTSA's analysis is available in Chapter VIII of the Final Regulatory Analysis of the Corporate Average Fuel Economy for MY 2011 Passenger Cars and Light Trucks (NHTSA, March 2009).

After considering comments and the currently available information and analysis, which was reflected in the approach employed by NHTSA, DOE concluded that it was appropriate to consider the global benefits of reducing CO_2 emissions, as well as the domestic benefits. Consequently, DOE considered in its decision-process for this final rule the potential benefits resulting from reduced CO_2 emissions valued at $2, $33 and $80. The resulting range is based on current peer-reviewed estimates of the value of SCC and, DOE believes, fairly represents the uncertainty surrounding the global benefits resulting from reduced CO_2 emissions and, at the $2 level, also encompasses the likely domestic benefits, DOE also concluded, based on the most recent Tol analysis, that it was appropriate to escalate these values at 3% [78] per year to represent the expected increases, over time, of the benefits associated with reducing CO_2 and other greenhouse gas emissions.

The tables below present the resulting estimates of the potential range of net present value benefits associated with reducing CO_2 emissions.

[75] ''Climate Change 2007—Impacts, Adaptation and Vulnerability.'' Contribution of Working Group II to the ''Fourth Assessment Report'' of the IPCC, 17. Available at *www.ipcc.ch/ipccreports/ar4-wg2.htm* (last accessed Aug. 7, 2008).

[76] Richard S.J. Tol (2008), The social cost of carbon: Trends, outliers, and catastrophes, Economics—the Open-Access, Open-Assessment E-Journal, 2 (25), 1–24.

[77] U.S. EPA, Technical Support Document on Benefits of Reducing GHG Emissions, June 12, 2008.

[78] Estimates of SCC are assumed to increase over time since future emissions are expected to produce larger incremental damages as physical and economic systems become more stressed as the magnitude of climate change increases. Although most studies that estimate economic damages caused by increased GHG emissions in future years produce an implied growth rate in the SCC, neither the rate itself nor the information necessary to derive its implied value is commonly reported. Given the limited amount of debate thus far about the appropriate growth rate of the SCC, applying a rate of 3%/yr seems appropriate at this stage. This value is consistent with the range recommended by IPCC (2007).

TABLE VII.27—ESTIMATES OF VALUE OF CO_2 EMISSIONS REDUCTIONS FOR GSFL UNDER TRIAL STANDARD LEVELS AT SEVEN-PERCENT AND THREE-PERCENT DISCOUNT RATES

GSFL TSL	Estimated cumulative CO_2 (MMt) emission reductions	Value of estimated CO_2 emission reductions (billion 2008$) at 7% discount rate			Value of estimated CO_2 emission reductions (billion 2008$) at 3% discount rate		
		CO_2 value of $2/ton CO_2	CO_2 value of $33/ton CO_2	CO_2 value of $80/ton CO_2	CO_2 value of $2/ton CO_2	CO_2 value of $33/ton CO_2	CO_2 value of $80/ton CO_2
1	66 to 130	0.1 to 0.1	1.1 to 2.1	2.6 to 5.1	0.1 to 0.3	2.3 to 4.5	5.6 to 10.9.
2	86 to 134	0.1 to 0.1	1.5 to 2.2	3.6 to 5.3	0.2 to 0.3	3.0 to 4.6	7.2 to 11.2.
3	148 to 297	0.2 to 0.3	2.5 to 4.9	6.1 to 11.9	0.3 to 0.6	5.1 to 10.3	12.5 to 24.9.
4	175 to 488	0.2 to 0.5	3.1 to 8.4	7.5 to 20.4	0.4 to 1.0	6.0 to 16.9	14.7 to 40.9.
5	262 to 552	0.3 to 0.6	4.6 to 9.6	11.1 to 23.4	0.6 to 1.2	9.1 to 19.1	22.0 to 46.4.

TABLE VII.28—ESTIMATES OF VALUE OF CO_2 EMISSIONS REDUCTIONS FOR IRL UNDER TRIAL STANDARD LEVELS AT SEVEN-PERCENT AND THREE-PERCENT DISCOUNT RATES

IRL TSL	Estimated cumulative CO_2 (MMt) emission reductions	Value of estimated CO_2 emission reductions (billion 2008$) at 7% discount rate			Value of estimated CO_2 emission reductions (billion 2008$) at 3% discount rate		
		CO_2 value of $2/ton CO_2	CO_2 value of $33/ton CO_2	CO_2 value of $80/ton CO_2	CO_2 value of $2/ton CO_2	CO_2 value of $33/ton CO_2	CO_2 value of $80/ton CO_2
1	7 to 20	0.0 to 0.0	0.1 to 0.3	0.3 to 0.8	0.0 to 0.0	0.3 to 0.7	0.6 to 1.7.
2	19 to 49	0.0 to 0.1	0.4 to 0.8	0.8 to 2.1	0.0 to 0.1	0.7 to 1.7	1.6 to 4.1.
3	38 to 85	0.0 to 0.1	0.7 to 1.5	1.7 to 3.6	0.1 to 0.2	1.3 to 2.9	3.2 to 7.1.
4	44 to 106	0.0 to 0.1	0.8 to 1.8	1.9 to 4.4	0.1 to 0.2	1.5 to 3.7	3.7 to 8.9.
5	53 to 118	0.1 to 0.1	1.0 to 2.0	2.3 to 4.9	0.1 to 0.2	1.8 to 4.1	4.5 to 9.9.

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other green house gas emissions (GHG) to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed in this rulemaking on reducing CO_2 emissions is subject to likely change.

The Department of Energy, together with other Federal agencies, is reviewing various methodologies for estimating the monetary value of reductions in CO_2 and other greenhouse gas emissions. This review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues, such as whether the appropriate values should represent domestic U.S. benefits, as well as global benefits (and costs). Given the complexity of the many issues involved, this review is ongoing. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this final rule the most recent values and analyses employed in a rulemaking by another Federal agency.

DOE also investigated the potential monetary benefit of reduced SO_2, NO_X, and Hg emissions from the TSLs it considered. As previously stated, DOE's initial analysis assumed the presence of nationwide emission caps on SO_2 and Hg, and caps on NO_X emissions in the 28 States covered by CAIR. In the presence of these caps, DOE concluded that no physical reductions in power sector emissions would occur, but that the standards could put downward pressure on the prices of emissions allowances in cap-and-trade markets. Estimating this effect is very difficult because of factors such as credit banking, which can change the trajectory of prices. DOE has concluded that the effect from energy conservation standards on SO_2 allowance prices is likely to be negligible based on runs of the NEMS–BT model. See chapter 16 of the TSD accompanying this notice for further details.

Because the courts have decided to allow the CAIR rule to remain in effect, projected annual NO_X allowances from NEMS–BT are relevant.[79] As noted above, standards would not produce an economic impact in the form of lower prices for emissions allowance credits in the 28 eastern States and D.C. covered by the CAIR cap. New or amended energy conservation standards would reduce NO_X emissions in those 22 States that are not affected by CAIR. For the area of the United States not covered by CAIR, DOE estimated the monetized value of NO_X emissions reductions resulting from each of the TSLs considered for today's final rule based on environmental damage estimates from the literature. Available estimates suggest a very wide range of monetary values for NO_X emissions, ranging from $370 per ton to $3,800 per ton of NO_X from stationary sources, measured in 2001$ (equivalent to a range of $432 per ton to $4,441 per ton in 2007$).[80]

For Hg emissions reductions, DOE estimated the national monetized values resulting from the TSLs considered for today's rule based on environmental damage estimates from the literature. DOE conducted research for today's final rule and determined that the impact of mercury emissions from power plants on humans is considered highly uncertain. However, DOE identified two estimates of the environmental damage of mercury based on two estimates of the adverse impact of childhood exposure to methyl mercury on IQ for American children, and subsequent loss of lifetime economic productivity resulting from these IQ losses. The high-end estimate is based on an estimate of the current aggregate cost of the loss of IQ in American children that results from exposure to mercury of U.S. power plant origin ($1.3 billion per year in year 2000$), which works out to $32.6 million per ton emitted per year

[79] The Update to the AEO2009 based version of NEMS–BT includes the representation of CAIR.

[80] Office of Management and Budget Office of Information and Regulatory Affairs, ''2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities,'' Washington, DC (2006).

(2007$).[81] The low-end estimate is $0.66 million per ton emitted (in 2004$) or $0.729 million per ton (in 2007)$. DOE derived this estimate from a published evaluation of mercury control using different methods and assumptions from the first study, but also based on the present value of the lifetime earnings of children exposed.[82] Table VI.28 and Table VI.29 present the resulting estimates of the potential range of present value benefits associated with reduced national NO_X and Hg emissions from the TSLs DOE considered.

TABLE VII.29—ESTIMATES OF SAVINGS FROM NO_X EMISSIONS REDUCTIONS FOR GSFL

TSL	Estimated cumulative NO_X (kt) emission reductions	Value of estimated NO_X emission reductions (million 2008$) at 7% discount rate	Value of estimated NO_X emission reductions (million 2008$) at 3% discount rate
1	1.9 to 11.7	$0.7 to $23.8	$0.8 to $34.5.
2	5.1 to 10.0	$1.5 to $21.9	$1.9 to $30.4.
3	7.3 to 17.0	$2.2 to $41.1	$2.7 to $54.7.
4	11.0 to 36.8	$4.2 to $107.2	$4.6 to $132.4.
5	12.9 to 58.1	$5.0 to $125.6	$5.5 to $173.9.

TABLE VII.30—ESTIMATES OF SAVINGS FROM NO_X EMISSIONS REDUCTIONS FOR IRL

TSL	Estimated cumulative NO_X (kt) emission reductions	Value of estimated NO_X emission reductions (million 2007$) at 7% discount rate	Value of estimated NO_X emission reductions (million 2007$) at 3% discount rate
1	1.3 to 1.9	$0.3 to $4.6	$0.4 to $6.0.
2	3.2 to 5.5	$0.8 to $13.8	$1.1 to $17.9.
3	5.4 to 7.6	$1.5 to $19.7	$1.9 to $25.2.
4	6.4 to 8.4	$1.8 to $24.4	$2.2 to $30.0.
5	8.1 to 9.3	$2.2 to $27.0	$2.7 to $33.1.

TABLE VII.31—ESTIMATES OF SAVINGS FROM HG EMISSIONS REDUCTIONS FOR GSFL

TSL	Estimated cumulative Hg (tons) emission reductions	Value of estimated Hg emission reductions (million 2007$) at 7% discount rate	Value of estimated Hg emission reductions (million 2007$) at 3% discount rate
1	0.0 to 2.0	$0 to $16.5	$0 to $32.7.
2	0.0 to 2.4	$0 to $20.3	$0 to $39.6.
3	0.0 to 4.8	$0 to $41.4	$0 to $80.2.
4	0.0 to 7.3	$0 to $67.7	$0 to $125.6.
5	0.0 to 8.8	$0 to $84.5	$0 to $154.4.

TABLE VII.32—ESTIMATES OF SAVINGS FROM HG EMISSIONS REDUCTIONS FOR IRL

TSL	Estimated cumulative Hg (tons) emission reductions	Value of estimated Hg emission reductions (million 2007$) at 7% discount rate	Value of estimated Hg emission reductions (million 2007$) at 3% discount rate
1	0.0 to 0.3	$0 to $2.7	$0 to $5.2.
2	0.0 to 0.7	$0 to $6.7	$0 to $12.5.
3	0.0 to 1.3	$0 to $11.7	$0 to $22.1.
4	0.0 to 1.7	$0 to $15.0	$0 to $28.1.
5	0.0 to 1.8	$0 to $16.0	$0 to $30.2.

7. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII) and 6316(e)(1)) In adopting today's standards, the Secretary considered the potential for GSFL and IRL standards to adversely affect low-income consumers, institutions of religious worship, historical facilities, institutions that serve low-income populations, and consumers of T12 electronic ballasts.

D. Conclusion

EPCA contains criteria for prescribing new or amended energy conservation standards. It provides that any such standard for GSFL and IRL must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) As stated above, in determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standards exceed its burdens considering the seven factors discussed

[81] Trasande, L., *et al.*, ''Applying Cost Analyses to Drive Policy that Protects Children,'' 1076 Ann. N.Y. Acad. Sci. 911 (2006).

[82] Ted Gayer and Robert Hahn, ''Designing Environmental Policy: Lessons from the Regulation of Mercury Emissions,'' Regulatory Analysis 05–01, AEI-Brookings Joint Center for Regulatory Studies, Washington, DC (2004). A version of this paper was published in the *Journal of Regulatory Economics* in 2006. The estimate was derived by back-calculating the annual benefits per ton from the net present value of benefits reported in the study.

in section IV.D. (42 U.S.C. 6295(o)(2)(B)(i)) A determination of whether a standard level is economically justified is not made based on any one of these factors in isolation. The Secretary must weigh each of these seven factors in total in determining whether a standard is economically justified. Further, the Secretary may not establish an amended standard if such standard would not result in ''significant conservation of energy,'' or ''is not technologically feasible or economically justified.'' (42 U.S.C. 6295(o)(3)(B))

As discussed in section V.A.1, DOE established a separate set of TSLs for GSFL and for IRL. Therefore, DOE analyzed each lamp type (GSFL or IRL) separately when considering various TSLs and eventually proposing standards. The following discussion briefly explains the development of the TSLs, consideration of the TSLs (starting with the most stringent) under the statutory factors, and the conclusion as to the GSFL standards and IRL standards that most improve energy efficiency that DOE has determined would most improve energy-efficiency and would be technologically feasible and economically justified.

For GSFL, DOE considered five TSLs in the April 2009 NOPR, with TSL5 being the most stringent level for which DOE performed full analyses. 74 FR 16920, 16979–82 (April 13, 2009). It is noted that DOE also considered the potential for a standard level beyond TSL5 that would require GSFL to use a higher-efficiency gas fill composition, which would have been the maximum technologically feasible level. Although more-efficient fill gases (often including higher molecular weight gases) are appropriate for and are currently used in some lamp applications, DOE is also aware employing this technology can cause lamp instability resulting in striations or flickering in some circumstances. DOE's research indicated that a potential standard level that would require the use of higher-efficiency fill gases would significantly reduce (or in some cases eliminate) the utility and performance of the covered GSFL. DOE concluded on this basis that a level with such an adverse impact on product utility would not be economically justified.[83] (42 U.S.C. 6295(o)(2)(B)(i)(IV) and (3)(B)) Having made this determination, there was no need to perform additional analyses relevant to the other statutory criteria. (See section I.A.2 for additional detail.) Consequently, TSL5 represents the most-efficient level analyzed for GSFL.

For IRL, DOE's engineering analysis considered the maximum technologically feasible level, which would require the use of a silver reflector. However, this level utilized a proprietary technology that represents a unique pathway to achieving that efficiency level. Accordingly, DOE determined that such level was likely to have significant anti-competitive effects on the markets for such lamps and ultimately concluded that it is not economically justified. (42 U.S.C. 6295(o)(3)(B)) Therefore, TSL5, which does not require installation of the proprietary silver reflector, represents the most efficient level analyzed for IRL. (See sections VI.B and VII.A.2 of this notice for more information on maximum technologically feasible levels and other efficacy levels DOE analyzed.)

DOE then considered the impacts of standards at each trial standard level that was identified and analyzed, beginning with the most efficient level, to determine whether the given level was economically justified. DOE then considered less efficient levels until it reached the highest level that meets the key statutory criteria in terms of being technologically feasible, economically justified, and saving a significant amount of energy.

DOE discusses the benefits and/or burdens of each trial standard level in the following sections. DOE bases its discussion on quantitative analytical results for each trial standard level (presented in section VII) such as national energy savings, net present value (discounted at 7 percent and 3 percent), emissions reductions, industry net present value, life-cycle cost, and consumers installed price increases. In addition to providing a summary of results, DOE discusses below the life-cycle cost and consumer installed price increase results for each product class and baseline, where appropriate. Beyond the quantitative results, DOE also considers other burdens and benefits that affect economic justification, including how the impacts of standards on competition, supply constraints, and lamp input prices may affect the economic benefits and burdens presented.

1. General Service Fluorescent Lamps Conclusion

In addition to the results presented above, DOE also calculates the annualized benefits and costs of each TSL. The table below presents these values for GSFL.

TABLE VII.33—ANNUALIZED BENEFITS AND COSTS FOR GSFL

TSL	Category	Unit	Primary estimate		Low estimate		High estimate	
			7%	3%	7%	3%	7%	3%
1	Benefits							
	Annualized Monetized ($millions/year)	2008$	650	741	445	504	855	978
	Annualized Quantified	CO_2 (Mt)	2.73	2.98	1.83	2.01	3.64	3.96
		NO_X (kT)	0.37	0.28	0.17	0.10	0.57	0.46
		Hg (T)	0.02	0.03	0.00	0.00	0.05	0.06
	Costs							
	Annualized Monetized ($millions/year)	2008$	123	80	181	128	64	31
	Net Benefits/Costs							
	Annualized Monetized ($millions/year)	2008$	527	661	264	375	791	946

[83] DOE notes that it did not eliminate higher-efficiency fill gases from further consideration as a technology under the screening analysis, because that technology may be appropriate for low-wattage lamp applications.

TABLE VII.33—ANNUALIZED BENEFITS AND COSTS FOR GSFL—Continued

TSL	Category	Unit	Primary estimate		Low estimate		High estimate	
			7%	3%	7%	3%	7%	3%
2	Benefits							
	Annualized Monetized ($millions/year)	2008$	761	842	586	633	936	1051
	Annualized Quantified	CO_2 (Mt)	3.22	3.41	2.68	2.73	3.76	4.08
		NO_X (kT)	0.45	0.33	0.38	0.25	0.52	0.40
		Hg (T)	0.03	0.04	0.00	0.00	0.07	0.07
	Costs							
	Annualized Monetized ($millions/year)	2008$	224	160	255	186	192	134
	Net Benefits/Costs							
	Annualized Monetized ($millions/year)	2008$	537	683	330	448	744	918
3	Benefits							
	Annualized Monetized ($millions/year)	2008$	1528	1663	1017	1089	2038	2237
	Annualized Quantified	CO_2 (Mt)	6.50	6.89	4.51	4.67	8.49	9.11
		NO_X (kT)	0.76	0.55	0.55	0.37	0.98	0.73
		Hg (T)	0.07	0.07	0.00	0.00	0.14	0.15
	Costs							
	Annualized Monetized ($millions/year)	2008$	577	484	522	417	633	550
	Net Benefits/Costs							
	Annualized Monetized ($millions/year)	2008$	950	1179	495	671	1405	1688
4	Benefits							
	Annualized Monetized ($millions/year)	2008$	2302	2420	1329	1387	3275	3452
	Annualized Quantified	CO_2 (Mt)	10.48	10.60	5.76	5.69	15.20	15.52
		NO_X (kT)	1.78	1.19	1.03	0.63	2.54	1.76
		Hg (T)	0.11	0.11	0.00	0.00	0.22	0.23
	Costs							
	Annualized Monetized ($millions/year)	2008$	582	425	378	230	786	621
	Net Benefits/Costs							
	Annualized Monetized ($millions/year)	2008$	1720	1994	951	1158	2489	2831
	Incremental Net Benefits/Costs Relative to TSL3							
	Annualized Monetized ($millions/year)	2008$	770	815	456	487	1084	1143
5	Benefits							
	Annualized Monetized ($millions/year)	2008$	2850	2988	1738	1811	3961	4165
	Annualized Quantified	CO_2 (Mt)	12.95	13.07	8.33	8.41	17.57	17.73
		NO_X (kT)	2.10	1.53	1.21	0.75	2.98	2.31
		Hg (T)	0.14	0.14	0.00	0.00	0.27	0.28
	Costs							
	Annualized Monetized ($millions/year)	2009$	911	737	783	613	1039	861
	Net Benefits/Costs							
	Annualized Monetized ($millions/year)	2009$	1939	2251	955	1197	2922	3304
	Incremental Net Benefits/Costs Relative to TSL4							
	Annualized Monetized ($millions/year)	2008$	219	257	4	39	433	473

Note: Annualized values are for the period from 2012 to 2042.

a. Trial Standard Level 5

For GSFL, DOE first considered the most efficient level, TSL5, which would save an estimated total of 5.1 to 12.0 quads of energy through 2042—a significant amount of energy. For the Nation as a whole, TSL5 would have a net savings of $10.0 billion to $30.9 billion at a 7-percent discount rate and $22.6 billion to $62.6 billion at a 3-percent discount rate. The emissions reductions at TSL5 are estimated at 262 to 552 MMt of CO_2, 13 to 58 kt of NO_X, up to 9 metric tons of Hg. Total generating capacity in 2042 is estimated to decrease compared to the reference case by 2.7 to 7.3 GW under TSL5. The monetized values of emissions reductions are estimated at $5.0 to $125.6 million for NO_X and up to $84.5 million for Hg at a 7-percent discount rate and $5.5 to $173.9 million for NO_X and up to $154.4 million for Hg at a 3-percent discount rate. The estimated benefits of reducing CO_2 emissions using the mid-range of the CO_2 value (using $33 per ton) is $4.6 to $9.6 billion and $9.1 to $19.1 billion at 7-percent and 3-percent discount rates respectively. The full range of likely benefits of CO_2 emission reductions is $0.3 billion to $23.4 billion at a 7-percent discount rate and $0.6 billion to $46.4 billion at a 3-percent discount rate.

The impacts on manufacturers at TSL5 result from the commoditization of high-efficacy lamps and the need to convert all T12 lines to T8 lines, requiring a capital investment of $211 million. The projected change in industry value ranges from a decrease of $211 million to an increase of $33 million. The extent of the industry impacts is driven primarily by how successful manufacturers will be in maintaining their current gross margins at near their current levels as efficient products become commoditized. Currently, manufacturers obtain higher margins for more-efficient products; therefore, to avoid the higher end of the anticipated impacts, manufacturers are likely to have to find new ways to differentiate GSFL to maintain full product lines. At TSL5, DOE recognizes the risk of very large negative impacts if the high end of the range of impacts is reached, resulting in a net loss of 40 percent in INPV.

At TSL5, DOE projects that most GSFL consumers would experience life-cycle cost savings. The following discussion summarizes the specific life-cycle cost impacts of TSL5 on the separate product classes and baseline lamps.

Table VII.5 presents the findings of an LCC analysis on various three-lamp, 4-foot medium bipin GSFL systems operating in the commercial sector. Regardless of the baseline lamp currently employed, consumers have lamp designs available which result in positive LCC savings at TSL5. At this standard level, users of 40W or 34W 4-foot MBP T12 baseline lamps installed on a magnetic ballast who need to replace their lamp would incur the cost of a lamp and ballast replacement ($65.96 to $73.94) because no T12 lamp currently meets the efficacy requirements of TSL5. Comparing this cost of lamp-and-ballast replacements to the cost of only baseline lamp replacements ($11.65 to $14.50) results in installed price increases of $52.83 to $59.44. These ranges in prices depend on the specific baseline lamps previously owned by consumers and the specific combinations of lamps and ballasts they select in the standards case. However, over the life of the lamp, these consumers would save $13.93 to $24.16.

Table VII.6 presents LCC results for a two-lamp 4-foot MBP system operating in the residential sector under average operating hours. The results are presented for a system operating 40W T12 lamps with a magnetic ballast, as this configuration is typical of the installed base of residential GSFL systems. As discussed in the NOPR, DOE believes that the vast majority of lamps sold in the residential market are sold with new ballasts or luminaires. 74 FR 16920, 16951 (April 13, 2009) At TSL5, residential consumers are expected to purchase T8 lamps with electronic ballasts in lieu of the T12 lamps with magnetic ballasts that they would purchase absent standards. These consumers would see LCC savings of $20.21 to $22.32. DOE recognizes that not all residential GSFL lamps would be sold in conjunction with a new ballast or luminaire in the base case. In particular, consumers with higher operating hours or consumers who choose to not discard their lamps upon fixture or ballast replacement may need to replace their lamp on an existing system. However, at TSL5, there are no standards-compliant T12 replacement lamps available. As seen in Table VII.8, the consumer economics of retrofitting a T12 system with a T8 system for a residential 4-foot MBP system depend on the remaining life of the T12 ballast. For those consumers who replace a T12 system with less than 7 years of life remaining in 2012, the LCC savings are positive. Those consumers who have greater than 7 years of life remaining in their T12 systems in 2012 will experience negative LCC savings. Considering an average system life of 15 years, and estimating that 10 percent of T12 lamps sold to residential sector are replacement lamps, DOE calculates that fewer than 6 percent of current purchasers of T12 lamps in the residential sector will experience increases in LCC. The first-costs increase for residential consumers forced to retrofit to T8 systems would be $49.00 to $49.91 ($53.13 to $54.04 for an installed T8 system compared to $4.13 for two new T12 lamp).

With regard to 4-foot MBP consumer subgroups, all consumer subgroups analyzed achieve similar LCC savings to the average consumer with the exception of commercial consumers who own 40W or 34W 4-foot MBP T12 lamps installed on electronic ballasts. These consumers, upon lamp failure, are forced to retrofit their existing ballasts, resulting in negative LCC savings of −$12.43 to −$7.00. Overall, based on the NIA, DOE estimates that at TSL5 in 2012, less than 2 percent of 4-foot MBP shipments result in negative LCC savings, and 9 percent of shipments are associated with the high installed price increases due to forced retrofits.

Table VII.11 presents the findings of an LCC analysis on various two-lamp, 8-foot SP slimline GSFL systems operating in the commercial sector. Except for consumers who purchase reduced-wattage 60W T12 lamps absent standards (and experience a lamp failure), all other consumers have available lamp designs that result in positive LCC savings at TSL5. At this standard level, users of 75W or 60W 8-foot SP slimline T12 baseline lamps installed on a magnetic ballast who need to replace their lamp would incur the cost of a lamp and ballast replacement ($97.41 to $98.80) because no T12 lamp currently meets the efficacy requirements of TSL5. Comparing the cost of a lamp-and-ballast replacement to the cost of only a baseline lamp replacement ($11.77 to $16.79) results in an installed price increase of $82.01 to $87.03. In addition, users of 60W T12 lamps who need to replace their lamp experience negative LCC savings of −$15.81 to −$13.89. On the other hand, over the life of the lamp, users of 75W T12 lamps who require a lamp replacement would save $9.68.

With regard to 8-foot SP slimline consumer subgroups, all consumer subgroups analyzed achieve similar LCC savings to the average consumer with the exception of consumers of T12 lamps operating in religious institutions, consumers of T12 lamps

operating in institutions that serve low-income populations, and users of T12 lamps installed on electronic ballasts. These consumers, upon lamp failure, are forced to retrofit their existing ballasts, resulting in negative LCC savings. In particular, consumers in institutions of religious worship (which have low operating hours in comparison with the average commercial-sector consumer) and consumers in institutions serving low income populations (experience negative LCC savings of −$30.56 to −$0.44. Consumers with T12 lamps installed on electronic ballasts experience negative LCC savings of −$33.55 to −$15.82. Overall, based on the NIA model, DOE estimates that at TSL5 in 2012, approximately 24 percent of 8-foot SP slimline shipments would result in negative LCC savings, and 65 percent of shipments would be associated with the high installed price increases due to forced retrofits.

Table VII.12 presents the findings of an LCC analysis on various two-lamp, 8-foot RDC HO GSFL systems operating in the industrial sector. With the exception of consumers who purchase reduced-wattage 95W T12 lamps absent standards (and purchase a lamp in response to a lamp failure), all other consumers have available lamp designs that result in positive LCC savings at TSL5. At this standard level, users of 110W or 95W 8-foot RDC HO T12 baseline lamps installed on a magnetic ballast who need to replace their lamp would incur the cost of a lamp and ballast replacement ($131.38) because no T12 lamp currently meets the efficacy requirements of TSL5. Comparing the cost of a lamp-and-ballast replacement to the cost of only a baseline lamp replacement ($14.46 to $20.51) results in an installed price increase of $110.87 to $116.92. Users of 95W T12 lamps who need to replace their lamp experience negative LCC savings of −$7.97. On the other hand, over the life of the lamp, users of 110W T12 lamps who require a lamp replacement would save $13.07.

With regard to 8-foot RDC HO consumer subgroups, all consumer subgroups analyzed achieve similar LCC savings to the average consumer except consumers who own T12 lamps installed on electronic ballasts. These consumers, upon lamp failure, are forced to retrofit their existing ballasts, resulting in negative LCC savings of −$20.50 to −$5.31. Overall, based on the NIA model, DOE estimates that at TSL5 in 2012, approximately 33 percent of 8-foot RDC HO shipments would result in negative LCC savings, and 86 percent of shipments would be associated with the high installed price increases due to forced retrofits.

Table VII.9 and Table VII.10 present the LCC analyses on two-lamp 4-foot MiniBP T5 standard-output and high-output systems, respectively. The standard-output system is modeled as operating in the commercial sector, and the high-output system is modeled as operating in the industrial sector. The baseline lamps for these systems are the model 28W and 54W halophosphor lamps, respectively, as discussed in section V.B.3. At TSL5 (EL2 for standard output T5 lamps), all consumers of standard output lamps have available lamp designs which result in positive LCC savings of $1.10 (for lamp replacement) and $45.67 to $47.49 (for new construction or renovation). At TSL5 (EL1 for high output T5 lamps), consumers of high-output lamps who need only a lamp replacement would experience negative LCC savings of −$3.03. However, purchasing a T5 high-output system for new construction or renovation would result in positive LCC savings of $65.69 to $67.06.

At TSL 5, the demand for rare-earth phosphors is significantly increased compared to current levels. DOE understands that it is difficult to predict the effects of new energy conservation standards on rare earth phosphor demand. However, DOE is sensitive to the trade vulnerability inherent in the concentrated geographical location of these resources and the possible incentives for manufacturers to relocate production (and associated employment) outside the U.S. It is particularly challenging to draw a line below which the risks are manageable and above which the risks become unacceptable. DOE notes that in its comments, NEMA views TSL 3 as a level that allows manufacturers to retain the flexibility needed to manage the impact of increased worldwide rare earth phosphor usage. In their comments, NEMA provided their estimate of the relative increase in rare earth phosphor demand for each TSL. This analysis showed the impacts at TSL 3 and TSL 4 to be very similar, increases of 230 percent and 250 percent, respectively. In contrast, the impacts at estimated by NEMA at TSL 5 are shown to be significantly larger at 350 percent. DOE concludes from this that NEMA perceives considerably larger risks at TSL 5 than at TSL 4 or TSL 3.

At TSL 5, product availability is also a concern, particularly the elimination of reduced-wattage 25W lamps, due to increased standard levels. DOE agrees with comments received that 25W lamps are valuable energy-saving products, because they provide a simple pathway to energy savings that does not require ballast replacements or design assistance. (California Stakeholders, No. 63 at p. 9) As demonstrated in DOE's national impact analysis, the level of expertise required to implement certain design choices is a key factor in determining energy savings, as well as consumer and national NPV benefits.

In summary, after carefully considering the analysis discussed above and weighing the benefits and burdens of TSL5, the Secretary has determined the following: At TSL 5, the benefits of energy savings, emissions reductions (both in terms of physical reductions and the monetized value of those reductions, including the likely U.S. and global benefits of reduced emissions of CO_2), and the positive net economic savings to the Nation (over 31 years) is outweighed by the economic burden on some consumers (as indicated by the large increase in total installed cost), the potentially large reduction in INPV for manufacturers resulting from large conversion costs and reduced gross margins, the elimination of certain low-wattage lamps, and the risks associated with significantly increased demand for rare-earth phosphors. Consequently, the Secretary has concluded that TSL 5 is not economically justified.

b. Trial Standard Level 4

Next, DOE considered TSL 4, which would save an estimated total of 3.8 to 9.9 quads of energy through 2042—a significant amount of energy. For the Nation as a whole, TSL4 would have a net savings of $10.0 billion to $26.3 billion at a 7-percent discount rate and $21.8 billion to $53.5 billion at a 3-percent discount rate. The emissions reductions at TSL4 are estimated at 175 to 488 MMt of CO_2, 11 to 37 kt of NO_X, and up to 7.3 metric tons of Hg. Total generating capacity in 2042 is estimated to decrease compared to the reference case by 1.8 to 6.2 GW under TSL4. The monetized values of emissions reductions are estimated at $4.2 to $107.2 million for NO_X and up to $67.7 million for Hg at a 7-percent discount rate and $4.6 to $132.4 million for NO_X and up to $125.6 million for Hg at a 3-percent discount rate. The estimated benefits of reducing CO_2 emissions using the mid-range of the CO_2 value (using $33 per ton) is $3.1 to $8.4 billion and $6.0 to $16.9 billion at 7-percent and 3-percent discount rates respectively. The full range of likely benefits of CO_2 emission reductions is $0.2 billion to $20.4 billion at a 7-percent discount rate and $0.4 billion to

$40.9 billion at a 3-percent discount rate.

Similar to TSL5, the level of impacts on manufacturers would depend primarily on their ability to differentiate their product offerings to offset the reduced range of efficacy levels. TSL 4 would also require a complete conversion of all T12 4-foot MBP, 8-foot SP slimline, and 8-foot RDC HO lines to T8 lines, a capital investment of $193 million. The projected change in industry value ranges from a decrease of $162 million to a decrease of $4 million. Because manufacturers have a broader range of efficiency available at TSL 4 than at TSL 5 (thereby permitting greater product differentiation and increased gross margins), DOE believes the impacts at TSL 4 will be significantly less than at TSL 5 and that the high range of impacts is less likely to occur.

As seen in Table VII.5 through Table VII.12, at TSL4, DOE projects that 4-foot MBP, 8-foot SP slimline, and 8-foot RDC HO consumers would experience similar life-cycle cost savings and increases as they would experience at TSL5. Like TSL5, most consumers who own T12 ballasts prior to 2012 at TSL4 would likely experience negative economic impacts, either through life-cycle cost increases or by large increases in total installed cost. For 4-foot MiniBP T5 standard-output lamps, TSL4 would require these lamps to meet EL1, resulting in positive LCC savings of $1.10 for lamp replacement and $43.30 for new construction or renovation (seen in Table VII.9). For 4-foot MiniBP T5 high-output lamps, TSL4 would require the same efficacy level (EL1) as TSL5, resulting in identical life-cycle cost impacts.

At TSL 4, the demand for rare-earth phosphors, although significantly increased compared to current levels, is similar to the demand at TSL 3, a level that manufacturers have suggested would allow them to retain the flexibility needed to manage the impacts of increased worldwide rare earth phosphor usage. In consideration of the small increased demand of rare-earth phosphors over a level that industry has indicated to be acceptable, DOE believes that risks of trade vulnerability and potential relocation of lamp production overseas in response to a standard adopted at TSL4 are low.

In contrast to TSL5, at TSL 4, consumers have several energy-saving lamp options including the reduced-wattage 25W and 30W 4-foot MBP lamps. The presence of these lamps on the market provides consumers with more simple pathways to achieving energy savings. As demonstrated in DOE's national impact analysis, the level of expertise required to implement certain design choices is a key factor in determining energy savings, as well as consumer and national NPV benefits.

In summary, after carefully considering the analysis discussed above and weighing the benefits and burdens of TSL4, the Secretary has determined the following: At TSL4, the benefits of energy savings, emissions reductions (both in terms of physical reductions and the monetized value of those reductions, including the likely U.S. and global benefits of reduced emissions of CO_2), and the positive net economic savings to the Nation (over 31 years) outweighs the economic burden on some consumers (as indicated by the large increase in total installed cost), the potential reduction in INPV for manufacturers, and the risks associated with increased demand for rare earth phosphors. Consequently, the Secretary has concluded that TSL4 offers the maximum improvement in efficacy that is technologically feasible and economically justified, and will result in significant conservation of energy. Therefore, DOE is adopting the energy conservation standards for GSFL at trial standard level 4.

2. Incandescent Reflector Lamps Conclusion

In addition to the results presented above, DOE also calculates the annualized benefits and costs of each TSL. The table below presents these values for GSFL.

TABLE VII.34—ANNUALIZED BENEFITS AND COSTS FOR IRL

TSL	Category	Unit	Primary estimate		Low estimate		High estimate	
			7%	3%	7%	3%	7%	3%
1	Benefits							
	Annualized Monetized ($millions/year)	2008$	120	130	68	72	173	188
	Annualized Quantified	CO_2 (Mt)	0.43	0.43	0.24	0.24	0.62	0.63
		NO_X (kT)	0.09	0.07	0.07	0.05	0.11	0.08
		Hg (T)	0.00	0.00	0.00	0.00	0.01	0.01
	Costs							
	Annualized Monetized ($millions/year)	2008$	103	100	77	74	129	127
	Net Benefits/Costs							
	Annualized Monetized ($millions/year)	2008$	18	29	−9	−2	44	61
2	Benefits							
	Annualized Monetized ($millions/year)	2008$	293	313	176	182	410	443
	Annualized Quantified	CO_2 (Mt)	1.1	1.1	0.66	0.63	1.53	1.56
		NO_X (kT)	0.26	0.19	0.21	0.14	0.32	0.23
		Hg (T)	0.01	0.01	0.00	0.00	0.02	0.02
	Costs							
	Annualized Monetized ($millions/year)	2008$	−33	−39	−28	−32	−39	−46

TABLE VII.34—ANNUALIZED BENEFITS AND COSTS FOR IRL—Continued

TSL	Category	Unit	Primary estimate		Low estimate		High estimate	
			7%	3%	7%	3%	7%	3%
	Net Benefits/Costs							
	Annualized Monetized ($millions/year)	2008$	326	352	203	215	449	489
3	Benefits							
	Annualized Monetized ($millions/year)	2008$	531	603	349	389	712	817
	Annualized Quantified	CO_2 (Mt) NO_X (kT) Hg (T)	1.97 0.42 0.02	1.98 0.3 0.02	1.29 0.37 0.00	1.25 0.26 0.00	2.66 0.47 0.04	2.7 0.33 0.04
	Costs							
	Annualized Monetized ($millions/year)	2008$	72	71	52	50	92	92
	Net Benefits/Costs							
	Annualized Monetized ($millions/year)	2008$	459	532	297	339	620	725
4	Benefits							
	Annualized Monetized ($millions/year)	2008$	650	696	406	424	894	968
	Annualized Quantified	CO_2 (Mt) NO_X (kT) Hg (T)	2.39 0.51 0.02	2.4 0.35 0.02	1.51 0.45 0.00	1.45 0.31 0.00	3.28 0.58 0.05	3.35 0.4 0.05
	Costs							
	Annualized Monetized ($millions/year)	2008$	118	106	227	218	9	−6
....	Net Benefits/Costs							
	Annualized Monetized ($millions/year)	2008$	532	590	179	207	885	973
	Incremental Net Benefits/Costs Relative to TSL3							
	Annualized Monetized ($millions/year)	2008$	73	58	−118	−132	265	248
5	Benefits							
	Annualized Monetized ($millions/year)	2008$	750	802	480	502	1020	1103
	Annualized Quantified	CO_2 (Mt) NO_X (kT) Hg (T)	2.76 0.59 0.02	2.76 0.4 0.03	1.83 0.54 0.00	1.76 0.37 0.00	3.69 0.65 0.05	3.75 0.44 0.05
	Incremental Costs							
	Annualized Monetized ($millions/year)	2008$	126	116	232	222	26	9
	Net Benefits/Costs							
	Annualized Monetized ($millions/year)	2008$	621	687	247	280	994	1093
....	Incremental Net Benefits/Costs Relative to TSL4							
	Annualized Monetized ($millions/year)	2008$	89	97	68	73	109	120

Note: Annualized values are for the period from 2012 to 2042.

a. Trial Standard Level 5

For IRL, DOE first considered the most efficient level, TSL5, which would save an estimated total of 1.12 to 2.72 quads of energy through 2042—a significant amount of energy. For the Nation as a whole, TSL5 would have a net savings of $4.9 billion to $10.2 billion at a 7-percent discount rate and $9.4 billion to $20.0 billion at a 3-percent discount rate. The emissions reductions at TSL5 are estimated at 53 to 118 MMt of CO_2, 8 to 9 kt of NO_X, and up to 2 metric tons of Hg. Total generating capacity in 2042 is estimated to decrease compared to the reference case by 300 to 1400 MW under TSL5. The monetized values of emissions reductions are estimated at $2.2 to $27.0 million for NO_X and up to $16.0 million for Hg at a 7-percent discount rate and $2.7 to $33.1 million for NO_X and up to $30.2 million for Hg at a 3-percent

discount rate. The estimated benefits of reducing CO_2 emissions using the mid-range of the CO_2 value (using $33 per ton) is $1.0 to 2.0 billion and $1.8 to $4.1 billion at 7-percent and 3-percent discount rates respectively. The full range of likely benefits of CO_2 emission reductions is $0.1 billion to $4.9 billion at a 7-percent discount rate and $0.1 billion to $9.9 billion at a 3-percent discount rate.

As seen in Table VII.13, regardless of the baseline lamp purchased absent standards, commercial-sector consumers have available lamp designs at TSL5 which would result in positive LCC savings ranging from $1.36 to $9.14, while residential-sector consumers have available lamp designs which would result in positive LCC savings ranging from $1.51 to $9.10.

The projected change in industry value at TSL5 would range from a decrease of $104 million to $111 million, or a net loss of 37 to 47 percent in INPV. The range in impacts is attributed in part to uncertainty concerning the future share of emerging technologies in the IRL market, as well as the expected migration to R–CFL and exempted IRL technologies under standards.

DOE based TSL5 on commercially-available IRL which employ a silver reflector, an improved IR coating, and a filament design that results in a lifetime of 4,200 hours. To DOE's knowledge, only one manufacturer currently sells products that meet TSL5. In addition, it is DOE's understanding that the silver reflector is a proprietary technology that all manufacturers may not be able to employ. However, DOE considered TSL5 in its analysis because it believes that there is an alternate, non-proprietary pathway to achieve this level. This pathway consists in redesigning the filament to achieve higher-temperature operation and, thus, reducing lifetime to 2,500 hours.

DOE conducted a complete set of analyses to capture the economic impacts of a TSL5 lamp designed to operate with a lifetime of 2500 hours instead of 4200 hours. Whereas the energy savings and emission reductions do not change for the Nation as a whole, a reduced-life lamp would result in much reduced net savings (NPV) of $2.53 billion to $4.86 billion at a 7-percent discount rate and $10.1 billion to $5.1 billion at a 3-percent discount rate. As seen in Table VII.13, as compared to one of the baseline lamps purchased absent standards, consumers would experience negative LCC savings, ranging from –$3.17 (in the commercial sector) to –$1.64 (in the residential sector), at TSL5. Because reduced lamp life results in greater IRL shipments, the projected change in industry value would be greatly reduced to a decrease of $43 million to $49 million, or a net loss of 14 to 22 percent in INPV.

The reduced LCC savings at TSL 5 for the reduced-life lamps brings added concern to the issue of hot shock, which is when vibrations that occur while the lamp is energized cause premature lamp failure. It is DOE's understanding that hot shock can reduce lamp life by 25 percent to 30 percent for some consumers. For a lamp rated at 2500 hours, this means that service life could be reduced to 1750 hours. As demonstrated in Tables Table VI.1 and Table VI.2, DOE expects that a lamp with price and efficacy associated with TSL5 and a lifetime of 1750 hours would result in negative LCC savings for the vast majority of consumers.

Furthermore, DOE is also concerned about the possible lessening of competition at TSL5. Only one manufacturer currently sells product that meets TSL5. This commercially-available product employs a proprietary technology, and while DOE has some evidence that alternative non-proprietary technologies may be used to meet this level, these alternative technologies have not been manufactured in large quantities and questions remain as to their cost and performance, as discussed above. Because DOE has not been able to verify manufacturer costs associated with these alternative technologies, it is possible that these approaches may not be cost-competitive with the currently-available product employing the proprietary technology. While DOE recognizes that a 2500-hour lamp at TSL 5 is technologically feasible and would not require the use of proprietary technologies, the LCC results show that these shortened-life lamps are likely to be less attractive to consumers and, therefore, at a competitive disadvantage.

In summary, after carefully considering the analysis discussed above and weighing the benefits and burdens of TSL5, the Secretary has determined the following: At TSL5, the benefits of energy savings, emissions reductions (both in terms of physical reductions and the monetized value of those reductions, including the likely U.S. and global benefits of reducing CO_2 emissions), the positive net economic savings to the Nation (over 31 years) is outweighed by the large capital conversion costs that could result in a reduction in INPV for manufacturers, possible negative LCC savings for some consumers of 2500-hour lamps, and the possible lessening of competition. Consequently, the Secretary has concluded that TSL5 is not economically justified.

b. Trial Standard Level 4

Next, DOE considered TSL4, which would save an estimated total of 0.94 to 2.39 quads of energy through 2042—a significant amount of energy. For the Nation as a whole, TSL4 would have a net savings of $4.20 billion to $9.06 billion at a 7-percent discount rate and $17.8 billion to $8.0 billion at a 3-percent discount rate. The emissions reductions at TSL4 are estimated at 44 to 106 MMt of CO_2, 6.4 to 8.4 kt of NO_X, and up to 2 metric tons of Hg. Total generating capacity in 2042 is estimated to decrease compared to the reference case by 200 to 1,100 MW under TSL4. The monetized values of emissions reductions are estimated at $1.8 to $24.4 million for NO_X and up to $15.0 million for Hg at a 7-percent discount rate and $2.2 to $30.0 million for NO_X and up to $28.1 million for Hg at a 3-percent discount rate. The estimated benefits of reducing CO_2 emissions using the mid-range of the CO_2 value (using $33 per ton) is $0.8 to $1.8 billion and $1.5 to $3.7 billion at 7-percent and 3-percent discount rates respectively. The full range of likely benefits of CO_2 emission reductions is $50 million to $4.4 billion at a 7-percent discount rate and $0.1 billion to $8.9 billion at a 3-percent discount rate.

The projected change in industry value at TSL4 would range from a decrease of $98 million to $102 million, or a net loss of 34 to 44 percent in INPV. The range in impacts is attributed in part to uncertainty concerning the future share of emerging technologies in the IRL market, as well as the expected migration to R–CFL and exempted IRL technologies under standards.

As seen in Table VII.13, regardless of the baseline lamp currently employed, commercial-sector consumers have available lamp designs at TSL4 which would result in positive LCC savings ranging from $1.81 to $7.95, while residential-sector consumers have available lamp designs which would result in positive LCC savings ranging from $1.75 to $7.45.

DOE does not believe TSL4 requires the use of a single proprietary technology. To DOE's knowledge, two manufacturers currently sell a full-range of lamp wattages that meet TSL4. Unlike TSL5, where it is possible that some manufacturers would not be able to achieve the level without lowering lamp lifetime, DOE believes that the existence of multiple technology pathways to TSL4 would not necessarily result in the reduction in lamp lifetime at TSL4. However, DOE also recognizes that

manufacturers may choose to sell products with reduced lifetimes. Therefore, DOE conducted a complete set of analyses to capture the economic impacts of a TSL4 lamp designed to operate with a lifetime of 2500 hours and 3000 hours instead of 4000 hours. Whereas the energy savings and emission reductions do not change for the Nation as a whole, a reduced-life lamp would result in much reduced net savings (NPV) of $1.83 billion to $5.22 billion at a 7-percent discount rate and $10.8 billion to $3.8 billion at a 3-percent discount rate. As seen in Table VII.13, as compared to one of the baseline lamps purchased absent standards, commercial consumers would experience small negative LCC savings of −$0.25 at TSL4. Because reduced lamp life results in greater IRL shipments, the projected change in industry value would be greatly reduced to a decrease of $21 million to $61 million, or a net loss of 7 to 28 percent in INPV.

Hot shock is less of a concern at TSL4 than at TSL5. DOE understands that manufacturers may choose to reduce their negative impacts by providing lamps with lifetimes less than 4000 hours at TSL4. However, because 4000-hour TSL4 lamps can be produced without the use of proprietary technologies, manufacturers may be able to implement technological changes in their lamps to prevent hot shock, while retaining lifetimes above 3000 hours.

In addition, competitive impacts are less severe at TSL4 than at TSL5. To DOE's knowledge, two of the three major manufacturers of IRL currently sell a full product line (across common wattages) that meet this potential standard level. It is DOE's understanding that the third manufacturer employs a technology platform that, due to the positioning of the filament in the HIR capsule, is inherently less efficient. Therefore, it is likely that in order to meet TSL4, this manufacturer would have to make higher investments than the other manufacturers, placing it at a competitive disadvantage. This manufacturer has commented that it could manufacture products at TSL4 if the standards implementation lead time were extended by an additional one year. While DOE recognizes the challenges inherent in gaining access to technology and building capacity needed to begin production, as detailed in section VI.D.1 of this notice, DOE does not have the statutory authority to extend the implementation period.

In summary, after considering the analysis discussed above and comments on the April 2009 NOPR, and weighing the benefits and burdens of TSL4, the Secretary has determined the following: At TSL4, the benefits of energy savings, emissions reductions (both in terms of physical reductions and the monetized value of those reductions, including the likely U.S. and global benefits of reduced CO_2 emissions), the positive net economic savings to the Nation (over 31 years), and positive life-cycle cost savings outweighs the reduction in INPV for manufacturers. Consequently, the Secretary has concluded that TSL4 offers the maximum improvement in efficacy that is technologically feasible and economically justified, and will result in significant conservation of energy. Therefore, DOE is adopting the energy conservation standards for IRL at trial standard level 4.

VIII. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Section 1(b)(1) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem it intends to address that warrants agency action such as today's final rule (including, where applicable, the failures of private markets or public institutions), and to assess the significance of that problem in evaluating whether any new regulation is warranted. DOE included a description of market failures in its April 2009 NOPR. 74 FR 16920, 17018–19 (April 13, 2009). DOE believes, in this final rule, that these market failures continue to persist.

In addition, because today's regulatory action is a significant regulatory action under section 3(f)(1) of Executive Order 12866, section 6(a)(3) of that Executive Order requires DOE to prepare and submit for review to the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) an assessment of the costs and benefits of today's rule. Accordingly, DOE presented to OIRA for review the draft final rule and other documents prepared for this rulemaking, including a regulatory impact analysis (RIA). These documents are included in the rulemaking record and are available for public review in the Resource Room of DOE's Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–9127, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Carlins Consulting stated that regulations were not necessary for consumers to adopt energy efficient lighting because the marketplace has provided the consumer with adequate options to choose a proper light source for any application given many variables. Specifically, the commenter cited the shift in office lighting from incandescent to fluorescent, then from T12 fluorescent lamps to T8 fluorescent lamps, the extinction of mercury vapor lamps after the introduction of metal halide lamps, and most recently—the popularity of lighting controls as evidence of the marketplace and economic incentives leading to the creation of energy efficient products. (Carlins Consulting, No. 57 at p. 1)

In response, the April 2009 NOPR contained a summary of the RIA, which evaluated the extent to which major alternatives to standards for GSFL and IRL could achieve significant energy savings at reasonable cost, as compared to the effectiveness of the proposed rule. 74 FR 16920, 17019–22 (April 13, 2009). The complete RIA *(Regulatory Impact Analysis for Proposed Energy Conservation Standards for General Service Fluorescent Lamps and Incandescent Reflector Lamps)* is contained in the TSD prepared for today's rule. 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 today's standards.

DOE sought additional information to further develop its analysis (*i.e.*, information to verify estimates of the percentages of consumers purchasing efficient lighting and the extent to which consumers will continue to purchase more-efficient lighting in future years), and to conduct additional analyses in support of its conclusions (*i.e.*, data on the correlation between the efficacy of existing lamps, usage patterns, and associated electricity price), but received no additional information or data in response to the April 2009 NOPR.

The major alternatives to the standards that DOE analyzed are: (1) No new regulatory action; (2) consumer rebates; (3) consumer tax credits; (4) manufacturer tax credits; (5) voluntary energy-efficiency targets; (6) bulk government purchases; and (7) early replacement. Each of these alternatives was analyzed in the RIA, with the exception of early replacement, because DOE found that the lifetimes of the lamps analyzed are too short for early replacement to result in significant savings. As explained in the April 2009 NOPR, DOE determined that none of

these alternatives would save as much energy or have an NPV as high as the proposed standards, TSL3 for GSFL and TSL4 for IRL. That same conclusion applies to the standards in today's rule. DOE has determined that none of the alternatives save as much energy or have an NPV as high as the adopted standards, TSL4 for GSFL and TSL4 for IRL. (DOE further notes that for GSFL, the final rule standard set at TSL4 would save more energy and have a higher NPV than the proposed standard at TSL3.) Also, several of the alternatives would require new enabling legislation, since authority to carry out those alternatives does not presently exist. Additional detail on the regulatory alternatives is found in the RIA report in the TSD.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, and a final regulatory flexibility analysis for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. Also, 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 the General Counsel's Web site: *http://www.gc.doe.gov.*

The Small Business Administration (SBA) classifies manufacturers of GSFL and IRL as small businesses if they have 1,000 or fewer employees.[84] DOE used this small business size standard, published at 65 FR 30386 (May 15, 2000) and codified at 13 CFR part 121, to determine whether any small entities would be required to comply with today's rule. The size standard is listed by North American Industry Classification System (NAICS) code and industry description. GSFL and IRL manufacturing are classified under NAICS 335110, ''Electric Lamp Bulb and Part Manufacturing.''

As explained in the April 2009 NOPR, DOE reviewed the proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003 (68 FR 7990). On the basis of that review, DOE certified that the proposed rule, if promulgated, ''would not have a significant economic impact on a substantial number of small entities.'' *74 FR 16920, 17022–23 (April 13, 2009).* Therefore, DOE did not prepare an initial regulatory flexibility analysis for the proposed rule. DOE set forth its certification to the Chief Counsel for Advocacy of the SBA and the statement of factual basis for that certification.

DOE received comments from Tailored Lighting Inc. in response to the Regulatory Flexibility Act discussion in the April 2009 NOPR. Tailored Lighting Inc. stated that DOE incorrectly characterizes the small business manufactures in the market by not including Tailored Lighting Inc. and possibly other businesses like it. (Tailored Lighting Inc., No. 73 at p. 2)

For the April 2009 NOPR, DOE conducted an extensive characterization of the GSFL and IRL industries and presented its findings for review and comment. In its characterization, DOE found that the majority of covered GSFL and IRL are manufactured by three large companies. A very small percentage of the market is manufactured by either large or small companies that primarily specialize in lamps not covered by this rulemaking. 74 FR 16920, 17022–23 (April 13, 2009).

During its market survey for the April 2009 NOPR, DOE created a list of every company that manufactures covered and non-covered GSFL and IRL for sale in the United States. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers. DOE then reviewed publicly-available data and contacted companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer in the GSFL or IRL industries. In total, DOE contacted 57 companies that could potentially be small businesses. During initial review of the 57 companies in its list, DOE either contacted or researched each company to determine if it sold covered GSFL and IRL. Research included reviewing each company's product catalogs and reviewing company's independent research reports.[85] Based on its research, DOE screened out companies that did not offer lamps covered by this rulemaking or if research reports indicated they were large manufacturers. Initially, DOE estimated that only 12 out of 57 companies listed were potentially small business manufacturers of covered products. 74 FR 16920, 17023 (April 13, 2009). Out of those 12 companies, DOE interviewed the four companies that consented to be interviewed. From these interviews, DOE determined that one manufacturer was not a small business. Two of the companies sold covered products, but were not manufacturers. The remaining company was the small business manufacturer DOE identified in the NOPR.

For today's final rule, DOE contacted the remaining eight companies again and conducted additional research. Out of the eight other companies, DOE determined that seven did not manufacture covered products or were not the manufacturer of the covered products that they offered. DOE was unable to determine if the remaining company was a small business manufacturer.

DOE also reviewed the product offerings of Tailored Lighting to determine whether that company is a small business manufacturer impacted by this rule. DOE determined that Tailored Lighting Inc is not a ''small business'' manufacturer within the context of the present rulemaking because it does not currently manufacture covered products.

For the final rule, DOE continued to indentify the small GSFL manufacturer discussed in the April 2009 NOPR as the only small business manufacturer of products covered by this rulemaking. In the April 2009 NOPR, DOE found that the small manufacturer of covered GSFL shared some of the same concerns about energy conservation standards as large manufacturers. DOE summarized the key issues in the April 2009 NOPR. 74 FR 16920, 16974–75 (April 13, 2009). However, the small manufacturer was less concerned about the potential of standards to severely harm its business. Because the small manufacturer is more focused on specialty products not covered by this rulemaking, covered GSFL represents a smaller portion of its revenue and product portfolio. In addition, this manufacturer stated that it is possible to pass along cost increases to consumers, thereby limiting margin impacts due to energy conservation standards.

DOE could not use the GSFL GRIM to model the impacts of energy conservation standards on the small business manufacturer of covered GSFL.

[84] *See http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.*

[85] Dun and Bradstreet provides independent research regarding company cash flows, revenues, employees, and credit-worthiness.

The GSFL GRIM models the impacts on GSFL manufacturers if concerns about margin pressure and significant capital investments necessitated by standards are realized. The small manufacturer did not share these concerns, and, therefore, the GRIM model would not be representative of the identified small business manufacturer. Like large manufacturers, the small business manufacturer stated that more-efficient products earn a premium; however, unlike larger manufacturers, the small manufacturer stated that it could pass costs along to its customers (a statement expected to apply to both the proposed TSL3 and the final rule's TSL4). Since the GSFL GRIM models the financial impact of the standards commoditizing premium products, it is not representative of the small business manufacturer because the small business manufacturer did not share these concerns. Because of its focus on specialized products, the small manufacturer was more concerned about being able to offer the products to their customers than the impact on its bottom line. For further information about the scenarios modeled in the GRIM, see section V.F of today's notice and chapter 13 of the TSD.

DOE reviewed the standard levels considered in today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. On the basis of the foregoing, DOE reaffirms the certification. Therefore, DOE has not prepared a final regulatory flexibility analysis for this rule.

C. Review Under the Paperwork Reduction Act

DOE stated in the April 2009 NOPR that this rulemaking would impose no new information and recordkeeping requirements, and that OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 74 FR 16920, 17023 (April 13, 2009). DOE received no comments on this in response to the April 2009 NOPR, and, as with the proposed rule, today's rule imposes no information and recordkeeping requirements. Therefore, DOE has taken no further action in this rulemaking with respect to the Paperwork Reduction Act.

D. Review Under the National Environmental Policy Act

DOE prepared an environmental assessment of the impacts of today's standards, which it published as chapter 16 within the TSD for the final rule. DOE found the environmental effects associated with today's standards for GSFL and IRL to be not significant, and, therefore, it is issuing a Finding of No Significant Impact (FONSI) pursuant to the National Environmental Policy Act of 1969 (NEPA) (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 NEPA (10 CFR part 1021). The FONSI is available in the docket 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. In accordance with DOE's statement of policy describing the intergovernmental consultation process it will follow in the development of regulations that have Federalism implications, 65 FR 13735 (March 14, 2000), DOE examined the proposed rule and determined that the rule would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. 74 FR 16920, 17023 (April 13, 2009). DOE received no comments on this issue in response to the April 2009 NOPR, and its conclusions on this issue are the same for the final rule as they were for the proposed rule. This statement remains true even though DOE has adopted energy conservation standards for GSFL in this final rule (TSL4) that are at a higher level than those proposed (TSL3). Therefore, DOE is taking no further action in today's final rule with respect to 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 (Feb. 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, the final regulations meet the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

As indicated in the April 2009 NOPR, DOE reviewed the proposed rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), which imposes requirements on Federal agencies when their regulatory actions will have certain types of impacts on State, local, and Tribal governments and the private sector. 74 FR 16920, 17024 (April 13, 2009). DOE concluded that, although this rule would not contain an intergovernmental mandate, it may result in expenditure of $100 million or more in one year by the private sector. *Id.* Therefore, in the April 2009 NOPR, DOE addressed the UMRA requirements that it prepare a statement as to the basis, costs, benefits, and economic impacts of the proposed rule, and that it identify and consider regulatory alternatives to the proposed rule. *Id.* DOE received no comments concerning the UMRA in response to the April 2009 NOPR, and its conclusions on this issue are the same for the final rule as they were for the proposed rule. This statement remains true even though DOE has adopted energy conservation standards for GSFL in this final rule (TSL4) that are at a higher level than those proposed (TSL3). Therefore, DOE is taking no further action in today's final rule with respect to the UMRA.

H. Review Under the Treasury and General Government Appropriations Act of 1999

DOE determined that, for this rulemaking, it need not prepare a Family Policymaking Assessment under Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277). *Id.* DOE received no comments concerning Section 654 in response to the April 2009 NOPR, and, therefore, takes no further action in today's final rule with respect to this provision.

I. Review Under Executive Order 12630

DOE determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that the proposed rule would not result in any takings which might require compensation under the Fifth Amendment to the U.S. Constitution. 74 FR 16920, 17024 (April 13, 2009). DOE received no comments concerning Executive Order 12630 in response to the April 2009 NOPR, and, today's final rule also would not result in any takings which might require compensation under the Fifth Amendment. Therefore, DOE takes no further action in today's final rule with respect to this Executive Order.

J. Review Under the Treasury and General Government Appropriations Act of 2001

Section 515 of 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. The OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's final rule 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 OIRA a Statement of Energy Effects for any significant energy action. DOE determined that the proposed rule was not a ''significant energy action'' within the meaning of Executive Order 13211 because the rule, which sets energy efficiency standards for covered GSFL and IRL, would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. 74 FR 16920, 17024 (April 13, 2009). Accordingly, DOE did not prepare a Statement of Energy Effects on the proposed rule. DOE received no comments on this issue in response to the April 2009 NOPR. As with the proposed rule, DOE has concluded that today's final rule is not a significant energy action within the meaning of Executive Order 13211. This statement remains true even though DOE has adopted energy conservation standards for GSFL in this final rule (TSL4) that are at a higher level than those proposed (TSL3). Accordingly, DOE has not prepared a Statement of Energy Effects on the rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, the OMB, in consultation with the Office of Science and Technology, issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government. As indicated in the April 2009 NOPR, this includes influential scientific information related to agency regulatory actions, such as the analyses in this rulemaking. 74 FR 16920, 17024–25 (April 13, 2009).

As more fully set forth in the April NOPR, DOE conducted formal 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: *http://www.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule. DOE also will submit the supporting analyses to the Comptroller General in the U.S. Government Accountability Office (GAO) and make them available to each House of Congress.

IX. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

List of Subjects in 10 CFR Part 430

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

Issued in Washington, DC, on June 26, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, chapter II, subchapter D, of Title 10, Code of Federal Regulations, Parts 430 is amended as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 2. Section 430.2 is amended by revising the definition of ''colored fluorescent lamp,'' ''fluorescent lamp,'' and ''rated wattage'' to read as follows:

§ 430.2 Definitions.

* * * * *

Colored fluorescent lamp means a fluorescent lamp designated and marketed as a colored lamp and not designed or marketed for general illumination applications with either of the following characteristics:

(1) A CRI less than 40, as determined according to the method set forth in CIE Publication 13.3 (incorporated by reference; *see* § 430.3); or

(2) A correlated color temperature less than 2,500K or greater than 7,000K as determined according to the method set forth in IESNA LM–9 (incorporated by reference; *see* § 430.3).

* * * * *

Fluorescent lamp means a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultraviolet energy generated by the mercury discharge into light, including only the following:

(1) Any straight-shaped lamp (commonly referred to as 4-foot medium bipin lamps) with medium bipin bases of nominal overall length of 48 inches and rated wattage of 25 or more;

(2) Any U-shaped lamp (commonly referred to as 2-foot U-shaped lamps) with medium bipin bases of nominal overall length between 22 and 25 inches and rated wattage of 25 or more;

(3) Any rapid start lamp (commonly referred to as 8-foot high output lamps) with recessed double contact bases of nominal overall length of 96 inches;

(4) Any instant start lamp (commonly referred to as 8-foot slimline lamps) with single pin bases of nominal overall length of 96 inches and rated wattage of 52 or more;

(5) Any straight-shaped lamp (commonly referred to as 4-foot

miniature bipin standard output lamps) with miniature bipin bases of nominal overall length between 45 and 48 inches and rated wattage of 26 or more; and

(6) Any straight-shaped lamp (commonly referred to 4-foot miniature bipin high output lamps) with miniature bipin bases of nominal overall length between 45 and 48 inches and rated wattage of 49 or more.

* * * * *

Rated wattage means:

(1) With respect to fluorescent lamps and general service fluorescent lamps:

(i) If the lamp is listed in ANSI C78.81 (incorporated by reference; *see* § 430.3) or ANSI C78.901 (incorporated by reference; *see* § 430.3), the rated wattage of a lamp determined by the lamp designation of Clause 11.1 of ANSI C78.81 or ANSI C78.901;

(ii) If the lamp is a residential straight-shaped lamp, and not listed in ANSI C78.81 (incorporated by reference; *see* § 430.3), the wattage of a lamp when operated on a reference ballast for which the lamp is designed; or

(iii) If the lamp is neither listed in one of the ANSI standards referenced in (1)(i) of this definition, nor a residential straight-shaped lamp, the electrical power of a lamp when measured according to the test procedures outlined in Appendix R to subpart B of this part.

(2) With respect to general service incandescent lamps and incandescent reflector lamps, the electrical power measured according to the test procedures outlined in Appendix R to subpart B of this part.

* * * * *

■ 3. Section 430.3 is amended by:

■ A. Removing paragraph (c)(1);

■ B. Redesignating paragraphs (c)(2) through (13) as (c)(1) through (12);

■ C. Revising newly redesignated paragraph (c)(1); and

■ D. In newly redesignated paragraph (c)(5), add ''430.32,'' after ''430.2,''.

The revision reads as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(c) * * *

(1) ANSI C78.3–1991 (''ANSI C78.3''), American National Standard for Fluorescent Lamps-Instant-start and Cold-Cathode Types-Dimensional and Electrical Characteristics, approved July 15, 1991; IBR approved for § 430.32.

* * * * *

■ 4. Appendix R to Subpart B of Part 430 is amended by adding paragraphs 4.1.2.3, 4.1.2.4, and 4.1.2.5 to read as follows:

Appendix R to Subpart B of Part 430—Uniform Test Method for Measuring Average Lamp Efficacy (LE) and Color Rendering Index (CRI) of Electric Lamps

* * * * *

4.1.2.3 8-foot slimline lamps shall be operated using the following reference ballast settings:

(a) *T12 lamps:* 625 volts, 0.425 amps, and 1280 ohms.

(b) *T8 lamps:* 625 volts, 0.260 amps, and 1960 ohms.

4.1.2.4 8-foot high output lamps shall be operated using the following reference ballast settings:

(a) *T12 lamps:* 400 volts, 0.800 amps, and 415 ohms.

(b) *T8 lamps:* 450 volts, 0.395 amps, and 595 ohms.

4.1.2.5 4-foot miniature bipin standard output or high output lamps shall be operated using the following reference ballast settings:

(a) *Standard Output:* 329 volts, 0.170 amps, and 950 ohms.

(b) *High Output:* 235 volts, 0.460 amps, and 255 ohms.

* * * * *

■ 5. Section 430.32 is amended by revising paragraph (n) to read as follows:

§ 430.32 Energy and water conservation standards and effective dates.

* * * * *

(n) *General service fluorescent lamps and incandescent reflector lamps.* (1) Except as provided in paragraphs (n)(2) and (n)(3) of this section, each of the following general service fluorescent lamps manufactured after the effective dates specified in the table shall meet or exceed the following lamp efficacy and CRI standards:

Lamp type	Nominal lamp wattage	Minimum CRI	Minimum average lamp efficacy (lm/W)	Effective date
4-foot medium bipin	>35W	69	75.0	Nov. 1, 1995.
	≤35W	45	75.0	Nov. 1, 1995.
2-foot U-shaped	>35W	69	68.0	Nov. 1, 1995.
8-foot slimline	≤35W	45	64.0	Nov. 1, 1995.
	>65W	69	80.0	May 1, 1994.
	>65W	45	80.0	May 1, 1994.
8-foot high output	>100W	69	80.0	May 1, 1994.
	≤100W	45	80.0	May 1, 1994.

(2) The standards described in paragraph (n)(1) of this section do not apply to:

(i) Any 4-foot medium bipin lamp or 2-foot U-shaped lamp with a rated wattage less than 28 watts;

(ii) Any 8-foot high output lamp not defined in ANSI C78.81 (incorporated by reference; see § 430.3) or related supplements, or not 0.800 nominal amperes; or

(iii) Any 8-foot slimline lamp not defined in ANSI C78.3 (incorporated by reference; see § 430.3).

(3) Each of the following general service fluorescent lamps manufactured after July 14, 2012, shall meet or exceed the following lamp efficacy standards shown in the table:

Lamp type	Correlated color temperature	Minimum average lamp efficacy (lm/W)
4-foot medium bipin	≤4,500K	89
	>4,500K and ≤7,000K	88
2-foot U-shaped	≤4,500K	84

Lamp type	Correlated color temperature	Minimum average lamp efficacy (lm/W)
8-foot slimline	>4,500K and ≤7,000K	81
	≤4,500K	97
8-foot high output	>4,500K and ≤7,000K	93
	≤4,500K	92
4-foot miniature bipin standard output	>4,500K and ≤7,000K	88
	≤4,500K	86
4-foot miniature bipin high output	>4,500K and ≤7,000K	81
	≤4,500K	76
	>4,500K and ≤7,000K	72

(4) Except as provided in paragraph (n)(5) of this section, each of the following incandescent reflector lamps manufactured after November 1, 1995, shall meet or exceed the lamp efficacy standards shown in the table:

Nominal lamp wattage	Minimum average lamp efficacy (lm/W)
40–50	10.5
51–66	11.0
67–85	12.5
86–115	14.0
116–155	14.5
156–205	15.0

(5) Each of the following incandescent reflector lamps manufactured after July 14, 2012, shall meet or exceed the lamp efficacy standards shown in the table:

Rated lamp wattage	Lamp spectrum	Lamp diameter (inches)	Rated voltage	Minimum average lamp efficacy (lm/W)
40–205	Standard Spectrum	>2.5	≥125V	$6.8*P^{0.27}$
			<125V	$5.9*P^{0.27}$
		≤2.5	≥125V	$5.7*P^{0.27}$
			<125V	$5.0*P^{0.27}$
40–205	Modified Spectrum	>2.5	≤125V	$5.8*P^{0.27}$
			<125V	$5.0*P^{0.27}$
		≤2.5	≥125V	$4.9*P^{0.27}$
			<125V	$4.2*P^{0.27}$

Note 1: P is equal to the rated lamp wattage, in watts.
Note 2: Standard Spectrum means any incandescent reflector lamp that does not meet the definition of modified spectrum in 430.2.

(6) (i)(A) Subject to the exclusions in paragraph (n)(6)(ii) of this section, the standards specified in this section shall apply to ER incandescent reflector lamps, BR incandescent reflector lamps, BPAR incandescent reflector lamps, and similar bulb shapes on and after January 1, 2008.

(B) Subject to the exclusions in paragraph (n)(6)(ii) of this section, the standards specified in this section shall apply to incandescent reflector lamps with a diameter of more than 2.25 inches, but not more than 2.75 inches, on and after June 15, 2008.

(ii) The standards specified in this section shall not apply to the following types of incandescent reflector lamps:

(A) Lamps rated at 50 watts or less that are ER30, BR30, BR40, or ER40 lamps;

(B) Lamps rated at 65 watts that are BR30, BR40, or ER40 lamps; or

(C) R20 incandescent reflector lamps rated 45 watts or less.

Appendix

[The following letter from the Department of Justice will not appear in the Code of Federal Regulations.]

Department of Justice, Antitrust Division, Main Justice Building, 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001, (202) 514–2401/(202) 616–2645(f), *antitrust.atr@usdoj.gov, http://www.usdoj.gov/atr.*

June 15, 2009.

Warren Belmar, Esq.,

Deputy General Counsel for Energy Policy, Department of Energy, Washington, DC 20585.

Dear Deputy General Counsel Belmar: I am responding to your letter seeking the views of the Attorney General about the potential impact on competition of proposed amended energy conservation standards for general service fluorescent lamps (''GSFL'') and incandescent reflector lamps (''IRL''). Your request was submitted pursuant to Section 325(o)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended, (''ECPA''), 42 U.S.C. 6295(o)(B)(i)(V), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR 0.40(g).

In conducting its analysis the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice, leaving consumers with fewer competitive alternatives, placing certain manufacturers of a product at an unjustified competitive disadvantage compared to other manufacturers, or by inducing avoidable inefficiencies in production or distribution of particular products.

We have reviewed the proposed standards contained in the Notice of Proposed Rulemaking (''NOPR'') (74 FR 16920, April 13, 2009) and the supplementary information submitted to the Attorney General, and attended the February 3, 2009 public hearing on the proposed standards.

Based on this review, the Department of Justice does not believe that the proposed standard for GSFLs would likely lead to a lessening of competition. Our review has focused upon the standards DOE has

proposed adopting; we have not determined the impact on competition of more stringent standards than those proposed in the NOPR.

With respect to IRLs, the Department is concerned that the proposed Trial Standard Level 4 could adversely affect competition. The NOPR would increase the minimum efficiency levels for IRLs to the second highest level under consideration in this rulemaking. The IRL market is highly concentrated, with three domestic manufacturers. Based on our review, it appears that only two of these firms may currently manufacture IRLs that would meet the new standard. It is our understanding that these firms produce only limited quantities of such products for high-end applications. The current producers may not have the capacity to meet demand. In addition, one of these manufacturers uses proprietary technology currently unavailable to other manufacturers.

Given the capital investments new entrants or providers would be required to make, and the potential that manufacturers may have to obtain proprietary technology, there is a risk that one or more IRL manufacturers will not produce products that meet the proposed standard. We request that the Department of Energy consider the possibility of new technology in this area as it settles on standards in this field.

Sincerely,

Christine A. Varney,

Assistant Attorney General.

[FR Doc. E9–15710 Filed 7–13–09; 8:45 am]

BILLING CODE 6450–01–P

Federal Register

Tuesday,
July 14, 2009

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1245

Establishment of a U.S. Honey Producer Research, Promotion, and Consumer Information Order; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1245

[Doc. No. AMS–FV–07–0091; FV–07–706–PR–1A]

RIN 0581–AC78

Establishment of a U.S. Honey Producer Research, Promotion, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This rule proposes a new U.S. honey producer funded research and promotion program under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act). The proposed U.S. Honey Producer Research, Promotion and Consumer Information Order (Proposed U.S. Producer Order) was submitted to the Department of Agriculture (Department) by the American Honey Producers Association (AHPA). The Department proposes that an initial referendum be conducted to ascertain whether the persons to be covered by and assessed under the Proposed U.S. Producer Order favor the Order prior to it going into effect. The Proposed U.S. Producer Order would provide that producers pay an assessment to the U.S. Honey Producer Board (Proposed Board) at the rate of $0.02 cents per pound of U.S. honey produced and shall only be imposed on U.S. producers. A producer who produces less than 100,000 pounds of U.S. honey per year would be eligible for a certificate of exemption.

The Proposed U.S. Producer Order also announces the Agricultural Marketing Service's (AMS) intention to request approval of new honey information collection requirements by the Office of Management and Budget (OMB) for the Proposed U.S. Producer Order.

DATES: Comments must be received by September 14, 2009. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by September 14, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at: *http://www.regulations.gov* or to the Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, Room 0632–S, Stop 0244, 1400 Independence Avenue SW., Washington, DC 20250–0244; fax (202) 205–2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.*

Pursuant to the Paperwork Reduction Act (PRA), comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, should be sent to the above address and to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kimberly Coy, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, Room 0634–S, 1400 Independence Ave, SW., Washington, DC 20250–0244; telephone (202) 720–9915 or (888) 720–9917 (toll free), Fax: (202) 205–2800 or e-mail *kimberly.coy@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

A proposed rule with the Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order (Packers and Importers Order) was published in the **Federal Register** on June 4, 2007 [72 FR 30924], with a 60-day comment period which ended on August 3, 2007. That rule also proposed termination of the Original Honey Research, Promotion, and Consumer Information Order (Original Order) and regulations in 7 CFR Part 1240. A second proposed rule and referendum order was published in the **Federal Register** on March 3, 2008 [73 FR 11474]. A final rule including the referendum procedures was published in the **Federal Register** the same day [73 FR 11470]. The final rule establishing the Packers and Importers Order was published in the **Federal Register** on May 21, 2008 [73 FR 29390]. A final rule terminating the Original Order was published in the **Federal Register** on April 17, 2009 [74 FR 17767].

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

Section 524 of the 1996 Act provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act, a person subject to an order may file a petition with the Department stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not established in accordance with the law, and requesting a modification of the order or an exemption from the order. Any such petition must be filed within two years after the effective date of an order, provision or obligation subject to challenge. The petitioner would have the opportunity for a hearing on the petition. Thereafter, the Department would issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of the Department's final ruling.

In deciding whether a proposal for an order is consistent with and will effectuate the purpose of the 1996 Act, the Secretary may consider the existence of other federal research and promotion programs issued under other laws. For example, in proposing the Packers and Importers Order, under the authority of the 1996 Act, the Department also proposed that the Original Order issued under the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4613) be terminated, after taking into account the duplicative nature of the two programs. As previously noted, a final rule terminating the Original Order was published in the **Federal Register** on April 17, 2009 [74 FR 17767]. However, the Proposed U.S. Producer Order and the previously promulgated Packers and Importers Order are authorized under the same statute, the 1996 Act.

Nonetheless, a more detailed comparison of the provisions of both programs appears later in this document to assist in the comment process. The following is an overview of the two programs.

The Packers and Importers Order and the Proposed U.S. Producer Order represent different interests within the honey industry. The Proposed U.S.

Producer Order represents the interests of U.S. producers while the Packers and Importers Order represents the interests of honey packers and importers. In addition, assessment requirements on both programs are on different parts of the industry.

The Proposed U.S. Producer Order provides for assessments to be paid by U.S. honey producers that produce in excess of 100,000 pounds of U.S. honey per year at the rate of $0.02 cents per pound of U.S. honey produced. The number of entities to be assessed under the Proposed U.S. Producer Order would be around 317. The first handler would be responsible for collecting and remitting assessments. The reporting burden for the Proposed U.S. Producer Order is on the first handler.

The Packers and Importers Order de minimis amount is 250,000 pounds and the number of entities assessed is 75. Under the Packers and Importers Order, first handlers must pay an assessment rate of $0.01 per pound on domestically produced honey or honey products that the handler handles and, each importer must pay an assessment of $0.01 per pound on honey or honey products the importer imports into the United States. The reporting burden for the Packers and Importers Order is on both the first handler and the importer.

At the initial rate of $0.02 per pound, revenue for the Proposed U.S. Producer Order would be approximately $1.9 million. At the initial rate of $0.01 per pound for the Packers and Importers Order, revenue will be approximately $3 million. The aggregate collection of assessments for the honey industry will be approximately $4.9 million.

The goals of the Proposed U.S. Producer Order are to: (1) Develop and finance an effective and coordinated research, promotion, industry information, and consumer education program for U.S. honey; (2) support and strengthen the position of the U.S. honey industry to ultimately increase consumption of U.S. honey; and (3) develop, maintain, and expand existing markets and enhance the image of U.S. honey.

The Department is soliciting comments from honey producers, first handlers, manufacturers, importers, consumers, industry organizations and other interested persons on the implementation of the Proposed U.S. Producer Order.

Background

This rule proposes the implementation of a U.S. Producer Order. The American Honey Producers Association (AHPA), which represents more than 550 U.S. honey producers, submitted a proposal to the Department for a national research, promotion, and consumer information order for U.S. honey on May 24, 2007.

The Proposed U.S. Producer Order is authorized under the 1996 Act. The 1996 Act authorizes the Department, under a generic authority, to establish agricultural commodity research and promotion orders, which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. The Proposed U.S. Producer Order would provide for the continued development and financing of a coordinated program of research, promotion, and information. The Proposed U.S. Producer Order will authorize these activities for U.S. honey only.

According to the AHPA, the U.S. honey industry is facing serious threats due to Colony Collapse Disorder (CCD) and other factors. The survival of U.S. commercial beekeepers is dependent upon creating a strong market demand for domestic, U.S.-produced honey. The AHPA believes that the establishment and implementation of an all U.S. Honey Producer Board will permit U.S. beekeepers to specifically address the various factors that affect the U.S. honey industry. Funding of an all U.S. Honey Producer Board, will permit the development of programs related to issues such as the drastic decline in numbers of the honeybee due to (1) natural pests and diseases that kill or weaken the honeybee; (2) record droughts in the mid-west that have destroyed the plants and flowers honeybees use to gather pollen, and (3) the overall dramatic decrease in demand for U.S. honey.

U.S. honey producers have attempted to halt the long term decline in the numbers of honeybees (over 30 percent in the past twenty years), due to the above mentioned issues, costing them millions of dollars for treatment, colony development, maintenance, replacement, and in lost honey production and pollination services. The funds generated by a U.S. Honey Producer Program would be spent on conducting research activities designed to address these critical issues, as well as promotional activities to expand the demand for U.S. honey.

The honeybee is a fundamental component of U.S. agriculture supplying pollination to 90 different food, fiber, and seed crops at an estimated value of approximately $15 to $20 billion a year. The value of pollination service is vastly greater than the total value of honey and wax produced by honey bees. Honey bees pollinate approximately one-third of the human diet each year in the United States, and more than 140 billion honey bees (representing 2 million colonies) are transported by beekeepers across the U.S. to pollinate crops. California grows 100% of the U.S. almond crop and supplies 80% of the world almonds. Each year, nearly one million honey bee hives are needed to pollinate the California Central Valley's 600,000 acres of almond groves. By the year 2012, it is estimated that this number may increase to two million hives if the expected increase in almond production grows to 800,000 acres. Blueberries and avocados also receive more than 90 percent of their pollination from honey bees.

Without an active, vibrant domestic honey industry, many other agricultural commodities may suffer due to the loss of essential pollination services that the U.S. honey industry provides. Due to many recent problems facing the U.S. honey industry, U.S. farmers were forced to import honey bees from other countries (New Zealand and Australia) for pollination services in 2006. This marked the first time since 1922 that honey bees were imported into the U.S. for pollination services, underscoring the fragile state of the U.S. honey industry and highlighting the need for a research and promotion program focused solely on the domestic honey industry. Although the United States can import honey, it may be difficult to import bees on the massive scale required by U.S. farm producers for the critical pollination of U.S. crops.

U.S. commercial beekeepers depend on the production of honey as well as pollination services in order to maintain a viable business. In order to remain in operation, U.S. beekeepers require a vibrant U.S. market place. The AHPA stated in their proposal that the creation of a U.S. honey producer program would help ensure the survival of the U.S. honey industry and strengthen other agricultural industries.

The AHPA believes that both the Proposed Board and the Packers and Importers Board, will more effectively operate programs specifically focused on each assessment payers' interests. The two boards would pursue their own distinct focus and agendas. Within this proposal is a discussion of some of the differences between the Proposed U.S. Producer Order and the Packers and Importers Order.

The 1996 Act provides for a number of optional provisions that allow the tailoring of orders to the needs of

different commodity groups. Section 516 of the 1996 Act contains permissive terms that may be included in the orders. For example, section 516 authorizes an order to provide for exemption of *de minimis* quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity covered by the order in both domestic and foreign markets; provision for reserve funds; and provision for credits for generic and branded activities.

Section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin to be collected under an order. An order also may provide for its approval in a referendum based upon different voting patterns. In accordance with § 518(e) of the 1996 Act, the results of the referendum must be determined in one of three ways: (1) By a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity.

For the Proposed U.S. Producer Order, the Department is recommending a referendum be conducted, preceding the Proposed U.S. Producer Order's effective date, to ascertain whether the persons to be covered and assessed favor the Proposed U.S. Producer Order going into effect. Implementation of the Proposed U.S. Producer Order would require the approval of a majority of the producers voting in the referendum, which also represent a majority of the volume of U.S. honey produced during the representative period by those voting in the referendum. Specific procedures to be followed in such referendum will be published in a separate **Federal Register** publication.

In addition, section 518 of the 1996 Act requires the Department to conduct subsequent referenda: (1) Not later than seven years after assessments first begin under the Proposed U.S. Producer Order; or (2) at the request of the Proposed Board established under the Proposed U.S. Producer Order; or (3) at the request of ten percent or more of the number of persons eligible to vote. In addition to these criteria, the 1996 Act provides that the Department may conduct a referendum at any time to determine whether persons eligible to vote favor the continuation, suspension, or termination of an order or a provision of an order. Expenses incurred by the Department in implementing and administering the Proposed U.S. Producer Order, including referenda costs, would be paid from assessments.

Order Assessments

The funds generated through the mandatory assessments on domestically produced U.S. honey would be used to pay for promotion, research, and consumer and industry information as well as the administration, maintenance, and functioning of the Proposed Board and shall be solely used to support U.S. honey.

Under the Proposed U.S. Producer Order, ''first handler'' would be defined to mean the person who first handles U.S. honey, including a producer who handles U.S honey of the producer's own production. The term is further defined as follows:

(a) When a producer delivers U.S. honey from the producer's own production to a packer or processor for processing in preparation for marketing and consumption, the packer or processor is the first handler, regardless of whether such honey is handled for the packer's or processor's own account or for the account of the producer or the account of other persons.

(b) When a producer delivers U.S. honey to a handler who takes title to such honey, and places it in storage, such handler is the first handler.

(c) When a producer delivers U.S. honey to a commercial storage facility for the purpose of holding such honey under the producer's own account for later sale, the first handler of such honey would be identified on the basis of later handling of such honey.

(d) When a producer delivers U.S. honey to a processor who processes and packages a portion of such honey for the processor's own account and sells the balance, with or without further processing, to another processor or commercial user, the first processor is the first handler for all the honey.

(e) When a producer supplies U.S. honey to a cooperative marketing organization that sells or markets such honey, with or without further processing and packaging, the cooperative marketing organization becomes the first handler upon physical delivery to such cooperative.

(f) U.S. honey used from the producer's own production for the purpose of feeding the producer's own bees is not considered as handled. Honey in any form sold and shipped to any persons for the purpose of feeding bees is handled and is subject to assessment. The buyer of such honey for feeding bees is the first handler.

(g) When a producer packages and sells U.S. honey of the producer's own production at a roadside stand or other facility to consumers or sells to wholesale or retail outlets or other buyers, the producer is both a producer and a first handler.

(h) When a producer uses U.S. honey from the producer's own production in the manufacture of formulated products for the producer's own account and for the account of others, the producer is both a producer and a first handler.

In addition, ''handle'' means to process, package, sell, transport, purchase, or in any other way place U.S. honey, or cause them to be placed, in commerce. This term shall include selling unprocessed U.S. honey that will be consumed with or without further processing or packaging. This term shall not include the transportation of unprocessed U.S. honey by a producer to a first handler or the transportation of processed or unprocessed U.S. honey by a commercial carrier for the account of the first handler or producer. This term shall not include the purchase of U.S. honey by a consumer or other end-user of the U.S. honey.

The Proposed U.S. Producer Order would provide that producers pay an assessment to the Proposed Board at the rate of $0.02 cents per pound of U.S. honey produced and shall only be imposed on U.S. producers. The Proposed U.S. Producer Order establishes that each first handler, responsible for collecting and remitting assessments, shall pay the Proposed Board the amount due on a date as established by the Proposed Board. The Proposed Board may provide for different payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

Except as otherwise provided for, the first handler shall collect the assessment from the producer or deduct such assessment from the proceeds paid to the producer on whose U.S. honey the assessment is made, and remit the assessments to the Proposed Board. The first handler shall furnish the producer with evidence of such payment. Any such collection or deduction of assessment shall be made no later than the time when the assessment becomes payable to the Proposed Board. The first handler shall maintain separate records for each U.S. producer's honey handled, including U.S. honey produced by said first handler. Should a first handler fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Proposed Board.

Under the Proposed U.S. Producer Order, first handlers shall remit to the Proposed Board the assessment on all U.S. honey for which they act as first handler, in addition to the assessment owed on U.S. honey they produce. The first handler shall collect and pay assessments to the Proposed Board unless such first handler has received documentation acceptable to the Proposed Board that the assessment has been previously paid. Assessments shall be paid to the Proposed Board at such time and in such manner as the Proposed Board, with the Secretary's approval, directs pursuant to this part. The Proposed Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

The assessment levied on U.S. honey producers would be used to pay for promotion, research, and consumer education and industry information developed and designed to benefit honey produced in the U.S., as well as the administration, maintenance, and functioning of the Board. Expenses incurred by the Department in implementing and administering the Proposed U.S. Producer Order, including referenda costs, also would be paid from assessments.

Persons failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures as set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by the Department [60 FR 12533, March 7, 1995]. Persons also would have to pay interest and late payment charges on late assessments as prescribed in the Proposed U.S. Producer Order.

Under the Proposed U.S. Producer Order, a producer who produces less than 100,000 pounds of U.S. honey per year would be eligible for a certificate of exemption.

In addition, a producer who operates under an approved NOP system plan, produces only products eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, is exempt from paying assessments under the Proposed U.S. Producer Order.

The Proposed U.S. Producer Order allows the Proposed Board to recommend to the Secretary an increase to the assessment, as it deems appropriate, by an affirmative vote of five Board members. The Proposed Board may not recommend an increase in the assessment of more than $0.05 per pound of U.S. honey and an assessment may not increase by more than $0.005 in any single fiscal year. Any change in the assessment rate shall be subject to rulemaking and announced by the Proposed Board at least 30 days prior to becoming effective.

Although the 1996 Act allows for credits of assessments for generic and branded activities, the AHPA, who proposed the U.S. Producer Order, did not elect to include this provision.

The Proposed U.S. Producer Order establishes that producers will be responsible for paying assessments. The Order further states that the first handler will be the responsible entity for collecting the assessments and filing specific reports and maintaining records regarding the amount of U.S. honey placed in commerce.

Each first handler would be required to maintain any books and records necessary to carry out the provisions of the Proposed U.S. Producer Order for two years beyond the fiscal period to which they apply. This would include the books and records necessary to verify any required reports. These books and records would be made available to the Board's or Department's employees or agents during normal business hours for inspection if necessary.

The Proposed U.S. Producer Order provides that all officers, employees, and agents of the Department and of the respective Boards are required to keep confidential all information obtained from persons subject to the Order. This information would be disclosed only if the Department considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Department or to which the Department or any officer of the Department is a party.

However, the issuance of general statements based on reports or on information relating to a number of persons subject to the Proposed U.S. Producer Order would be permitted, if the statements do not identify the information furnished by any person. Finally, the publication, by direction of the Department, of the name of any person violating the Proposed U.S. Producer Order and a statement of the particular provisions of the Proposed U.S. Producer Order violated by the person would be allowed.

It is anticipated that, based on current estimates of the number of commercial beekeepers in the U.S that would be covered under this proposal, the Proposed Board would collect approximately $1.9 million dollars per year and that program administrative expenses could be kept at a minimum so that approximately $1.6 million would be available to develop and implement research and promotion programs designed specifically to benefit honey produced in the United States.

It is also anticipated that since only 317 producers would be covered under the Proposed U.S. Producer Order, program administrative expenditures would be kept to a minimum.

Establishment of the U.S. Honey Producer Board

Section 515 of the 1996 Act provides for the establishment of a board consisting of producers, first handlers, and others in the marketing chain, as appropriate. The Department would appoint members to the Proposed Board from nominees submitted in accordance with a Proposed U.S. Producer Order. The Proposed U.S. Producer Order would provide for the establishment of an U.S. Honey Producer Board to administer the Proposed U.S. Producer Order under AMS oversight. The AHPA has proposed that the Proposed Board be composed of no more than seven honey producers and seven alternates.

Each term of office on the Proposed Board would begin on April 1 and end on March 31, with the exception of the initial Board's term of office. The Proposed Board would nominate the seven producer members and their alternate representatives appointed by the Secretary from seven regions of the United States, to carry out a program of promotion, research, and information regarding U.S. honey. The United States would be defined to include collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States. Honey is produced in almost all of the 50 States. The top six producing States in 2007 included North Dakota, California, Florida, South Dakota, Montana, and Minnesota.

One producer member and one alternate would be appointed to serve on the Proposed Board from each of the following regions:

(1) Region 1: Washington, Oregon, Idaho, California, Nevada, Utah, Alaska, and Hawaii.

(2) Region 2: Montana, Wyoming, Nebraska, Kansas, Colorado, Arizona, and New Mexico.

(3) Region 3: North Dakota and South Dakota.

(4) Region 4: Minnesota, Iowa, Wisconsin, and Michigan.

(5) Region 5: Texas, Oklahoma, Missouri, Arkansas, Tennessee, Louisiana, Mississippi, and Alabama.

(6) Region 6: Florida, Georgia, and all other U.S. territories and possessions.

(7) Region 7: Illinois, Indiana, Ohio, Kentucky, Virginia, North Carolina, South Carolina, West Virginia,

Maryland, District of Columbia, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine.

In the Proposed U.S. Producer Order, U.S. honey producers within each of the seven regions would receive from the Proposed Board, an established list of producers eligible to serve on the Proposed Board and would notify all producers within the regions that they may nominate persons to serve as members and alternates on the Proposed Board.

The Proposed U.S. Producer Order indicates that the Proposed Board may recommend to the Department that a member be removed from office if the member consistently refuses to perform his or her duties or engages in dishonest acts or willful misconduct. The Department may remove the member if the Department finds that the Proposed Board's recommendation demonstrates cause.

The 1996 Act provides that to ensure fair and equitable representation, the composition of a board shall reflect the geographic distribution of the production of the agriculture commodity in the United States.

Under the Proposed U.S. Producer Order at least once every five years, but not more frequently than once in each three year period, the Proposed Board would review the geographical distribution in the United States of the quantities of production of U.S. honey covered by the Proposed U.S. Producer Order.

The review, based on a five year average annual review of assessments and/or Department statistics, would enable the Proposed Board to evaluate whether the Proposed Board membership is reflective of the regional representation of U.S. honey produced.

Under the Proposed U.S. Producer Order, Board members could serve terms of three years and are eligible to serve a maximum of two consecutive terms. When the Proposed Board is first established, three producers would be assigned initial terms of four years; two producers would be assigned initial terms of three years; and two producers would be assigned initial terms of two years. Thereafter, each of these positions will carry a full three-year term. Members serving initial terms of two or four years would be eligible to serve a second term of three years. Each Board member and alternate member would continue to serve until the member's or alternate's successor meets all qualifications and is appointed by the Secretary.

In the event that any member or alternate of the Proposed Board ceases to be a member of the category of members from which the member was appointed to the Proposed Board, such position shall become vacant. Provided, that if, as a result of the Proposed Board reallocation a producer member or alternate is no longer from the region from which such person was appointed, the affected member or alternate may serve out the term for which such person was appointed.

Under the Proposed U.S. Producer Order, a quorum is met if there are a majority of members present including alternates acting in place of members.

Comparison of the Proposed U.S. Producer Order and the Packers and Importers Order

A major difference between the Packers and Importers Order and the Proposed U.S. Producer Order is that the Proposed U.S. Producer Order provides for assessments to be paid by the producers of U.S. honey rather than first handlers and importers of honey and honey products.

Other differences between the Proposed U.S. Producer Order and the Packers and Importers Order are the entities assessed, the de minimis amount, and the assessment rate.

The Proposed U.S. Producer Order provides for assessments to be paid by U.S. honey producers that produce in excess of 100,000 pounds of U.S. honey per year. The number of entities assessed under the Proposed U.S. Producer Order would be around 317. In addition, the Proposed U.S. Producer Order would provide that producers pay an assessment to the Proposed Board at the rate of $0.02 cents per pound of U.S. honey produced and shall only be imposed on U.S. producers. The first handler will be responsible for collecting and remitting assessments. The reporting burden under the Proposed U.S. Producer Order would be on the first handler.

The Packers and Importers Order de minimis amount is 250,000 pounds and the number of entities assessed is 75. Under the Packers and Importers Order, first handlers must pay an assessment rate of $0.01 per pound on domestically produced honey or honey products that the handler handles and, each importer must pay an assessment of $0.01 per pound on honey or honey products the importer imports into the United States. The reporting burden for the Packers and Importers Order is on both the first handler and the importer.

At the initial rate of $0.02 per pound, revenue for the Proposed U.S. Producer Order would be approximately $1.9 million. At the initial rate of $0.01 per pound for the Packers and Importers Order, revenue will be approximately $3 million.

In addition to differences in the entities assessed, the de minimis amount, and the assessment rate, there are other comparative differences between the Proposed U.S. Producer Order and the Packers and Importers Order including reporting costs, the makeup of the Boards, and the nomination process.

The Proposed Board would consist of seven producers and each member would have an alternate. The Secretary would appoint members to the Proposed Board from nominees submitted in accordance with the Proposed U.S. Producer Order. Each term of office will begin on April 1 and end on March 31.

In the Proposed U.S. Producer Order, U.S. honey producers within each of the seven regions would receive from the Proposed Board, an established list of producers eligible to serve on the Proposed Board and would notify all producers within the regions that they may nominate persons to serve as members and alternates on the Proposed Board.

The Packers and Importers Board consists of 10 members; three first handler representatives, two importer representatives, one importer-handler representative, three producer representatives, and one marketing cooperative representative. A term of office begins on January 1.

Under the Packers and Importers Order, first handlers, producers, and a national honey marketing cooperative representative represent those entities in the United States. Board members from each of these groups are nominated by national organizations representing each of them respectively. Importers and the importer-handler on the Packers and Importers Board are nominated by national organizations representing importers.

The estimated total cost of providing information to the Proposed Board by all respondents would be $47,751. This total has been estimated by multiplying 1,447 total hours required for reporting and recordkeeping by $33, the average mean hourly earnings of various occupations involved in keeping this information. In contrast, under the Packers and Importers Order an estimated 350 total hours are required for reporting and recordkeeping at a total cost of $11,550.

Other Order Provisions

The 1996 Act requires that for fiscal years beginning 3 years after the date of the Board's establishment, the Board

shall not expend for administration, maintenance, and functioning of the Board in a single fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Board for that fiscal year. There is no specific requirement for research funds under the Proposed U.S. Producer Order.

The Proposed U.S. Producer Order provides for a continuance referendum every seven years.

This Proposed U.S. Producer Order includes definitions, provisions concerning establishment of the Board, expenses and assessments, plans and projects, reports, books and records, and other miscellaneous provisions.

The Department modified the AHPA's proposal to make it consistent with the 1996 Act and to provide clarity, consistency, and correctness with respect to word usage and terminology. The Department also changed the proposal to make it consistent with other similar national research and promotion programs. Some of the changes made by the Department to the AHPA's proposal were: (1) To remove the terms ''handler'' and ''producer-packer'' and adopt ''first handler'' as the term to be used throughout the Proposed U.S. Producer Order; (2) to describe in more detail the section describing reports, books, and records that need to be provided by the Board on its financial position; (3) to delete any references to quality standards and prices as these provisions are not authorized under the 1996 Act; (4) to remove the refund of assessment language; (5) to add language which states that any change in the assessment rate shall be subject to rulemaking; and (6) to modify section numbers as appropriate to match the above necessary changes made to the proposal.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses would not be disproportionately burdened.

The 1996 Act authorizes generic promotion, research, and information programs for agricultural commodities. Development of such programs under this authority is in the national public interest and vital to the welfare of the agricultural economy of the United States and to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

The Packers and Importers Order and the Proposed U.S. Producer Order represent different interests within the honey industry. The Proposed U.S. Producer Order represents the interest of U.S. producers while the Packers and Importers Order represents the interests of honey packers and importers. In addition, assessment requirements on both programs would be required of different segments of the industry.

The Proposed U.S. Producer Order provides for assessments to be paid by U.S. honey producers that produce in excess of 100,000 pounds of U.S. honey per year at the rate of $0.02 cents per pound of U.S. honey produced. The number of entities assessed under the Proposed U.S. Producer Order would be around 317. An estimated 1,683 producers would be exempt under the 100,000 pound exemption, while an estimated 5 producers would be exempt as organic producers. The first handler will be responsible for collecting and remitting assessments.

The Packers and Importers Order de minimis amount is 250,000 pounds and the number of entities assessed is 75. Under the Packers and Importers Order, first handlers must pay an assessment rate of $0.01 per pound on domestically produced honey or honey products that the handler handles and, each importer must pay an assessment of $0.01 per pound on honey or honey products the importer imports into the United States. The reporting burden for the Packers and Importers Order is on both the first handler and the importer.

At the initial rate of $0.02 per pound, revenue for the Proposed U.S. Producer Order would be approximately $1.9 million. At the initial rate of $0.01 per pound for the Packers and Importers Order, revenue will be approximately $3 million. The aggregate collection of assessments for the honey industry will be approximately $4.9 million.

Section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the order. An initial referendum would be conducted prior to putting this Proposed U.S. Producer Order in effect. The Proposed U.S. Producer Order also provides for approval in a referendum to be based upon: (1) Approval by a majority of those persons voting; and (2) persons voting for approval that represent a majority of the volume of U.S. honey of those voting in the referendum. Every seven years, the Department shall conduct a referendum to determine whether producers of U.S. honey favor the continuation, suspension, or termination of the Order. In addition, the Department could conduct a referendum at any time; at the request of 10 percent and more of the producers required to pay assessments; or at the request of the Board.

The Proposed U.S. Producer Order provides for first handlers to file reports to the Proposed Board. While the Proposed U.S. Producer Order would impose certain reporting and recordkeeping requirements on first handlers, the information required under the Proposed U.S. Producer Order could be compiled from records currently maintained and would involve existing clerical or accounting skills. The forms require the minimum information necessary to effectively carry out the requirements of the Proposed U.S. Producer Program, and their use is necessary to fulfill the intent of the 1996 Act. An estimated 63 first handler respondents and 317 producer respondents would provide information to the Proposed Board. The estimated total cost of providing information to the Proposed Board by all respondents would be $47,751. This total has been estimated by multiplying 1,447 total hours required for reporting and recordkeeping by $33, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics.

The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of $750,000 or less annually and small agricultural service firms as those having annual receipts of $7.0 million or less. Using these criteria, under the Proposed U.S. Producer Order, most producers and handlers would be considered small businesses.

National Agricultural Statistic Service (NASS) data reports that U.S. production of honey, from producers with five or more colonies, totaled less than 155 million pounds in 2006, a decrease of almost 16 percent from 2004. The top six producing States in 2006 included North Dakota, California, Florida, South Dakota, Montana, and Minnesota. NASS reported the value of honey sold from these six states in 2006 was $84,583,000 and the volume produced was 90,433,000 pounds. By comparison, as recently as 2000, U.S. commercial beekeepers produced over 220 million pounds of honey. In 2006, honey prices increased during 2006 to 104.2 cents, up 14 percent from 91.8 cents in 2005, due to congressional action.

Based on the assessment reports in connection with the Original Order and recorded by Customs, seventeen countries produced over 93 percent of the honey imported into the U.S. In 2005, five of these countries produced almost 79 percent of the total honey imported into the United States. These countries and their share of the imports are: China (27%), Argentina (21%), Vietnam (13%), Canada (10%), and India (8%). Imports accounted for 69 percent of U.S. consumption in 2006, an increase of 18 percent, up from 51 percent since 2002.

Associations and related industry media would receive news releases and other information regarding the implementation of the Proposed U.S. Producer Order and the referendum process. Furthermore, all information would be available electronically.

The Proposed Board may develop guidelines for compliance with the Proposed U.S. Producer Order. The Proposed Board may recommend changes in the assessment rate, programs, plans, projects, budgets, and any rules and regulations that might be necessary for the administration of the program. Any changes in the assessment rate shall be subject to rulemaking. The administrative expenses of the Proposed Board are limited by the 1996 Act to no more than 15 percent of assessment income. This does not include USDA costs for program oversight.

With regard to alternatives, the 1996 Act itself provides for authority to tailor a program according to the individual needs of an industry. Provision is made for permissive terms in an order in section 516 of the 1996 Act, and other sections provide for alternatives.

The Proposed U.S. Producer Order is designed to: (1) Develop and finance an effective and coordinated research, promotion, industry information, and consumer education program for U.S. honey; (2) strengthen the position of the U.S. honey industry and ultimately increase consumption of U.S. honey; and (3) maintain, develop, and expand existing markets for U.S. honey.

Additionally, the Proposed U.S. Producer Order would impose some additional reporting and recordkeeping costs on first handlers; however, the reporting requirements are minimal. If the Proposed U.S. Producer Order is implemented, the reporting and recordkeeping burden cost would be $47,916 under the Proposed U.S. Producer Order. These costs should be offset by the benefits derived by the operation of the Proposed U.S. Producer Order.

Section 516 authorizes an order to provide for exemption of *de minimis* quantities (the AHPA has proposed less than 100,000 pounds as a *de minimis* quantity) of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; and provision for credits for generic and branded activities.

Also, under authority provided by 7 U.S.C. 7401, the Proposed U.S. Producer Order exempts producers who operate under an approved National Organic Program (NOP) (7 CFR part 205) system plan, produces only products that are eligible to be labeled as 100 percent organic under the NOP, and are not a split operation, from paying assessments.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

While the Department has performed this initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities, in order to have as much data as possible for a more comprehensive analysis of the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, the Department requests information on the expected benefits and costs of implementing the Proposed U.S. Producer Program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS announces its intention to request an approval of a new information collection for the Proposed U.S. Honey Producer Program.

Title: Advisory Committee and Research and Promotion Board Background Information.

OMB Number for background form AD–755: (Approved under OMB No. 0505–0001).

Expiration Date of Approval: Awaiting renewal.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–NEW.

Expiration Date of Approval: 3 years from approval date.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the 1996 Act.

Under the Proposed U.S. Producer Order, producers would be required to pay assessments and first handlers would be required to collect these assessments and file reports with the Proposed Board. While the Proposed U.S. Producer Order would impose certain recordkeeping requirements on first handlers, information required under the Proposed U.S. Producer Order could be compiled from records currently maintained by such first handlers. Such records would be retained for at least two years beyond the marketing year of their applicability.

Under the Proposed U.S. Producer Order producers are responsible to pay an assessment of $0.02 per pound.

An estimated 63 first handler respondents and 317 U.S. producer respondents would provide information to the Proposed Board. The estimated total cost of providing information to the Proposed Board by all respondents would be $47,751. This total has been estimated by multiplying 1,447 total hours required for reporting and recordkeeping by $33, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics.

The Proposed U.S. Producer Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other honey programs administered by the Department.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the Proposed U.S. Producer Order, and their use is necessary to fulfill the intent of the 1996 Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Proposed Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information monthly during the production season would coincide with normal industry business practices. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. The requirement to keep records for two years is consistent with normal industry practices. There is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this proposal include:

(1) A Background Information Form AD–755 (Approved under OMB Form No. 0505–0001).

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each Board nominee.

Respondents: Producers.

Estimated number of Respondents: 28 for initial nominations, 9 in subsequent years.

Estimated number of Responses per Respondent: 1 every 3 years. (0.3)

Estimated Total Annual Burden on Respondents: 4.2 hours for the initial nominations and 1.35 hours annually thereafter.

(2) Monthly Report by Each First Handler of U.S. Honey

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per each first handler reporting on U.S. honey handled.

Respondents: First handlers.

Estimated number of Respondents: 63.

Estimated number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 378 hours.

(3) A Requirement To Maintain Records Sufficient to Verify Reports Submitted Under the Order

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Respondents: First handlers and producers.

Estimated Number of Respondents: 380.

Estimated Total Annual Burden of Respondents: 190 hours.

(4) An Exemption Application for Producers Who Would Be Exempt From Assessments. (Certification Of Exemption)

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response for each exempt producer.

Respondents: Exempt Producers.

Estimated Number of Respondents: 1683.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 841.50 hours.

(5) Nomination Appointment Form

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hours per application.

Respondents: Producers.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 7.5 hours.

(6) Nomination Appointment Ballot

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hours per application.

Respondents: Producers.

Estimated Number of Respondents: 105.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 26.25 hours.

(7) Organic Exemption Form. (Approved under OMB Form No. 0581–0217)

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.5 hours per exemption form.

Respondents: Producers.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2.5 hours.

Request for Public Comment on the Paperwork Reduction Act

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Proposed U.S. Producer Order and the Department's oversight of the Proposed U.S. Producer Order, including whether the information would have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–NEW. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the USDA Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Room 0632–S, Washington, DC 20250–0244. Comments may also be sent by facsimile to (202) 205–2800 or electronically to *http://www.regulations.gov*. All comments received will be available for public inspection during regular business hours at the same address. Comments regarding information collection should also be sent to the Office of Management and Budget at: Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this rule by the date specified would be considered prior to finalizing this action.

While the proposal set forth below has not received the approval of the Department, it is determined that the Proposed U.S. Producer Order is consistent with and will effectuate the purposes of the 1996 Act.

List of Subjects in 7 CFR Part 1245

Administrative practice and procedure, Advertising, Consumer education, U.S. Honey, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

1. Add Part 1245 to read as follows:

PART 1245—U.S. HONEY PRODUCER RESEARCH, PROMOTION, AND CONSUMER INFORMATION

Definitions

Subpart A—U.S. Honey Producer Research, Promotion, and Consumer Information Order

Sec.

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

Subpart A—U.S. Honey Producer Research, Promotion, and Consumer Information Order

Definitions

§ 1245.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996, (7 U.S.C. 7411–7425), and any amendments to that Act.

§ 1245.2 Board.

Board or ''U.S. Honey Producer Board'' means the administrative body established pursuant to § 1245.30, or such other name as recommended by the Board and approved by the Department.

§ 1245.3 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1245.4 Department.

Department means the United States Department of Agriculture, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1245.5 Exporter.

Exporter means any person who exports U.S. honey from the United States.

§ 1245.6 First handler.

First handler means the person who first handles U.S. honey, including a producer who handles U.S honey of the producer's own production. Persons who are first handlers include but are not limited to the following:

(a) When a producer delivers U.S. honey from the producer's own production to a packer or processor for processing in preparation for marketing and consumption, the packer or processor is the first handler, regardless of whether such honey is handled for the packer's or processor's own account or for the account of the producer or the account of other persons.

(b) When a producer delivers U.S. honey to a handler who takes title to such honey, and places it in storage, such handler is the first handler.

(c) When a producer delivers U.S. honey to a commercial storage facility for the purpose of holding such honey under the producer's own account for later sale, the first handler of such honey would be identified on the basis of later handling of such honey.

(d) When a producer delivers U.S. honey to a processor who processes and packages a portion of such lot of honey for the processor's own account and sells the balance, with or without further processing, to another processor or commercial user, the first processor is the first handler for all the honey.

(e) When a producer supplies U.S. honey to a cooperative marketing organization that sells or markets such honey, with or without further processing and packaging, the cooperative marketing organization becomes the first handler upon physical delivery to such cooperative.

(f) When a producer uses U.S. honey from the producer's own production for the purpose of feeding the producer's own bees, that honey is not considered as handled. Honey in any form sold and shipped to any persons for the purpose of feeding bees is handled and is subject to assessment. The buyer of such honey for feeding bees is the first handler.

(g) When a producer packages and sells U.S. honey of the producer's own production at a roadside stand or other facility to consumers or sells to wholesale or retail outlets or other buyers, the producer is both a producer and a first handler.

(h) When a producer uses U.S. honey from the producer's own production in the manufacture of formulated products for the producer's own account and for the account of others, the producer is both a producer and a first handler.

§ 1245.7 Fiscal period and marketing year.

Fiscal period means the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

§ 1245.8 Handle.

Handle means to process, package, sell, transport, purchase or in any other way place honey, or causes it to be placed, in commerce. This term includes selling unprocessed honey that will be consumed without further processing or packaging. This term does not include the transportation of unprocessed honey by the producer to a first handler or transportation by a commercial carrier of honey, whether processed or unprocessed for the account of the first handler or producer. This term shall not include the purchase of honey by a consumer or other end user of the honey.

§ 1245.9 Honey.

Honey means the nectar and saccharine exudations of plants that are gathered, modified, and stored in the comb by honeybees, including comb honey.

§ 1245.10 Honey production.

Honey production means all beekeeping operations related to managing honey bee colonies to produce U.S. honey, harvesting U.S. honey from the colonies, extracting honey from the honeycombs, and preparing U.S. honey for sale and further processing.

§ 1245.11 Information.

Information means information, programs, or activities that are designed to develop new domestic or foreign markets, maintain or expand such markets, develop new marketing strategies, increase market efficiency, or enhance the image of U.S. honey. These include:

(a) *Consumer information,* which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes and care of U.S. honey; and

(b) *Industry information* means any action that will lead to the development of new markets, new marketing strategies, or increased efficiency for the U.S. honey industry, and activities to enhance the image or strengthen the position of the U.S. honey industry.

§ 1245.12 Marketing.

Marketing means the sale or other disposition of U.S. honey in the domestic market or the foreign market.

§ 1245.13 Order.

Order means the U.S. Honey Producer Research, Promotion, and Consumer Information Order.

§ 1245.14 Part and subpart.

Part means the Honey Producer Research, Promotion, Consumer Education, and Industry Information Order (Order) Part 1245 and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a ''subpart'' of such part.

§ 1245.15 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term partnership includes, but is not limited to:

(a) A spouse or marital partner who have title to, or leasehold interest in, honey bee colonies or beekeeping equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(b) Joint ventures wherein one or more parties to the agreement, informal or otherwise, contributed land and others contributed capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production, or handling for market and the authority to transfer title to the U.S. honey so produced, or handled.

§ 1245.16 Plans and projects.

Plans and projects mean those research, promotion and information programs, plans, or projects established pursuant to this subpart.

§ 1245.17 Producer.

Producer means any person who produces honey in any State for sale in commerce.

§ 1245.18 Promotion.

Promotion means any action, including paid advertising and public relations, to advance the desirability or marketability of U.S. honey to the general public and the food industry with the express intent of improving the competitive position, expanding existing markets, increasing consumption, and enhancing the image of U.S. honey.

§ 1245.19 Referendum.

Referendum means a referendum to be conducted by the Secretary pursuant to the Act whereby U.S. honey producers shall be given the opportunity to vote to determine whether the implementation of or continuance of this part is favored by a majority of eligible persons voting in the referendum who also represent a majority of the volume of U.S. honey produced.

§ 1245.20 Research.

Research means any type of systematic study, analysis, test, or investigation, including studies testing the effectiveness of market development and promotion efforts, or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, or production of U.S. honey. Such term shall also include studies on bees to advance the cost effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, U.S. honey production, and honey bees.

§ 1245.21 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the Department to whom authority the Secretary delegated the authority to act on his or her behalf.

§ 1245.22 State.

State means any of the fifty States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

§ 1245.23 Suspend.

Suspend means to issue a rule under section 553 of U.S.C. Title 5 to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1245.24 Terminate.

Terminate means to issue a rule under section 553 of U.S.C. Title 5 to cancel permanently the operation of an order beginning on a date certain specified in the rule.

§ 1245.25 United States.

United States means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

U.S. Honey Producer Board

§ 1245.30 Establishment and membership.

(a) There is hereby established a U.S. Honey Producer Board, composed of no more than seven honey producers and seven alternates, appointed by the Secretary, to carry out a program of promotion, research, and information regarding U.S. honey.

(b) One producer member and one alternate shall be appointed to serve on the Board from each of the following regions:

(1) Region 1: Washington, Oregon, Idaho, California, Nevada, Utah, Alaska, and Hawaii.

(2) Region 2: Montana, Wyoming, Nebraska, Kansas, Colorado, Arizona, and New Mexico.

(3) Region 3: North Dakota and South Dakota.

(4) Region 4: Minnesota, Iowa, Wisconsin, and Michigan.

(5) Region 5: Texas, Oklahoma, Missouri, Arkansas, Tennessee, Louisiana, Mississippi, and Alabama.

(6) Region 6: Florida, Georgia, and all other U.S. territories and possessions.

(7) Region 7: Illinois, Indiana, Ohio, Kentucky, Virginia, North Carolina, South Carolina, West Virginia, Maryland, District of Columbia, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine.

§ 1245.31 Nominations and voting.

(a) The Board shall seek nominations for members and alternates from the specific regions set forth in this subpart in accordance with the following procedures:

(1) The Board shall establish a list of producers that are eligible to serve on the Board and shall notify all producers that they may nominate persons to serve as members and alternates on the Board.

Nominations shall be received by mail from any producer that resides in the region in which one or more vacancies will occur. Persons that are interested in nominating an individual to serve on the Board shall submit to the Board in writing the name and mailing address of the proposed nominee and such other information as the Board may require, in order to place such individual on the ballot.

(2) Once proposed nominations have been submitted from the applicable region, the Board shall cause each proposed nominee, if the individual qualifies, to be placed on the region's nominee ballot. The Board then shall mail a ballot to each known producer within the region.

(3) Within 45 days after a mail ballot is issued, the Board shall validate the ballots cast, tabulate the votes, and provide the Secretary with the results of the vote and the identification of the two producers receiving the highest number of votes for each open position on the Board.

(b) For each region, the Board shall submit to the Secretary the name of the nominee receiving the highest number of votes and the name of the nominee receiving the second highest number of votes as the producers' first and second choice nominees. The Secretary shall select the producer members and alternates of the Board from the names of those persons receiving the highest and second highest number of votes within a specific region, as submitted by the Board.

(c) Notice of balloting to nominate candidates for the Board shall be publicized by the Board to producers in the region involved, and to the Secretary, at least 90 days before the region's nominee ballot is issued except for the initial Board.

(d) In proposing nominees for inclusion on a mail ballot, nominations must be received by the Board at least 30 days before the region's nominee ballot is issued.

(e) If a producer nominee is engaged in the production of honey in more than one region, such producer shall participate within the region that such producer so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(f) Each producer within a region shall cast a ballot for each open position on the Board assigned to such region in accordance with the procedures prescribed in this subpart. The completed ballot must be returned to the Board or its designee within 30 days after the ballot is issued.

(g) The Board shall provide nominees with qualification statements and other specified information. Each nominee selected in the mail ballot will be contacted by the Board and asked to forward such completed documentation to the Board within 14 days of such notification.

(h) The Department will conduct the nomination process for the initial Board using the same procedures described above.

§ 1245.32 Term of office.

The members of the Board and their alternates shall serve for terms of three years. No member or alternate shall serve more than two consecutive three-year terms. The term of office shall begin on April 1. When the Board is first established, three producers will be assigned initial terms of four years; two producers will be assigned initial terms of three years; and two producers will be assigned initial terms of two years. Thereafter, each of these positions will carry a full three-year term. Members serving initial terms of two or four years will be eligible to serve a second term of three years. Each Board member and alternate member shall continue to serve until the member's or alternate's successor meets all qualifications and is appointed by the Secretary.

§ 1245.33 Board reapportionment.

(a) At least once every five years, but not more frequently than once in a three-year period, the Board shall review the geographic distribution of the quantities of U.S. honey assessed under this subpart. The review will be based on Board assessment records and statistics from the Department.

(b) If warranted as a result of this review, the Board shall recommend for the Secretary's approval changes in the regional representation of honey producers. Any changes in the makeup of the Board shall be subject to rulemaking by the Department.

(c) Recommendations made under paragraph (b) of this section shall be based on the 5-year average annual assessments and statistics from the Department, determined pursuant to the review that is conducted under paragraph (a) of this section.

(d) Any such reallocation shall be made at least six months prior to the date on which terms of office of the Board begin and shall become effective at least 30 days prior to such date.

§ 1245.34 Vacancies.

(a) In the event any member of the Board ceases to be a producer, such position shall automatically become vacant: Provided, that if, as a result of Board reallocation pursuant to § 1245.33, a producer member or alternate is no longer from the region from which such person was appointed, the affected member or alternate may serve out the term for which such person was appointed.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary may remove such member from office.

(c) Should any member position become vacant, the alternate for that member shall automatically assume the position of that member. At its next meeting, the Board shall nominate a replacement for such alternate. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired terms of such member and alternate shall be nominated and appointed in the manner specified in § 1245.31, except that nomination and replacement shall not be required if the unexpired terms are less than six months.

§ 1245.35 Procedure.

(a) A majority of members, including alternates acting in place of members of the Board, shall constitute a quorum. Alternates shall serve whenever the member is absent from a meeting or is disqualified.

(b) All Board members shall be notified at least 30 days in advance of all Board and committee meetings unless an emergency meeting is declared.

(c) Any action of the Board shall require the concurring votes of a majority of those present and voting.

(d) At the start of each fiscal period, the Board will select a chairperson and vice chairperson. The chairperson, or in the chairperson's absence the vice chairperson, shall conduct meetings throughout that fiscal period.

(e) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may act upon the concurring votes of a majority of its members by mail, telephone, electronic mail, facsimile, or any other means of communication, provided that all members are notified and given the opportunity to vote. All votes shall be promptly confirmed in writing. Any action so taken shall have the same force and effect as though such action

had been taken at a properly convened meeting of the Board. All votes shall be recorded in the Board minutes.

(f) There shall be no voting by proxy.

(g) The Chairperson shall be a voting member of the Board.

(h) The organization of the Board and the procedures for conducting meetings shall be in accordance with the Board's bylaws, which shall be established by the Board and approved by the Secretary.

§ 1245.36 Compensation and reimbursement.

(a) Members of the Board, alternates when acting as members, and the members of any special committees formed by the Board shall serve without compensation.

(b) Members of the Board, alternates, and the members of any special committees shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred in the performance of their Board duties. The Board shall have the authority to request the attendance of alternates of any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 1245.37 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and provisions of the Act and to collect assessments;

(b) To carry out promotion, research, and information plans and projects related to U.S. honey;

(c) To develop and recommend to the Department for approval such rules, regulations, and by-laws for the conduct of its business as it may deem advisable;

(d) To recommend to the Secretary amendments to the Order;

(e) To pay the costs of promotion, research, and information plans and projects with assessments collected pursuant to section 1245.41, earnings from invested assessments, and other funds authorized under this part.

(f) To appoint and convene, from time to time, special committees and subcommittees which may include producers, first handlers, exporters, members of wholesale or retail outlets for honey, or other members of the public to assist in the development of research, promotion, advertising, information plans, or projects for U.S. honey;

(g) To prepare and submit to the Secretary for approval 60 days in advance of the beginning of a fiscal period, a budget of its anticipated expenses in the administration of this part, including the probable costs of all promotion, research, and information activities and to recommend a rate of assessment;

(h) To meet and organize and select from among its members a chairperson, and other officers;

(i) To require its employees to receive, investigate, and report to the Secretary complaints of violations of the Order;

(j) To employ persons, other than members, as it may deem necessary and to determine the compensation and define the duties of each employee;

(k) To cause its books to be audited by an independent auditor at the end of each fiscal period and to submit a copy of each audit to the Secretary;

(l) To periodically prepare and make public and to make available to producers reports of its activities carried out and, at least once each fiscal period, to make public an accounting of funds received and expended;

(m) To give to the Secretary the same notice of meetings of the Board and any special committees as is given to members in order that representatives of the Secretary may attend such meetings;

(n) To notify honey producers of all Board meetings through press releases or other means;

(o) To maintain such records as the Secretary may require and make such records available to the Secretary for inspection and audit;

(p) To account for the receipt and disbursement of all funds in the possession, or under the control, of the Board; and

(q) To develop plans and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of plans or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and make such other reports available as the Board or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

§ 1245.38 Prohibited activities.

The Board may not engage in, and shall prohibit its employees and agents from engaging in:

(a) Any action that would be a conflict of interest; and

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental policy or action, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to the Order.

Expenses and Assessments

§ 1245.40 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal period covering its anticipated expenses and disbursements in the administration of this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each plan or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each plan or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget, including shifting funds from one plan or project to another, must be approved by the Secretary before such amendment or addition shall occur. Shifts of funds which do not cause an

increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(d) The Board is authorized to incur expenses, including a provision for a reserve for operating contingencies, for research, promotion, advertising, or information activities and such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary. Such expenses shall be paid from funds received by the Board, including assessments, contributions from persons, and other funds available to the Board.

(e) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of research, promotion, advertising, or information activities. Voluntary contributions shall be free from any encumbrances by the donor, and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Department for all expenses incurred by the Department in the implementation, administration, and supervision of the Order, including all referenda costs incurred in connection with the Order.

(h) For fiscal years beginning 3 years after the date of the Board's establishment, the Board shall not expend for administration, maintenance, and functioning of the Board in a single fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Board for that fiscal year. Such limitation on spending shall not include reimbursements to the Secretary.

§ 1245.41 Assessments.

(a) The assessment rate shall be $0.02 per pound of U.S. honey produced and shall only be imposed on producers of 100,000 pounds or more per fiscal year. Such assessments shall not be levied on the portion of U.S. honey which does not enter commerce and which is utilized solely to sustain a producer's own colonies of bees.

(b) The assessment rate shall not be increased without an affirmative vote of five members of the Board. The assessment rate shall not be increased by more than $0.005 per fiscal year and shall not exceed $0.05 per pound. Any change in the assessment rate shall be announced by the Board at least 30 days prior to becoming effective and shall not be subject to a vote in a referendum. Any change in the assessment rate shall be subject to rulemaking.

(c) Except as provided in this section, the first handler shall collect the assessment from the producer or deduct such assessment from the proceeds paid to the producer on whose honey the assessment is made, and remit the assessments to the Board. The first handler shall furnish the producer with evidence of such payment. Any such collection or deduction of assessment shall be made not later than the time when the assessment becomes payable to the Board. The first handler shall maintain separate records for each producer's honey handled, including honey produced by said handler. Should a first handler fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board.

(d) First handlers shall remit to the Board the assessment on all U.S. honey for which they act as first handler, in addition to the assessment owed on U.S. honey they produce.

(e) The first handler shall collect and pay assessments to the Board unless such handler has received documentation acceptable to the Board that the assessment has been previously paid.

(f) Assessments shall be paid to the Board on a monthly basis no later than the fifteenth day of the month following the month in which the U.S. honey was produced unless the Board determines that assessments due shall be paid to the Board at a different time and manner, with approval of the Secretary. The Board may recommend different payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(g) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

§ 1245.42 Late payment.

(a) There shall be a late-payment charge imposed on any person who fails to remit to the Board the total amount for which any such person is liable on or before the payment due date established by the Board. The amount of the late-payment charge shall be prescribed in regulations issued by the Secretary.

(b) There shall also be imposed on any person subject to a late-payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(c) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

§ 1243.43 Exemption from assessment.

(a) A producer who produces less than 100,000 pounds of U.S. honey per year shall be exempt from the payment of assessments. Such producer may apply to the Board—on a form provided by the Board—for a certificate of exemption. Such producer shall certify that the producer's production of U.S. honey shall be less than 100,000 pounds for the fiscal year for which the exemption is claimed.

(b) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, produces only products that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, shall be exempt from the payment of assessments.

(c) To obtain the exemption in paragraph (b) of this section, an eligible producer shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before the beginning of the fiscal period as long as the producer continues to be eligible for the exemption.

(d) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in the Organic Act, a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(e) If the producer complies with the requirements of paragraph (b) of this section, the Board will grant an assessment exemption and shall issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15 of the fiscal year, the Board will have 60 days to approve the exemption request; after August 15 of the fiscal year, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(f) An exemption will apply immediately following the issuance of the certificate of exemption.

(g) If a person has been exempt from paying assessments for any calendar year under this section and no longer meets the requirements for an exemption, the person shall file a report with the Board in the form and manner prescribed by the Board and begin to pay the assessment on all U.S. honey produced.

(h) The Board may recommend to the Secretary that honey exported from the United States be exempt from this subpart and recommend procedures for refunding assessments paid on exported honey and any necessary safeguards to prevent improper use of this exemption.

§ 1245.44 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: Provided, that the funds in the reserve shall not exceed one fiscal period's budget.

Promotion, Research, and Information

§ 1245.50 Plans and projects.

(a) The Board shall receive and evaluate, or, on its own initiative, develop and submit to the Secretary for approval, any plan or project authorized under this part. Such plans or projects may provide for:

(1) The establishment, issuance, effectuation, or administration of appropriate activities for research, promotion, advertising, or information, including industry and consumer information, with respect to U.S. honey;

(2) The establishment and conduct of marketing research and development activities to encourage, improve, or expand the acquisition of knowledge pertaining to U.S. honey or their consumption and use, nutritional benefits or the marketing and utilization of U.S. honey;

(3) The development and expansion of the sale of U.S. honey in foreign markets; or

(4) The sponsorship of research designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, U.S. honey production, and honey bees.

(b) No plan or project shall be implemented prior to approval by the Secretary. Once a plan or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each plan or project implemented under this part shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or information. If the Board finds that any such plan or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such plan or project.

(d) In addition to any evaluation that may be carried out pursuant to paragraph (c) of this section, the Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and plans and projects conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

(e) No plan or project including advertising shall be false or misleading or disparaging to another agricultural commodity including but not limited to unfair or deceptive acts or practices with respect to quality, value, or use of any competing product. In addition, no reference to a brand name, trade name, or State identification will be made.

§ 1245.51 Contracts.

(a) Subject to the approval of the Secretary, the Board may:

(1) Enter into contracts and agreements to carry out promotion, research, and information activities relating to U.S. honey, including contracts and agreements with producer associations or other entities as considered appropriate by the Secretary; and

(2) Pay the cost of approved promotion, research, and information activities using assessments collected under the Order, earnings obtained from assessments, and other income of the Board.

(b) Each contract or agreement shall provide that any person who enters into the contract or agreement with the Board shall:

(1) Develop and submit to the Board a proposed activity together with a budget that specifies the cost to be incurred to carry out the activity;

(2) Keep accurate records of all of its transactions relating to the contract or agreement;

(3) Account for funds received and expended in connection with the contract or agreement;

(4) Make periodic reports to the Board of activities conducted under the contract or agreement; and

(5) Make such other reports as the Board or the Secretary considers relevant.

(c) Each contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a plan or project together with a budget or budgets that shall show the estimated cost to be incurred for such plan or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit account for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receive or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

§ 1245.52 Patents, copyrights, trademarks, information, publications, and product formulations.

(a) Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart:

(1) Shall be the property of the U.S. Government, as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board;

(2) Shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and

(3) May be licensed subject to approval by the Department.

(b) Upon termination of this subpart, section 1245.73 shall apply to determine disposition of all such property.

Reports, Books, and Records

§ 1245.60 First handler reports.

(a) Each first handler subject to this part shall be required to report to the Board, at such time and in such manner as the Board may prescribe such information as may be necessary for the Board to perform its duties. Such reports may include, but shall not be limited to the following:

(1) The first handler's name and address;

(2) The date of report (which is also date of payment to the Board);

(3) The period covered by report; and

(4) The total quantity of U.S. domestic honey determined as assessable during the reporting period.

(b) First handlers who collect assessments from producers or withhold assessments for their accounts or pay

the assessments themselves shall also include with each report a list of all such producers whose honey was handled during the period, their addresses, and the total assessable quantities handled for each such producer.

(c) First handlers shall also include with each report the following:

(1) The total quantity of U.S. honey acquired during the reporting period;

(2) The total quantity of U.S. honey handled during such period;

(3) The amount of U.S. honey acquired from each producer, giving the name and address of each producer;

(4) The assessments collected during the reporting period;

(5) The quantity of U.S. honey purchased from a first handler responsible for paying the assessment due pursuant to this Order;

(6) The date that assessment payments were made on U.S. honey handled;

(7) The first handler's tax identification number;

(8) The quantity of U.S. honey processed for sale from a first handler's own production; and

(9) A record of each transaction for U.S. honey on which assessments had already been paid, including a statement from the seller that the assessment had been paid.

(d) In the event of a first handler's death, bankruptcy, receivership, or incapacity to act, the representative of the handler or his or her estate, shall be considered the first handler for the purposes of this part.

§ 1245.61 Books and records.

Each first handler and producer shall maintain, and during normal business hours, make available for inspection by employees or agents of the Board or the Secretary, such books and records as are necessary to carry out the provisions of this part, including such records as are necessary to verify any required reports. A member or alternate member of the Board is prohibited from conducting inspections authorized by this section. Such books and records shall be maintained for two years beyond the fiscal period of their applicability.

(a) The Board may request any other information from first handlers and producers, that it deems necessary to perform its duties under this subpart, subject to the approval of the Secretary.

§ 1245.62 Confidential treatment.

(a) All information obtained from the books, records, or reports required to be maintained by producers shall be kept confidential by all employees and agents of the Board and all officers and employees of the Department, and shall not be disclosed to the public. Only such information as the Secretary deems relevant shall be disclosed, and then only in a judicial proceeding or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart.

(b) Nothing in this subpart shall be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of producers or first handlers or statistical data collected therefrom, if such statements do not identify the information furnished by any person; or

(2) The publication by direction of the Secretary of the name of any person who has been adjudged to have violated this part, together with a statement of the particular provisions of this part violated by such person.

Miscellaneous

§ 1245.70 Right of the Secretary.

All fiscal matters, plans or projects, rules or regulations, reports, contracts, agreements, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1245.71 Referenda.

(a) After the initial referendum, the Secretary shall conduct subsequent referenda;

(1) Every seven years, to determine whether producers of U.S. honey favor the continuation, suspension, or termination of the Order. The Order shall continue if it is favored by a majority of the producers voting for approval in the referendum and who also represent a majority of the volume of U.S. honey produced.

(2) At the request of the Board or when petitioned by ten (10) percent or more of the number of persons eligible to vote under the Order, but not more often than once every five years under this paragraph; or

(3) Whenever the Department deems that a referendum is necessary.

§ 1245.72 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of the producers voting who, during a representative period determined by the Secretary, have been engaged in the production of U.S. honey.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this Order and regulations issued hereunder in an orderly manner.

§ 1245.73 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1245.37;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and

(4) Upon the direction of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations as imposed upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Department to be utilized, to the extent practicable, in the interest of continuing one or more of the honey research or education programs hitherto authorized.

§ 1245.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, terminating or amending this subpart or any regulation issued under it will not:

(a) Affect or waive any right, duty, obligation, or liability that arose or may arise in connection with any provision of this subpart;

(b) Release or extinguish any violation of this subpart; or

(c) Affect or impair any rights or remedies of the United States or any person with respect to any violation.

§ 1245.75 Personal liability.

No member, alternate member, employee, or agent of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, or agent, except for acts of dishonesty or willful misconduct.

§ 1245.76 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1245.77 Amendments.

Amendments to this Order may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Department.

§ 1245.78 OMB control numbers.

The control number assigned to the information collection requirements in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0505–0001, OMB control number 0581–0217, and OMB control number 0581–[NEW, to be assigned by OMB].

Dated: June 30, 2009.

Robert C. Keeney,

Acting Associate Administrator, Agricultural Marketing Service.

[FR Doc. E9–16401 Filed 7–8–09; 4:15 pm]

BILLING CODE P

Federal Register

Tuesday,
July 14, 2009

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1245

U.S. Honey Producer Research, Promotion, and Consumer Information Order; Referendum Procedures; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1245

[Doc. No. AMS–FV–07–0091; FV–07–706–PR–1B]

RIN 0581–AC78

U.S. Honey Producer Research, Promotion, and Consumer Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, Agriculture, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this proposed rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed U.S. Honey Producer Research, Promotion, and Consumer Information Order (Proposed U.S. Producer Order) is favored by persons to be covered by and assessed under this Order. The Proposed U.S. Producer Order will be implemented if it is approved by a majority of the eligible producers voting in the referendum who also represent a majority of the volume of U.S. honey produced. These procedures would also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The Proposed U.S. Producer Order is being published separately in this issue of the **Federal Register**. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act).

DATES: Comments must be received by September 14, 2009. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by September 14, 2009.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments can be made on the Internet at *http://www.regulations.gov* or to the Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, Room 0634-S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; Fax (202) 205–2800. Comments should reference the docket number, title of action, date, and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or can be viewed at *http://www.regulations.gov.*

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address and to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kimberly Coy, Marketing Specialist, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, Room 0634-S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; telephone 202–720–9915 or (888) 720–9917 (toll free) or *e-mail kimberly.coy@usda.gov.*

SUPPLEMENTARY INFORMATION: A referendum will be conducted among eligible U.S. producers of honey to determine whether they favor issuance of the proposed U.S. Honey Producer Research, Promotion, and Consumer Information Order (Proposed U.S. Producer Order) [7 CFR part 1245]. The program will be implemented if it is approved by a majority of U.S. honey producers voting in the referendum who also represent a majority of the volume of U.S. honey produced. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) [7 U.S.C. 7411–7425]. The Order would cover the producers of U.S. honey of 100,000 pounds or more. The Proposed U.S. Producer Order is being published separately in this issue of the **Federal Register**.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to an order may file a petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of USDA's final ruling.

Initial Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], the Department is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The 1996 Act, which authorizes the Department to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The 1996 Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the 1996 Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. In addition, Section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under an order. The American Honey Producers Association (AHPA), the proponent of the Proposed U.S. Producer Order, has recommended that the Department conduct a referendum in which approval of an order would be based on a majority of U.S. producers of honey voting in the referendum who also represent a majority of the volume of U.S. honey produced. The Department proposes that a referendum be

conducted prior to the Proposed U.S. Producer Order going into effect.

This proposed rule would establish the procedures under which producers of U.S. honey may vote on whether they want a U.S. honey producer research, promotion, and consumer information program to be implemented. This proposal would add a new subpart which establishes procedures to conduct an initial referendum and future referenda. The proposed subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 317 producers of honey who would be subject to the program and eligible to vote in the first referendum. The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of $750,000 or less annually and small agricultural service firms as those having annual receipts of $7.0 million or less. Using these criteria, most producers would be considered small businesses.

National Agricultural Statistic Service (NASS) data reports that U.S. production of honey, from producers with five or more colonies, totaled 155 million pounds in 2006. The top ten producing States in 2006 included North Dakota, South Dakota, California, Florida, Minnesota, Montana, Texas, Wisconsin, Idaho, and New York. To avoid disclosing data for individual operations, NASS statistics do not include Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, Oklahoma, Rhode Island, and South Carolina. NASS reported the value of honey sold in 2006 was $161,314,000. Honey prices increased during 2006 to 104.2 cents, up 14 percent from 91.8 cents in 2005.

There is a current Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order (Packers and Importers Order) in effect (7 CFR Part 1212) that replaced the Original Honey Research, Promotion, and Consumer Information Order (Original Order) on May 15, 2008 [73 FR 29390]. Based on the assessment reports in connection with the Original Honey Research, Promotion, and Consumer Information Order and recorded by U.S. Customs and Border Protection, seventeen countries produced over 93 percent of the honey imported into the U.S. In 2005, five of these countries produced almost 79 percent of the total honey imported into the United States. These countries and their share of the imports are: China (28%), Argentina (21%), Vietnam (13%), Canada (10%), and India (8%). Imports accounted for 69 percent of U.S. consumption in 2006, an increase of 18 percent, up from 51 percent since 2002. In 2006, 155 million pounds of honey were produced in the United States, 279.4 million pounds were imported and 7.6 million pounds were exported. At the initial rate of $0.02 per pound, revenue for the Proposed U.S. Producer Order would be approximately $1.9 million in a twelve month period.

This proposed rule provides the procedures under which U.S. honey producers may vote on whether they want the Proposed U.S. Producer Order to be implemented. In accordance with the provisions of the 1996 Act, subsequent referenda may be conducted, and it is anticipated that the proposed procedures would apply. There are approximately 317 producers of honey who would be eligible to vote in the first referendum. U.S. honey producers of less than 100,000 pounds of U.S. honey annually would be exempt from assessments and not eligible to vote in the referendum.

USDA will keep these U.S. honey producers informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if U.S. honey producers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the Proposed U.S. Producer program.

The information collection requirements contained in this proposed rule are designed to minimize the burden on U.S. honey producers. This rule provides for a ballot to be used by eligible U.S. honey producers to vote in the referendum. The estimated total cost of providing information by an estimated 317 U.S. producers would be $317 or $1.00 per U.S. producers.

USDA considered requiring eligible voters to vote in person at various USDA offices across the country. USDA also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot would be more cost effective and reliable. USDA will provide easy access to information for potential voters through a toll free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities.

Paperwork Reduction Act

In accordance with the OMB regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this proposed rule, was submitted to OMB for approval and would be approved under OMB number 0581–NEW.

Title: U.S. Honey Producers Research, Promotion, and Consumer Information Order.

OMB Number: 0581–NEW.

Expiration Date of approval: 3 years from approval date.

Title: New information collection for research and promotion programs.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Order. The ballot is needed for the referendum that will be held to determine whether U.S. producers are in favor of the program. The information collected is used by USDA to determine whether a majority of the eligible U.S. producers voting in a referendum, who also represent a majority of the volume of U.S. honey and honey products, approve this program.

Referendum Ballot

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each U.S. honey producer.

Respondents: U.S. honey producers.

Estimated Number of Respondents: 317.

Estimated Number of Responses per Respondent: 1 every 7 years (0.14).

Estimated Total Annual Burden on Respondents: 11 hours.

The ballot will be added to the other information collections approved for use under OMB Number 0581–NEW.

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 will have practical utility; (b) the accuracy of USDA's estimate of

the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–NEW and the U.S. Honey Producer Research, Promotion, Consumer Information Order, and should be sent to USDA in care of Sonia Jimenez at the address above and the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

All comments received will be available for public inspection during regular business hours at the same address and at *http://www.regulations.gov*. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will also become a matter of the public record.

The Agricultural Marketing Service (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.

The estimated annual cost of providing the information by an estimated 317 U.S. honey producers would be $317 or $1.00 per producer.

A 60-day comment period is provided to allow interested persons to comment on this proposed information collection.

Background

The 1996 Act, which became effective on April 4, 1996, authorizes the Department to establish a national research and promotion program covering domestic and imported honey and honey products. The AHPA submitted the Proposed U.S. Producer Order on May 25, 2007, and modifications were made to the proposal to make it consistent with the 1996 Act. The proposal is being published for public comment in this issue of the **Federal Register**.

The Proposed U.S. Producer Order would provide for the development and financing of an effective and coordinated program of promotion, research, and consumer and industry information for honey and honey products in the United States. The program would be funded by an assessment levied on U.S. honey producers at an initial rate of $0.02 per pound. U.S. honey producers of less than 100,000 pounds of U.S. honey annually will be exempt from assessments. At the initial rate of $0.02 per pound, revenue for the Proposed U.S. Producer Order would be approximately $1.9 million in a twelve month period.

The assessments would be used to pay for promotion, research, and consumer and industry information; administration, maintenance, and functioning of the U.S. Honey Producer Board; and expenses incurred by the Department in implementing and administering the Order, including referendum costs.

Section 1206 of the 1996 Act requires that a referendum be conducted among U.S. honey producers of honey to determine whether they favor implementation of the Proposed U.S. Producer Order. That section also requires the Proposed U.S. Producer Order to be approved by a majority of U.S. honey producers of honey during the representative period.

This proposed rule establishes the procedures under which U.S. honey producers of honey may vote on whether they want the U.S. honey producer research, promotion, and consumer information program to be implemented. There are approximately 317 eligible voters.

This proposed rule would add a new subpart which would establish procedures to be used in this and future referenda. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

All written comments received in response to this rule by the date specified will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for the honey industry.

List of Subjects in 7 CFR Part 1245

Administrative practice and procedure, Advertising, Consumer Education, Honey, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

PART 1245—U.S. HONEY PRODUCER RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

1. The authority citation for part 1245 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

2. Subpart B of 7 CFR part 1245 (as proposed to be added in **Federal Register** document 2009–16401 published elsewhere in this issue) is proposed to be added to Title 7, Chapter XI of the Code of Federal Regulations to read as follows:

Subpart B—Referendum Procedures

Sec.

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

Subpart B—Referendum Procedures

§ 1245.100 General.

Referenda to determine whether eligible U.S. producers favor the issuance, continuance, amendment, suspension, or termination of the U.S. Honey Producer Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

§ 1245.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to re-delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Department* means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(c) *Eligible producer* means any person who produces 100,000 pounds or more of honey in any State for sale in commerce and is subject to pay assessments to the Board on such U.S. honey produced during the representative period and who:

(1) Owns or shares in the ownership of honey bee colonies or beekeeping equipment resulting in the ownership of the U.S. honey produced;

(2) Rents honey bee colonies or beekeeping equipment resulting in the

ownership of all or a portion of the U.S. honey produced;

(3) Owns honey bee colonies or beekeeping equipment but does not manage them and, as compensation, obtains the ownership of a portion of the U.S. honey produced; or

(4) Is a party in a lessor-lessee relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey that share the risk of loss and receive a share of the U.S. honey produced. No other acquisition of legal title to honey shall be deemed to result in persons becoming eligible producers.

(d) *Honey* means the nectar and saccharine exudations of plants that are gathered, modified, and stored in the comb by honeybees, including comb honey.

(e) *Honey products* mean products where honey is a principal ingredient. For purposes of this subpart, a product shall be considered to have honey as a principal ingredient, if the product contains at least 50 percent honey by weight.

(f) *Order* means the U.S. Honey Producer Research, Promotion, and Consumer Information Order.

(g) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A spouse or marital partner who have title to, or leasehold interest in, honey bee colonies or beekeeping equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production, or handling for market and the authority to transfer title to the honey so produced, or handled.

(h) *Referendum agent* or *agent* means the individual or individuals designated by the Department to conduct the referendum.

(i) *Representative period* means the period designated by the Department.

(j) *United States or U.S.* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1245.102 Voting.

(a) Each person who is an eligible U.S. producer and each person who is an eligible producer-packer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast one ballot in the referendum: However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce U.S. honey or honey products, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only that producer's share of the ownership of U.S. honey or honey products.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer may cast one ballot in the referendum on behalf of such entity. Any individual so voting in a referendum shall certify that they are an officer or employee of the eligible entity, or an administrator, executor, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, as instructed by the Department.

§ 1245.103 Instructions.

(a) *Referenda.* The Order shall not become effective unless the Department determines that the Order is consistent with and will effectuate the purposes of the Act; and for initial and subsequent referenda the Order is favored by a majority of the eligible persons voting in the referendum who also represent a majority of the volume of U.S. honey produced, during a representative period determined by the Department, have been engaged in the production of honey and are subject to assessments under this Order and excluding those exempt from assessment under the Order.

(b) The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(1) Determine the period during which ballots may be cast.

(2) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(3) Give reasonable public notice of the referendum:

(i) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(ii) By such other means as the agent may deem advisable.

(4) Mail to eligible U.S. producers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the Order. No person who claims to be eligible to vote shall be refused a ballot.

(5) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(6) Prepare a report on the referendum.

(7) Announce the results to the public.

§ 1245.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1245.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1245.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1245.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1245.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0505–0001, OMB control number 0581–0217, and OMB control number 0581–[NEW, to be assigned by OMB].

Dated: June 30, 2009.

Robert C. Keeney,

Acting Associate Administrator, Agricultural Marketing Service.

[FR Doc. E9–16405 Filed 7–8–09; 4:15 pm]

BILLING CODE P

Federal Register

Tuesday,
July 14, 2009

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1 and Parts 17, 22, and 36
Federal Acquisition Regulation; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2009–0001, Sequence 6]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–35; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–35. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://acquisition.gov/far.*

DATES: July 14, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–35 and the FAR case number. Interested parties may also visit our Web site at *http://acquisition.gov/far.* For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

RULE LISTED IN FAC 2005–35

Subject	FAR case	Analyst
Revocation of Executive Order 13202	2009–015	Woodson

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments to this FAR case, refer to FAR case 2009–015.

FAC 2005–35 amends the FAR as specified below:

Revocation of Executive Order 13202 (FAR Case 2009–015)

In accordance with Executive Order 13502—Use of Project Labor Agreements for Federal Construction Projects, this final rule amends FAR 36.202(d) to delete references to the revoked Executive Order 13202. The E.O. prohibited executive departments and agencies from requiring or prohibiting Federal Government contractors and subcontractors' entrance into project labor agreements. This rule requires no action on the part of contracting officers.

Dated: July 9, 2009.

Al Matera,

Director, Office of Acquisition Policy

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–35 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–35 is effective July 14, 2009.

Dated: July 8, 2009.

Linda W. Neilson,

Deputy Director, Defense Procurement and Acquisition Policy (Defense Acquisition Regulations System).

Dated: July 9, 2009.

David A. Drabkin,

Acting Chief Acquisition Officer, Office of the Chief Acquisition Officer, U.S. General Services Administration.

Dated: July 8, 2009.

James A. Balinskas,

Acting Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. E9–16617 Filed 7–10–09; 11:15 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 17, 22, 36

[FAC 2005–35; FAR Case 2009–015; Docket 2009–0025; Sequence 1]

RIN 9000-AL35

Federal Acquisition Regulation; FAR Case 2009–015, Revocation of Executive Order 13202

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to delete the implementation of Executive Order (E.O.) 13202 of February 17, 2001, as amended. The E.O. prohibited executive departments and agencies from requiring or prohibiting Federal Government contractors and subcontractors' entrance into project labor agreements.

DATES: *Effective Date:* July 14, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–35, FAR case 2009–015.

SUPPLEMENTARY INFORMATION:

A. Background

On February 6, 2009, the President issued E.O. 13502 which encourages executive agencies to consider requiring the use of project labor agreements in connection with large scale construction projects in order to promote economy and efficiency in Federal procurement. The term ''project labor agreement'' means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

The President revoked E.O. 13202 issued on February 17, 2001 (66 FR 11225, published February 22, 2001)

and E.O. 13208 (66 FR 18717, published April 11, 2001). E.O. 13202 prohibited the Government from requiring or prohibiting the use of project labor agreements by its construction contractors and subcontractors, and E.O. 13208 authorized certain exemptions from E.O. 13202.

This final rule amends the Federal Acquisition Regulation to revise FAR 36.202(d) to delete any references to the revoked Executive Order 13202.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 17, 22, and 36

Government procurement.

Dated: July 9, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 17, 22, and 36 as set forth below:

■ 1. The authority citation for 48 CFR parts 17, 22, and 36 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 17–SPECIAL CONTRACTING METHODS

17.603 [Amended]

■ 2. Amend section 17.603 by removing paragraph (c).

PART 22–APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.101–1 [Amended]

■ 3. Amend section 22.101–1 by redesignating paragraph (b)(1) as paragraph (b) and removing paragraph (b)(2).

PART 36–CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.202 [Amended]

■ 4. Amend section 36.202 by removing paragraph (d).

[FR Doc. E9–16615 Filed 7–10–09; 11:15 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2009–0002, Sequence 6]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–35; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005–35 which amends the FAR.

Interested parties may obtain further information regarding these rules by referring to FAC 2005–35 which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Hada Flowers, FAR Secretariat, (202) 208–7282. For clarification of content, contact the analyst whose name appears in the table below.

RULE LISTED IN FAC 2005–35

Subject	FAR case	Analyst
Revocation of Executive Order 13202	2009–015	Woodson

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments to this FAR case, refer to FAR case 2009–015.

FAC 2005–35 amends the FAR as specified below:

Revocation of Executive Order 13202 (FAR Case 2009–015)

In accordance with Executive Order 13502—Use of Project Labor Agreements for Federal Construction Projects, this final rule amends FAR 36.202(d) to delete references to the revoked Executive Order 13202. The E.O. prohibited executive departments and agencies from requiring or prohibiting Federal Government contractors and subcontractors' entrance into project labor agreements. This rule requires no action on the part of contracting officers.

Dated: July 9, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–16618 Filed 7–10–09; 11:15 am]

BILLING CODE 6820–EP–P

Reader Aids

Federal Register

Vol. 74, No. 133

Tuesday, July 14, 2009

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, JULY

31345–31566 1
31567–31828 2
31829–32048 6
32049–32388 7
32389–32784 8
32785–33138 9
33139–33318 10
33319–33900 13
33901–34208 14

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8394 31821
8395 33137
Executive Orders:
13510 32047
Administrative Orders:
Presidential Determinations:
No. 2009-22 of July 1, 2009 32785

5 CFR

1600 31345

7 CFR

1 32787
52 32389
246 32049
354 32391
457 32049
650 33319
760 31567
1205 32400
1400 31567
1439 31567
1491 31578
1730 32406
3431 32788
Proposed Rules:
1245 ..... 34182, 34200

9 CFR

78 33139
93 31582
320 31829
Proposed Rules:
381 33374

10 CFR

35 33901
430 ..... 31829, 34080
431 32059
Proposed Rules:
35 33925
431 33171

11 CFR

111 ..... 31345, 33140

12 CFR

41 ..... 31484, 32410
222 ..... 31484, 32410
308 32226
334 ..... 31484, 32410
363 32226
571 ..... 31484, 32410
717 ..... 31484, 32410
913 33907
1204 33907
1253 31602
1702 33907
Proposed Rules:
41 31529
222 31529
334 31529
571 31529
717 31529

13 CFR

107 33911

14 CFR

1 31842
23 ..... 32799, 33324
25 32799
26 31618
27 32799
29 32799
39 ..... 31350, 32411, 32414, 32417, 32419, 32421, 32423, 32426, 32802
71 ..... 31843, 31844, 31845, 31849, 32073, 32074, 33143
91 ..... 32799, 32803
97 ..... 33917, 33918
101 31842
121 ..... 31618, 32799, 32804
125 ..... 31618, 32799
129 31618
135 32799
Proposed Rules:
25 ..... 32810, 33375
39 ..... 31640, 31891, 31894, 31896, 32476, 33377, 33928
71 ..... 31899, 33381
73 33382

15 CFR

742 31850
745 31850
748 31620
774 31850

16 CFR

641 32410
660 31484
680 32410
681 32410
698 32410
Proposed Rules:
660 31529

17 CFR

Proposed Rules:
16 31642
240 32474
270 32688
274 32688

18 CFR

Proposed Rules:
806 31647

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 1777/P.L. 111–39

To make technical corrections to the Higher Education Act of 1965, and for other purposes. (July 1, 2009; 123 Stat. 1934)

S. 614/P.L. 111–40

To award a Congressional Gold Medal to the Women Airforce Service Pilots ("WASP"). (July 1, 2009; 123 Stat. 1958)

Last List July 6, 2009

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.