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Proclamation 8454 of November 19, 2009

The President

National Entrepreneurship Week, 2009

By the President of the United States of America

A Proclamation

Throughout our history, American entrepreneurs have been an effective force for innovation at home and around the world. From the airplane to the Internet search engine to new tractors, they have pioneered technologies, products, and processes that have improved lives and shaped the course of our future. Today, they are fueling our economy with their creativity, tireless work ethic, and risk-taking spirit. During National Entrepreneurship Week, we renew our commitment to supporting American entrepreneurs, including social entrepreneurs, who are spreading opportunity and prosperity across our Nation.

Entrepreneurs are the engine of job creation in America, generating millions of good jobs. Many begin with nothing more than a good idea, and translate new products and services into vibrant businesses. To secure our Nation's future prosperity, we must ensure that our entrepreneurs have the tools they need to survive and thrive.

My Administration is working to provide opportunities and conditions for entrepreneurs to succeed. We are supporting the flow of credit by increasing loan guarantees and reducing borrowing fees to help more Americans start businesses. We also made the Research and Experimentation Tax Credit permanent to help burgeoning companies afford the high costs of developing new products and technologies. The recently formed Office of Innovation and Entrepreneurship at the Department of Commerce is building on these efforts with new policies and initiatives to unleash creativity and innovation, as well as turn inspired ideas into new employment-generating businesses.

Our Nation led the world's economies in the 20th century because we led the world in innovation. To strengthen our position in the 21st century, we must rededicate ourselves to harnessing the creative spirit that has made America great.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 16 through November 22, 2009, as National Entrepreneurship Week. I call upon all Americans to recognize the important contributions of entrepreneurs to our economy.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of November, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style. The signature is positioned to the right of the witness text.

[FR Doc. E9-28313
Filed 11-23-09; 8:45 am]
Billing code 3195-W0-P

Presidential Documents

Proclamation 8455 of November 20, 2009

National Farm-City Week, 2009

By the President of the United States of America

A Proclamation

Our Nation's farm and ranch families supply many of the basic necessities of our daily life. They manage a large portion of our country's fertile land base, and they are caretakers of our valuable natural resources and diverse ecosystems. Their connections with urban and suburban communities are critical to our economy and to the nourishment of our people. During National Farm-City Week, we express gratitude for the contributions of our Nation's farmers and ranchers, and we rededicate ourselves to providing all Americans with access to healthy food, and thus, a healthy future.

Pioneered by Native Americans, agriculture was our Nation's first industry. For agriculture to thrive in the 21st century, we must continue to cultivate the relationships between farmers and rural businesses and their partners and customers in cities and towns. American farmers and ranchers are proud to grow the food, feed, fuel, and fiber that enhance our national security and prosperity, and remain steadfast stewards of the land they love. We must ensure that farming is maintained as an economically, socially, and environmentally sustainable way of life for future generations.

This Thanksgiving season, we celebrate farms of every size that produce fruits, vegetables, dairy, and livestock indispensable to the health of our families. We also recognize the vital ties between our urban and suburban communities and their local farmers through regional food systems, farmers markets, and community gardens. During National Farm-City Week, we celebrate the bounty of America, and we honor the commitment of those who grow, harvest, and deliver agricultural goods to feed our country and grow our economy.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim the week ending on Thanksgiving Day of each year as National Farm-City Week. I call on Americans as they gather with their families and friends to reflect on the accomplishments of all who dedicate their lives to promoting our Nation's agricultural abundance and environmental stewardship.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of November, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a vertical line through it, and a horizontal line extending to the right.

[FR Doc. E9-28315
Filed 11-23-09; 8:45 am]
Billing code 3195-W0-P

Rules and Regulations

Federal Register

Vol. 74, No. 225

Tuesday, November 24, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 337

RIN 3206-AL51

Examining System

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing final regulations pertaining to direct hire authority for certain acquisition positions. The purpose of this change is to conform OPM's regulations with recent changes in law.

DATES: March 24, 2010.

FOR FURTHER INFORMATION CONTACT: Darlene Phelps by telephone at (202) 606-0830; by fax at (202) 606-2329; by TTY at (202) 418-3134; or by e-mail at Darlene.phelps@opm.gov.

SUPPLEMENTARY INFORMATION: On November 24, 2008, OPM published a proposed rule at 73 FR 70915, to incorporate a statutory extension of direct-hire authority for certain acquisition positions. In the National Defense Authorization Act for Fiscal Year 2008 (NDAA 2008), Public Law 110-181, Congress extended the direct-hire authority for acquisition positions under section 1413 of Public Law 108-136 through September 30, 2012. This statutory change permits department and agency heads (other than the Secretary of Defense) to determine, under regulations prescribed by OPM, when certain Federal acquisition positions are shortage positions for purposes of direct-hire authority. The Federal acquisition positions covered by section 1413 are listed in section 433(g)(1)(A) of title 41, United States Code.

OPM proposed to modify 5 CFR part 337, subpart B, to:

a. Update the legal authority citation for section 337.204(c) with section 1413(a) of Public Law 108-136, as amended by section 853 of Public Law 110-181;

b. Update section 337.206(d) to provide that agencies may not make new appointments under this authority after September 30, 2012; and

c. Remove the reporting requirements for this authority currently contained in 5 CFR 337.206(e).

Comments

OPM received no comments on the proposed rule.

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and employees.

Lists of Subjects in 5 CFR Part 337

Government employees.

U.S. Office of Personnel Management.

John Berry,
Director.

■ Accordingly, OPM is amending part 337 of title 5, Code of Federal Regulations, as follows:

PART 337—EXAMINING SYSTEM

■ 1. Revise the authority citation for part 337 to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 1302, 2302, 3301, 3302, 3304, 3319, 5364; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; 45 FR 18365, Mar. 21, 1980; 116 Stat. 2290, sec. 1413 of Public Law 108-136 (117 Stat. 1665), as amended by sec. 853 of Public Law 110-181 (122 Stat. 250).

Subpart B—Direct Hire Authority

■ 2. Revise paragraph (c) of § 337.204 to read as follows:

§ 337.204 Severe shortage of candidates.
* * * * *

(c) A department or agency head (other than the Secretary of Defense) may determine, pursuant to section 1413(a) of Public Law 108-136, as amended by section 853 of Public Law 110-181, that a shortage of highly

qualified candidates exists for certain Federal acquisition positions (covered under section 433(g)(1)(A) of title 41, United States Code). To make such a determination, the deciding agency official must use the supporting evidence prescribed in 5 CFR 337.204(b)(1)-(8) and must maintain a file of the supporting evidence for documentation and reporting purposes.

■ 3. Revise paragraph (d) of § 337.206 to read as follows:

§ 337.206 Terminations, modification, extensions, and reporting.
* * * * *

(d) No new appointments may be made under the provisions of section 1413 of Public Law 108-136 after September 30, 2012.

§ 337.206(e) [Removed]

■ 4. Remove paragraph (e) of § 337.206.

[FR Doc. E9-28209 Filed 11-23-09; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS-FV-09-0044; FV09-959-2 FIR]

Onions Grown in South Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim final rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that decreased the assessment rate established for the South Texas Onion Committee (Committee) for the 2009-10 and subsequent fiscal periods from \$0.03 to \$0.025 per 50-pound equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. The interim final rule was necessary to reduce the Committee's reserve fund to a desirable level.

DATES: *Effective Date:* Effective November 25, 2009.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager,

Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (956) 682-2833, Fax: (956) 682-5942, or E-mail:

Belinda.Garza@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: [http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&](http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrders)

[page=MarketingOrders](#)

SmallBusinessGuide; or by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: *Jay.Guerber@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

Under the order, South Texas onion handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable onions for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on August 1 and ends on July 31.

In an interim final rule published in the **Federal Register** on August 4, 2009, and effective on August 5, 2009 (74 FR 38505, Doc. No. AMS-FV-09-0044; FV09-959-2 IFR), § 959.237 was amended by decreasing the assessment rate established for the Committee for the 2009-10 and subsequent fiscal periods from \$0.03 to \$0.025 per 50-pound equivalent of onions handled. The decrease in the per-unit assessment rate was possible due to a higher than desired reserve fund coupled with adequate anticipated assessment revenue and interest income.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has

considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 84 producers of onions in the production area and approximately 31 handlers who are subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000.

Most of the South Texas handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2007-08 marketing year, the industry's 31 handlers shipped onions produced on 10,978 acres with the average and median volume handled being 202,245 and 176,551 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 31 handlers were estimated to be \$174.7 million, with average and median revenues being \$5.64 million and \$4.92 million, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all of the 31 handlers regulated by the order would be considered small entities if only their onion revenues are considered. However, revenues from other farming enterprises could result in a number of these handlers being above the \$7,000,000 annual receipt threshold. All of the 84 producers may be classified as small entities based on the SBA definition if only their revenue from onions is considered.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2009-10 and subsequent fiscal periods from \$0.03 to \$0.025 per 50-pound equivalent of onions. The Committee unanimously recommended 2009-10 expenditures of \$184,705.12 and an assessment rate of \$0.025 per 50-pound equivalent. The assessment rate of \$0.025 is \$0.005 lower than the rate previously in effect. The quantity of assessable onions for the 2009-10 fiscal period is estimated at 6 million 50-pound equivalents. Thus, the \$0.025 rate should provide \$150,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2009-10 fiscal period include \$73,705 for management, administrative, and rent expenses; \$45,000 for promotion expenses; and \$44,000 for compliance. Budgeted expenses for these items in 2008-09 (previous year) were \$66,695, \$45,000, and \$48,000, respectively.

The Committee reviewed and unanimously recommended 2009-10 expenditures of \$184,705.12, which included a decrease in compliance expenses due to a shortened regulatory period. The assessment rate of \$0.025 per 50-pound equivalent of assessable onions recommended by the Committee was determined by considering anticipated expenses and production levels of South Texas onions. As stated earlier, the Committee utilized an estimate of 6 million 50-pound equivalents of assessable onions for the 2009-10 fiscal period, which, if realized will provide estimated assessment revenue of \$150,000 from all handlers. In addition, it is anticipated that \$34,705 will be provided by interest income and reserve funds. When combined, revenue from these sources will be adequate to cover budgeted expenses.

The Committee discussed alternative expenditure levels, but determined that the recommended expenses were reasonable and necessary to adequately cover program operations. Other assessment rates were not considered because the Committee believed decreasing the rate by \$0.005 was sufficient to reduce their current reserve fund to a desirable level.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the season average f.o.b. price for the 2009-10 fiscal period could range between \$10.00 and \$28.00 per 50-

pound equivalent of onions. Therefore, the estimated assessment revenue for the 2009–10 fiscal period as a percentage of total f.o.b. revenue could range between 0.1 and 0.25 percent.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the South Texas onion production area and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 9, 2009, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Comments on the interim final rule were required to be received on or before October 5, 2009. No comments were received. Therefore, for the reasons given in the interim final rule, we are adopting the interim final rule as a final rule, without change.

To view the interim final rule, go to <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a0086c>.

This action also affirms information contained in the interim final rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (74 FR 38505, August 4, 2009) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ Accordingly, the interim final rule amending 7 CFR part 959, which was published at 74 FR 38505 on August 4, 2009, is adopted as a final rule, without change.

Dated: November 17, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–28144 Filed 11–23–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Doc. No. AMS–FV–09–0035; FV09–987–1 FR]

Domestic Dates Produced or Packed in Riverside County, CA; Changes to Nomination Procedures and a Reporting Date

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the nomination procedures and changes a reporting date under the California date marketing order (order). The order regulates the handling of domestic dates produced or packed in Riverside County, California, and is administered locally by the California Date Administrative Committee (CDAC or Committee). This rule changes the method of polling for nominees to the Committee and the date on which CDAC Form 6 is due. These changes will assist in the administration of the order by updating and streamlining Committee program operations.

DATES: *Effective Date:* November 25, 2009.

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

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington,

DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the nomination procedures and changes a reporting date under the order. This rule changes the method of polling for nominees to the Committee and the date on which CDAC Form 6 is due for the California Date Administration Committee. These changes will assist in the administration of the order by updating and streamlining Committee program operations. This final rule permits the Committee to conduct nominations for member and alternate member positions on the Committee through the mail or equivalent electronic means (including, but not limited to fax, or other technology, as available) rather than limit balloting to in-person polling on a specific date or absentee balloting.

This final rule also changes the date on which CDAC Form 6 is due to the Committee. Currently, the form is due by the 10th day of each month, but this

final rule relaxes the reporting requirement by changing the due date to the 16th day of each month or such other date as the Committee may prescribe. These changes were recommended unanimously by the Committee at a meeting on October 30, 2008. A meeting of the Marketing Order Policy Review Subcommittee was held on October 21, 2008. At that meeting, the subcommittee discussed various proposals for improving Committee operations, including these two changes.

Section 987.24 of the order specifies that nominations shall be made no later than June 15 of every other year, and establishes procedures for nominations for membership on the Committee by requiring the Committee to establish a polling day for receiving Committee nominations, and procedures for requesting and returning absentee ballots. This section also provides authority for the Committee, with the approval of the Secretary, to recommend rules and regulations on the manner in which nominees may be obtained.

Section 987.124 of the order's rules and regulations further specifies the date, time, and procedure for polling, as well as for obtaining and casting absentee ballots.

At its meeting on October 30, 2008, the Committee recommended that nominations be permitted through the mail or by other electronic means equivalent to the mail. When the order was promulgated, there were a number of absentee date garden owners, and the advent of the polling day permitted the owners to travel to the area to vote on nominees to the Committee.

Section 987.62 of the date order provides authority for the Committee to require reports of dates shipped from handlers. In § 987.162 of the order's rules and regulations, CDAC Form 6 is specified as the handler acquisition and disposition report, and is currently due by the 10th day of each month.

There also is a California State marketing program, administered by the California Date Commission (commission). Under that program, the due date for the same type of information is the 16th of each month. Changing the due date of the CDAC Form 6 will simplify reporting by handlers as well as coordinate the operations of the Committee and commission, since the Committee staff is also the commission staff.

Deliberations on the Changes

In its deliberations on mail balloting, the Committee commented that the current system is outmoded and cumbersome. Authorizing the

Committee to conduct nominations via mail or equivalent electronic means could result in greater industry participation in the nomination process, with the possible result being greater Committee outreach and diversity of Committee representation.

In their deliberations regarding the due date for CDAC Form 6, the Committee discussed the confusion created by the State and Federal programs' differing due dates. Handlers report to the Committee on the 10th day of the month and to the commission on the 16th day of the month. By making both reports due the same day, handlers can report more conveniently, and Committee and commission operations will be coordinated and streamlined.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 85 producers of dates in the production area and 9 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those having annual receipts of less than \$7,000,000.

According to the National Agricultural Statistics Service (NASS), data for the most-recently revised crop year, 2008, indicates that about 3.57 tons of dates were produced per acre. The 2008 grower price published by NASS was \$1,580 per ton. Thus, the value of date production in 2008 averaged about \$5,640 per acre (3.57 tons per acre times \$1,580 per ton). At that average price, a producer would have to have over 133 acres to receive an annual income from dates of \$750,000 (\$750,000 divided by \$5,640 per acre equals 133 acres). According to Committee staff, the majority of California date producers farm fewer than 133 acres. Thus, it can be concluded that the majority of date

producers could be considered small entities. According to data from the Committee, the majority of handlers of California dates may also be considered small entities.

This final rule authorizes the Committee to conduct nominations via mail or equivalent electronic means, and revises the due date for CDAC Form 6 from the 10th day each month to the 16th day of each month or such other date as the Committee may prescribe.

The Committee unanimously recommended these changes at their meeting on October 30, 2008. At the meeting, the Committee discussed the impact of these changes on handlers and producers in terms of cost. Handlers and producers will be positively impacted by mail balloting, as they will not have to set aside time to drive to the Committee offices to vote for Committee members and alternate members, nor will they have to plan ahead to request absentee ballots.

Handlers will also be positively impacted by the change in the due date of the CDAC Form 6, since changing the due date of the Committee form brings the requirement into line with the due date of the commission form, which seeks identical information. Handlers will simply be able to file the forms on the same day. Committee and commission operations will, thus, be streamlined.

The benefits for this final rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to these changes, including not conducting mail balloting or changing the due date of the CDAC Form 6. However, mail balloting provides the industry with increased flexibility, outreach, and convenience by offering an opportunity for polling on more than just one day. Changing the due date for the CDAC Form 6 will also increase the reporting handlers' convenience. Both changes improve the administration of the program and keep informational data filing uniform between the Committee and the commission. For those reasons, the changes are advantageous to all entities, as well as to the Committee staff. As a result, the Committee members unanimously agreed that these changes should be recommended and should be in effect for the 2009–10 crop year, beginning on October 1, 2009.

A meeting of the Marketing Order Policy Review Subcommittee was held on October 21, 2008. At that meeting, the subcommittee discussed various proposals for improving Committee

operations, including these two changes.

This final rule provides more flexibility on Committee polling procedures and changes the due date for CDAC Form 6 under the date marketing order. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large date handlers.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

In addition, the Committee's meeting was widely publicized throughout the date industry, and all interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the October 30, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on September 15, 2009 (74 FR 47124). The proposed regulatory text that was published in the **Federal Register** contained incorrect references that have been corrected in this final rule. Copies of the rule were mailed or sent via facsimile to all Committee members and date handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending October 15, 2009, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide

should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping dates for the 2009-2010 crop. Therefore, this rule should be implemented as soon as possible. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

■ 1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601-674.

■ 2. In § 987.124, paragraph (a) is revised to read as follows:

§ 987.124 Nomination and polling.

(a) Date producers and producer-handlers shall be provided an opportunity to nominate and vote for individuals to serve on the Committee. For this purpose, the Committee shall, no later than June 15 of each even-numbered year, provide date producers and producer-handlers nomination and balloting material by mail or equivalent electronic means, upon which producers and producer-handlers may nominate candidates and cast their votes for members and alternate members of the Committee in accordance with the requirements in paragraphs (b)(1) and (b)(2) of this section, respectively. All ballots are subject to verification. Balloting material should be provided to voters at least 2 weeks before the due date and should contain, at least, the following information:

(1) The names of incumbents who are willing to continue to serve on the committee;

(2) The names of other persons willing and eligible to serve;

(3) Instructions on how voters may add write-in candidates;

(4) The date on which the ballot is due to the committee or its agent; and

(5) How and where to return ballots.

* * * * *

■ 3. Section 987.162 is revised to read as follows:

§ 987.162 Handler acquisition and disposition.

(a) Handlers shall file CDAC Form No. 6 with the committee by the 16th of each month or such other date as the committee may prescribe, reporting at least the following for the preceding month:

(1) Their acquisitions of field run dates;

(2) Their shipments of marketable dates in each outlet category;

(3) Their shipments of free dates and disposition of restricted dates, whenever applicable; and

(4) Their purchases from other handlers of DAC, export, product, graded, and field run dates.

(b) In addition, this report shall include the names and addresses of any producers not previously identified pursuant to § 987.38, the quantity of dates acquired from each producer, the location of such producer's date garden, the acreage of that garden, and the estimated current season's production from that garden.

Dated: November 17, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9-28153 Filed 11-23-09; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 24

[CBP Dec. 09-44; Docket No. USCBP 2007-0111]

RIN 1505-AB97

Electronic Payment and Refund of Quarterly Harbor Maintenance Fees

AGENCIES: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends title 19 of the Code of Federal Regulations by

prescribing an alternative procedure by which payers of the quarterly harbor maintenance fee (HMF) may submit payments or refund requests to Customs and Border Protection (CBP) electronically via an Internet account established by the payer and located at <http://www.pay.gov>. CBP will continue to accept quarterly HMF payments or refund requests via mail. These changes are intended to provide the trade with expanded electronic payment/refund options and to modernize and enhance CBP's port use fee collection efforts. This document also clarifies the regulations to reflect that both HMF supplemental payments and refund requests must be accompanied by the requisite CBP Form 350 (HMF Amended Quarterly Summary Report) and CBP Form 349 (HMF Quarterly Summary Report). This clarification is necessary to remove any ambiguity as to what forms are required in conjunction with such payments.

DATES: *Effective Date:* December 24, 2009.

FOR FURTHER INFORMATION CONTACT: Kim Cochenour, Office of Finance, Revenue Division, Collections, Refunds and Analysis Branch, (317) 614-4598 or at hmj@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The harbor maintenance fee (HMF) was created by the Water Resources Development Act of 1986 (Pub. L. 99-622, 26 U.S.C. 4461 *et seq.*). The purpose of the fee is to require those who benefit from the maintenance of U.S. ports and harbors to share in the associated costs of such maintenance. The HMF is assessed based on 0.125 percent of the value of commercial cargo loaded or unloaded at certain identified ports or, in the case of passengers, on the value of the actual charge paid for the transportation.

The HMF implementing regulations are set forth in § 24.24 of title 19 of the Code of Federal Regulations (19 CFR 24.24).

On August 5, 2008, CBP published in the **Federal Register** (73 FR 45364) a proposal to amend title 19 of the Code of Federal Regulations (19 CFR) by prescribing an alternative procedure by which payers of the quarterly harbor maintenance fee (HMF) may submit their payments or refund requests to Customs and Border Protection (CBP) electronically via an Internet account established by the payer and located at <http://www.pay.gov>. CBP would also continue to accept quarterly HMF payments or refund requests via mail. The proposal also required that each

HMF quarterly payment, whether paper or electronic, be accompanied by a CBP Form 349 (HMF Quarterly Summary Report). The proposed amendments were intended to provide the trade with an expanded electronic payment/refund option for quarterly HMFs and to modernize and enhance CBP's port use fee collection efforts.

CBP solicited public comment on the proposed amendments in the August 5, 2008, **Federal Register** document. CBP received no comments.

Conclusion

After further review of the matter, and in light of the fact that no comments were submitted in response to CBP's solicitation of public comment, CBP has determined to adopt as final, with minor technical changes and clarifications, the proposed rule published in the **Federal Register** (73 FR 45364) on August 5, 2008. Specifically, CBP is making technical changes to §§ 24.24(e)(2)(ii) and (h)(3) that replace references to "Customs" with the term "CBP" and, in the "For Further Information Contact" section of this document, is identifying a new CBP contact to whom questions regarding HMF may be directed. In addition, this document restructures the regulatory text in §§ 24.24(c)(8)(i), (e)(1)(ii), (e)(2)(iii), (e)(3)(ii), (e)(4)(iii), (e)(4)(iv)(A), and (g) to clarify CBP's preference that certain payments and refund requests be made electronically and, in the alternative, via mail to a CBP address located on Forms.CBP.gov. By removing references to a specific CBP address and referring to a Web site which is updated regularly, CBP will avoid having to amend these regulations in the event the mailing address is changed. Sections 24.24 (e)(1)(ii), (e)(2)(iii), (e)(3)(ii), and (e)(4)(iii) are also clarified to state that each CBP Form 349 or 350 that is mailed to CBP must be accompanied by a single payment. Lastly, CBP is of the view that a clarification of the proposed amendments to §§ 24.24(c)(8)(i) and (e)(4)(iii) in 73 FR 45364 is necessary to reflect that both CBP Form 350 and CBP Form 349 are required to be submitted to CBP with supplemental payments and refund requests. This clarification is necessary to remove any ambiguity as to what forms are required in conjunction with such payments and to reconcile the proposed new language with the existing text in paragraph (e)(4)(iii) which requires that both forms be submitted in such instances.

The Regulatory Flexibility Act and Executive Order 12866

Because these amendments implement an alternative procedure that

provides an expanded electronic payment/refund option for quarterly HMF payments and do not require small entities to change their business practices, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that, if adopted, the amendments will not have a significant economic impact on a substantial number of small entities. Further, these amendments do not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information in the current regulations have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB control number 1651-0055 (harbor maintenance fee). This rule does not involve any material change to the existing approved information collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects in 19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Exports, Imports, Interest, Reporting and recordkeeping requirements, Taxes, User fees, Wages.

Amendments to the Regulations

■ For the reasons set forth in the preamble, part 24 of title 19 of the CFR (19 CFR Part 24) is amended as follows:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a-58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*)

* * * * *

■ 2. In § 24.24:

- a. The introductory text to paragraph (c)(8) is amended by removing the words "the U.S. Customs Service" and adding in their place the term "CBP";
- b. Paragraph (c)(8)(i) is revised;
- c. Paragraph (c)(8)(ii) is amended by removing the word "shall" each place it appears and adding in its place the word "must"; and removing the word

“Customs” and adding in its place the term “CBP”;

- d. The introductory text to paragraph (d)(3) is amended by removing the word “shall” and adding in its place the word “will”;
- e. Paragraph (e)(1)(ii) is revised;
- f. Paragraph (e)(2)(i) is amended: in the second sentence, by removing the words “U.S. Customs” and adding in their place the term “CBP”; and in the third sentence, by removing the word “shall” and adding in its place the word “will”;
- g. Paragraph (e)(2)(ii) is amended: in the first sentence, by removing the word “shall” and adding in its place the word “must” and by removing the word “Customs” and adding in its place the term “CBP”; in the second sentence, by removing the language “U.S. Customs Entry Summary Form (Customs)” and adding in its place “CBP Entry Summary Form (CBP)”; in the third sentence, by removing the word “shall” and adding in its place the word “must”; and in the fourth sentence, by removing the word “shall” and adding in its place the word “must” and by removing the word “Customs” and adding in its place the term “CBP”.
- h. Paragraph (e)(2)(iii) is revised;
- i. Paragraph (e)(3)(ii) is revised;
- j. Paragraph (e)(4)(i) is amended by removing the fourth and fifth sentences;
- k. Paragraph (e)(4)(ii) is amended by removing the word “Customs” each place it appears and adding in its place the term “CBP”;
- l. Paragraph (e)(4)(iii) is amended by: removing the word “Customs” each place it appears and adding in its place the term “CBP”; and adding three new sentences after the last sentence;
- m. The introductory text to paragraph (e)(4)(iv) is amended by removing the word “Customs” and adding in its place the term “CBP”;
- n. Paragraph (e)(4)(iv)(A) is amended by adding two new sentences after the last sentence;
- o. Paragraphs (e)(4)(iv)(B)(1), (2), and (3) are amended by removing the word “Customs” each place it appears and adding in its place the term “CBP”;
- p. Paragraph (e)(4)(iv)(B)(4) is amended by: removing the word “Customs” and adding in its place the term “CBP”; and removing the number “90” each place it appears and adding in its place the number “180”;
- q. Paragraph (e)(4)(iv)(B)(5) is amended: in the second sentence, by removing the words “by Customs” and adding in their place the words “by CBP”, and by removing the words “and Customs” and adding in their place the words “and CBP’s”; and in the fourth and fifth sentences, by removing the

word “Customs” each place it appears and adding in its place the term “CBP”;

- r. Paragraph (e)(4)(iv)(C) is amended by removing the word “Customs” each place it appears and adding in its place the term “CBP”;
- s. Paragraph (g) is amended: in the first, second, and fifth sentences, by removing the word “shall” each place it appears and adding in its place the word “must”, and by removing the word “Customs” each place it appears and adding in its place the term “CBP”; and by revising the third and fourth sentences;
- t. Paragraph (h)(1) is amended by removing the word “shall” each place it appears and adding in its place the word “will”;
- u. Paragraph (h)(2) is amended by removing the word “shall” each place it appears and adding in its place the word “must”; and
- v. Paragraph (h)(3) is amended by: removing the word “shall” each place it appears and adding in its place the word “will”; and removing the word “Customs” and adding in its place the term “CBP”.

The revisions and additions read as follows:

§ 24.24 Harbor maintenance fee.

* * * * *

(c) * * *

(8) * * *

(i) The donated cargo is required to be certified as intended for use in humanitarian or development assistance overseas by CBP. Subsequent to payment of the fee, a refund request may be made by electronically submitting to CBP the Harbor Maintenance Fee Amended Quarterly Summary Report (CBP Form 350), as well as the Harbor Maintenance Fee Quarterly Summary Report (CBP Form 349) for the quarter covering the payment to which the refund request relates, using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at <http://www.pay.gov>. In the alternative, the requisite forms may be mailed to the Office of Finance, Revenue Division, Customs and Border Protection, using the current address posted at [Forms.CBP.gov](http://www.pay.gov). Upon request by CBP, the party requesting the refund must also submit to CBP, via mail, any supporting documentation deemed necessary by CBP to certify that the entity donating the cargo is a nonprofit organization or cooperative and that the cargo was intended for humanitarian or development assistance overseas (including contiguous countries). A description of the cargo listed in the shipping documents and a brief

summary of the intended use of the goods, if such use is not reflected in the documents, are acceptable evidence for certification purposes. Approved HMF refund payments will be made via ACH to those payers who are enrolled in the ACH refund program; all others will receive HMF refund payments via mail.

* * *

(e) * * *

(1) * * *

(ii) *Fee payment.* The shipper whose name appears on the Vessel Operation Report must pay all accumulated fees for which he is liable on a quarterly basis in accordance with paragraph (f) of this section by submitting to CBP a Harbor Maintenance Fee Quarterly Summary Report, CBP Form 349. The CBP Form 349 must either be submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at <http://www.pay.gov> or, alternatively, mailed with a single check or money order payable to U.S. Customs and Border Protection to the Office of Finance, Revenue Division, Customs and Border Protection, using the current address posted at [Forms.CBP.gov](http://www.pay.gov).

(2) * * *

(iii) *Foreign Trade Zones.* In cases where imported cargo is unloaded from a commercial vessel at a port within the definition of this section and admitted into a foreign trade zone, the applicant for admission (the person or corporation responsible for bringing merchandise into the zone) who becomes liable for the fee at the time of unloading pursuant to paragraph (e)(3)(i) of this section, must pay all fees for which he is liable on a quarterly basis in accordance with paragraph (f) of this section by submitting to CBP a Harbor Maintenance Fee Quarterly Summary Report, CBP Form 349. The CBP Form 349 must either be submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at <http://www.pay.gov> or, alternatively, mailed with a single check or money order payable to U.S. Customs and Border Protection to the Office of Finance, Revenue Division, Customs and Border Protection, using the current address posted at [Forms.CBP.gov](http://www.pay.gov). Fees must be paid for all shipments unloaded and admitted to the zone, or in the case of direct deliveries under §§ 146.39 and 146.40 of this chapter, unloaded and received in the zone under the bond of the foreign trade zone operator.

(3) * * *

(ii) *Fee payment.* The operator of the passenger-carrying vessel must pay the accumulated fees for which he is liable on a quarterly basis in accordance with paragraph (f) of this section by submitting to CBP a Harbor Maintenance Fee Quarterly Summary Report, CBP Form 349. The CBP Form 349 must either be submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at <http://www.pay.gov> or, alternatively, mailed with a single check or money order payable to U.S. Customs and Border Protection to the Office of Finance, Revenue Division, Customs and Border Protection, using the current address posted at Forms.CBP.gov.

(4) * * *
 (iii) * * * Supplemental payments and HMF refund requests, accompanied by the requisite CBP Forms 350 and 349 and, if applicable, supporting documentation, must be submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at <http://www.pay.gov> or, alternatively, mailed to the Office of Finance, Revenue Division, Customs and Border Protection, using the current address posted at Forms.CBP.gov. If a supplemental payment is mailed, a single check or money order payable to U.S. Customs and Border Protection must be attached to each CBP Form 350. Approved HMF refund payments will be made via ACH to those payers who are enrolled in the ACH refund program; all others will receive HMF refund payments via mail.

(iv) * * *
 (A) * * * Refund requests must either be submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at <http://www.pay.gov> or, alternatively, mailed to the Office of Finance, Revenue Division, Customs and Border Protection, using the current address posted at Forms.CBP.gov. Approved HMF refund payments will be made using the ACH to those payers who are enrolled in the ACH refund program; all others will receive HMF refund payments via mail.

* * * * *
 (g) * * * The affected parties must advise the Director, Revenue Division, U.S. Customs and Border Protection, at the current address posted at Forms.CBP.gov, of the name, address, email and telephone number of a responsible officer who is able to verify any records required to be maintained under this paragraph. The Director,

Revenue Division, must be promptly notified of any changes in the identifying information submitted.

* * *
 * * * * *
Jayson P. Ahern,
Acting Commissioner, U.S. Customs and Border Protection.
 Approved: November 19, 2009.
Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.
 [FR Doc. E9-28132 Filed 11-23-09; 8:45 am]
BILLING CODE 9111-14-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 54

[TD 9472]

RIN 1545-BG48

Notice Requirements for Certain Pension Plan Amendments Significantly Reducing the Rate of Future Benefit Accrual

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations providing guidance relating to the application of the section 204(h) notice requirements to a pension plan amendment that is permitted to reduce benefits accrued before the plan amendment's applicable amendment date. These regulations also reflect certain amendments made to the section 204(h) notice requirements by the Pension Protection Act of 2006. These final regulations generally affect sponsors, administrators, participants, and beneficiaries of pension plans.

DATES: *Effective date:* These regulations are effective on November 24, 2009.

Applicability date: For dates of applicability of these regulations, see Q&A-18, § 54.4980F-1 of these regulations.

FOR FURTHER INFORMATION CONTACT: Pamela R. Kinard at (202) 622-6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations were previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1780, in conjunction with the

Treasury decision (TD 9052), relating to Notice of Significant Reduction in the Rate of Future Benefit Accrual, published on April 9, 2003 in the **Federal Register** (68 FR 17277). There are no proposals for substantive changes to this collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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

Background

Overview

This document contains amendments to 26 CFR parts 1 and 54 under sections 411(d)(6) and 4980F of the Internal Revenue Code (Code). This Treasury decision amends § 54.4980F-1 of the Treasury regulations to reflect changes made to section 4980F by the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780) (PPA '06). In addition, this Treasury decision amends § 1.411(d)-3 to reflect changes to section 411(d)(6) made by section 1107 of PPA '06.

Section 411(d)(6) Protected Benefits

Section 401(a)(7) of the Code provides that a trust does not constitute a qualified trust unless the plan under which the trust is established and maintained satisfies the requirements of section 411 (relating to minimum vesting standards). Section 411(d)(6)(A) and § 1.411(d)-3(a)(1) provide that a plan is treated as not satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(d)(2) (formerly section 412(c)(8)), section 4281 of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or any other applicable law. Applicable law includes sections 418D and 418E of the Code and section 1541(a)(2) of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788, 1085). Section 204(g) of ERISA contains parallel rules to section 411(d)(6) of the Code.

Notice Requirements for Significant Reduction in the Rate of Future Benefit Accruals

Section 4980F imposes an excise tax when a plan administrator fails to

provide timely notice of a plan amendment that provides for a significant reduction in the rate of future benefit accrual. For this purpose, the elimination or reduction of an early retirement benefit or retirement-type subsidy is treated as having the effect of reducing the rate of future benefit accrual. Section 4980F(e)(3) provides that, except as provided in regulations, the notice must be provided within a "reasonable time" before the effective date of the plan amendment. Section 204(h) of ERISA contains parallel rules to section 4980F of the Code, and a notice required under section 4980F of the Code or section 204(h) of ERISA is generally referred to as a "section 204(h) notice."

The Secretary of the Treasury has interpretive authority over sections 411(d)(6) and 4980F of the Code as well as sections 204(g) and 204(h) of ERISA, including the subject matter addressed in these regulations. See section 101(a) of Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt (under which the Secretary of the Treasury generally has the authority to issue regulations under parts 2 and 3 of subtitle B of title I of ERISA, including sections 204(g) and 204(h) of ERISA).¹ Thus, these Treasury regulations under sections 411(d)(6) and 4980F of the Code also apply for purposes of sections 204(g) and 204(h) of ERISA.

Provisions of the Pension Protection Act of 2006

Section 402 of PPA '06 provides special funding rules for plans maintained by an employer that is a commercial passenger airline or the principal business of which is providing catering services to a commercial passenger airline. Section 402(h)(4) of PPA '06 provides that, in the case of a plan amendment adopted in order to comply with the rules in section 402 of PPA '06, any notice required under section 4980F(e) of the Code (or section 204(h) of ERISA) must be provided within 15 days of the effective date of the plan amendment. Section 402 of PPA '06 generally applies to amendments made pursuant to section 402 of PPA '06 for plan years ending after the date of enactment of PPA '06 (August 17, 2006).

Section 502(c) of PPA '06 amended section 4980F(e)(1) of the Code (and section 204(h) of ERISA) to add a requirement that, if a section 204(h) notice is required with respect to an

amendment, any employer with an obligation to contribute to the plan receive a section 204(h) notice. This new disclosure requirement is effective for plan years beginning after December 31, 2007.

Section 1107 of PPA '06 provides that any plan amendment made pursuant to a PPA '06 change may be retroactively effective and, except as provided by the Secretary of the Treasury, does not violate the anti-cutback rules of section 411(d)(6) of the Code (or section 204(g) of ERISA) if, in addition to satisfying the conditions specified in section 1107(b)(2) of PPA '06, the amendment is made on or before the last day of the first plan year beginning on or after January 1, 2009 (January 1, 2011, with respect to governmental plans).

Notice Requirements Relating to Plan Amendments Affecting Previously Accrued Benefits

In addition to the section 204(h) notice requirement, both the Code and ERISA include a number of other requirements to provide information to certain parties (such as participants, beneficiaries, and contributing employers) regarding the potential effect of a plan amendment that is permitted to reduce or eliminate previously accrued benefits.

Section 412(d)(2) of the Code provides special rules relating to retroactive plan amendments. Rev. Proc. 94-42 (1994-1 CB 717), see § 601.601(d)(2)(ii) (b), sets forth procedures under which a plan sponsor may file notice with and obtain approval from the Secretary of the Treasury for a retroactive amendment described in former section 412(c)(8) (now section 412(d)(2)) that reduces prior accrued benefits. Section 4 of Rev. Proc. 94-42 provides guidance relating to the written notice that must be provided to affected parties (employee organizations, participants, beneficiaries, and alternate payees) regarding the application for approval of a retroactive plan amendment to reduce accrued benefits under section 412(d)(2).

Section 113(a)(1)(B) of PPA '06 added Code section 436 which provides rules limiting benefits and benefit accruals for single-employer plans with certain funding shortfalls.² In general, these limits are based on a plan's adjusted funding target attainment percentage (AFTAP)³ and include limits on unpredictable contingent event

benefits⁴ (where the plan's AFTAP is or would be below 60 percent), certain plan amendments which would increase liabilities of the plan by reason of an increase in benefits (where the plan's AFTAP is or would be below 80 percent), and prohibited payments (where the plan's AFTAP is below 60 percent or is at least 60 percent but below 80 percent, or during a period in which the plan sponsor is a debtor in a case under title 11 U.S.C. or similar federal or State law and the plan actuary has not certified that the plan's AFTAP is at least 100 percent for the plan year), and a cessation of benefit accruals (where the plan's AFTAP is below 60 percent).⁵

Section 101(j) of ERISA requires the plan administrator to provide a written notice to plan participants and beneficiaries, generally within 30 days after the plan becomes subject to the benefit limitations in section 206(g)(1), (3), or (4) of ERISA (which are parallel to the benefit limitations in Code section 436(b), (d), or (e)) relating to unpredictable contingent event benefits, prohibited payments, and cessation of benefit accruals. Section 101(c)(1)(A)(ii) of the Worker, Retiree, and Employer Recovery Act of 2008, Public Law 110-458 (122 Stat. 5092) (WREERA), amended section 101(j) of ERISA to authorize the Secretary of the Treasury, in consultation with the Secretary of Labor, to prescribe rules applicable to the notice requirements under section 101(j) of ERISA.

Section 418D of the Code (and the parallel provision at section 4244A of ERISA) provides that a multiemployer plan in reorganization is permitted to adopt an amendment reducing or eliminating accrued benefits attributable to employer contributions under the plan. Under section 418D(b), an amendment is not permitted to reduce or eliminate benefits unless notice is given to plan participants, beneficiaries, and other affected persons at least 6 months before the first day of the plan year in which the amendment reducing benefits is adopted. The notice must include certain information, including an explanation of the rights and remedies of participants and beneficiaries under the plan and notification that, if contributions under the plan are not increased, accrued benefits under the plan for certain participants and beneficiaries will be

⁴ For a definition of unpredictable contingent event benefit, see section 436(b)(3).

⁵ These provisions are reflected in sections 436(b)(1), (c)(1), (d)(1), (d)(2), and (d)(3), and (e)(1) (and the parallel provisions at sections 206(g)(1)(A), (g)(2)(A), (g)(3)(A), (g)(3)(B), and (g)(3)(C), and (g)(4)(A) of ERISA).

¹ In addition, sections 204(g) and 204(h) of ERISA include provisions authorizing the Secretary of the Treasury to issue guidance with respect to specific issues.

² Section 103(a) of PPA '06 added section 206(g) of ERISA, the parallel provision to section 436 of the Code.

³ For a definition of AFTAP, see section 436(j)(2).

reduced or an excise tax will be imposed on contributing employers.

Section 418E of the Code (and the parallel provision at section 4245 of ERISA) provides rules relating to suspension of benefits under an insolvent multiemployer plan. If payments of basic benefits under the plan exceed the resource benefit level or the level of basic benefits of the plan for the plan year, the payment of benefits must be suspended to the extent necessary to reduce such payments to the greater of the resource benefit level of the plan or the level of basic benefits. Section 418E of the Code provides that plans in reorganization that may become insolvent must provide notice to the Pension Benefit Guaranty Corporation (PBGC), contributing employers, employee organizations, plan participants, and beneficiaries that certain non-basic benefit payments will be suspended if insolvency occurs.

Section 4281 of ERISA provides rules relating to the reduction of benefits or the suspension of benefit payments under certain terminated multiemployer plans. Section 4281(c) of ERISA provides that, if the value of nonforfeitable benefits under a terminated plan exceeds the value of a plan's assets, the plan must be amended to reduce benefits under the plan to the extent necessary to ensure that the plan's assets are sufficient to meet its obligations. The regulations at 29 CFR 4281.32 provide that a plan sponsor must notify the PBGC and plan participants and beneficiaries of a plan amendment reducing benefits pursuant to section 4281(c) of ERISA.

Section 212(a) of PPA '06 added section 432 of the Code (and section 202(a) of PPA '06 added the parallel provision at section 305 of ERISA), which provides rules relating to multiemployer plans that are in endangered or critical status. Under certain circumstances, a plan may adopt a plan amendment that reduces previously accrued benefits. Section 432(b)(3)(D) of the Code provides that, within 30 days after a certification by a plan actuary that a plan is in endangered or critical status, the plan sponsor must notify plan participants and beneficiaries, the bargaining parties, the PBGC, and the Secretary of Labor of the plan's endangered or critical status. If the plan is certified to be in critical status, the notice must provide an explanation of the possibility that (1) adjustable benefits may be reduced and (2) such reductions may apply to participants and beneficiaries whose benefit commencement date is on or after the date the notice is provided for the first plan year in which the plan is

in critical status. Adjustable benefits, defined in section 432(e)(8)(A)(iv), include certain section 411(d)(6) protected benefits such as early retirement benefits and retirement-type subsidies.

Section 432(e)(8)(C) requires a plan to provide notice of a plan amendment reducing adjustable benefits to affected parties (including plan participants, beneficiaries, and contributing employers) at least 30 days before the general effective date of the reduction. The notice must include information that is sufficient for participants and beneficiaries to understand the effect of any reduction on their benefits, a description of the possible rights and remedies of plan participants and beneficiaries, and information on how to contact the Department of Labor and the PBGC. *See* sections 102(b)(1)(C), 102(b)(1)(E)(iv), 102(b)(2)(B), 102(b)(2)(D)(iv)(III), and 102(b)(2)(D)(iv)(IV) of WRERA for provisions authorizing the Secretary of the Treasury, in consultation with the Secretary of Labor, to issue guidance relating to the notice requirements in section 305(b)(3)(D) of ERISA (and the parallel provision at section 432(b)(3)(D) of the Code) and section 305(e)(8)(C)(iii) of ERISA (and the parallel provision at section 432(e)(8)(C) of the Code).

Section 432(f)(2) of the Code also restricts a plan from making certain accelerated benefit payments, effective on the date a notice of certification of a multiemployer plan's critical status is provided, which include single sum distributions. On March 18, 2008, proposed regulations (REG-151135-07) under section 432 of the Code (432 proposed regulations) were published in the **Federal Register** (73 FR 14417). Under § 1.432(b)-1(e)(2) of the 432 proposed regulations, if a plan in critical status provides benefits that are restricted under section 432(f)(2), then the notice of critical status described in section 432(b)(3)(D) must include an explanation that the plan cannot pay such restricted benefits, to the extent the benefits exceed the monthly amount paid under a single life annuity (plus social security supplements described in section 411(a)(9)).

On March 21, 2008, proposed regulations (REG-110136-07) under sections 411(d)(6) and 4980F of the Code (2008 proposed regulations) were published in the **Federal Register** (73 FR 15101). On July 10, 2008, the IRS held a public hearing on the 2008 proposed regulations. Written comments responding to the notice of proposed rulemaking were also received. After consideration of the comments, the proposed regulations are

adopted, as amended by this Treasury decision. The revisions are discussed in this preamble.

Summary of Comments and Explanation of Revisions

PPA '06 Revisions to Section 204(h) Notice Requirements

This Treasury decision amends the regulations under section 4980F of the Code to reflect provisions in PPA '06. Section 502(c) of PPA '06 amended section 204(h) of ERISA and section 4980F of the Code to require that section 204(h) notice be provided to any employer that has an obligation to contribute to the plan. A contributing employer is defined in the regulations as an employer that has an obligation to contribute to a plan (within the meaning of section 4212(a) of ERISA). A commentator suggested that the final regulations clarify that the requirement that section 204(h) notice be given to contributing employers applies only to employers in a multiemployer plan, not to employers in a single employer plan. These regulations include this suggestion.

These final regulations retain from the proposed regulations a special timing rule to reflect section 402 of PPA '06. Section 402 of PPA '06 provides special funding rules for plans maintained by an employer that is a commercial passenger airline or the principal business of which is providing catering services to a commercial passenger airline. Section 402(h)(4) of PPA '06 provides that, in the case of a plan amendment adopted in order to comply with the rules in section 402 of PPA '06, any notice required under section 4980F(e) of the Code (or section 204(h) of ERISA) must be provided within 15 days of the effective date of the plan amendment. The proposed regulations provided that, for certain plans maintained by an employer that is a commercial passenger airline or the principal business of which is providing catering services to a commercial passenger airline, section 204(h) notice must be provided at least 15 days before the effective date of the amendment. This is consistent with the Joint Committee on Taxation's Technical Explanation to section 402 of PPA '06 which states that the section 204(h) notice "allows the notice to be provided at least 15 days before the effective date of the plan amendment."⁶ No comments were received on this proposed rule and the final regulations

⁶ See Joint Committee on Taxation, Technical Explanation of H.R. 4, the "Pension Protection Act of 2006" (JCX-38-06), August 3, 2006, 109th Cong., 2nd Sess. 87 (2006) at 87.

retain the rule from the proposed regulations.

Plan Amendments Reflecting a Change in Statutorily Mandated Minimum Present Value Rules

Section 417(e)(3) of the Code provides that, in distributing the present value of an accrued benefit to a plan participant, the present value of the benefit is not permitted to be less than the present value calculated using the applicable mortality table and the applicable interest rate under section 417(e)(3). Section 302(b) of PPA '06 amended section 417(e)(3) of the Code to provide new actuarial assumptions for calculating the minimum present value of a participant's accrued benefit. Plan sponsors have asked whether a plan amendment to reflect the change in these section 417(e)(3) actuarial assumptions would trigger the requirement to provide a section 204(h) notice. Revenue Ruling 2007-67 (2007-2 CB 1047), *see* § 601.601(d)(2)(ii)(b), which includes guidance on plan amendments regarding the new applicable mortality table and applicable interest rate under section 417(e)(3), states that certain amendments to reflect the new applicable mortality table and applicable interest rate for distributions with an annuity starting date in 2008 or later would not violate the anti-cutback rules of section 411(d)(6). The final regulations retain the rule in the 2008 proposed regulations that no section 204(h) notice is required if a defined benefit plan is amended to reflect changes to the applicable interest or mortality assumptions in section 417(e)(3) made by PPA '06. For example, a reduced single-sum distribution resulting from an amendment to a traditional defined benefit plan that timely substitutes the prescribed actuarial assumptions under section 417(e)(3), as amended by PPA '06, for the pre-PPA '06 actuarial assumptions under section 417(e)(3) does not require a section 204(h) notice.

Interaction of the Section 204(h) Notice Timing Rules With Plan Amendments That Have a Retroactive Effective Date

Section 1.411(d)-3(a)(1) of the current Treasury regulations generally provides that a plan is not a qualified plan if a plan amendment decreases the accrued benefit of any plan participant. These rules are generally based on the "applicable amendment date," which is defined in § 1.411(d)-3(g)(4) as the later of the effective date of the amendment or the date the amendment is adopted. While § 1.411(d)-3(a)(1) generally prohibits a plan amendment that

reduces benefits accrued before the applicable amendment date, a number of statutory exceptions apply. These exceptions include amendments permitted under sections 412(d)(2), 418D, and 418E of the Code, section 4281 of ERISA, and section 1107 of PPA '06. The prior regulations under section 411(d)(6) of the Code listed these exceptions, other than the exception under section 1107 of PPA '06. The final regulations provide a conforming amendment to § 1.411(d)-3(a)(1) to include section 1107 of PPA '06 as a statutory exception to the general anti-cutback rule in section 411(d)(6) of the Code.

In the case of an amendment that is permitted to be adopted retroactively, the proposed regulations stated that the effective date of the amendment, for purposes of section 4980F, is the date the amendment is put into effect on an operational basis under the plan, so that a section 204(h) notice must generally be provided at least 45 days before the date the amendment is put into effect on an operational basis (15 days for multiemployer plans).

A commentator suggested that the final regulations clarify that there is no specific time limit on how far in advance of the effective date of a section 204(h) amendment⁷ a section 204(h) notice may be provided. The commentator argued that while the notice requirements under section 4980F only restrict how late a notice can be provided, other notice requirements, such as the notice required under section 417(a)(6), provide a timeframe in which the notice must be provided. The commentator argued that notification far in advance of the effective date should be permitted on the grounds that notice any time in advance of the effective date would satisfy the statute, and would provide a practical solution to the administrative challenges of providing notice for a large plan with many contributing employers and with a variety of different amendment effective dates. No change has been made to the proposed regulations to reflect these comments.

Another commentator requested clarification on whether section 204(h) notice is required in the case of a plan amendment that is permitted to reduce prior benefit accruals. The commentator cited to Q&A-7(b) of § 54.4980F-1, which provides that any section 411(d)(6) protected benefit that may be eliminated or reduced as permitted

⁷ A section 204(h) amendment is defined in Q&A-4(b) of § 54.4980F-1 of the Treasury regulations as an amendment for which section 204(h) notice is required.

under § 1.411(d)-3 or § 1.411(d)-4, Q&A-2(a) or (b), is not taken into account in determining whether an amendment is a section 204(h) amendment. This cross-reference to § 1.411(d)-3 was added to the regulations in 2005 with the intent to address amendments that reduce or eliminate benefits or subsidies that create significant burdens or complexities for the plan and plan participants unless the amendment adversely affects the rights of any participant in more than a de minimis manner, not to address amendments implementing changes in applicable law. Similarly, the cross-reference to § 1.411(d)-4, Q&A-2(a) or (b) was not intended to apply to amendments implementing future changes in applicable law. In order to reflect this intent, the final regulations revise the cross-references in Q&A-7(b) to provide that any plan amendment that is permitted to eliminate or reduce a section 411(d)(6) protected benefit under § 1.411(d)-3(c), (d), or (f), or under § 1.411(d)-4, Q&A-2(a)(2), (a)(3), (b)(1), or (b)(2)(ii) through (b)(2)(xi), is not an amendment for which section 204(h) notice is required.

The final regulations retain a special transitional rule which provides that, in the case of an amendment that is permitted to reduce benefit accruals and is made to a plan that is a statutory hybrid to which section 411(a)(13)(C) applies, a section 204(h) notice must be provided at least 30 days before the amendment is effective. No commentators objected to this rule in the proposed regulations. Accordingly, the final regulations provide that for any section 204(h) notice that is required to be provided in connection with an amendment to a statutory hybrid plan under section 411(a)(13)(C) that is first effective before January 1, 2009, and that limits the amount of a distribution to the account balance as permitted under section 411(a)(13)(A), section 204(h) notice does not fail to be timely if the notice is provided at least 30 days before the date the amendment is first effective. This special timing rule reflects the 30-day timing rule described in Notice 2007-6 (2007-3 CB 272), *see* § 601.601(d)(2)(ii)(b), which provides transitional guidance on the requirements of sections 411(a)(13) and 411(b)(5).⁸ The final regulations, like the

⁸ Section B.4 of Notice 2007-6 provides that, in the case of a plan amendment that is permitted to reduce benefit accruals, a section 204(h) notice must be provided at least 30 days before the amendment is effective. This rule would require the notice to be provided at least 30 days before the

proposed regulations, permit the use of this transitional timing rule through the end of 2008. Thereafter, the general 45-day timing rule applies to such amendments.

Interaction of Section 204(h) Notice Requirements With Other Notice Requirements Relating to Plan Amendments

As stated in the background portion of this preamble, the Code and ERISA include a number of other notice requirements relating to plan amendments that are permitted to reduce or eliminate accrued benefits. To eliminate the need for a plan to provide multiple notices at different dates and with substantially the same function and information to affected persons, the proposed regulations stated that, with respect to an amendment that triggers a section 204(h) notice requirement as well as another statutory notice requirement, if a plan provides the latter notice in accordance with the applicable standards for such a notice, the plan is treated as having timely complied with the requirement to provide a section 204(h) notice with respect to the section 204(h) amendment. Under the proposed regulations, this treatment would apply to the following notices:

- A notice required under Rev. Proc. 94-42 relating to retroactive plan amendments that reduce accrued benefits described in section 412(d)(2) of the Code;
- A notice required under section 101(j) of ERISA if an amendment is adopted to comply with the benefit limitation requirements of section 436 of the Code (section 206(g) of ERISA);
- A notice required under section 418D of the Code (section 4244A(b) of ERISA) for an amendment that reduces or eliminates accrued benefits attributable to employer contributions with respect to a multiemployer plan in reorganization;
- A notice required under section 418E of the Code (section 4245(e) of ERISA), relating to the effects of the insolvency status for a multiemployer plan; and
- A notice required under section 4281 of ERISA and 29 CFR 4281.32 for an amendment of a multiemployer plan reducing benefits pursuant to section 4281(c) of ERISA.

In general, commentators did not object to this treatment under the 2008 proposed regulations. However, some commentators argued that the regulations should not apply the excise tax under section 4980F of the Code if

earliest date on which the plan is operated in accordance with the amendment.

the plan were to fail to satisfy the requirements of the other applicable notice. For example, a commentator suggested that if the notice requirements under section 101(j) of ERISA are not satisfied for an amendment adopted to comply with section 436 of the Code (or section 206(g) of ERISA), the plan should still be treated as having provided section 204(h) notice even though participants receive no notice of the amendment. However, there is no statutory basis for this suggestion, and the final regulations do not make this change. Thus, in any case in which notice is required to be given under section 101(j) of ERISA and, in addition, section 204(h) notice is required for the related plan amendment under section 4980F of the Code (and section 204(h) of ERISA), the plan sponsor either could provide two notices—at the times and in the manner required under each such section—or could provide a notice under section 101(j) of ERISA at the time and in the manner required under section 101(j). In this respect, providing section 101(j) notice constitutes a safe harbor for purposes of any requirement to provide section 204(h) notice. However, in general (and depending on the facts and circumstances), the failure to provide notice under both section 101(j) of ERISA and section 4980F of the Code (and section 204(h) of ERISA), where required, would violate section 101(j) of ERISA and, separately, Code section 4980F (as well as section 204(h) of ERISA).

With respect to amendments made in order to comply with the benefit limitations provided by section 436 of the Code, some commentators asked that the rules in the final regulations be clarified to provide explicitly that a plan that is never required to provide a notice under ERISA section 101(j) (or is not required to do so for a long period of time) is not treated as failing to satisfy ERISA section 204(h) or Code section 4980F. Commentators asserted that this should be the case even though a section 204(h) notice was not sent when the plan adopted general conditional language authorizing the benefit restrictions to become effective if and when required. Under the standards set forth in the existing regulations at § 54.4980F-1, A-5(a) and A-6, whether an amendment to comply with section 436 requires section 204(h) notice depends on whether it is reasonably expected that the amendment will result in a reduction, taking into account facts and circumstances at the time of the amendment (in either the rate of future benefit accrual or early retirement benefits or retirement-type subsidies)

and, if so, whether such reduction will be significant. A plan would still be required to provide notice under section 101(j) of ERISA when a benefit limitation is triggered under the rules of section 436 of the Code. The provision in these final regulations under which providing timely section 101(j) notice satisfies any section 204(h) notice requirement for a section 436 amendment has the effect of mooted questions such as when and whether an amendment to comply with section 436 requires section 204(h) notice. Accordingly, no special rules have been adopted to address these comments.

A conforming change was made to Q&A-8 of the regulation for plan amendments with retroactive effective dates. The final regulations provide that whether an amendment reducing the rate of future benefit accrual provides for a reduction that is significant is determined based on reasonable expectations taking into account the relevant facts and circumstances at the time the amendment is adopted, or earlier, at the time of the effective date of the amendment.

As stated earlier, a plan is treated as having timely complied with the requirements to provide a section 204(h) notice if the plan satisfies the requirements for providing one of the notices listed earlier in this section. Note that this special treatment does not apply if a plan is amended to implement benefit reductions independent of the reductions permitted under the relevant notice requirement. Thus, if a plan that is subject to the requirements of section 436 of the Code (section 206(g) of ERISA) is amended to cease all benefit accruals independent of the amendment implementing the limitations required under section 436(e) (section 206(g)(4) of ERISA) (for example, an amendment implementing a permanent cessation of benefit accruals), the section 204(h) notice is required if the plan amendment provides for a significant reduction in the rate of future benefit accrual (treating elimination or reduction of an early retirement benefit or retirement-type subsidy as a reduction in the rate of future benefit accrual). A section 101(j) notice, however, is not required to be provided as a result of such an independent plan amendment.

Timing and Content Rules for Multiemployer Plans in Critical Status

Section 432 of the Code, relating to multiemployer plans that are in endangered or critical status (as defined in section 432(b)), permits a plan amendment to be adopted that reduces prior accruals under certain

circumstances. With respect to any such amendment for a plan that is in critical status, section 432(e)(8)(C) requires that notice be provided to participants, beneficiaries, contributing employers, and certain employee organizations of any reduction in adjustable benefits. The 2008 proposed regulations included a rule under which the timing and content of a notice under 432(e)(8)(C) also satisfies the timing and content requirements for a section 204(h) notice. As a result, under the proposed regulations, any notice for a multiemployer plan in critical status that satisfies the timing and content requirements under section 432(e)(8)(C) would satisfy the timing and content requirements of a section 204(h) notice. Currently, the IRS and the Treasury Department are establishing requirements for a notice required under section 432(e)(8)(C), including the content requirements. The interaction of the section 432(e)(8)(C) notice with the requirements for a section 204(h) notice will be addressed as part of the section 432 regulation project.

The final regulations add the notice required under section 432(b)(3)(D) to the list of similarly situated benefit reduction notices discussed in the preamble to these regulations under the heading, "Interaction of the Section 204(h) Notice Requirements with Other Notice Requirements Relating to Plan Amendments." As mentioned in the background section of the preamble to these regulations, section 432(b)(3)(D) generally requires notice to plan participants and beneficiaries, within 30 days after a plan receives its annual certification, on whether the plan is in endangered or critical status. If the plan is in critical status, section 432(b)(3)(D) provides that the notice must provide certain information to participants and beneficiaries, including the possibility that adjustable benefits may be reduced and a description of who might be subject to the reductions. Section 432(f)(2)(A) generally states that, effective on the date that notice is provided that a plan is in critical status, the plan must not pay any payment in excess of the monthly amount paid under a single-life annuity (notwithstanding the anti-cutback rule in section 411(d)(6)). Thus, the payment of single-sum distributions would not be permitted under section 432(f)(2)(A) after a plan provides notification that the plan is in critical status. The final regulations provide that if a plan provides the notice under section 432(b)(3)(D) in accordance with the applicable timing and content standards for such a notice with respect to an

amendment, the plan is treated as having complied with any requirement to provide a section 204(h) notice with respect to the amendment.

Delegation of Authority to the Commissioner

Like the 2008 proposed regulations, these final regulations delegate authority to the Commissioner of the Internal Revenue Service to publish revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter) under section 4980F of the Code (which would also apply to section 204(h) of ERISA) that the Commissioner determines to be necessary or appropriate for a section 204(h) amendment that applies with respect to benefits accrued before the applicable amendment date but that does not violate section 411(d)(6) of the Code. This delegation of authority provides the Commissioner with greater flexibility to develop special rules to address special circumstances in the future, such as future statutory changes. This delegation of authority also extends to circumstances in which a section 204(h) amendment may require another notice in addition to a section 204(h) notice, as long as the amendment is permitted to reduce accrued benefits, regardless of whether that amendment actually reduces benefits accrued before the adoption date of the amendment. This delegation would permit the Commissioner to treat plans providing other notices with timing and content requirements similar to a section 204(h) notice as having complied with the requirement to provide a section 204(h) notice.

Effective/Applicability Dates

These rules in these final regulations are generally applicable to section 204(h) amendments that are effective on or after January 1, 2008. With respect to the timing rules on providing a section 204(h) notice for a plan amendment that has a retroactive effective date and the clarification of the cross-references in Q&A-7(b), these special rules apply to section 204(h) amendments adopted in plan years beginning after July 1, 2008. With respect to any section 204(h) amendment to a lump sum-based benefit formula (or any amendment adopted pursuant to section 701 of PPA '06), the special rules under the regulations relating to an amendment that applies with respect to benefits accrued before the applicable amendment date apply to amendments adopted after December 21, 2006. The special 30-day timing rule for providing

a section 204(h) notice applies to such amendments effective on or after December 21, 2006, and no later than December 31, 2008. The Treasury Department and the IRS anticipate issuing guidance in the near future relating to the application of section 4980F to plan amendments that are adopted, in accordance with section 1107 of PPA '06, to comply with the requirements of section 411(b)(5)(B)(i), relating to market rates of return. As provided in Announcement 2009-82 (available on the IRS Web site at <http://www.irs.gov/pub/irs-drop/a-09-82.pdf>), this future guidance may provide a special timing rule for when section 204(h) notice must be provided.

The regulations also reflect special statutory effective dates for provisions in PPA '06. Section 402 of PPA '06 applies to section 204(h) amendments adopted in plan years ending after August 17, 2006. Section 4980F(e)(1) of the Code, as amended by section 502(c) of PPA '06, applies to section 204(h) amendments adopted in plan years beginning after December 31, 2007.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the collection of information in this regulation would not have a significant impact on a substantial number of small entities. This certification is based on the fact that this regulation only provides guidance on how to satisfy existing collection of information requirements. Accordingly, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Pamela R. Kinard of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 54 are amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.411(d)-3 is amended by revising the first sentence of paragraph (a)(1).

The revision reads as follows:

Section 411(d)(6) protected benefits.

(a) Protection of accrued benefits—(1) General rule. Under section 411(d)(6)(A), a plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) if a plan amendment decreases the accrued benefit of any plan participant, except as provided in section 412(d)(2) (section 412(c)(8) for plan years beginning before January 1, 2008), section 4281 of the Employee Retirement Income Security Act of 1974 as amended (ERISA), or other applicable law (see, for example, sections 418D and 418E of the Internal Revenue Code, and section 1107 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780, 1063)).

* * *

PART 54—PENSION EXCISE TAXES

Par. 3. The authority citation for part 54 continues to read in part as follows:

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

Section 54.4980F-1 also issued under 26 U.S.C. 4980F. * * *

Par. 4. Section 54.4980F-1 is amended by:

- 1. Revising the second sentence of paragraph A-1(a).
2. Revising paragraph A-7(b).
3. Revising paragraph A-8(a) and redesignating paragraph A-8(d) as A-8(e) and adding new paragraph A-8(d).
4. Revising the first sentence of paragraphs A-9(a), A-9(b), and A-9(c), and revising paragraph A-9(d)(1).
5. Adding paragraphs A-9(f) and A-9(g).
6. Revising the first sentence of paragraph A-10(a).

- 7. Revising paragraph A-11(a)(1).
8. Adding paragraphs A-18(a)(4) and A-18(a)(5).
9. Revising paragraph A-18(b)(1) and adding paragraphs A-18(b)(3)(i), A-18(b)(3)(ii), and A-18(b)(3)(iii).

The additions and revisions read as follows:

Section 54.4980F-1 Notice requirements for certain pension plan amendments significantly reducing the rate of future benefit accrual.

* * * * *

A-1. (a) * * * The notice is required to be provided to plan participants and alternate payees who are applicable individuals (as defined in Q&A-10 of this section), to certain employee organizations, and to contributing employers under a multiemployer plan (as described in Q&A-10(a) of this section). * * *

* * * * *

A-7. * * *

(b) Plan provisions not taken into account—(1) In general. Plan provisions that do not affect the rate of future benefit accrual of participants or alternate payees are not taken into account in determining whether there has been a reduction in the rate of future benefit accrual.

(2) Interaction with section 411(d)(6). Any benefit that is not a section 411(d)(6) protected benefit as described in §§ 1.411(d)-3(g)(14) and 1.411(d)-4, Q&A-1(d) of this chapter, or that is a section 411(d)(6) protected benefit that may be eliminated or reduced as permitted under § 1.411(d)-3(c), (d), or (f), or under § 1.411(d)-4, Q&A-2(a)(2), (a)(3), (b)(1), or (b)(2)(ii) through (b)(2)(xi) of this chapter, is not taken into account in determining whether an amendment is a section 204(h) amendment. Thus, for example, provisions relating to the right to make after-tax deferrals are not taken into account.

* * * * *

A-8. (a) General rule. Whether an amendment reducing the rate of future benefit accrual or eliminating or reducing an early retirement benefit or retirement-type subsidy provides for a reduction that is significant for purposes of section 4980F (and section 204(h) of ERISA) is determined based on reasonable expectations taking into account the relevant facts and circumstances at the time the amendment is adopted, or, if earlier, at the effective date of the amendment.

* * * * *

(d) Plan amendments reflecting a change in statutorily mandated minimum present value rules. If a defined benefit plan offers a distribution

to which the minimum present value rules of section 417(e)(3) apply (other than a payment to which section 411(a)(13)(A) applies) and the plan is amended to reflect the changes to the applicable interest rate and applicable mortality table in section 417(e)(3) made by the Pension Protection Act of 2006, Public Law 109-780 (120 Stat. 780) (PPA '06) (and no change is made in the dates on which the payment will be made), no section 204(h) notice is required to be provided.

* * * * *

A-9. (a) 45-day general rule. Except as otherwise provided in this Q&A-9, section 204(h) notice must be provided at least 45 days before the effective date of any section 204(h) amendment. * * *

(b) 15-day rule for small plans. Except for amendments described in paragraphs (d)(2) and (g) of this Q&A-9, section 204(h) notice must be provided at least 15 days before the effective date of any section 204(h) amendment in the case of a small plan. * * *

(c) 15-day rule for multiemployer plans. Except for amendments described in paragraphs (d)(2) and (g) of this Q&A-9, section 204(h) notice must be provided at least 15 days before the effective date of any section 204(h) amendment in the case of a multiemployer plan. * * *

(d) Special timing rule for business transactions—(1) 15-day rule for section 204(h) amendment in connection with an acquisition or disposition. Except for amendments described in paragraphs (d)(2) and (g) of this Q&A-9, if a section 204(h) amendment is adopted in connection with an acquisition or disposition, section 204(h) notice must be provided at least 15 days before the effective date of the section 204(h) amendment.

* * * * *

(f) Special timing rule for certain plans maintained by commercial airlines. See section 402 of PPA '06 for a special rule that applies to certain plans maintained by an employer that is a commercial passenger airline or the principal business of which is providing catering services to a commercial passenger airline. Under this special rule, section 204(h) notice must be provided at least 15 days before the effective date of the amendment.

(g) Special timing rules relating to certain section 204(h) amendments that reduce section 411(d)(6) protected benefits—(1) Plan amendments permitted to reduce prior accruals. This paragraph (g) generally provides special rules with respect to a plan amendment that would not violate section 411(d)(6)

even if the amendment were to reduce section 411(d)(6) protected benefits, which are limited to accrued benefits that are attributable to service before the applicable amendment date. For example, this paragraph (g) applies to amendments that are permitted to be effective retroactively under section 412(d)(2) of the Code (section 412(c)(8) for plan years beginning before January 1, 2008), section 418D of the Code, section 418E of the Code, section 4281 of ERISA, or section 1107 of PPA '06. See, generally, § 1.411(d)-3(a)(1).

(2) *General timing rule for amendments to which this paragraph (g) applies.* For an amendment to which this paragraph (g) applies, the amendment is effective on the first date on which the plan is operated as if the amendment were in effect. Thus, except as otherwise provided in this paragraph (g), a section 204(h) notice for an amendment to which paragraph (a) of this section applies that is adopted after the effective date of the amendment must be provided, with respect to any applicable individual, at least 45 days before (or such other date as may apply under paragraph (b), (c), (d), or (f) of this Q&A-9) the date the amendment is put into operational effect.

(3) *Special rules for section 204(h) notices provided in connection with other disclosure requirements—(i) In general.* Notwithstanding the requirements in this Q&A-9 and Q&A-11 of this section, if a plan provides one of the notices in paragraph (g)(3)(ii) of this Q&A-9, in accordance with the applicable timing and content rules for such notice, the plan is treated as timely providing a section 204(h) notice with respect to a section 204(h) amendment.

(ii) *Notice requirements.* The notices in this paragraph (g)(3)(ii) are—

(A) A notice required under any revenue ruling, notice, or other guidance published under the authority of the Commissioner in the Internal Revenue Bulletin to affected parties in connection with a retroactive plan amendment described in section 412(d)(2) (section 412(c)(8) for plan years beginning before January 1, 2008);

(B) A notice required under section 101(j) of ERISA if an amendment is adopted to comply with the benefit limitation requirements of section 206(g) of ERISA (section 436 of the Code);

(C) A notice required under section 432(b)(3)(D) of the Code for an amendment adopted to comply with the benefit restrictions under section 432(f)(2);

(D) A notice required under section 418D, or section 4244A(b) of ERISA, for an amendment that reduces or

eliminates accrued benefits attributable to employer contributions with respect to a multiemployer plan in reorganization;

(E) A notice required under section 418E, or section 4245(e) of ERISA, relating to the effects of the insolvency status for a multiemployer plan; and

(F) A notice required under section 4281 of ERISA for an amendment of a multiemployer plan reducing benefits pursuant to section 4281(c) of ERISA.

(4) *Delegation of authority to Commissioner.* The Commissioner may provide special rules under section 4980F, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), that the Commissioner determines to be necessary or appropriate with respect to a section 204(h) amendment—

(A) That applies to benefits accrued before the applicable amendment date but that does not violate section 411(d)(6); or

(B) For which there is a required notice relating to a reduction in benefits and such notice has timing and content requirements similar to a section 204(h) notice with respect to a significant reduction in the rate of future benefit accruals.

A-10. (a) *In general.* Section 204(h) notice must be provided to each applicable individual, to each employee organization representing participants who are applicable individuals, and, for plan years beginning after December 31, 2007, to each employer that has an obligation to contribute (within the meaning of section 4212(a) of ERISA) to a multiemployer plan. * * *

A-11. (a) *Explanation of notice requirement—(1) In general.* Section 204(h) notice must include sufficient information to allow applicable individuals to understand the effect of the plan amendment. In order to satisfy this rule, a plan administrator providing section 204(h) notice must generally satisfy paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of this Q&A-11. See paragraph (g)(3) of Q&A-9 of this section for special rules relating to section 204(h) notices provided in connection with certain other written notices. See also paragraph (g)(4) of Q&A-9 of this section for a delegation of authority to the Commissioner to provide special rules. * * *

A-18. (a) * * * (4) *Special effective date for certain section 204(h) amendments made by plans of commercial airlines.* Section

402 of PPA '06 applies to section 204(h) amendments adopted in plan years ending after August 17, 2006.

(5) *Special effective date for rule relating to contributing employers.* Section 502(c) of PPA '06, which amended section 4980F(e)(1) of the Internal Revenue Code, applies to section 204(h) amendments adopted in plan years beginning after December 31, 2007.

(b) *Regulatory effective date—(1) General effective date.* Except as otherwise provided in this paragraph (b) of this section, Q&A-1 through Q&A-18 of this section apply to amendments with an effective date that is on or after September 1, 2003.

(3) *Effective dates for Q&A-9(g)(1), (g)(3), and (g)(4)—(i) General effective date.* Except as otherwise provided in Q&A-18(b)(3)(ii) or (b)(3)(iii) of this section, Q&A-9(g)(1), (g)(3), and (g)(4) of this section apply to amendments that are effective on or after January 1, 2008.

(ii) *Effective dates for Q&A-9(g)(2) and Q&A-7(b).* Except as otherwise provided in Q&A-18(b)(3)(iii) of this section, Q&A-9(g)(2) and Q&A-7(b) of this section apply to section 204(h) amendments adopted in plan years beginning after July 1, 2008.

(iii) *Special rules for section 204(h) amendments to an applicable defined benefit plan.* Except as otherwise provided in paragraph (b)(3)(i) or (b)(3)(ii) of this Q&A-18, with respect to any section 204(h) notice provided in connection with a section 204(h) amendment to an applicable defined benefit plan within the meaning of section 411(a)(13)(C)(i) to limit distributions as permitted under section 411(a)(13)(A) for distributions made after August 17, 2006, that is made pursuant to section 701 of PPA '06, paragraphs (g)(1) and (g)(2) of Q&A-9 of this section apply to amendments that are effective after December 21, 2006. For such an amendment that is effective not later than December 31, 2008, section 204(h) notice does not fail to be timely if the notice is provided at least 30 days, rather than 45 days, before the date that the amendment is first effective.

Steve T. Miller, Deputy Commissioner for Services and Enforcement.

Approved: November 12, 2009.

Michael Mundaca, Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9-28078 Filed 11-23-09; 8:45 am]

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket No. USCG-2009-1004]

RIN 1625-AA11

Safety and Security Zone, Chicago Sanitary and Ship Canal, Romeoville, IL**AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety and security zones on the Chicago Sanitary and Ship Canal (CSSC) near Romeoville, IL. This temporary final rule is intended to restrict all vessels from transiting the navigable waters of the CSSC. The safety and security zones are necessary to protect the waters, waterway users and vessels from hazards associated with the U.S. Army Corps of Engineers (USACE) electrical dispersal barrier and for the preparation and safe application of a fish toxicant during a period of time when the barrier will be disabled to conduct maintenance.

DATES: This temporary final rule is effective from 5 p.m. on November 24, 2009, until 5 p.m. on December 18, 2009. This temporary final rule is enforceable with actual notice by Coast Guard personnel beginning November 16, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-1004 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-1004 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call CDR Tim Cummins, Deputy Prevention Division, Ninth Coast Guard District, telephone 216-902-6045. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior

notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for, good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because the USACE made the decision, without time for a proper notice period, to permanently increase the voltage of the fish barrier to two-volts per inch in response to data which indicates that Asian carp are closer to the Great Lakes waterway system than originally thought. The electric current in the water created by the electrical dispersal barriers coupled with the uncertainty of the effects of the increased voltage poses a safety risk to commercial vessels and recreational boaters who transit the area. As such, a safety and security zone is being enacted to ensure the safety of vessels operating in the vicinity of the electrical dispersal barrier.

In addition, the emergent planning and execution of maintenance to Barrier IIA by the USACE and the preventative application of the fish toxicant (rotenone), under the direction of the Illinois Department of Natural Resources (IDNR) and the Federal coordination of the U.S. Environmental Protection Agency (EPA) resulted in good cause for not publishing an NPRM as there was insufficient time for proper notice. During IDNR's deployment of rotenone, the Coast Guard will enact a safety and security zone to provide for the safety and security of the waters, the waterway facilities and the vessels operating between the Lockport Lock and Dam and the electrical dispersal barrier.

The application of rotenone to the CSSC will ensure Asian carp do not transit across the fish barrier when Barrier IIA is taken off line and Barrier I, which only operates at one volt per inch, is the sole prophylactic from preventing the Asian carp from entering the Great Lakes. The effective application of rotenone is essential in preventing the Asian carp from surviving the application. IDNR reports indicate that vessels moored along the Canal wall could create pockets or eddies where the fish toxicant is not able to reach all of the Asian Carp necessitating the Captain of the Port (COTP) Sector Lake Michigan to order their immediate removal from the safety and security zone. Exceptions may

possibly be granted upon the review of COTP Sector Lake Michigan.

Rotenone has potential for adverse effects on humans. As such, delaying this rule would be contrary to the public interest of ensuring the safety and security of waterway users and vessels during the preparations, application and clean-up from the use of rotenone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because of the safety and security risk to the waters, commercial vessels and recreational boaters who transit the area. The following discussion and the Background and Purpose section below provide additional support of the Coast Guard's determination that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication.

In 2002, the USACE energized a demonstration electrical dispersal barrier located in the Chicago Sanitary and Ship Canal. The demonstration barrier, commonly referred to as "Barrier I," generates a low-voltage electric field (one-volt per inch) across the canal, which connects the Illinois River to Lake Michigan. Barrier I was built to block the passage of aquatic nuisance species, such as Asian carp, and prevent them from moving between the Mississippi River basin and Great Lakes via the canal.

In 2006, the USACE completed construction of a new barrier, "Barrier IIA." Because of its design, Barrier IIA can generate a more powerful electric field (up to four-volts per inch), over a larger area within the Chicago Sanitary and Ship Canal, than Barrier I. Testing was conducted by the USACE which indicated that two-volts per inch is the optimal voltage to deter aquatic nuisance species. The USACE's original plan was to perform testing on the effects of the increased voltage on vessels passing through the fish barrier prior to permanently increasing the voltage. However, after receiving data that the Asian carp were closer to the Great Lakes than expected, the decision was made to immediately energize the barrier to two-volts per inch without prior testing.

A comprehensive, independent analysis of Barrier IIA, conducted in 2008 by the USACE at the one-volt per inch level, found a serious risk of injury or death to persons immersed in the water located adjacent to and over the barrier. Additionally, sparking between barges transiting the barrier (a risk to flammable cargoes) occurred at the one-volt per inch level. The Coast Guard and

USACE developed regulations and safety guidelines, with stakeholder input, which addressed the risks and hazards associated with operating the barriers at the one-volt per inch level. These regulations were published in 33 CFR 165.923, 70 FR 76692 (Dec 28, 2005) and in a series of temporary final rules: 71 FR 4488 (Jan 27, 2006); 71 FR 19648 (Apr 17, 2006); 73 FR 33337 (Jun 12, 2008); 73 FR 37810 (Jul 2, 2008); 73 FR 45875 (Aug 7, 2008); and 73 FR 63633 (Oct 27, 2008). A temporary interim rule was issued on February 9, 2009 (74 FR 6352). Finally, an NPRM was issued on May 26, 2009 (74 FR 24722).

In October of 2009, the USACE notified the Coast Guard that barrier IIA needed to be shut-down for required maintenance. As a result, the IDNR, in the coordination of the EPA, will apply rotenone to the CSSC to ensure Asian Carp do not transit through the CSSC while Barrier IIA is disabled. The Coast Guard's understanding is that the application of the rotenone will take approximately fifteen (15) hours followed by neutralizing and clean-up. The application, neutralizing and clean-up is expected to take a minimum of five days and a maximum of ten (10) days. For any questions related to the application of rotenone, please contact Mr. Bill Bolen, U.S. Environmental Protection Agency, Senior Advisor, Great Lakes National Program Office, 77 W. Jackson Blvd., Chicago, IL 60604, at (312) 353-6316.

Until Barrier IIA is shut-down, the risks to persons and vessels are on-going and immediate action is needed to prevent injury to the people, vessels and waters. When the electrical power to Barrier IIA is secured for maintenance and rotenone is applied to the CSSC, the risk to persons and vessels continues to exist although now from an alternative source. The timing of the decision to use rotenone during the maintenance did not provide an opportunity for full notice and comment period. Until on-scene preparations begin on December 2, 2009, for the application of rotenone, the Captain of the Port Sector Lake Michigan will make every effort to permit vessels to pass over the fish barrier while it is operating at the two volt per inch level. Once preparations begin on December 2, 2009, until clean-up is complete which at the earliest will be December 7 but may last until December 14, no vessels, except those being used for the rotenone application and clean-up, will be permitted to enter or remain in the safety and security zones. As areas become neutralized and the necessary clean up action has been completed, the Captain of the Port

Sector Lake Michigan will re-open certain portions of the waterways in an effort to minimize commerce disruption.

Prior to December 2, 2009, vessels that comply with the regulations as set forth in this temporary rule may transit through the safety and security zones. After December 2, 2009, all vessels desiring to enter the safety and security zones must receive permission from the Captain of the Port Sector Lake Michigan to do so and must follow all orders from the Captain of the Port Sector Lake Michigan or her designated on-scene representative while in the zone. As soon as the rotenone clean-up efforts are complete, the security and safety zone from the Lockport Lock and Dam to the electric dispersal barrier will be removed. Upon completion of the rotenone clean-up efforts, the safety and security zone encompassing the electric dispersal barrier will remain in place; however, the Captain of the Port Sector Lake Michigan will permit vessels complying with the regulations set forth in this rule to transit through the zone.

The Captain of the Port Sector Lake Michigan maintains a live radio watch on VHF-FM Channel 16 and a telephone line that is manned 24 hours a day, seven days a week. The public can obtain information concerning enforcement of the safety zone by contacting the Captain of the Port Sector Lake Michigan via the Coast Guard Sector Lake Michigan Command Center at 414-747-7182.

Background and Purpose

The Non-indigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended by the National Invasive Species Act of 1996, authorized the USACE to conduct a demonstration project to identify an environmentally sound method for preventing and reducing the dispersal of non-indigenous aquatic nuisance species through the Chicago Sanitary and Ship Canal. The USACE selected an electric barrier because it is a non-lethal deterrent with a proven history, which does not overtly interfere with navigation in the canal.

A demonstration dispersal barrier (Barrier I) was constructed and has been in operation since April 2002. It is located approximately 30 miles from Lake Michigan and creates an electric field in the water by pulsing low voltage DC current through steel cables secured to the bottom of the canal. A second barrier, Barrier IIA, was constructed 800 to 1300 feet downstream of the Barrier I. The potential field strength for Barrier IIA will be up to four times that of the Barrier I. Barrier IIA was successfully operated for the first time for

approximately seven weeks in September and October 2008, while Barrier I was taken down for maintenance. Construction on a third barrier (Barrier IIB) is in the initial stages; Barrier IIB will augment the capabilities of Barriers I and IIA.

In the spring of 2004, a commercial towboat operator reported an electrical arc between a wire rope and timberhead while making up a tow in the vicinity of the Barrier I. During subsequent USACE safety testing in January 2005, sparking was observed at points where metal-to-metal contact occurred between two barges in the barrier field.

The electric current in the water also poses a safety risk to commercial and recreational boaters transiting the area. The Navy Experimental Diving Unit (NEDU) was tasked with researching how the electric current from the barriers would affect a human body if immersed in the water. The NEDU concluded that the possible effects to a human body if immersed in the water include paralysis of body muscles, inability to breathe, and ventricular fibrillation.

Based on the safety hazards associated with electric current flowing through navigable waterways and the uncertainty of the effects of higher voltage on people and vessels that pass over and adjacent to the barriers, the Coast Guard implemented a safety zone restricting use of the waterway until proper testing and analysis of such testing can be completed by the USACE. As the testing results were, and continue to be analyzed, the Coast Guard has permitted, on a case by case basis, vessel transits so long as the vessels met certain operational restrictions.

As soon as safety testing and analysis are completed, the Coast Guard plans on publishing a new temporary interim rule (TIR) with requests for comments. Although the Coast Guard anticipates being able to continue to permit some vessels to transit through the fish barrier after testing is complete, it is currently anticipated that any subsequent TIR will continue to place restrictions on vessels including prohibiting some vessels from transiting through the fish barrier entirely. The Coast Guard will then likely follow with a supplemental notice of proposed rulemaking (SNPRM) in order to provide a complete notice and comment period for interested parties.

Until on-scene preparations begin on December 2, 2009, for the application of rotenone, the Captain of the Port Sector Lake Michigan will make every effort to permit vessels to pass over the fish barrier while it is operating at the two volt per inch level. Once preparations

begin on December 2, 2009, until clean-up is complete which at the earliest will be December 7 but may last until December 14, no vessels except those being used for the rotenone application and clean-up will be permitted to enter or remain in the safety and security zone. The Captain of the Port Sector Lake Michigan will cause notice of the Coast Guard again permitting vessels on a case by case basis, or those complying with this regulation set forth in this rule, to transit the safety zone to be made by all appropriate means to affect the widest publicity among the affected segments of the public.

Discussion of Rule

This temporary final rule removes 33 CFR 165.T09-0942. This rule suspends 33 CFR 65.923 until 5 p.m. on December 18, 2009. This rule places a safety and security zone on all waters of the Chicago Sanitary Ship Canal from mile-marker 291 (Lockport Lock and Dam) to mile-marker 296. The rule also placed a safety and security zone from mile-marker 296 to mile-marker 297.7 which is located adjacent to and over the electrical dispersal barriers on the Chicago Sanitary and Ship Canal.

The electrical dispersal barrier safety and security zone will be in effect at all times the USACE operates the electrical dispersal barrier. The Coast Guard has deemed this safety and security zone necessary from November 16, 2009, until December 18, 2009, because safety testing and analysis is still being conducted on vessels to determine whether and under what conditions vessels can safely pass adjacent to and over the electrical dispersal barriers. In addition, the safety and security zone is necessary to protect the waters, commercial vessels and recreational boaters who transit the area during the preparation, application and clean-up of the rotenone application.

Until 8 a.m. on December 2, 2009, vessels that comply with the following restrictions are permitted to transit the electrical dispersal barrier safety and security zone:

- (1) Vessels must be greater than twenty feet in length;
- (2) Vessel must not be a personal watercraft of any kind (*i.e.*, jet skis, wave runners, kayak, *etc.*);
- (3) All up-bound and down-bound tows that consist of barges carrying flammable liquid cargos (grade A through C, flashpoint below 140 degrees Fahrenheit, or heated to within 15 degrees Fahrenheit of flash point) must engage the services of a bow boat at all times until the entire tow is clear of the safety and security zone;

(4) Vessels engaged in commercial service, as defined in 46 U.S.C 2101(5), may not pass (meet or overtake) in the safety zone and must make a SECURITE call when approaching the safety and security zone to announce intentions and work out passing arrangements on either side;

(5) Commercial tows transiting the safety and security zone must be made up with wire rope to ensure electrical connectivity between all segments of the tow;

(6) All vessels are prohibited from loitering in the safety and security zone;

(7) Vessels may enter the safety zone for the sole purpose of transiting to the other side and must maintain headway throughout the transit. All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the safety zone;

(8) All personnel in the safety zone on open decks must wear a Coast Guard approved Type I personal flotation device;

(9) Vessels may not moor or lay up on the right or left descending banks of the safety zone; and,

(10) Towboats may not make or break tows if any portion of the towboat or tow is located in the safety zone.

With respect to the safety and security zone from the Lockport Lock and Dam to the electrical dispersal barrier (from mile-marker 291 to 296), until December 2, 2009, all up-bound and down-bound vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), are permitted to transit through safety and security zone. Vessels may not moor or lay up in the safety and security zone unless preparing to, or engaging in, loading or unloading operations. Any vessel not actively preparing to, or currently engaged in, loading and unloading operations must ask for permission for the Captain of the Port to remain in the safety and security zone.

On December 2, 2009, preparations will begin for the application of rotenone at which time the Captain of the Port Sector Lake Michigan will prohibit all vessels from transiting either safety and security zone. As soon as the rotenone clean-up efforts are complete, the safety and security zone from the Lockport Lock and Dam to the electric dispersal barrier will be removed. Upon completion of the rotenone clean-up efforts, the safety and security zone encompassing the electric dispersal barrier will remain in place; however, the Captain of the Port Sector Lake Michigan will permit vessels complying with the regulations set forth in this rule to transit through the zone.

The Captain of the Port Sector Lake Michigan will cause notice of the Coast Guard again permitting vessels to transit the electrical dispersal barrier safety zone by all appropriate means to affect the widest publicity among the affected segments of the public. Such means of notification will include, but is not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. In addition, Captain of the Port Sector Lake Michigan maintains a telephone line that is manned 24 hours a day, seven days a week. The public can obtain information concerning enforcement of the safety and security zones by contacting the Captain of the Port Sector Lake Michigan via the Coast Guard Sector Lake Michigan Command Center at 414-747-7182.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this rule to be minimal. This determination is based the following: (1) Initial test results at the current operating parameters of two volts per inch indicate that the majority of commercial and recreational vessels that regularly transit the Chicago Sanitary and Ship Canal will be permitted to enter the safety zone under certain conditions; and, (2) every effort will be made to reduce the closure time of the canal following the shutdown of Barrier IIA for maintenance and rotenone application.

Because these safety and security zones must be implemented immediately without a full notice and comment period, the full economic impact of this rule is difficult to determine at this time. The Coast Guard urges interested parties to submit comments that specifically address the economic impacts of permanent or temporary closures of the Chicago Sanitary and Ship Canal. Comments can be made online by going to <http://www.regulations.gov>, inserting USCG-2009-0942 in the "Keyword" box, and then clicking "Search."

Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider whether regulatory actions would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. An RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). The Coast Guard determined that this rule is exempt from notice and comment rulemaking pursuant to 5 U.S.C. 553(b)(B). Therefore, an RFA analysis is not required for this rule. The Coast Guard, nonetheless, expects that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have

determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate Tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that this rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of the category of actions which do not individually or cumulatively have significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2 Figure 2–1, paragraph (34)(g), of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves the establishing, disestablishing, or changing of a security or safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated

under **ADDRESSES**. The Coast Guard's environmental responsibilities extend only to the creation of a safety and security zone and do not address the application of rotenone. Any questions regarding the rotenone operation should be addressed to Mr. Bill Bolen, U.S. Environmental Protection Agency, Senior Advisor, Great Lakes National Program Office, 77 W. Jackson Blvd., Chicago, IL 60604, at (312) 353-6316.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§ 165.T09-0942 [Removed]

■ 2. Remove § 165.T09-0942.

§ 165.923 [Suspended]

■ 3. Section 165.923 is suspended until December 18, 2009.

■ 4. A new temporary section 165.T09-1004 is added as follows:

§ 165.T09-1004 Safety and Security Zone, Chicago Sanitary and Ship Canal, Romeoville, IL.

(a) *Lockport Lock to Electrical Dispersal Barrier Safety and Security Zone.* (1) The following area is a temporary safety and security zone: All waters of the Chicago Sanitary and Ship Canal located between mile marker 291.0 (Lockport Lock and Dam) and mile marker 296.0 (approximately 958 feet south of the Romeo Road Bridge).

(2) *Enforcement Period.* The safety and security zone will be enforced from 5 p.m. on November 16, 2009, until 5 p.m. on December 18, 2009. Beginning November 16, 2009, the Coast Guard will use actual notice to enforce this safety and security zone until this rule is published in the **Federal Register**.

(3) *Regulations.* (i) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety and security zone is prohibited unless authorized by the Captain of the Port Sector Lake Michigan, or her on-scene representative.

(ii) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Sector Lake Michigan to act on her behalf. The on-scene representative of the Captain of the Port Sector Lake Michigan will be aboard a Coast Guard, Coast Guard Auxiliary, or other designated vessel or will be on shore and will communicate with vessels via VHF-FM radio, loudhailer, or by phone. The Captain of the Port Sector Lake Michigan or her on-scene representative may be contacted via VHF-FM radio Channel 16 or the Coast Guard Sector Lake Michigan Command Center at 414-747-7182.

(iii) Vessel operators desiring to enter or operate within the safety and security zone must comply with the provisions of paragraph (a)(4)(iv) or contact the Captain of the Port Sector Lake Michigan or her on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety and security zone must comply with all directions given to them by the Captain of the Port Sector Lake Michigan or her on-scene representative.

(iv) Until 8 a.m. on December 2, 2009, all up-bound and down-bound vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), are permitted to transit through the safety zone. Vessels may not moor or lay up in the safety and security zone unless preparing to, or engaging in, loading or unloading operations. Any vessel not actively preparing to, or currently engaged in, loading and unloading operations must ask for permission for the Captain of the Port to remain in the safety and security zone.

(v) Starting at 8 a.m. on December 2, 2009, this safety zone and security zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Sector Lake Michigan or her on-scene representative. As soon as clean-up efforts from the rotenone application are complete, the Captain of the Port will cause notice of the enforcement of the safety and security zone being removed by all appropriate means to effect the widest publicity among the affected segments of the public. Such means of notification include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners.

(b) *Electrical Dispersal Barrier Safety and Security Zone.* (1) The following area is a temporary safety and security zone: All waters of the Chicago Sanitary and Ship Canal located between mile marker 296.0 (approximately 958 feet south of the Romeo Road Bridge) and mile marker 297.7 (approximately one

mile north of the electrical dispersal barrier).

(2) *Enforcement Period.* The safety zone will be enforced from 5 p.m. on November 16, 2009, until 5 p.m. on December 18, 2009. Beginning November 16, 2009, the Coast Guard will use actual notice to enforce this safety zone until this rule is published in the **Federal Register**.

(3) *Definitions.* The following definitions apply to paragraph (b) of this section:

Bow boat means a towing vessel capable of providing positive control of the bow of a tow containing one or more barges, while transiting the regulated navigation area. The bow boat must be capable of preventing a tow containing one or more barges from coming into contact with the shore and other moored vessels.

(4) *Regulations.* (i) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Sector Lake Michigan, or her representative.

(ii) The "representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Sector Lake Michigan to act on her behalf. The representative of the Captain of the Port Sector Lake Michigan will be aboard a Coast Guard, Coast Guard Auxiliary, or other designated vessel or will be on shore and will communicate with vessels via VHF-FM radio, loudhailer, or by phone. The Captain of the Port Sector Lake Michigan or her representative may be contacted via VHF-FM radio Channel 16 or the Coast Guard Sector Lake Michigan Command Center at 414-747-7182.

(iii) Vessel operators desiring to enter or operate within the safety and security zone must comply with the provisions of paragraph (b)(4)(iv) or shall contact the Captain of the Port Sector Lake Michigan or her representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety and security zone must comply with all directions given to them by the Captain of the Port Sector Lake Michigan or her representative.

(iv) Until 8 a.m. on December 2, 2009, vessels that comply with the following restrictions are permitted to transit the safety and security zone and the following regulations apply:

(A) Vessels must be greater than twenty feet in length.

(B) Vessel must not be a personal watercraft of any kind (*i.e.*, jet skis, wave runners, kayak, *etc.*).

(C) All up-bound and down-bound tows that consist of barges carrying flammable liquid cargos (grade A through C, flashpoint below 140 degrees Fahrenheit, or heated to within 15 degrees Fahrenheit of flash point) must engage the services of a bow boat at all times until the entire tow is clear of the safety and security zone.

(D) Vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), may not pass (meet or overtake) in the safety zone and must make a SECURITE call when approaching the safety zone to announce intentions and work out passing arrangements on either side.

(E) Commercial tows transiting the safety zone must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

(F) All vessels are prohibited from loitering in the safety and security zone.

(G) Vessels may enter the safety and security zone for the sole purpose of transiting to the other side and must maintain headway throughout the transit. All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the safety and security zone.

(H) If a vessel is permitted by the Captain of the Port Sector Lake Michigan or her representative to transit the safety and security zone, all personnel should remain on open decks inside the cabin, or as inboard as practicable and wear a Coast Guard approved Type I personal flotation device. Alternatively, personnel on recreational vessels may wear a Coast Guard approved personal flotation device under 33 CFR Part 175 while in the safety zone.

(I) Vessels may not moor or lay up on the right or left descending banks of the safety zone.

(J) Towboats may not make or break tows if any portion of the towboat or tow is located in the safety zone.

(v) Starting at 8 a.m. on December 2, 2009, this safety and security zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Sector Lake Michigan or her representative. As soon as clean-up efforts from the rotenone application are complete, the Captain of the Port will cause notice of the safety and security zone being open to vessel transits, so long as the vessels comply with regulations described in paragraph (b)(4)(iv) of this section, by all appropriate means to effect the widest publicity among the affected segments of the public. Such means of notification include but are not limited

to, Broadcast Notice to Mariners or Local Notice to Mariners.

(vi) Persons on board any vessel transiting this safety and security zone in accordance with this rule or otherwise are advised they do so at their own risk.

Dated: November 16, 2009.

D.R. Callahan,

*Captain, U.S. Coast Guard, Commander,
Ninth Coast Guard District, Acting.*

[FR Doc. E9-28183 Filed 11-23-09; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0808041043-9036-02]

RIN 0648-XS77

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Directed Butterfish Fishery

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the directed fishery for butterfish in the Exclusive Economic Zone (EEZ) will be closed effective 0001 hours, November 25, 2009. Vessels issued a Federal permit to harvest butterfish may not retain or land more than 600 lb (0.27-mt) of butterfish per trip for the remainder of the year (through December 31, 2009). This action is necessary to prevent the fishery from exceeding its domestic annual harvest (DAH) of 500 mt and to allow for effective management of this stock.

DATES: Effective 0001 hours, November 25, 2009, through 2400 hours, December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Lindsey Feldman, Fishery Management Specialist, 978-675-2179, Fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Regulations governing the butterfish fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing, and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel,

Squid, and Butterfish Fishery Management Plan (FMP). The procedures for setting the annual initial specifications are described in § 648.21.

The 2009 specification of DAH for butterfish was set at 500 mt (74 FR 6244, February 6, 2009).

Section 648.22 requires NMFS to close the directed butterfish fishery in the EEZ when 80 percent of the total annual DAH has been harvested. If 80 percent of the butterfish DAH is projected to be landed prior to October 1, a 250-lb (0.11-mt) incidental butterfish possession limit is put in effect for the remainder of the year, and if 80 percent of the butterfish DAH is projected to be landed on or after October 1, a 600-lb (0.27-mt) incidental butterfish possession limit is put in effect for the remainder of the year. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of butterfish permits at least 72 hr before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**.

The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 80 percent of the DAH for butterfish in 2009 fishing year will be harvested. Therefore, effective 0001 hours, November 25, 2009, the directed fishery for butterfish fishery is closed and vessels issued Federal permits for butterfish may not retain or land more than 600 lb (0.27 mt) of butterfish during a calendar day. The directed fishery will reopen effective 0001 hours, January 1, 2010, when the 2010 DAH becomes available.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action closes the butterfish fishery until December 31, 2009, under current regulations. The regulations at § 648.21 require such action to ensure that butterfish vessels do not exceed the 2009 TAC. Data indicating the butterfish fleet will have landed at least 80 percent of the 2009 TAC have only recently become available. If implementation of this closure is delayed to solicit prior

public comment, the quota for this year will be exceeded, thereby undermining the conservation objectives of the FMP. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: November 18, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9-28155 Filed 11-19-09; 4:15 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 090324366-9371-01]

RIN 0648-XS52

Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #8, #9, #10, #11, and #12

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

ACTION: Modification of fishing seasons, gear restrictions, and landing and possession limits; request for comments.

SUMMARY: NOAA Fisheries announces five inseason actions in the ocean salmon fisheries. Inseason actions #8, #9, and #11 modified the recreational fishery in the area from the U.S./Canada Border to Cape Falcon, Oregon. Inseason action #10 modified the commercial and recreational fisheries in the area from Cape Falcon, Oregon to the Oregon/California Border. Inseason action #12 modified the commercial fishery in the area from the U.S./Canada Border to Cape Falcon, Oregon.

DATES: See **SUPPLEMENTARY INFORMATION** for effective dates of inseason actions #8, #9, #10, #11, and #12. Comments will be accepted through December 9, 2009.

ADDRESSES: You may submit comments, identified by 0648-XS52, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>
- Fax: 206-526-6736, Attn: Peggy Busby
- Mail: 7600 Sand Point Way NE, Building 1, Seattle, WA, 98115

Instructions: No comments will be posted for public viewing until after the comment period has closed. 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 (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 N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Peggy Busby, by phone at 206-526-4323.

SUPPLEMENTARY INFORMATION: In the 2009 annual management measures for ocean salmon fisheries (74 FR 20610, May 5, 2009), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada Border to the U.S./Mexico Border, beginning May 1, 2009.

The Regional Administrator (RA) consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife on August 26 and September 3, 2009. The information considered related to catch to date and Chinook and coho catch rates compared to quotas and other management measures established preseason.

Inseason action #8 modified the recreational quota in the area from the U.S./Canada Border to Cape Falcon, Oregon by transferring quota among subareas; 1,000 coho were transferred from the quota of the Neah Bay subarea (U.S./Canada Border to Cape Alava, Washington) to the quota for the LaPush subarea (Cape Alava, Washington to Queets River, Washington). This action was taken to distribute remaining quota among the subareas to allow fishing to continue in the LaPush subarea. On August 26, the states recommended this action and the RA concurred; inseason action #8 took effect on August 26, 2009, and will remain in effect until it is modified by any subsequent inseason actions; otherwise, regulations are consistent with 2009 annual management measures for ocean salmon fisheries (74 FR 20610, May 5, 2009). Modification in quota and/or fishing seasons is authorized by regulations at 50 CFR 660.409 (b)(1)(i).

Inseason action #9 closed the recreational fishery in the Columbia River subarea (Leadbetter Point, Washington to Cape Falcon, Oregon). This action was taken to prevent exceeding the subarea coho quota. On August 26, 2009 the states recommended this action and the RA concurred; inseason action #9 took effect on August 31, 2009, and will remain in effect until it is modified by any subsequent inseason actions; otherwise, regulations are consistent with 2009 annual management measures for ocean salmon fisheries (74 FR 20610, May 5, 2009). Modification in quota and/or fishing seasons is authorized by regulations at 50 CFR 660.409 (b)(1)(i).

Inseason action #10 modified the commercial and recreational quotas in the area from the Cape Falcon, Oregon to the Oregon/California Border by transferring unutilized coho salmon quota from the June-August recreational fishery to the September commercial and recreational quotas; 10,240 coho were transferred to the non-mark-selective commercial fishery in the area from Cape Falcon, Oregon to Humbug Mountain, Oregon; 2,560 coho were transferred to the mark-selective recreational fishery in the area from Cape Falcon, Oregon to the Oregon/California Border. This action was taken to utilize available coho salmon quota south of Cape Falcon, Oregon. On September 3, the states recommended this action and the RA concurred; inseason action #10 took effect on September 3, 2009, and will remain in effect until it is modified by any subsequent inseason actions; otherwise, regulations are consistent with 2009 annual management measures for ocean salmon fisheries (74 FR 20610, May 5, 2009). Modification in quota and/or fishing seasons is authorized by regulations at 50 CFR 660.409 (b)(1)(i).

Inseason action #11 reopened the recreational fishery in the Columbia River subarea (Leadbetter Point, Washington to Cape Falcon, Oregon), previously closed by inseason action #9. This action was taken to utilize remaining quota in the Columbia River subarea. On September 3, 2009, the states recommended this action and the RA concurred; inseason action #11 took effect on September 7, 2009, and will remain in effect until it is modified by any subsequent inseason actions; otherwise, regulations are consistent with 2009 annual management measures for ocean salmon fisheries (74 FR 20610, May 5, 2009). Modification in quota and/or fishing seasons is authorized by regulations at 50 CFR 660.409 (b)(1)(i).

Inseason action #12 modified the commercial fishery in the area from the U.S./Canada Border to Cape Falcon, Oregon by reducing the landing and possession limit from 200 coho per opening to 100 coho per opening. This action was taken to avoid exceeding the coho quota while keeping the fishery open as scheduled. On September 3, 2009, the states recommended this action and the RA concurred; inseason action #11 took effect on September 5, 2009, and will remain in effect until it is modified by any subsequent inseason actions; otherwise, regulations are consistent with 2009 annual management measures for ocean salmon fisheries (74 FR 20610, May 5, 2009). Modification in quota and/or fishing seasons is authorized by regulations at 50 CFR 660.409 (b)(1)(i).

All other restrictions and regulations remain in effect as announced for the 2009 Ocean Salmon Fisheries and previous inseason actions.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance

with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the date the action was effective, by telephone hotline number 206-526-6667 and 800-662-9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. These actions do not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (73 FR 23971, May 1, 2008; 74 FR 20610, May 5, 2009), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public

comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to allow fishers access to the available fish at the time the fish were available. The AA also finds good cause to waive the 30-day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the Salmon Fishery Management Plan and the current management measures.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: November 19, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9-28160 Filed 11-23-09; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 74, No. 225

Tuesday, November 24, 2009

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563-AC14

Common Crop Insurance Regulations; Stonefruit Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Stonefruit Crop Insurance Provisions to allow coverage for plums under the Stonefruit Crop Insurance Provisions and to make other changes to clarify policy provisions. The proposed rule will also remove the Plum Crop Insurance Provisions from the *Code of Federal Regulations*. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of the producers, and to reduce vulnerability to program fraud, waste, and abuse. The changes will apply for the 2011 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business January 25, 2010 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments, titled "Stonefruit Crop Provisions", by any of the following methods:

- *By Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141-6205.

- *By Express Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, 9240 Troost Avenue, Kansas City, MO 64131-3055.

- *E-mail:* DirectorPDD@rma.usda.gov.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT:

Claire White, Economist, Product Management, Product Administration and Standards Division, Risk Management Agency, at the Kansas City, MO address listed above, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563-0053 through March 31, 2012.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, 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.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132,

Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1,000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC proposes to revise 7 CFR part 457, Common Crop Insurance Regulations, by removing and reserving § 457.157 and revising § 457.159 (Stonefruit Crop Insurance Provisions). Plums, along with apricots, nectarines, and peaches, are a member of the stonefruit family. Coverage under the Plum Crop Insurance Provisions is similar to the coverage under the Stonefruit Crop Insurance Provisions. Several requests have been made to combine the Plum Crop Insurance Provisions and the Stonefruit Crop Insurance Provisions to consolidate the Crop Provisions, underwriting procedures, and loss adjustment standards. Several requests also have been made for changes to improve the coverage offered, address program integrity issues, and improve clarity of the Stonefruit Crop Insurance Provisions. The provisions will be effective for the 2011 and succeeding crop years.

The proposed changes to § 457.159 are as follows:

1. *Section 1*—FCIC proposes to remove the definition of “grading standards” and replace it with a definition of “grade standards.” The term “grade standards,” rather than “grading standards,” is consistent with terminology in other Crop Provisions administered by FCIC. The term “grade standards” replaces the term “grading standards” everywhere it appears in the Stonefruit Crop Insurance Provisions.

FCIC proposes to revise the definition of “harvest.” The current definition says

“The picking of mature stonefruit either by hand or machine.” The proposed definition says “The physical removal of mature stonefruit from the tree either by hand or machine.” Use of the term “picking” created an ambiguity which is eliminated with the use of the term “physical removal.”

FCIC proposes to revise the table in the definition of “lug” to include plums and provide a weight for plums per lug. FCIC also proposes to revise the table in the definition of “lug” to change the unit weight measurement for fresh freestone peaches from 22 pounds per lug to 25 pounds per lug. Data indicates the peach industry now uses 25, rather than 22, pounds per lug. FCIC also proposes to revise the definition of “lug” to allow the flexibility to change the weight measurement through the Special Provisions, if necessary. This will eliminate the administrative burden of revising the regulation when a simple numerical change is necessary because of a change in industry practices.

FCIC proposes to revise the definition of “marketable.” The current definition states “Stonefruit production acceptable for processing or other human consumption, even if it fails to meet the State Department of Food and Agriculture minimum grading standard.” The proposed definition states “Stonefruit production that meets or exceeds the quality standards for U.S. No. 1 in accordance with the applicable grade standards or other standards specified in the Special Provisions or is accepted by a packer, processor or other handler.” The new definition clarifies that the grade standards will first be applied to determine whether the stonefruit is marketable. If the stonefruit does not make grade, it is not considered marketable unless a packer, handler or processor accepts the production not making grade. If accepted, it will be considered marketable.

FCIC proposes to revise the definition of “stonefruit” to include plums. FCIC also proposes to revise the definition of “stonefruit” to allow other stonefruit crops to be added via the Special Provisions, if such crops can be added without making any other changes to the Crop Provisions.

FCIC proposes to revise the definition of “type” to remove the word “class” and replace it with the word “category.” The proposed change is necessary due to administrative system changes in the near future. The definition of “type” is also revised to clarify the types are listed in the Special Provisions.

FCIC proposes to remove the definition of “varietal group.” “Varietal group” is defined as “a subclass of

type” and is used throughout the Crop Provisions. “Type” is also defined. However, the context in which “varietal group” is used is synonymous with “type.” Therefore, the term “varietal group” is not needed.

2. *Section 3*—FCIC proposes to redesignate paragraph (c) as paragraph (d) and designate the undesignated paragraph following paragraph (b)(4)(iii) as paragraph (c). FCIC proposes to revise redesignated section 3(c) to add provisions to specify if the insured fails to notify the insurance provider by the production reporting date of an event or action that may reduce the yield potential, any loss of production from such acreage will result in an appraisal for uninsured causes. The yield used to establish the insured’s production guarantee will also be reduced for the subsequent crop year. FCIC also proposes to revise redesignated section 3(c) to remove the list of possible effects on yield potential and instead cross-reference section 3(b)(1)–(4), which currently contains the possible effects on yield potential. This will eliminate the current redundancy.

3. *Section 4*—FCIC proposes to revise section 4 to add language to allow additional contract change dates to be specified in the Special Provisions. This provides additional flexibility to adjust the dates or add new dates as needed.

4. *Section 5*—FCIC proposes to revise section 5 to add language to allow additional cancellation and termination dates to be specified in the Special Provisions. This provides additional flexibility to adjust the dates or add new dates as needed.

5. *Section 6*—FCIC proposes to revise paragraph (b)(1) to allow insurance for trees that become commercially available after set out. Currently, insurance only attaches to trees that are commercially available at set out. However, there are situations where trees may become commercially available after they have been set out, such as trees that were set out for experimental purposes. In some cases these experimental trees become commercially acceptable and available after set out. According to the current provisions, these trees would not be eligible for insurance because they were not commercially available when they were set out. The proposed language allows these trees to be insurable.

FCIC proposes to revise paragraph (b) to include the provision currently in paragraphs (d), (e), (f), and (g) and remove paragraphs (d), (e), (f), and (g). Current paragraphs (b), (d), (e), (f), and (g) refer to conditions of insurability of the stonefruit trees so it provides clarity to combine the provisions into one

provision. However, currently, paragraph (e) suggests that the trees must be regulated by the state before they are insurable. There are some states where the trees are not regulated by the state. Therefore, FCIC proposes to revise the provisions of the new paragraph (b)(4) to clarify that the trees must be regulated by the state only if such regulations exist. Further, FCIC also proposes to revise the new paragraph (b)(5) to allow the stonefruit crop to be insurable if grown on trees that have produced a minimum amount of production in at least one of the previous four, instead of the previous three, actual production history crop years. This is consistent with the minimum production requirement in other perennial crops such as apples and pears.

FCIC proposes to remove paragraph (c), which states stonefruit is insurable if grown on trees that are irrigated. Requirements for irrigation will be contained in the Special Provisions. Removing this paragraph makes the Stonefruit Crop Insurance Provisions consistent with other Crop Provisions that include the insurable practices in the Special Provisions and actuarial documents.

6. Section 8—FCIC proposes to revise paragraph (a)(2) to establish an end of insurance period of September 30 for fresh plums in all states except California and to establish an end of insurance period of October 20 for fresh plums in California only. Under the current Plum Crop Insurance Provisions, which is currently only available in California, the end of the insurance period is September 30. September 30 will remain the end of insurance period for fresh plums in other counties in other states where insurance is available. However, according to published data, plums can be harvested as late as October 20 in California. Therefore, the end of the insurance period is extended to allow for harvesting until October 20.

List of Subjects in 7 CFR Part 457

Crop insurance, Stonefruit, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2010 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(o).

§ 457.157 [Removed and Reserved]

- 2. Remove and reserve § 457.157.
3. Amend § 457.159 as follows:
a. Amend the introductory text by removing "2001" and adding "2011" in its place;
b. Remove the undesignated paragraph immediately preceding section 1.
c. Amend section 1 by:
1. Adding a definition of "grade standards";
2. Removing the definitions of "grading standards" and "varietal group"; and
3. Revising the definitions of "harvest", "lug", "marketable", "stonefruit", "type".
d. Amend section 2(b) by removing the phrase "varietal group" in two places;
e. Amend section 3 by:
1. Revising paragraph (a) by removing the phrase " or varietal group" in all three places;
2. Revising the introductory text of paragraph (b) and (b)(4)(i); and
3. Redesignating paragraph (c) as paragraph (d), designating the undesignated paragraph following paragraph (b)(4)(iii) as paragraph (c), and revising redesignated paragraph (c).
f. Amend section 4 by adding the phrase " , or as specified in the Special Provisions" after the word "states".
g. Amend section 5 by adding the phrase " , or as specified in the Special Provisions" after the word "states".
h. Amend section 6 by:
1. Revising paragraph (b); and
2. Removing paragraphs (c), (d), (e), (f) and (g).
i. Amend section 8 by revising paragraphs (a)(2)(ii) and (a)(2)(iii) and adding a new paragraph (a)(2)(iv).
j. Amend section 11 by:
1. Revising paragraph (b);
2. Revising paragraph (c)(3)(ii) by removing the word "grading" and adding the word "grade" in its place in both instances it is found; and
3. Revising paragraph (c)(4).

The additions and revisions read as follows:

§ 457.159 Stonefruit crop insurance provisions.

- 1. Definitions.

Grade standards. The United States Standards for Grades of Peaches, the United States Standards for Grades of Nectarines, the United States Standards for Grades of Apricots, and the United States Standards for Grades of Fresh Plums and Prunes, or other such

standards specified in the Special Provisions.

Harvest. The physical removal of mature stonefruit from the tree either by hand or machine.

* * * * *

Lug. A container of fresh stonefruit of specified weight. Lugs of varying sizes will be converted to standard lug equivalents on the basis of the following average net pounds of packed fruit, or as specified in the Special Provisions:

Table with 2 columns: Crop, Pounds per lug. Rows include Fresh Apricots (24), Fresh Nectarines (25), Fresh Freestone Peaches (25), and Fresh Plums (28).

Weight for Processing Apricots, Processing Cling Peaches, and Processing Freestone Peaches is specified in tons.

Marketable. Stonefruit production that meets or exceeds the quality standards for U.S. No. 1 in accordance with the applicable grade standards or other standards specified in the Special Provisions or is accepted by a packer, processor or other handler.

* * * * *

Stonefruit. Any of the following crops grown for fresh market or processing:

- (a) Fresh Apricots,
(b) Fresh Freestone Peaches,
(c) Fresh Nectarines,
(d) Fresh Plums,
(e) Processing Apricots,
(f) Processing Cling Peaches,
(g) Processing Freestone Peaches, and
(h) Other crops listed in the Special Provisions.

* * * * *

Type. A category of a stonefruit crop with similar characteristics that are grouped for insurance purposes, as listed in the Special Provisions.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type, if applicable, for each stonefruit crop:

* * * * *

(4) * * *

(i) The age of the interplanted crop, and type, if applicable;

* * * * *

(c) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of such event or action of any of the items listed

in section 3(b)(1) through (4) as indicated below. If the event or action occurred:

(1) Before the beginning of the insurance period, we will reduce the yield used to establish your production guarantee for the current crop year as necessary. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee at any time we become aware of the circumstance;

(2) Or may occur after the beginning of the insurance period and you notify us by the production reporting date, we will reduce the yield used to establish your production guarantee for the current crop year as necessary; or

(3) Or may occur after the beginning of the insurance period and you fail to notify us by the production reporting date, we will appraise your production in accordance with section 11(c)(1)(ii). We will reduce the yield used to establish your production guarantee for the subsequent crop year.

* * * * *

6. Insured Crop.

* * * * *

(b) That is grown on trees that:

(1) Were commercially available when the trees were set out or have subsequently become commercially available;

(2) Are adapted to the area;

(3) are grown on root stock that is adapted to the area;

(4) Are in compliance with the applicable State's Tree Fruit Agreement or related crop advisory board for the state (for each insured crop and type), when such regulations exist;

(5) Have produced at least 200 lugs of fresh market production per acre, or at least 2.2 tons per acre for processing crops, in at least one of the four most recent actual production history crop years, unless we inspect such acreage and give our approval in writing;

(6) Have reached at least the fifth growing season after set out. However, we may agree in writing to insure acreage that has not reached this age if it meets the requirements of 6(b)(5); and

(7) Are grown in an orchard that, if inspected, is considered acceptable by us.

* * * * *

8. Insurance Period.

(a) * * *

* * * * *

(2) * * *

(i) * * *

(ii) September 30 for all nectarines and peaches;

(iii) In all states except California, September 30 for all fresh plums;

(iv) In California only, October 20 for all fresh plums; or

(v) As otherwise provided for specific counties or types in the Special Provisions.

* * * * *

11. Settlement of Claim.

* * * * *

(b) * * *

(1) Multiplying the insured acreage for each type by its respective production guarantee;

(2) Multiplying each result of section 11(b)(1) by the respective price election for the type;

(3) Totaling the results of section 11(b)(2) (if there is only one type, the result of (3) will be the same as the result of (2));

(4) Multiplying the total production to count (see section 11(c)), for each type, by the respective price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting the result of section 11(b)(5) from the result of section 11(b)(3) (if there is only one type, the result of (6) will be the same as the result of (5)); and

(7) Multiplying the result of section 11(b)(6) by your share.

Scenario 1:

You select 75 percent coverage level and 100 percent of the price election on 50 acres of type A stonefruit with 100 percent share in the unit. The guarantee is 500 lugs per acre and the price election is \$6.00 per lug. You are only able to harvest 5,000 lugs. Your indemnity would be calculated as follows:

(1) 50.0 acres × 500 lugs = 25,000 lug guarantee;

(2) 25,000 lugs × \$6.00 price election = \$150,000.00 value of guarantee;

(4) 5,000 harvested lugs × \$6.00 price election = \$30,000.00 value of production to count;

(6) \$150,000.00 – \$30,000.00 = \$120,000.00 loss; and

(7) 120,000.00 × 1.000 share = \$120,000 indemnity payment.

Scenario 2:

In addition to the above information in Scenario 1, you have an additional 50 acres of type B stonefruit with 100 percent share in the unit. The guarantee is 300 lugs per acre and the price election is \$3.00 per lug. You are only able to harvest 3,000 lugs. Your indemnity would be calculated as follows:

(1) 50.0 acres × 500 lugs type A = 25,000 lugs guarantee; and 50.0 acres × 300 lugs type B = 15,000 lugs guarantee;

(2) 25,000 lugs × \$6.00 price election = \$150,000.00 value of guarantee for type A; and 15,000 lugs × \$3.00 price

election = \$45,000.00 value of guarantee for type B;

(3) \$150,000.00 + \$45,000.00 = \$195,000.00 total value of guarantee;

(4) 5,000 harvested lugs type A × \$6.00 price election = \$30,000.00 value of production to count; and 3,000 harvested lugs type B × \$3.00 price election = \$9,000.00 value of production to count; and

(5) \$30,000.00 + \$9,000.00 = \$39,000.00 total value of production to count;

(6) \$195,000.00 – \$39,000.00 = \$156,000.00 total loss; and

(7) \$156,000.00 loss × 1.000 share = \$156,000 indemnity payment.

(c) * * * * *

(4) Harvested fresh or processing stonefruit production that is eligible for quality adjustment as specified in section 11(c)(3) will be reduced as follows:

(i) When packed and sold as fresh fruit or when insured as a processing crop, by dividing the value per lug or ton of marketable production by the highest price election and multiplying the result (not to exceed 1.00) by the quantity of such production; or

(ii) For all other fresh stonefruit, by multiplying the number of tons that could be marketed by the value per ton and dividing that result by the highest price election available for that type.

* * * * *

Signed in Washington, DC, on November 13, 2009.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E9-27988 Filed 11-23-09; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2009-0876; Airspace Docket No. 09-ASW-24]

Proposed Amendment of Class E Airspace; Stamford, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Stamford, TX. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Arledge Field

Airport, Stamford, TX. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at Arledge Field Airport.

DATES: 0901 UTC. Comments must be received on or before January 8, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001. You must identify the docket number FAA-2009-0876/Airspace Docket No. 09-ASW-24, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321-7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2009-0876/Airspace Docket No. 09-ASW-24." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>.

Recently published rulemaking documents can also be accessed through the FAA's Web page at http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAP operations at Arledge Field Airport, Stamford, TX. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more

detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Arledge Field Airport, Stamford, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

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

* * * * *

ASW TX E5 Stamford, TX [Amended]

Arledge Field Airport, TX
(Lat. 32°54'33" N., long. 99°44'10" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Arledge Field Airport, and within 2 miles each side of the 180° bearing from the airport extending from the 6.4-mile radius to 11.5 miles south of the airport.

* * * * *

Issued in Fort Worth, TX, on November 10, 2009.

Walter L. Tweedy,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. E9-28176 Filed 11-23-09; 8:45 am]

BILLING CODE 4901-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 73**

[Docket No. FAA-2009-0693; Airspace Docket No. 09-AAL-14]

RIN 2120-AA66

Proposed Amendment of Restricted Area R-2204 High and R-2204 Low; Oliktok Point, AK**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend R-2204 High and R-2204 Low at Oliktok Point, AK, by increasing the authorized times of designation and extending the duration of the restricted areas beyond 2009, until they are no longer needed by the Department of Energy (DOE). The DOE is continuing their study of rapid climate changes occurring in the arctic. Continued access to R-2204 High and R-2204 Low at Oliktok, AK, is required for current moored balloon and future climate-related aviation activities.

DATES: Comments must be received on or before January 8, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001; telephone: (202) 366-9826. You must identify FAA Docket No. FAA-2009-0693 and Airspace Docket No. 09-AAL-14 at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall

regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2009-0693 and Airspace Docket No. 09-AAL-14) and be submitted in triplicate to the Federal Docket Management System (*see ADDRESSES* section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2009-0693 and Airspace Docket No. 09-AAL-14." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Federal Docket Management System office (*see ADDRESSES* section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The DOE, Sandia National Laboratories, is conducting arctic climatology research on the North Slope of Alaska. Their Adjacent Arctic Ocean site is providing data about cloud and radiative processes at high latitudes. The arctic area has been identified as one of the most sensitive regions to climate change. In 2004, the need to operate an unlighted moored balloon in clouds resulted in the establishment of R-2204 at Oliktok Point. That site was selected because of its proximity to the Arctic Ocean, availability of ground infrastructure to support the scientists, and remoteness that lessens the impacts to other instrument flight rules and visual flight rules air traffic.

In addition to the current moored balloon activities, scientists are interested in testing the use of unmanned aircraft (UAS) over the coastal waters (in clouds) of the Arctic Ocean and propose to launch and recover UAS aircraft at the Oliktok station. A Certificate of Approval for flight outside of R-2204 would be required by the FAA for UAS operations not contained within R-2204. The DOE has stated that they are anticipating the development of Letters of Agreement with other aircraft operators using airspace in the vicinity of Oliktok to ensure that access to airspace within R-2204 is available within the parameters agreed upon by the parties involved.

On May 28, 2004, the FAA published in the **Federal Register** a final rule to establish Restricted Area R-2204 (69 FR 30576). The rule stated that the "area [would] be activated starting October 2004 for approximately 30 days a year, and be effective through the year 2009." On April 21, 2008, the FAA published in the **Federal Register** a final rule to amend R-2204 by changing the using agency and subdividing the area to create R-2204 High and R-2204 Low (73 FR 21246).

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 73 to amend the time of designation to allow activation of R-2204 High and R-2204 Low by NOTAM 24 hours in advance for up to 75 days per year. Special Use Airspace R-2204 High and R-2204 Low would continue to be designated until it is no longer required by the DOE to conduct research.

Section 73.22 of Title 14 CFR part 73 was republished in FAA Order 7400.8R, effective February 16, 2009.

The FAA has determined that this proposed regulation only involves an

established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it proposes to amend times of designation for restricted area airspace at Oliktok Point, Alaska.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

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

§ 73.22 [Amended]

2. § 73.22 is amended as follows:

* * * * *

R-2204 High, Oliktok Point, AK [Amended]

Under Time of Designation, remove the words "By NOTAM, 24 hours in advance, not to exceed 30 days annually" and insert Time of designation. By NOTAM, 24 hours in advance, not to exceed 75 days per year.

* * * * *

R-2204 Low, Oliktok Point, AK [Amended]

Under Time of Designation, remove the words "By NOTAM, 24 hours in advance, not to exceed 30 days annually" and insert Time of designation. By NOTAM, 24 hours in advance, not to exceed 75 days per year.

* * * * *

Issued in Washington, DC, on November 12, 2009.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E9–28194 Filed 11–23–09; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA 2009–0075]

RIN 0960–AH15

Withdrawal of Certain Proposed Rules

AGENCY: Social Security Administration.

ACTION: Proposed rules; withdrawal.

SUMMARY: We are withdrawing seven proposed rules we published in the *Federal Register* that we no longer plan to pursue.

DATES: The proposed rules identified in this document are withdrawn as of November 24, 2009.

FOR FURTHER INFORMATION CONTACT: Richard Bresnick, Social Insurance Specialist, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401. Call (410) 965–1758 for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number 1 (800) 772–1213 or TTY 1 (800) 325–0778. You may also contact Social Security Online at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the *Federal Register* at <http://www.gpoaccess.gov/fr/index.html>.

Background

Over the years, we have published in the *Federal Register* several notices of

proposed rulemaking (NPRMs) for which we never issued final rules, and we have decided not to pursue final rules on these NPRMs at this time. We have made some of the changes we proposed in these NPRMs in the context of other rulemaking proceedings; in other cases, we have decided not to pursue the policy we proposed in the NPRM. Consequently, as part of a comprehensive review of our regulatory processes, we are withdrawing the seven NPRMs listed below.

NPRMs Being Withdrawn

Supplemental Security Income for the Aged, Blind, and Disabled; Suspensions, Terminations, and Advance Notice of Unfavorable Determination (51 FR 17057, May 8, 1986) (SSA–31P).

Disability Insurance and Supplemental Security Income; Nonpayment Policy for Consultative Examination Appointments That Are Not Kept (53 FR 39487, October 7, 1988) (SSA–181P).

Reduction for Receipt of Government Pension (54 FR 51036, December 12, 1989) (SSA–188P).

Supplemental Security Income for the Aged, Blind, and Disabled (55 FR 33922, August 20, 1990) (SSA–180P).

Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Determinations of Disability—Determining State Agency Substantial Failure to Comply with Federal Rules (56 FR 11025, March 14, 1991) (SSA–206P).

Administrative Review Process; Prehearing and Posthearing Conferences (65 FR 38796, June 22, 2000) (SSA–778P).

New Disability Claims Process (66 FR 5494, January 19, 2001) (SSA–816P).

Dated: October 26, 2009.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E9–28140 Filed 11–23–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

22 CFR Part 125

[Public Notice 6338]

RIN 1400–AC59

Amendment to the International Traffic in Arms Regulations: Section 125.4(b)(9) Export Exemption for Technical Data

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State is proposing to amend the International Traffic in Arms Regulations (ITAR) regarding an exemption for technical data, to clarify that the exemption covers technical data, regardless of media or format, sent or taken by a U.S. person who is an employee of a U.S. corporation or a U.S. Government agency to a U.S. person employed by that U.S. corporation or to a U.S. Government agency outside the United States.

DATES: The Department of State will accept comments on this proposed rule until January 25, 2010.

ADDRESSES: Interested parties may submit comments within 60 days of the date of the publication by any of the following methods:

- *E-mail:*

DDTCResponseTeam@state.gov with an appropriate subject line.

- *Mail:* Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, Attn: Regulatory Change, Section 125.4, SA-1, 12th Floor, Washington, DC 20522-0112.

- Persons with access to the Internet may also view this notice by going to the U.S. Government regulations.gov Web site at <http://regulations.gov/index.cfm>.

FOR FURTHER INFORMATION CONTACT:

Director Charles Shotwell, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663-2792 or Fax (202) 261-8199; E-mail *DDTCResponseTeam@state.gov*. Attn: Regulatory Change, Section 125.4.

SUPPLEMENTARY INFORMATION: The proposed export exemption at 22 CFR 125.4(b)(9) is amended to allow technical data, including classified information, and regardless of media or format, sent or taken by a U.S. person who is an employee of a U.S. corporation or a U.S. Government agency to a U.S. person employed by that U.S. corporation or to a U.S. Government agency outside the United States under certain specified circumstances reflected in 22 CFR 125.4(b)(9)(i) through (iii). This amendment will add after the word "information" the words "and regardless of media or format." Also, the words "sent by a U.S. corporation to a U.S. person employed by that corporation overseas or to a U.S. Government agency" has been replaced by "sent or taken by a U.S. person who is an employee of a U.S. corporation or a U.S. Government agency to a U.S. person employed by that corporation or to a U.S. Government agency outside the United States." Thus, the exemption

will explicitly allow hand carrying technical data by a U.S. person employed by a U.S. corporation or a U.S. Government agency to a U.S. person employed by that U.S. corporation or to a U.S. Government agency outside the United States as long as certain criteria in § 125.4(b)(9) and 125.4(b)(9)(i) through (iii) are met. The word "overseas" will be replaced by "outside the United States" at § 125.4(b)(9), 125.4(b)(9)(i), 125.4(b)(9)(ii), and 125.4(b)(9)(iii). Also, § 125.4(b)(9)(iii) will be amended to add the words "or taken" after the word "sent." As stated in section 22 CFR 125.4(a), this exemption does not apply to exports to proscribed destinations under 22 CFR 126.1.

Regulatory Analysis and Notices

Administrative Procedure Act

This proposed amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures contained in 5 U.S.C. 553 and 554.

Regulatory Flexibility Act

Since this proposed amendment involves a foreign affairs function of the United States, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This proposed amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This proposed amendment 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. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism

summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Order 12866

This proposed amendment is exempt from review under Executive Order 12866 but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

Executive Order 12988

The proposed Department of State has reviewed the proposed regulations in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

This proposed rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 125

Arms and munitions, Classified information, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 125 is proposed to be amended as follows:

PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

1. The authority citation for part 125 continues to read as follows:

Authority: Secs. 2 and 38, Public Law 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a.

2. Section 125.4 is amended by revising paragraph (b)(9) to read as follows:

§ 125.4 Exemptions of general applicability.

* * * * *

(b) * * *

(9) Technical data, including classified information, and regardless of media or format, sent or taken by a U.S. person who is an employee of a U.S. corporation or a U.S. Government agency to a U.S. person employed by that U.S. corporation or to a U.S. Government agency outside the United States. This exemption is subject to the limitations of § 125.1(b) of this subchapter and may be used if:

(i) The technical data is to be used outside the United States solely by U.S. persons;

(ii) If the U.S. person outside the United States is an employee of the U.S. Government or is directly employed by the U.S. corporation and not by a foreign subsidiary; and

(iii) The classified information is sent or taken outside the United States in accordance with the requirements of the Department of Defense National Industrial Security Program Operating Manual (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case the latter guidance must be followed).

* * * * *

Dated: November 9, 2009.

Ellen O. Tauscher,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. E9-28181 Filed 11-23-09; 8:45 am]

BILLING CODE 4710-25-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 301

[REG-139255-08]

RIN 1545-B151

Information Reporting for Payments Made in Settlement of Payment Card and Third Party Network Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to information reporting requirements, information reporting penalties, and backup withholding requirements for payment card and third party network transactions. The proposed regulations reflect the enactment of section 6050W and related changes in the law made by the Housing Assistance Tax Act of 2008 that require payment settlement organizations to report payments in settlement of payment card and third party network transactions for each calendar year. The proposed regulations in this document will affect persons that make payment in settlement of payment card and third party network transactions and the payees of these transactions. The proposed regulations provide guidance to assist persons who will be required to make returns reporting payment card and third party network transactions and to the payees of those transactions. This document also provides notice of a public hearing

on these proposed amendments to the regulations.

DATES: Written or electronic comments must be received by *January 25, 2010*. Outlines of topics to be discussed at the public hearing scheduled for February 10, 2010, at 10 a.m. must be received by January 27, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-139255-08), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-139255-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG-139255-08).

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Barbara Pettoni, (202) 622-4910; concerning submissions of comments or the public hearing, Regina Johnson, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR Part 1 relating to information reporting under sections 6041, 6050W, and 6051 of the Internal Revenue Code (Code). This document also contains proposed amendments to 26 CFR Part 31 relating to backup withholding under section 3406, and to 26 CFR Part 301 relating to information reporting penalties under sections 6721 and 6722.

A new reporting requirement, section 6050W, was added to the Code by section 3091(a) of the Housing Assistance Tax Act of 2008, Div. C of Public Law 110-289, 122 Stat. 2654 (the Act), enacted on July 30, 2008. Section 6050W requires merchant acquiring entities and third party settlement organizations to file an information return for each calendar year reporting all payment card transactions and third party network transactions with participating payees occurring in that calendar year. This requirement to file information returns applies to returns for calendar years beginning after December 31, 2010. This section also requires statements to be furnished to participating payees on or before January 31st of the year following the year for which the return is required.

The Act also amended section 3406(b)(3) to provide that amounts reportable under section 6050W are subject to backup withholding

requirements. Section 3406(a)(1) requires certain payors to perform backup withholding by deducting and withholding income tax from a reportable payment (as defined in section 3406(b)(1)) if the payee fails to furnish the payee's taxpayer identification number (TIN) to the payor on a required return, or if the Secretary notifies the payor that the TIN furnished by the payee is incorrect. Backup withholding for amounts reportable under section 6050W applies to amounts paid after December 31, 2011.

Prior to making an information return, a payor may check the TIN furnished by the payee against the name/TIN combination contained in the IRS's database maintained for the program, and the IRS will inform the participant whether or not the name/TIN combination furnished by the payee matches a name/TIN combination in the database. The matching information provided to participants will help avoid TIN errors and reduce the number of backup withholding notices required under section 3406(a)(1)(B) of the Code. A verified TIN/name match will also provide participants with reasonable cause relief from penalties under section 6724(a). The Act further provides that, solely for purposes of carrying out TIN matching under section 3406, section 6050W is effective on the date of enactment, July 30, 2008. The TIN matching program described in Rev. Proc. 2003-9, 2003-1 CB 516, permits program participants to verify the payee TINs required to be reported on information returns and payee statements. On February 6, 2009, the IRS announced that persons who will be required to make returns under section 6050W may match TINs under the procedures established by Rev. Proc. 2003-9. *See* Announcement 2009-6, "Taxpayer Identification Number ("TIN") Matching Program is Available to Persons Required to Make Returns Under New Section 6050W of the Internal Revenue Code" (Announcement 2009-6, 2009-9 IRB 643 (March 2, 2009)). *See* § 601.601(d)(2)(ii)(b).

The Act also amended section 6724(d) by adding returns required by section 6050W to the definition of information return for purposes of penalties for failure to comply with certain information reporting requirements. The amendments to section 6724(d) apply to returns for calendar years beginning after December 31, 2010.

Notice 2009-19 invited public comments regarding guidance under section 6050W. *See* Notice 2009-19, "Information Reporting of Payments Made in Settlement of Payment Card

and Third Party Network Transactions” (Notice 2009–19, 2009–10 IRB 660 (March 9, 2009)). In particular, Notice 2009–19 requested comments on the interpretation of the statutory definitions of terms used in section 6050W, how to administer the reporting requirements so as to prevent reporting of the same transaction more than once, and whether the “gross amount” of the reportable payment transaction should be defined as “gross receipts or sales” or whether adjustments should be made for credits, cash equivalents, discounts, fees, refunds, or other amounts. Notice 2009–19 also requested comments on how to address differences between section 6050W reporting and payee reporting on Form 1040, “U.S. Individual Income Tax Return,” Form 1065, “U.S. Return of Partnership Income,” or Form 1120, “U.S. Corporation Income Tax Return,” and whether the time, form and manner of reporting should conform to existing practices for information reporting to the IRS under other provisions of the Code.

Comments were received in response to Notice 2009–19, and the comments were taken into consideration in developing these proposed regulations. The IRS and the Treasury Department invite any additional comments on the issues discussed in this preamble or on other issues relating to section 6050W. See § 601.601(d)(2)(ii)(b).

Explanation of Provisions

In General

The proposed regulations provide guidance to interpret the definitions used in the statute and examples to illustrate the rules in the proposed regulations. The new law requires any payment settlement entity making payment to a participating payee in settlement of reportable payment transactions to make an annual return for each calendar year reporting the gross amount of the reportable transactions, and the name, address, and TIN of the participating payee. See section 6050W(a). The law also requires payment settlement entities to furnish written statements to persons with respect to whom such a return is required showing the name, address, and telephone number of the person required to make the return and the gross amount of the reportable payment transactions with respect to the person required to be shown on the return. See section 6050W(f).

Section 6050W(b) provides that the term *payment settlement entity* means, in the case of a payment card

transaction, a merchant acquiring entity; and in the case of a third party network transaction, a third party settlement organization. Section 6050W(b)(2) defines *merchant acquiring entity* as the bank or other organization with the contractual obligation to make payment to participating payees in settlement of payment card transactions, and section 6050W(b)(3) defines *third party settlement organization* as the central organization that has the contractual obligation to make payment to participating payees of third party network transactions. The proposed regulations clarify that a “payment settlement entity” may be a domestic or foreign entity.

A *reportable payment transaction* is any transaction in which a payment card is accepted as payment and any transaction that is settled through a third party payment network. See section 6050W(c). The proposed regulations provide guidance to interpret the meaning of this term in the context of both payment card transactions and third party network transactions, and to determine the gross amount of the transaction to be reported. Many commenters suggested meanings for the term “gross amount.” Some commenters suggested defining “gross amount” as the total amount of the transaction reduced by the fees deducted by the merchant acquiring entity. Other commenters suggested defining “gross amount” as the total amount of the transaction reduced by not only fees but also chargebacks and refunds. Commenters did not suggest, however, that reporting a gross amount with no reductions for any amounts would be burdensome for payment settlement entities. The proposed regulations provide that *gross amount* means the total dollar amount of aggregate reportable payment transactions for each participating payee without regard to any adjustments for credits, cash equivalents, discount amounts, fees, refunded amounts, or any other amounts.

The proposed regulations require reporting, with respect to each participating payee, of the gross amount of the aggregate reportable payment transactions for the calendar year and the gross amount of the aggregate reportable payment transactions for each month of the calendar year. The inclusion of monthly amounts on the return filed with the IRS and on the statement furnished to the payee will aid in reconciling payment card and third party network transaction receipts for fiscal year payees.

Section 6050W(e) provides an exception for de minimis payments by

third party settlement organizations to certain participating payees. Under the proposed regulations, a third party settlement organization must report payments made to a participating payee only if its aggregate payments to that payee from third party network transactions exceed \$20,000 and the aggregate number of those transactions with the payee exceeds 200. Several commenters requested that the exception for de minimis payments be extended to include payments in settlement of payment card transactions. The proposed regulations do not adopt this suggestion. Further comments are requested on the application of the de minimis rule exception, including whether the exception should be mandatory or voluntary.

Section 6050W(d)(1)(A) provides that *participating payee* means: (i) In the case of a payment card transaction, any person who accepts a payment card as payment; and (ii) in the case of a third party network transaction, any person who accepts payment from a third party settlement organization in settlement of such transaction. Under section 6050W(d)(1)(B), the term *participating payee* excludes any person with a foreign address, except as the Secretary may provide. The proposed regulations provide that a payment settlement entity that is a person described as a U.S. payor or U.S. middleman in § 1.6049–5(c)(5) is not required to report payments to participating payees with a foreign address as long as, prior to payment, the payee has provided the payment settlement entity with documentation upon which the payment settlement entity may rely to treat the payment as made to a foreign person in accordance with § 1.1441–1(e)(1)(ii). By contrast, a payment settlement entity that is not a person described as a U.S. payor or U.S. middleman in § 1.6049–5(c)(5) is not required to report payments to participating payees that do not have a United States address as long as the payment settlement entity neither knows nor has reason to know that the participating payee is a United States person. For purposes of this section, *foreign address* means any address that is not within the United States, as defined in section 7701(a)(9) (the States and the District of Columbia). *United States address* means any address that is within the United States. The IRS and the Treasury Department request comments on the treatment of payment settlement entities that are not U.S. payors or U.S. middlemen within the meaning of § 1.6049–5(c)(5).

Under section 6050W(d)(1)(C), the term “participating payee” includes any

governmental unit and any agency or instrumentality thereof. Accordingly, the proposed regulations do not provide for any exceptions to reporting for payments made to governmental units. Payments to governmental units that are made using transit cards and electronic toll collection systems are included within the scope of section 6050W if such payments meet the other requirements of section 6050W. Comments were not received from governmental units regarding these issues. Therefore, the IRS and the Treasury Department request comments from governmental units and other interested parties regarding the impact of these proposed regulations on governmental units that accept payments made using transit cards, electronic toll collection systems, and similar electronic payment mechanisms.

Payment Card Transactions

A *payment card transaction* is any transaction in which a payment card is accepted as payment. See section 6050W(c)(2). Under section 6050W(d)(2), a *payment card* is a card issued pursuant to an agreement or arrangement that provides for: (1) One or more issuers of such cards; (2) a network of persons unrelated to each other, and to the issuer, who agree to accept the cards as payment; and (3) standards and mechanisms for settling the transactions between the merchant acquiring entities and the persons who agree to accept the cards as payment.

Funds generally do not pass directly from the cardholder to the provider of goods or services for purchases made with a payment card. For example, in the case of a credit card transaction, a credit card organization may direct the transfer of funds from an issuing bank (the bank that issued the credit card) through the debit of the funds on account at an acceptable institution (such as a Federal Reserve Bank) and a credit of those funds to the merchant's bank (the merchant acquiring bank), which in turn pays the provider of goods or services. The cardholder frequently does not pay the issuing bank until after receipt of the payment card monthly billing statement. Thus, the merchant acquiring bank makes the payment to the provider of goods or services to settle the transaction, and the cardholder, who is the ultimate payor, generally does not make payment until after the transaction occurs. The information reporting requirements under section 6050W reflect that the merchant acquiring bank is in the best position to file the information return reporting the payment to the provider of goods or services.

Commenters suggested adopting the definition of "payment card" in § 31.3406(g)-1(f)(2)(i) for purposes of section 6050W. However, the definition of "payment card" in section 6050W(d)(2) is broader than in § 31.3406(g)-1(f)(2)(i), which defines *payment card* as a card issued by a payment card organization (for example, a credit card organization). The proposed regulations reflect the broader statutory definition of "payment card" under section 6050W. Accordingly, a payment card is a card, issued to a cardholder, that a network of unrelated persons has agreed to accept as payment under an agreement that provides standards and mechanisms for settling the transactions between a merchant acquiring bank or similar entity and the providers who accept the cards. Under the proposed regulations, a payment card includes, but is not limited to, all credit cards, debit cards, and stored-value cards (including gift cards), and also includes the acceptance as payment of any account number or other indicia associated with a payment card.

Cards Issued in Connection With a Flexible Spending Account or a Health Reimbursement Arrangement

Several commenters requested that the definition of *payment card* be interpreted to exclude cards issued in connection with flexible spending arrangements (FSAs) (as defined in section 106(c)(2)) or health reimbursement arrangements (HRAs) that are treated as employer-provided coverage under an accident or health plan for purposes of section 106. The commenters expressed concern that section 6050W may be interpreted to override the exception to information reporting under section 6041(f) for payments made for medical care (as defined in section 213(d)) under FSAs and HRAs. Other commenters indicated that it would be difficult for merchant acquiring entities to identify FSA and HRA card transactions and segregate them from other payment card transactions. In general, FSA and HRA cards have the imprint of a credit card association and function like credit or debit cards. Therefore, merchant acquiring entities may have difficulty distinguishing these transactions from typical credit or debit card transactions. In keeping with the broad interpretation of the definition of "payment card," the proposed regulations do not except payments for medical care using an FSA or HRA card from reporting under section 6050W. Therefore, under the proposed regulations, the definition of payment card encompasses a card issued in connection with an FSA or

HRA. Payments made for medical care under FSAs or HRAs will continue to be exempt from reporting under section 6041.

Stored-Value Cards and Gift Cards

The proposed regulations provide that the term "stored-value card" means any card with a prepaid value, including any gift card. Under the proposed regulations, a stored-value card is not a payment card within the meaning of section 6050W when the card is accepted as payment by a person who is related to the issuer of the card. Under these circumstances, the transaction is not a payment card transaction within the meaning of section 6050W and thus not a reportable transaction. However, if the stored-value card itself is purchased with a payment card issued by an unrelated entity, that purchase transaction is reportable under section 6050W.

In contrast, a stored-value card that a network of persons unrelated to the issuer has agreed to accept as payment (such as a stored-value card issued by a college that may be used at various local merchants unrelated to the college) is a payment card when it is accepted as payment in a transaction with an unrelated person. Under these circumstances, the transaction is a payment card transaction within the meaning of section 6050W that is reportable by the payment settlement entity. Use of a stored-value card within a network of both related persons and unrelated persons is a reportable transaction only when it is accepted as payment by an unrelated person. For purposes of this section, *unrelated* means any person who is not related within the meaning of section 267(b) (providing a list of relationships), including the application of section 267(c) and (e)(3) (providing rules relating to constructive ownership), or section 707(b)(1) (relationships with partnerships).

Third Party Network Transactions

Section 6050W(c)(3) provides that a *third party network transaction* means any transaction that is settled through a third party payment network. Section 6050W(d)(3) provides that *third party payment network* means any agreement or arrangement that: (A) Involves the establishment of accounts with a central organization by a substantial number of persons who (i) are unrelated to such organization, (ii) provide goods or services, and (iii) have agreed to settle transactions for the provision of such goods or services pursuant to such agreement or arrangement; (B) provides for standards and mechanisms for

settling such transactions; and (C) guarantees persons providing goods or services pursuant to such agreement or arrangement that those persons will be paid for providing such goods or services. Section 6050W(d)(3) provides that a third party payment network does not include any agreement or arrangement that provides for the issuance of payment cards.

The Joint Committee on Taxation (JCT) technical explanation of section 6050W explains that, in the case of a third party network transaction, the payment settlement entity is the third party settlement organization, defined as a central organization with the contractual obligation to make payment to participating payees of third party payment networks. According to the technical explanation, the central organization is a payment settlement entity required to report under section 6050W if it provides "a network enabling buyers to transfer funds to sellers who have established accounts with the organization and have a contractual obligation to accept payments through the network." See "Technical Explanation of Division C of H.R. 3221, the 'Housing Assistance Act of 2008' as Scheduled for Consideration by the House of Representatives on July 23, 2008" (JCX-63-08), *Joint Committee on Taxation*, at 61 (July 23, 2008) (JCT Technical Explanation). Consistent with this explanation, the proposed regulations provide that the central organization of a third party settlement organization must provide a third party payment network that enables purchasers to transfer funds to providers of goods and services.

The JCT Technical Explanation also gives an example of "substantial number of persons" as that phrase is used in the definition of "third party payment network" in section 6050W(d)(3). The JCT Technical Explanation describes a "third party payment network" as any agreement or arrangement that, among other requirements, involves the establishment of accounts with a central organization by "a substantial number of persons (e.g., more than 50)." JCT Technical Explanation at 61. Comments are requested on the interpretation of "substantial number of persons" as used in the definition of "third party payment network."

Many comments were received requesting clarification on the meaning of third party payment network, in particular with respect to healthcare networks, accounts payable departments and "shared-service" organizations, and organizations that settle payment transactions on behalf of others.

Healthcare Networks

Several commenters expressed concern that the broad definition of third party payment network will include health carriers that have contracts with a network of providers who provide services to covered persons under both insured and administrative service contract healthcare arrangements. A typical healthcare network (sometimes referred to as a "managed care" network) may include "covered persons" (policyholders, subscribers, enrollees or other individuals participating in a health benefit plan), a "health care provider" or "participating provider" (a healthcare professional or a facility that agrees under contract with a health carrier to provide services to covered persons with the expectation of receiving payment directly from the health carrier), and a "health carrier" (an entity that enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the cost of health care services). Each of these parties may be a primary party with respect to its agreements with the other parties in the network.

Under the proposed regulations, health carriers operating a healthcare network are outside the scope of section 6050W because a healthcare network does not enable the transfer of funds from buyers to sellers. Health carriers do not facilitate the transfer of payments from a covered person to a healthcare provider: the payments by covered persons to health carriers and the payments by health carriers to healthcare providers are separate and distinct. Health carriers collect premiums from covered persons pursuant to a plan agreement between the health carrier and the covered person for the cost of participation in the healthcare network. Separately, health carriers pay healthcare providers to compensate providers for services rendered to covered persons pursuant to provider agreements. Accordingly, because the purpose of a healthcare network is not to enable buyers to transfer funds to sellers, a healthcare network is not a "third party payment network" within the meaning of the proposed regulations.

Accounts Payable Departments and Shared-Service Organizations

Many comments were received requesting guidance on the interpretation of "third party payment network" with respect to accounts payable departments. Under the proposed regulations, an in-house accounts payable department is not a

third party settlement organization of a third party payment network because an in-house accounts payable department is not a "third party." Rather, an in-house accounts payable department is merely an accounting function of the purchaser of goods and services by which the purchaser makes payments directly to sellers on the purchaser's own behalf.

In contrast, many purchasers outsource their accounts payable function to a third party organization, sometimes referred to as a "shared-service" organization. In a shared-service business model, the shared-service organization acts as an independent contractor with respect to the accounts payable of purchasers of goods and services. A shared-service arrangement allows purchasers to transfer funds to providers who have established accounts with the shared-service organization and have agreed to accept payment for their goods and services from the shared-service organization. Thus, the shared-service business model consists of a central organization that provides "a network enabling buyers to transfer funds to sellers who have established accounts with the organization and have a contractual obligation to accept payments through the network." JCT Technical Explanation at 61.

Accordingly, under the proposed regulations, a shared-service organization is a third party settlement organization of a third party payment network if: (1) A substantial number of unrelated providers of goods and services have established accounts with the shared-service organization, and (2) this arrangement enables purchasers of goods and services to transfer funds to these providers, who are obligated by contract to accept guaranteed payments from the shared-service organization in settlement of their transactions with the purchasers. The shared service organization must report these transactions as third party network transactions unless the de minimis exception applies (that is, the aggregate payments to each payee do not exceed \$20,000 or the aggregate number of transactions for each payee does not exceed 200).

Automated Clearing House (ACH) Networks

As stated previously, the JCT Technical Explanation states that an organization generally is required to report if it provides "a network enabling buyers to transfer funds to sellers who have established accounts with the organization and have a contractual obligation to accept payment through

the network.” JCT Technical Explanation at 61. The JCT Technical Explanation further states: “However, an organization operating a network which merely processes electronic payments (such as wire transfers, electronic checks, and direct deposit payments) between buyers and sellers, but does not have contractual agreements with sellers to use such network, is not required to report under the provision.” JCT Technical Explanation at 61.

Consistent with the JCT Technical Explanation, an example in the proposed regulations illustrates that payments settled through an automated clearing house (ACH) network are not settled through a third party payment network. An ACH merely processes electronic payments between payors and payees, and does not itself have contractual agreements with payees to use the ACH network. Accordingly, the proposed regulations reflect that an ACH network is not a third party payment network, and an ACH is therefore not required to report under section 6050W.

Aggregated Payees

Section 6050W(b)(4)(A) imposes special rules for persons who receive payments from a payment settlement entity on behalf of one or more participating payees and distribute such payments to one or more participating payees. Under section 6050W(b)(4)(A), such persons are treated (i) as participating payees with respect to the payment settlement entity, and (ii) as payment settlement entities with respect to the participating payees to whom the person distributes payments.

For example, in the case of a corporation that receives payment from a bank for credit card sales transacted at corporate independently-owned franchise stores, the bank is required to report the gross amount of the reportable transactions settled through the corporation even though the corporation does not accept credit cards and would not otherwise be treated as a participating payee under this section. In turn, the corporation is required to report the gross amount of reportable transactions allocable to each franchise store. The bank has no obligation to report the payments allocated by the corporation to the franchise stores. See Technical Explanation at 61–62. The proposed regulations provide an example of persons that are aggregated payees for purposes of this section. This example is not meant to exclude other aggregated payee arrangements.

Electronic Payment Facilitators

A payment settlement entity may contract with a third party to settle reportable payment transactions on behalf of the payment settlement entity. Section 6050W(b)(4)(B) provides a special rule for such arrangements. In any case where an “electronic payment facilitator” or other third party makes payments in settlement of reportable payment transactions on behalf of the payment settlement entity, the return under section 6050W must be filed by the electronic payment facilitator or other third party in lieu of the payment settlement entity.

Under the proposed regulations, any person that has contracted with a payment settlement entity to make payments on behalf of the payment settlement entity to a participating payee in settlement of reportable payment transactions is subject to the electronic payment facilitator rule. Because the electronic payment facilitator or other third party is required by statute to file the return if it makes the payment on behalf of the payment settlement entity, and because the electronic payment facilitator or other third party files in lieu of the payment settlement entity, the payment facilitator or other third party, not the payment settlement entity, is the party with the obligation to file the return under section 6050W in these cases. Therefore, the electronic payment facilitator or other third party that makes payment on behalf of the payment settlement entity is the party that will be liable for any applicable penalties for failure to comply with the information reporting requirements under section 6050W.

Duplicate Reporting of the Same Transaction

Section 6050W(g) grants authority to the Secretary to issue guidance to implement the reporting requirement, including rules to prevent the reporting of the same transaction more than once. Numerous commenters requested relief from reporting the same transaction under more than one Code section, in particular with respect to transactions that will be subject to reporting under both sections 6041 (relating to information at source) and 6050W.

Depending on the circumstances, reporting of the same transaction more than once may be warranted for several reasons. First, the burden for reporting may fall on different persons. For example, under section 6041, the reporting person is the payor, whereas under section 6050W, the reporting person is the payment settlement entity.

Requiring reporting from both reporters will help ensure that the transaction is reported even where one reporter fails to report.

Second, information reporting under other Code sections may provide different information that may be useful to the IRS. For example, section 6041 requires reporting of fixed or determinable gains, profits and income, whereas section 6050W requires reporting of gross amounts.

Third, exceptions to information reporting may apply under one Code section but not the other, which makes rules to avoid reporting the same transaction more than once difficult to coordinate. For example, § 1.6041–3(p) provides that payments made to corporations are generally exempt from reporting under section 6041, whereas no corporate payee exception exists under section 6050W. Conversely, for third party network transactions under section 6050W, a de minimis exception applies where the aggregate payments to each payee do not exceed \$20,000 or the aggregate number of transactions for each payee does not exceed 200, but no similar exception exists under section 6041. Thus, there are compelling reasons to require reporting under both Code sections.

Nevertheless, for payment card transactions, relief from reporting under section 6041 is warranted because section 6050W reporting covers all payment card transactions and thus effectively encompasses all payments subject to section 6041 reporting made by payment card. Accordingly, the proposed regulations amend section § 1.6041–1 to provide that any payment card transaction that otherwise would be reportable under both sections 6041 and 6050W must be reported under section 6050W and not section 6041.

Relief from reporting under section 6041 is not warranted, however, for third party network transactions because such transactions are not subject to reporting unless the de minimis thresholds are met. The payor with the obligation to report under section 6041 cannot determine with certainty whether a third party network transaction is required to be reported under section 6050W. Additional comments are requested regarding the application of this rule to prevent the reporting of the same transaction more than once.

Commenters also requested relief from reporting the same transaction under both sections 3402(t) (relating to withholding on certain payments made by Government entities) and 6050W. Government entities frequently use payment cards for payments for

property and services. Such payment card transactions will be subject both to information reporting under section 6050W and to withholding and information reporting under section 3402(t).

Information reporting under section 3402(t) and section 6050W serve different purposes, however. The purpose of information reporting under section 6050W is to encourage voluntary compliance in the reporting of gross receipts. In contrast, the purpose of information reporting under section 3402(t) is to report the amounts of tax withheld from payments and to furnish this information to payees and to the IRS. Both payees and the IRS must have mechanisms in place to account for the income tax that has been withheld from payments. Therefore, reporting under section 3402(t) cannot be eliminated for transactions that will also be required to be reported under section 6050W.

Further, an exception from reporting under section 6050W when the same transaction will be reported under section 3402(t) is not feasible because the payment settlement entity, such as a merchant acquiring entity in the case of a payment card transaction, may not have access to the identity of the actual card user. Thus, the payment settlement entity would not know whether the card user is a government entity required to withhold on payments pursuant to section 3402(t) and would not be able to determine whether reporting under section 6050W is excepted. Also, the proposed rules under section 3402(t) provide for a \$10,000 payment threshold amount, whereas section 6050W has no payment threshold amount for payment card transactions. See REG-158747-06, 2009-4 IRB 362 (73 FR 74,082) (Dec. 5, 2008). Accordingly, the proposed regulations do not provide relief from reporting the same transaction under both sections 3402(t) and 6050W.

Time, Form and Manner for Reporting

Many commenters recommended that the IRS create a new form to be used solely for reporting under section 6050W. A draft form for this purpose, Form 1099-K, "Merchant card and third-party payments," is expected to be released contemporaneously with these proposed regulations. Draft Form 1099-K will be available for viewing and comment on the IRS Web site at <http://www.irs.gov/pub/irs-dft/f1099k-dft.pdf>. Additional guidance regarding the proper form for reporting under this section will be issued in time for filing the first returns due under this section (returns for calendar year 2011 due in 2012).

The draft form is expected to require reporting, with respect to each participating payee, of the gross amount of the aggregate reportable payment transactions for the calendar year and the gross amount of the aggregate reportable payment transactions for each month of the calendar year. The inclusion of monthly amounts on the return filed with the IRS and on the statement furnished to the payee will aid in reconciling payment card and third party network transaction receipts for fiscal year payees. Additionally, the proposed regulations provide that the time and manner for reporting under section 6050W will follow the existing procedures for information reporting under other Code sections.

Section 6050W(f) provides that payee statements may be furnished electronically. Commenters requested that the existing procedures for payee statements be modified to eliminate the requirement for an affirmative consent to receive the payee statement under section 6050W electronically. Instead, commenters requested that merchants already receiving business communications electronically be deemed to have consented to receive electronic payee statements under section 6050W. Commenters also suggested that reporting entities not be required to send a separate communication to payees to inform them of their option to receive payee statements electronically; rather, the communication may be included in another business communication. Commenters also suggested that merchants receiving paper communications who wish to receive electronic payee statements be allowed to consent to electronic payee statements by logging onto a Web site to indicate their consent, with no further written consent required. The proposed regulations do not adopt these suggestions to eliminate the existing consent procedures for furnishing electronic statements to payees. Additional comments are requested on whether the existing consent procedures should be modified.

Backup Withholding

The Act amended section 3406(b)(3) to provide that reportable payment transactions subject to information reporting under section 6050W generally are subject to backup withholding requirements. Section 3406 requires backup withholding in the case of any reportable payment if a condition for backup withholding, as set forth in section 3406(a)(1), exists. In the case of reportable payments, backup withholding generally applies if the

payee fails to furnish his TIN to the payor or if the IRS notifies the payor that the TIN furnished by the payee is incorrect.

Section 3091(c) of the Act amended section 3406(b) by expanding the meaning of reportable payments subject to backup withholding to include payments required to be shown on a return required under section 6050W, effective for amounts paid after December 31, 2011. Accordingly, the proposed regulations amend the regulations under section 3406 to provide that persons making information returns with respect to any reportable payment under section 6050W made after December 31, 2011 are included in the definition of "payors" obligated to backup withhold.

Several commenters expressed concern that when backup withholding for reportable payments reportable under section 6050W becomes effective, duplicate backup withholding on the same payment could potentially occur. The same reportable payment may be reportable under section 6050W and under another Code section, such as section 6041 or 6041A, thus potentially subjecting the payee to as much as 56-percent withholding for the same transaction.

Because the proposed regulations provide relief from reporting under section 6041 for payment card transactions that would otherwise be reportable under both sections 6041 and 6050W, the potential for duplicate backup withholding in such situations is eliminated. There continues, however, to be a potential for duplicate backup withholding for reportable payments made after December 31, 2011 that are reportable under section 6050W and another Code section. Also, in the case of a payment for services using a third party payment network after December 31, 2011, the payment potentially could be subject to backup withholding by the payor for these services as a reportable payment under section 6041, and by the third party settlement organization as a reportable payment under section 6050W.

A payment settlement entity reporting under section 6050W is in a better position to perform backup withholding for a third party network transaction than the payor reporting under section 6041. Backup withholding compliance is difficult for payors in third party network transactions because an invoice may not be issued, and the payor in the transaction may not be in a position to backup withhold easily at the time of the transaction. Backup withholding may also be difficult because the payor does not make payment directly to the

provider of services; rather, the third party settlement organization makes payment to the provider. However, relief from backup withholding for third party network transactions reportable under both section 6050W and section 6041 is not warranted because such transactions are not subject to reporting under section 6050W unless the de minimis thresholds are met. Thus, the payor with the obligation to report under section 6041 cannot determine with certainty whether a third party network transaction is required to be reported under section 6050W.

For payments that are subject to withholding under both sections 3402(t) and 6050W, the potential for duplicate withholding is complicated by the 3-percent withholding requirement contained within section 3402(t) itself. Section 3402(t) expressly provides exceptions to the 3-percent withholding requirement for payments that are subject to backup withholding under section 3406 if backup withholding is actually being deducted from the payment. Thus, where there is no 3-percent withholding on a government payment card transaction, the transaction will be subject to the higher 28-percent backup withholding under section 3406 instead of the 3-percent withholding under section 3402(t). However, a potential for duplicate backup withholding may arise if information reporting is required under both sections 3402(t) and 6050W but neither reporting requirement is satisfied.

The proposed regulations do not eliminate the requirement for backup withholding for transactions that are reportable under section 6050W and another Code section. Comments are requested on the circumstances under which relief for duplicate backup withholding is appropriate once backup withholding under section 6050W becomes effective.

Proposed Effective/Applicability Dates

The amendments to the regulations as proposed will be effective on the date they are published as final regulations in the **Federal Register**.

With respect to the regulations under sections 6041, 6050W, 6051, 6721 and 6722, the regulations are proposed to apply to returns for calendar years beginning after December 31, 2010. With respect to the regulations under section 3406, the regulations are proposed to apply to amounts paid after December 31, 2011.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a

significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the persons required to report under section 6050W, payment settlement entities, will generally not be small businesses. Merchant acquiring entities, the payment settlement entities required to report payment card transactions, will primarily be banks with over \$175 million in assets. Third party settlement organizations, the payment settlement entities required to report third party network transactions, will generally not be small entities by virtue of the definition of a third party payment network, which requires the establishment of accounts with a central organization (the third party settlement organization) by a substantial number of persons. Further, section 6050W(e) provides a de minimis exception that exempts third party settlement organizations from reporting transactions with respect to a payee if the aggregate amount of such transactions does not exceed \$20,000 or the aggregate number of such transactions does not exceed 200. The IRS and the Treasury Department also request comments on the accuracy of the statement that the regulations in this document will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. Comments are requested on the examples in the proposed regulations, and commentators are specifically invited to suggest changes to these examples or to suggest new examples that they believe would better illustrate the principles that should be included in the final

regulations. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 10, 2010 at 10 am in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by January 27, 2010. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Barbara Pettoni, Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6041-1 is amended by adding a sentence at the end of paragraph (a)(1)(ii) and adding paragraphs (a)(1)(iv) and (a)(1)(v) to read as follows:

§ 1.6041-1 Return of information as to payments of \$600 or more.

(a) * * *

(1) * * *

(ii) * * * For payment card transactions (as described in § 1.6050W-1(b)) required to be reported on information returns required under section 6050W (relating to payment card and third party network transactions), see special rules in § 1.6041-1(a)(1)(iv).

* * * * *

(iv) *Information returns required under section 6050W for calendar years beginning after December 31, 2010.* For payments made by payment card after December 31, 2010, that are required to be reported on an information return under section 6050W (relating to payment card and third party network transactions), the following rule applies. Payment card transactions that are described in paragraph (a)(1)(ii) of this section that otherwise would be reportable under both sections 6041 and 6050W are reported under section 6050W and not section 6041. For provisions relating to information reporting for payment card transactions, see § 1.6050W-1.

(v) *Example.* The provisions of paragraph (a)(1)(iv) are illustrated by the following example:

Example. Restaurant owner A, in the course of business, pays \$600 of fixed or determinable income to B, a repairman, by credit card. B is one of a network of unrelated persons that has agreed to accept A's credit card as payment under an agreement that provides standards and mechanisms for settling the transaction between a merchant acquiring bank and the persons who accept the cards. Merchant acquiring bank Y is responsible for making the payment to B. Under paragraph (a)(1)(iv) of this section, A, as payor, is not required to file an information return under section 6041 with respect to the transaction because Y, as the payment settlement entity for the payment card transaction, is required to file an information return under section 6050W.

* * * * *

Par. 3. Section § 1.6050W-1 is added to read as follows:

§ 1.6050W-1 Information reporting for payments made in settlement of payment card and third party network transactions.

(a) *In general*—(1) *General rule.* Every payment settlement entity, as defined in paragraph (a)(3) of this section, must file an information return for each calendar year with respect to payments made in settlement of reportable payment transactions, as defined in paragraph (a)(2) of this section, setting forth the following information:

(i) The name, address, and taxpayer identification number (TIN) of each participating payee, as defined in paragraph (a)(4) of this section, to whom one or more payments in settlement of reportable payment transactions are made.

(ii) With respect to each participating payee, the gross amount, as defined in paragraph (a)(5) of this section, of—

(A) The aggregate reportable payment transactions for the calendar year; and

(B) The aggregate reportable payment transactions for each month of the calendar year.

(iii) Any other information required by the form, instructions or current revenue procedures.

(2) *Reportable payment transaction.* The term *reportable payment transaction* means any payment card transaction (as defined in paragraph (b)(1) of this section) and any third party network transaction (as defined in paragraph (c)(1) of this section).

(3) *Payment settlement entity.* The term *payment settlement entity* means a domestic or foreign entity that is—

(i) In the case of a payment card transaction, a merchant acquiring entity (as defined in paragraph (b)(2) of this section); and

(ii) In the case of a third party network transaction, a third party settlement organization (as defined in paragraph (c)(2) of this section).

(4) *Participating payee*—(i) *Definition.* In general, the term *participating payee* means any person, including any governmental unit (and any agency or instrumentality thereof), who:

(A) In the case of a payment card transaction, accepts a payment card (as defined in paragraph (b)(3) of this section) as payment; and

(B) In the case of a third party network transaction, accepts payment from a third party settlement organization (as defined in paragraph (c)(2) of this section) in settlement of such transaction.

(ii) *Foreign payees.* For special rules relating to foreign payees, see paragraph (d)(3) of this section.

(5) *Gross amount.* For purposes of this section, *gross amount* means the total dollar amount of aggregate reportable

payment transactions for each participating payee without regard to any adjustments for credits, cash equivalents, discount amounts, fees, refunded amounts or any other amounts.

(b) *Payment card transactions*—(1) *Definition.* The term *payment card transaction* means any transaction in which a payment card, or any account number or other indicia associated with a payment card, is accepted as payment.

(2) *Merchant acquiring entity.* The term *merchant acquiring entity* means the bank or other organization that has the contractual obligation to make payment to participating payees (as defined in paragraph (a)(4)(i)(A) of this section) in settlement of payment card transactions.

(3) *Payment card.* (i) The term *payment card* means any card, including any stored-value card as defined in paragraph (b)(4) of this section, issued pursuant to an agreement or arrangement that provides for—

(A) One or more issuers of such cards;

(B) A network of persons unrelated to each other, and to the issuer, who agree to accept such cards as payment; and

(C) Standards and mechanisms for settling the transactions between the merchant acquiring entities and the persons who agree to accept the cards as payment.

(ii) Persons who agree to accept such cards as payment as described in this paragraph (b)(3) are participating payees within the meaning of paragraph (a)(4)(i)(A) of this section.

(4) *Stored-value cards.* The term *stored-value card* means any card with a prepaid value, including any gift card.

(c) *Third party network transactions*—(1) *Definition.* The term *third party network transaction* means any transaction that is settled through a third party payment network.

(2) *Third party settlement organization.* The term *third party settlement organization* means the central organization that has the contractual obligation to make payments to participating payees (as defined in paragraph (a)(4)(i)(B) of this section) of third party network transactions. A central organization is a third party settlement organization if it provides a third party payment network (as defined in paragraph (c)(3)(i) of this section) that enables purchasers to transfer funds to providers of goods and services.

(3) *Third party payment network.* (i) The term *third party payment network* means any agreement or arrangement that—

(A) Involves the establishment of accounts with a central organization by

a substantial number of providers of goods or services who are unrelated to the organization and who have agreed to settle transactions for the provision of the goods or services to purchasers according to the terms of the agreement or arrangement;

(B) Provides standards and mechanisms for settling the transactions; and

(C) Guarantees payment to the persons providing goods or services in settlement of transactions with purchasers pursuant to the agreement or arrangement.

(ii) Persons who are providers of goods and services as described in this paragraph (c)(3) are participating payees within the meaning of paragraph (a)(4)(i)(B) of this section.

(4) *Exception for de minimis payments.* A third party settlement organization is required to report any information under paragraph (a)(1) of this section with respect to third party network transactions of any participating payee only if—

(i) The amount that would otherwise be reported under paragraph (a)(1)(ii) of this section with respect to such transactions exceeds \$20,000; and

(ii) The aggregate number of such transactions exceeds 200.

(d) *Special rules—(1) Aggregated payees.* In any case where a person receives payments from a payment settlement entity (as defined in paragraph (a)(3) of this section) on behalf of one or more participating payees and distributes such payments to one or more participating payees (as defined in paragraph (a)(4) of this section), the person is treated as:

(i) The participating payee with respect to the payment settlement entity; and

(ii) The payment settlement entity with respect to the participating payees to whom the person distributes payments.

(2) *Electronic payment facilitator.* If a payment settlement entity (as defined in paragraph (a)(3) of this section) contracts with an electronic payment facilitator or other third party to settle reportable payment transactions on behalf of the payment settlement entity, the electronic payment facilitator or other third party must file the annual information return under this section in lieu of the payment settlement entity. The electronic payment facilitator or other third party who makes payment on behalf of the payment settlement entity is the party that will be liable for any applicable penalties for failure to comply with the information reporting requirements of section 6050W.

(3) *Foreign payees—(i) In general.* A payment settlement entity that is a person described as a U.S. payor or U.S. middleman in § 1.6049–5(c)(5) is not required to make a return of information for payments to a participating payee with a foreign address as long as, prior to payment, the payee has provided the payment settlement entity with documentation upon which the payment settlement entity may rely to treat the payment as made to a foreign person in accordance with § 1.1441–1(e)(1)(ii). For purposes of this paragraph (d)(3)(i), the provisions of § 1.1441–1 shall apply by substituting the term payor for the term withholding agent and without regard to the limitation to amounts subject to withholding under chapter 3 of the Internal Revenue Code and the regulations under that chapter.

(ii) *Special rule.* A payment settlement entity that is not a person described as a U.S. payor or U.S. middleman in § 1.6049–5(c)(5) is not required to make a return of information for a payment to a participating payee that does not have a United States address as long as the payment settlement entity neither knows nor has reason to know that the participating payee is a United States person.

(iii) *Foreign address; United States address.* For purposes of this section, *foreign address* means any address that is not within the United States, as defined in section 7701(a)(9) of the Internal Revenue Code (the States and the District of Columbia). *United States address* means any address that is within the United States.

(4) *Unrelated persons.* For purposes of this section, *unrelated* means any person who is not related to another person within the meaning of section 267(b) (providing a list of relationships), including the application of section 267(c) and (e)(3) (providing rules relating to constructive ownership), and section 707(b)(1) (relationships with partnerships).

(e) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Merchant acquiring entity. Customer A purchases goods from merchant B using a credit card issued by Bank X. B is one of a network of unrelated persons that has agreed to accept credit cards issued by X as payment under an agreement that provides standards and mechanisms for settling the transaction between a merchant acquiring bank and the persons who accept the cards. Bank Z is the bank with the contractual obligation to make payment to B for goods provided to A in the above transaction. As defined in paragraph (b)(2) of this section, Z is the merchant acquiring entity that must file the annual information return required under paragraph (a)(1) of this

section to report the payment made to settle the transaction for the sale of goods from B to A.

Example 2. Third party settlement organization. (i) Merchant B is one of a substantial number of persons selling goods or services over the Internet that have an account with X, an Internet payment service provider. None of these persons, including B, are related to X, and all have agreed to settle transactions for the sale of goods or services to customers according to the terms of their contracts with X. X has guaranteed payment to all of these persons, including B, for the sale of goods or services to customers. Customer A purchases goods from B. A pays X for the goods purchased from B. X, in turn, makes payment to B in settlement of the transaction for the sale of goods from B to A.

(ii) X's arrangement constitutes a third party payment network as defined in paragraph (c)(3) of this section because a substantial number of persons that are unrelated to X, including B, have established accounts with X, and X is contractually obligated to settle transactions for the provision of goods or services by these persons to purchasers. Thus, under paragraph (c)(2) of this section, X is a third party settlement organization and the transaction discussed in this example is a third party network transaction under paragraph (c)(1) of this section. Therefore, X must file the annual information return required under paragraph (a)(1) of this section to report the payment made to B in settlement of the transaction with A provided that X's aggregate payments to B from third party network transactions exceed \$20,000 and the aggregate number of X's transactions with B exceeds 200 (as provided in paragraph (c)(4) of this section).

Example 3. Automated clearinghouse network. A operates an automated clearinghouse ("ACH") network that merely processes electronic payments (such as wire transfers, electronic checks, and direct deposit payments) between buyers and sellers. There are no contractual agreements between A and the sellers for the purpose of permitting the sellers to use the ACH network. Thus, A is not a third party settlement organization under paragraph (c)(2) of this section, the ACH network is not a third party payment network under paragraph (c)(3) of this section, and the electronic payment transactions are not third party network transactions under paragraph (c)(1) of this section. A is not required to file the annual information return required under paragraph (a)(1) of this section.

Example 4. Gross amount. Customer A uses a payment card to purchase \$100 worth of goods at merchant B. Bank X, the merchant acquiring entity for B, is the party with the contractual obligation to make payment to B in settlement of the transaction. X, after deducting fees of \$2, makes payment of \$98 to settle the transaction for the sale of goods from B to A. Under paragraph (a)(5) of this section, X must report the amount of \$100, without any reduction for fees or any other amount, as the gross amount of this reportable payment transaction on the annual information return filed under paragraph (a)(1) of this section.

Example 5. Gift card. (i) Customer A purchases a gift card from Merchant X that may be used only at X and its related network of stores. A purchases the gift card using cash. A gives the gift card to B. B uses the gift card to purchase goods at one of X's stores. The purchase of the gift card by A using cash is not a payment card transaction described in paragraph (b)(1) of this section and, thus, is not required to be reported in a return of information required under paragraph (a)(1) of this section. Under paragraph (b)(3) of this section, the gift card is not a payment card because the gift card is accepted as payment by a person who is related to the issuer of the gift card. Therefore, the use of the gift card by B is not required to be reported in a return of information required under paragraph (a)(1) of this section.

(ii) The facts are the same as in paragraph (i), except that B adds value to the gift card using a credit card. The use of the credit card to add value to the gift card is a reportable payment transaction (as defined in paragraph (a)(2) of this section) and must be reported in a return of information under this section by the bank or other organization that has the contractual obligation to make payment to X in settlement of the transaction.

Example 6. Campus card. (i) Student A purchases a card issued by University Y that may be used on campus at various university-owned merchants and at various local merchants unrelated to Y. A uses the card in the university-owned cafeteria to purchase lunch. Under paragraph (b)(3) of this section, the campus card is not a payment card in this transaction because the card is accepted as payment by a person who is related to the issuer of the card. Therefore, the use of the campus-card by A in the university cafeteria is not required to be reported in a return of information required under paragraph (a)(1) of this section.

(ii) The facts are the same as in paragraph (i), except that A uses the campus card to purchase lunch at a local restaurant, unrelated to Y, that has agreed to accept the campus card as payment. Under paragraph (b)(3) of this section, the campus card is a payment card in this transaction because the card is accepted as payment by a person that is unrelated to this issuer of the card pursuant to an agreement. Therefore, the use of the card by A in the local restaurant for the purchase of lunch must be reported in a return of information required under paragraph (a)(1) of this section by the bank or other organization that has the contractual obligation to make payment to the restaurant in settlement of the transaction.

Example 7. Prepaid telephone card. A purchases a prepaid telephone card from Company X that may be used to make telephone calls using various long-distance providers unrelated to X that have agreed to accept the card as payment. A places a telephone call using the prepaid card as payment for the telephone call. Under paragraph (b)(3) of this section, the prepaid telephone card is a payment card because the card is accepted as payment by a person that is unrelated to the issuer of the card pursuant to an agreement. Therefore, the use of the prepaid card to make payment for the

telephone call must be reported in a return of information required under paragraph (a)(1) of this section by the bank or other organization that has the contractual obligation to make payment to the long distance provider in settlement of the transaction.

Example 8. Transit card. City Z accepts a transit card as payment for use of its mass transit system. The transit card is issued by B, an organization unrelated to Z. A network of persons, including Z, who are unrelated to each other and to B, have agreed to accept the transit card issued by B as payment for transit and for other goods and services. Transit rider X purchases a transit card and uses the card to pay for travel on Z's mass transit system. Under paragraph (b)(3) of this section, the transit card is a payment card because the card is accepted as payment by a person who is one of a network of persons that are unrelated to the issuer of the card and that have agreed to accept the card as payment. Therefore, the use of the transit card by X to pay for transit on Z's mass transit system is a payment card transaction described in paragraph (b)(1) of this section that must be reported in a return of information required under paragraph (a)(1) of this section by the bank or other organization that has the contractual obligation to make payment to Z. Z is the participating payee, described in paragraph (a)(4)(i)(A) of this section, of the payment card transaction.

Example 9. Healthcare network. Health carrier A operates healthcare network Y. A collects premiums from covered persons pursuant to a plan agreement between A and the covered persons for the cost of membership in Y. Separately, A pays healthcare providers pursuant to provider agreements to compensate these providers for services rendered to covered persons who are members of Y. A is not a third party settlement organization under paragraph (c)(2) of this section because A does not operate a third party payment network that enables purchasers to transfer funds to providers of goods and services. Therefore, A is not required to file the annual information return required under paragraph (a)(1) of this section.

Example 10. Third party accounts payable. X is a "shared-service" organization that performs accounts payable services for numerous purchasers that are unrelated to X. A substantial number of providers of goods and services have established accounts with X and have agreed to accept payment from X in settlement of their transactions with purchasers. The provider agreement with X includes standards and mechanisms for settling the transactions and guarantees payment to the providers, and the arrangement enables purchasers to transfer funds to providers. Under paragraph (c)(3) of this section, X's accounts payable services constitute a third party payment network, of which X is the third party settlement organization (as defined in paragraph (c)(2) of this section). For each payee, X must file the annual information return required under paragraph (a)(1) of this section to report payments made by X in settlement of accounts payable to that payee if X's

aggregate payments to that payee exceed \$20,000 and the aggregate number of transactions with that payee exceeds 200 (as provided in paragraph (c)(4) of this section).

Example 11. Toll collection network. State A charges a toll to vehicles that travel its state highways. The tolling agency for A contracted with organization X to perform its toll collection. X provides an electronic toll collection system that allows the toll facility to record the passage of a vehicle with a transponder affixed to the vehicle. The customer account associated with the transponder is automatically debited for the amount of the toll. The customer funds a balance in the account, which is then depleted as the toll transactions occur. X periodically bills the customer to replenish the account. X then makes payment to A to settle the toll transactions that are recorded by the transponder. X also contracts with a substantial number of other entities unrelated to X that have established accounts with X and have agreed to accept payment using the electronic toll collection system provided by X. X guarantees payment to the entities for all toll transactions that are recorded by the transponders, and the arrangement enables customers to transfer funds to State A and other entities that charge tolls. Under paragraph (c)(3) of this section, X's electronic toll collection system constitutes a third party payment network, of which X is the third party settlement organization (as defined in paragraph (c)(2) of this section). For each payee, including A, X must file the annual information return required under paragraph (a)(1) of this section to report payments made by X in settlement of toll transactions if X's aggregate payments to that payee exceed \$20,000 and the aggregate number of transactions with that payee exceeds 200 (as provided in paragraph (c)(4) of this section).

Example 12. Hotel kiosk. Under a "hotel kiosk" arrangement, Hotel B permits its customers to charge, to their room account, transactions for goods and services at a substantial number of sellers unrelated to B that operate on B's premises and have established accounts in B's hotel kiosk system. Customers settle their room account with B when they check out, and B in turn settles the hotel kiosk transactions with the unrelated sellers. B guarantees payment to the sellers for these transactions and the arrangement enables customers to transfer funds to the sellers by means of one payment made to the hotel. Under paragraph (c)(3) of this section, B's hotel kiosk system constitutes a third party payment network, of which B is the third party settlement organization (as defined in paragraph (c)(2) of this section). For each payee, B must file the annual information return required under paragraph (a)(1) of this section to report payments made by B in settlement of the hotel kiosk transactions if B's aggregate payments to that payee exceed \$20,000 and the aggregate number of transactions with that payee exceeds 200 (as provided in paragraph (c)(4) of this section).

Example 13. Aggregated payee. Corporation A, acting on behalf of A's independently-owned franchise stores, receives payment from Bank X for credit card

sales effectuated at these franchise stores. X, the payment settlement entity (as defined in paragraph (a)(3)(i) of this section), is required under paragraph (d)(1)(i) of this section to report the gross amount of the reportable payment transactions distributed to A (notwithstanding the fact that A does not accept payment cards and would not otherwise be treated as a participating payee). In turn, under paragraph (d)(1)(ii), A is required to report the gross amount of the reportable payment transactions allocable to each franchise store. X has no reporting obligation under this section with respect to payments made by A to its franchise stores.

Example 14. Electronic payment facilitator. Bank A is a merchant acquiring entity (as defined in paragraph (b)(2) of this section) with the contractual obligation to make payments to participating merchants to settle certain credit card transactions. X enters into a contract with A to settle these credit card transactions electronically on behalf of A. Under paragraph (d)(2) of this section, X is an electronic payment facilitator and must file the information return required under paragraph (a)(1) of this section with respect to A's credit card transactions settled by X. A has no reporting obligation with respect to payments made by X on A's behalf.

(f) *Prescribed form.* The return required by paragraph (a)(1) of this section must be made according to the forms and instructions published by the IRS.

(g) *Time and place for filing.* Returns made under this section for any calendar year must be filed on or before February 28th (March 31st if filing electronically) of the following year at the Internal Revenue Service Center location designated in the instructions to the relevant form.

(h) *Time and place for furnishing statement—(1) In general.* Every payment settlement entity required to file a return under this section must also furnish to each participating payee a written statement with the same information (as described in paragraph (h)(2) of this section). The statement must be furnished to the payee on or before January 31st of the year following the calendar year in which the reportable payment is made. If the return of information is not made on magnetic media, this requirement may be satisfied by furnishing to such person a copy of all Forms 1099-K, "Merchant card and third-party payments," or any successor form with respect to such person filed with the Internal Revenue Service Center. The statement will be considered furnished to the payee if it is mailed to the payee's last known address. The payment settlement entity may furnish the statement electronically with the prior consent of the payee.

(2) *Information to be shown on statement furnished to payee.* Each written statement furnished under

paragraph (h)(1) of this section must include the following information—

(i) The name, address, and phone number (or e-mail address if the statement is furnished electronically) of the information contact of the payment settlement entity.

(ii) With respect to the participating payee, the gross amount of—

(A) The aggregate reportable payment transactions for the calendar year; and

(B) The aggregate reportable payment transactions for each month of the calendar year.

(iii) Any other information required by the form, instructions, or current revenue procedures.

(i) *Cross-reference to penalties.* For provisions relating to the penalty for failure to file timely a correct information return required under section 6050W, see § 301.6721-1 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty for failure to furnish timely a correct payee statement required under section 6050W(f), see § 301.6722-1 of this chapter. See § 301.6724-1 of this chapter for the waiver of a penalty if failure is due to reasonable cause and is not due to willful neglect.

(j) *Effective/applicability date.* The rules in this section apply to returns for calendar years beginning after December 31, 2010. The rules in this section are effective on the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 4. The authority citation for part 31 continues to read in part as follows:

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

Par. 5. Section 31.3406-0 is amended as follows:

- 1. Entries for § 31.3406(b)(3)-5(a) and (b) are added.
- 2. Entry for § 31.3406(g)-1 is amended by adding paragraphs (d), (e), and (f).

The additions read as follows:

§ 31.3406-0 Outline of the backup withholding regulations.

* * * * *

§ 31.3406(b)(3)-5 Reportable payments of payment card and third party network transactions.

(a) Payment card and third party network transactions subject to backup withholding.

(b) Amount subject to backup withholding.

* * * * *

§ 31.3406(g)-1 Exception for payments to certain payees and certain other payments.

* * * * *

(d) Reportable payments made to Canadian nonresident alien individuals.

(e) Certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others.

(f) Special rule for certain payment card transactions.

* * * * *

Par. 6. Section 31.3406(a)-2 is amended by revising paragraph (a) to read as follows:

§ 31.3406(a)-2 Definition of payors obligated to backup withhold.

(a) *In general.* Payor means the person that is required to make an information return under sections 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, 6050N, or 6050W with respect to any reportable payment (as described in section 3406(b)), or that is described in paragraph (b) of this section.

* * * * *

Par. 7. Section 31.3406(b)(3)-5 is added to read as follows:

§ 31.3406(b)(3)-5 Reportable payments of payment card and third party network transactions.

(a) *Payment card and third party network transactions subject to backup withholding.* A payment of a kind, and to a payee, that is required to be reported under section 6050W (relating to information reporting for payment card and third party network transactions) is a reportable payment for purposes of section 3406. See § 31.6051-4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) *Amount subject to backup withholding.* In general, the amount described in paragraph (a) of this section that is subject to withholding under section 3406 is the amount subject to reporting under section 6050W.

(c) *Effective/applicability date.* The provisions of this section apply to amounts paid after December 31, 2011.

Par. 8. Section 31.3406(d)-1 is amended by revising paragraph (d) to read as follows:

§ 31.3406(d)-1 Manner required for furnishing a taxpayer identification number.

* * * * *

(d) *Rents, commissions, nonemployee compensation, certain fishing boat operators, and payment card and third party network transactions, etc.—Manner required for furnishing a taxpayer identification number.* For accounts, contracts, or relationships

subject to information reporting under section 6041 (relating to information reporting at source on rents, royalties, salaries, etc.), section 6041A(a) (relating to information reporting of payments for nonemployee services), section 6050A (relating to information reporting by certain fishing boat operators), section 6050N (relating to information reporting of payments of royalties), or section 6050W (relating to information reporting for payment card and third party network transactions), the payee must furnish the payee's taxpayer identification number to the payor either orally or in writing. Except as provided in § 31.3406(d)-5, the payee is not required to certify under penalties of perjury that the taxpayer identification number is correct regardless of when the account, contract, or relationship is established.

Par. 9. Section 31.6051-4 is amended by revising paragraph (c)(2) to read as follows:

§ 31.6051-4 Statement required in case of backup withholding.

* * * * *

(c) * * *

(2) The amount subject to reporting under sections 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, 6050N, or 6050W whether or not the amount of the reportable payment is less than the amount for which an information return is required. If tax is withheld under section 3406, the statement must show the amount of the payment withheld upon;

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 10. Section 301.6721-1(g) is amended by:

- 1. Removing the language "or" at the end of paragraphs (g)(2)(vi) and (g)(3)(xii).
2. Redesignating paragraph (g)(2)(vii) as (g)(2)(viii).
3. Adding new paragraph (g)(2)(vii).
4. Redesignating paragraphs (g)(3)(viii), (g)(3)(ix), (g)(3)(x), (g)(3)(xi), (g)(3)(xii) and (g)(3)(xiii) as (g)(3)(ix), (g)(3)(x), (g)(3)(xi), (g)(3)(xii), (g)(3)(xiii) and (g)(3)(xiv).
5. Adding the language "or" at the end of newly designated paragraph (g)(3)(xiii).
6. Adding new paragraph (g)(3)(viii).
The revisions and additions read as follows:

§ 301.6721-1 Failure to file correct information returns.

* * * * *

(g) * * *

(2) * * *

(vii) Section 6050W (relating to information returns with respect to payments made in settlement of payment card and third party network transactions (effective for information returns required to be filed for calendar years beginning after December 31, 2010)), or

* * * * *

(3) * * *

(viii) Section 6050W (relating to information returns with respect to payments made in settlement of payment card and third party network transactions (effective for information returns required to be filed for calendar years beginning after December 31, 2010)),

* * * * *

Par. 11. Section 301.6722-1 is amended by:

- 1. Removing the language "and" at the end of paragraph (d)(2)(xviii).
2. Redesignating paragraphs (d)(2)(xvi), (d)(2)(xvii), (d)(2)(xviii) and (d)(2)(xix) as (d)(2)(xvii), (d)(2)(xviii), (d)(2)(xix) and (d)(2)(xx).
3. Adding new paragraph (d)(2)(xvi).
4. Adding the language "and" at the end of the newly designated paragraph (d)(2)(xix).
5. Adding new paragraph (f).

The revisions and additions read as follows:

§ 301.6722-1 Failure to furnish correct payee statements.

* * * * *

(d) * * *

(2) * * *

(xvi) Section 6050W (relating to information returns with respect to payments made in settlement of payment card and third party network transactions, generally the recipient copy),

* * * * *

(f) Effective/Applicability date. The provisions of paragraph (d)(2)(xvi) of this section apply to information returns required to be filed for calendar years beginning after December 31, 2010.

* * * * *

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E9-28076 Filed 11-23-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2009-0501]

RIN 1625-AA87

Security Zones; Brazos River, Freeport, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish four permanent security zones in the Brazos River in Freeport, Texas. This security zone is needed to protect vessels, waterfront facilities, and surrounding areas from destruction, loss, or injury caused by terrorism, sabotage, subversive acts, accidents, or incidents of a similar nature. Entry into this zone will be prohibited except by permission of the Captain of the Port Houston-Galveston.

DATES: Comments and related material must reach the Coast Guard on or before December 24, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-2009-0501 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Online: http://www.regulations.gov.

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

(3) Hand delivery: Room W12-140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, 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.

FOR FURTHER INFORMATION CONTACT:

Lieutenant junior grade Margaret Brown, Sector Houston-Galveston, telephone (713) 678-9001, or e-mail margaret.a.brown@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Request for Comments

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking [USCG–2009–0501], indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2009–0501" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

Public Meeting

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

Background and Purpose

Heightened awareness of potential terrorist acts requires enhanced security of our ports, harbors, and vessels. To enhance security, the Captain of the Port Houston-Galveston proposes to establish four permanent security zones within the port of Freeport, TX.

These zones would protect waterfront facilities, persons, and vessels from subversive or terrorist acts. Vessels operating within the Captain of the Port Houston-Galveston Zone are potential targets of terrorist attacks, or potential launch platforms for terrorist attacks on other vessels, waterfront facilities, and adjacent population centers. The zones being proposed are in areas with a high concentration of commercial facilities that are considered critical to national security.

All vessels not exempted under § 165.814(c) desiring to enter this zone would be required to obtain express permission from the Captain of the Port Houston-Galveston or his designated representative prior to entry. This proposed rule is not designed to restrict access to vessels engaged, or assisting in commerce with waterfront facilities within the security zones, vessels operated by port authorities, vessels operated by waterfront facilities within the security zones, and vessels operated by federal, state, county or municipal agencies. By limiting access to this area the Coast Guard would reduce potential methods of attack on vessels, waterfront facilities, and adjacent population centers located within the zones.

Discussion of Proposed Rule

The Captain of the Port Houston-Galveston is proposing four permanent security zones in the waters adjacent to the Dow Chemical Facility in Freeport, Texas. All vessels not exempted under this rule would be prohibited from entering the security zone unless authorized by the Captain of the Port Houston-Galveston or his designated representative. In Houston, vessels can contact the Captain of the Port Houston-Galveston through Vessel Traffic Service Houston/Galveston on VHF Channel 5A, by telephone at (713) 671–5103, or by facsimile at (713) 671–5159. In Freeport, vessels can contact the Captain of the Port Houston-Galveston through Marine Safety Unit Galveston, by telephone at (409) 978–2700, or by facsimile at (409) 978–2671.

The security zones are as follows:

(i) The Dow Barge Canal, containing all waters of the Dow Barge Canal north of a line drawn between 28°56.81' N/095°18.33' W and 28°56.63' N/095°18.54' W (NAD 1983). This zone increases the size of the established security zone to include the interior part of the Dow Barge Canal.

(ii) The Brazos Harbor, containing all waters west of a line drawn between 28°56.45' N, 95°20.00' W, and 28°56.15' N, 95°20.00' W (NAD 1983) at its junction with the Old Brazos River. This security zone remains unchanged, but the position descriptions are changed from Degrees-Minutes-Seconds to Degrees-Minutes.Decimal Minutes for ease of use and maximum compatibility with GPS devices.

(iii) The Dow Chemical plant, containing all waters of the Brazos Point Turning Basin within 100' of the north shore and bounded on the east by the longitude line drawn through 28°56.58' N/095°18.64' W and on the west by the longitude line drawn through 28°56.64' N/095°19.13' W (NAD 1983). This is a new security zone surrounding the docks of the Dow Chemical Plant.

(iv) The Seaway Teppco Facility, containing all waters of the Brazos Port Turning Basin bounded on the south by the shore, the north by the Federal Channel, on the east by the longitude line running through 28°56.44' N, 95°18.83' W and 28°56.48' N 095°18.83' W and on the West by the longitude line running through 28°56.12' N, 95°19.27' W and 28°56.11' N, 095°19.34' W (NAD 1983). This is a new security zone surrounding the docks of the Seaway Teppco Facility.

(v) The Conoco Phillips Facility docks, containing all waters within 100 feet of a line drawn from a point on shore at approximate position 28°55.96'

N, 095°19.77' W east to a point on shore at approximate position 28°56.19' N, 095°20.07' W (NAD 1983). This is a new security zone surrounding the docks of the Conoco Phillips facility.

Regulatory Evaluation

This proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The basis of this finding is that the security zones are not part of the Federal Channel. It does not impede commercial traffic to, from, or within the Port of Freeport. Recreational and commercial fishing vessel traffic will be able to transit the Brazos River within the Federal Channel.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reason: This proposed rule would not interfere with any commercial vessel traffic within the Old Brazos River.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant junior grade Margaret Brown at (713) 678–9001. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045,

Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule would not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969

(NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary “Environmental Analysis Check List” supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. The proposed rule involves establishing security zones and is excluded under paragraph 34(g) of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise § 165.814(a)(5) to read as follows:

§ 165.814 Security Zones; Captain of the Port Houston-Galveston Zone.

(a) * * * * *

(5) *Freeport, Texas.* (i) The Dow Barge Canal, containing all waters of the Dow Barge Canal north of a line drawn between 28°56.81' N/095°18.33' W and 28°56.63' N/095°18.54' W (NAD 1983).

(ii) The Brazos Harbor, containing all waters west of a line drawn between 28°56.45' N, 95°20.00' W, and 28°56.15' N, 95°20.00' W (NAD 1983) at its junction with the Old Brazos River.

(iii) The Dow Chemical plant, containing all waters of the Brazos Point Turning Basin within 100' of the north shore and bounded on the east by the longitude line drawn through 28°56.58' N/095°18.64' W and on the west by the longitude line drawn through 28°56.64' N/095°19.13' W (NAD 1983).

(iv) The Seaway Teppco Facility, containing all waters of the Brazos Port Turning Basin bounded on the south by the shore, the north by the Federal Channel, on the east by the longitude line running through 28°56.44' N, 95°18.83' W and 28°56.48' N 095°18.83' W and on the West by the longitude line running through 28°56.12' N, 95°19.27'

W and 28°56.11' N, 095°19.34' W (NAD 1983).

(v) The Conoco Phillips Facility docks, containing all waters within 100' of a line drawn from a point on shore at Latitude 28°55.96' N, Longitude 095°19.77' W, extending west to a point on shore at Latitude 28°56.19' N, Longitude 095°20.07' W (NAD 1983).

Dated: September 29, 2009.

Marcus E. Woodring,

Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.

[FR Doc. E9–28185 Filed 11–23–09; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 09–194; FCC 09–94]

Empowering Parents and Protecting Children in an Evolving Media Landscape

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This document seeks comment on how to empower parents to help their children take advantage of the opportunities offered by evolving electronic media technologies while at the same time protecting children from the risks inherent in use of these technologies. It asks for comment about the extent to which children are using electronic media today, the benefits and risks this presents, and the ways in which parents, teachers, and children can help reap the benefits while minimizing the risks of using these technologies. It also asks about the effectiveness of media literacy efforts and about how the Commission can assist with efforts being made by other Federal agencies that are addressing similar issues.

DATES: Comments are due January 25, 2010; reply comments are due February 22, 2010.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact David Konczal, Media Bureau, Policy Division at (202) 418–2228 or at David.Konczal@fcc.gov, Kim Matthews, Media Bureau, Policy Division at (202) 418–2154 or at Kim.Matthews@fcc.gov, or Holly Saurer, Media Bureau, Policy Division at (202) 418–7283 or at Holly.Saurer@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Inquiry* (NOI), FCC 09–94, adopted on October 22, 2009, and released on

October 23, 2009. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Notice of Inquiry

Introduction

The evolving electronic media landscape presents parents with both tremendous opportunities and critical challenges. On the one hand, electronic media technologies present many benefits for children, such as offering an almost unlimited potential for educational avenues and providing the technological literacy needed to compete in a global economy. On the other hand, the technological developments that produce these benefits also present risks for children. With this Notice of Inquiry (“NOI”), we seek to develop a record that will help us answer the question of how to empower parents to help their children take advantage of these opportunities, while at the same time protecting children from the risks inherent in use of these platforms.

From television to mobile devices to the Internet, electronic media offer children today avenues for education that their parents could never have envisioned. Using a television, a mobile device, a computer, or other media platform, children potentially can access educational information on every topic imaginable. The new media landscape is also participatory in nature. In addition to passively viewing or listening to educational content, children are using new technologies, such as social networking sites, to interact with and learn from relatives, friends, and others located across the globe.

As children are exposed to new media platforms, however, they may also be exposed to content that is inappropriate

or subjected to contact with individuals who may want to cause them harm. The same television, mobile device, computer, or other media platform that provides educational information may also expose children to exploitative advertisements, offensive language, sexually explicit material, violent content, bullying, scams, or even child predators. Media convergence also presents new challenges for parents in monitoring their children's media consumption. The same content that is blocked when a child attempts to view it on a television may be available for viewing on the Internet. Moreover, two decades ago, children's media consumption was limited to the home environment; today, children can access the Internet and its unlimited content options on their mobile devices outside the home where a parent is not present. While indecency regulations apply to radio and television broadcasting, subscription services have generally received different regulatory treatment, requiring parents to take additional actions to protect children when using these services. In addition, children are now creators of content in a participatory media environment, posting their thoughts on blogs and sharing pictures or videos on Web sites or using mobile phones. Thus, children today are at risk of sharing private information that may be embarrassing or may even expose them to harm.

Some parents are aware of the wide range of electronic media technologies available today but are confused about how to ensure that their children benefit from these technologies while avoiding the inherent risks. Other parents may be unaware of the benefits and risks of electronic media technologies, leaving their children in danger of being left behind in the digital revolution or left unsupervised as they navigate this challenging media landscape.

Through this NOI, we seek information on the extent to which children are using electronic media today, the benefits and risks these technologies bring for children, and the ways in which parents, teachers, and children can help reap the benefits while minimizing the risks. We start by reviewing the current children's media landscape, including the extent to which children use various kinds of electronic media and the potential impact on children from media use. We acknowledge that a wealth of academic research and studies exists on these issues. As discussed below, we ask commenters to identify additional data and important studies, whether concluded or ongoing, beyond those discussed here. Commenters are also

invited to ask and answer any other questions that this NOI fails to raise which they believe would help inform our inquiry.

We then explore the many positive impacts on children that media use may have. As discussed below, the benefits of electronic media for children include (i) accessing educational content; (ii) acquiring technological literacy needed to compete in a global economy; (iii) developing new skills in the use of technology and the creation of content; (iv) facilitating new forms of communication with family and peers; (v) improving health through telemedicine; and (vi) removing barriers for children with disabilities. We seek comment on these benefits, whether parents, teachers, and children are aware of these benefits, and the extent to which educational content is offered over the various electronic media platforms.

While we recognize that electronic media technologies offer these potential benefits to children, we also explore the risks of harm that media use presents. As discussed below, these risks include (i) exposure to exploitative advertising; (ii) exposure to inappropriate content (such as offensive language, sexual content, violence, or hate speech); (iii) impact on health (for example, childhood obesity, tobacco use, sexual behavior, or drug and alcohol use); (iv) impact on behavior (in particular, exposure to violence leading to aggressive behavior); (v) harassment and bullying; (vi) sexual predation; (vii) fraud and scams; (viii) failure to distinguish between who can and who cannot be trusted when sharing information; and (ix) compromised privacy. We seek comment on these risks, whether parents, teachers, and children are aware of them, and what can be done to protect children from them.

Some experts believe that greater media literacy for parents, teachers, and children is critical to enabling children to enjoy the benefits of electronic media while minimizing the potential harms. We are particularly interested in learning more about the effectiveness of media literacy and what can be done to increase media literacy among parents, teachers, and children. We explore those issues below.

In conducting this inquiry, we recognize that other Federal agencies are addressing some of the same issues, at least with respect to online safety. We seek comment on what the Commission can do to assist these efforts. We also invite commenters to suggest new actions that the Commission or industry can take to address the issues posed

here. In doing so, we ask commenters to discuss whether the Commission has the statutory authority to take any proposed actions and whether those actions would be consistent with the First Amendment. In addressing the issues raised here, we urge commenters to consider the full range of electronic media platforms, including broadcast television and radio, multichannel video programming distributors ("MVPDs"), audio devices, video games, wireless devices, nonnetworked devices, and the Internet.

Our goal with this NOI is to gather data and recommendations from experts, industry, and parents that will enable us to identify actions that all stakeholders can take to enable parents and children to navigate this promising electronic media landscape safely and successfully. In this regard, we solicit information on how other nations have dealt with and are dealing with these issues. Commenters should provide data on broadcast services, subscription video and other electronic media platforms. We also note that we recently issued a Report to Congress (the "CSVA Report") pursuant to the Child Safe Viewing Act of 2007 that contains relevant data and information for this NOI. See *Implementation of the Child Safe Viewing Act: Examination of Parental Control Technologies for Video or Audio Programming*, MB Docket No. 09-26, Report, FCC 09-69 (rel. Aug. 31, 2009). ("CSVA Report"). In the CSVA Report, we assessed the current state of the marketplace with respect to the existence and availability of advanced blocking technologies, methods of encouraging the development, deployment, and use of such technologies, and the existence, availability, and use of parental empowerment tools and initiatives already in the market. This NOI picks up where the CSVA Report left off, and we urge commenters to read the CSVA Report before filing comments in this proceeding. In addition, we will incorporate the comments filed in the CSVA proceeding by reference into the record on this NOI.

Issues for Comment

Children's Media Use

Children today live in a media environment that is dramatically different from the one in which their parents and grandparents grew up decades ago. The advent of cable and satellite television, accompanied by the transition to digital technology, has dramatically increased the number of television channels available in most homes. Studies examining the media

habits of American children demonstrate that children have access to a wide array of electronic media technologies. For instance, a study using 2004 data indicates that almost all households with children ages 8 to 18 had a television set, video player, radio, and audio player. In fact, a Kaiser Family Foundation study found that in 2004 the typical American child of that age was likely to live in a home with three televisions, three video cassette recorders (“VCRs”), three radios, three CD/tape players, two video game consoles, and a personal computer with an Internet connection. Data from 2005 indicates that this ubiquity even extended to households with children six years and younger, 78 percent of whom had personal computers, and 50 percent of whom had a video game player. According to a recent study by the Pew Internet & American Life Project (“Pew”), 71 percent of children ages 12 to 17 owned cell phones in 2008 and 74 percent owned an iPod or other MP3 player. The study also found that more than 70 percent of 12- and 13-year-olds owned a portable gaming device in 2008—more than the percentage that owned a cell phone among that age group. We therefore seek information about whether these trends continue to hold true, and ways in which they may have changed.

Studies also demonstrate that the pervasive presence of media in the lives of children has led to children spending significant time using some form of media, and often using two or more kinds of media simultaneously. One study found that five years ago, in 2004, children ages 8 to 18 already were reporting an average of five hours and 48 minutes of daily electronic media use, while, in 2005, children six years and younger averaged two hours and twenty four minutes of daily exposure to electronic media. Further, a Kaiser Family Foundation study analyzing 2004 data concluded that 8- to 18-year-olds watched on average just over three hours of television each day and nearly four hours when videos, DVDs, and pre-recorded shows were included. The same study found that 12- to 13-year-olds spent about 1¾ hours each day listening to music (including radio, CDs, tapes, or MP3 players), one hour each day on the computer (not including schoolwork), and just under 50 minutes each day playing video games. The study also concluded that one quarter of the time that 8- to 18-year-olds used media, they used two or more media at the same time. Thus, the amount of media content to which children were exposed exceeded the number of hours

children actually used media. We seek comment on how these viewing habits may have changed in the past several years. We also seek comment on the extent to which the rise of media multitasking by children—their use of more than one kind of electronic media simultaneously—may be increasing their total exposure to media content.

The rise in Internet use by children plays a significant role in their exposure to more forms of media. For instance, according to a Pew study analyzing data from 2006, 93 percent of American children ages 12 to 17 accessed the Internet. The number of applications children are using online are increasing as well: children are now heavily involved on social networking sites, share videos on sites such as YouTube and GoogleVideo, and share artwork, photos, stories, and videos online. We seek comment on whether these trends have increased and whether children have begun using other new forms of media over the past several years.

We ask commenters to identify additional data and studies on children’s media use beyond those that we have discussed. Are there additional relevant studies describing which media platforms children are using most frequently? Are there studies analyzing trends in children’s media consumption (for example, how does the amount of time children spend texting and using social networking sites compare to television viewing, and how has this changed over time)? Are there studies describing where children use media (inside the home in the presence of a parent or outside the home)? In what ways does media consumption vary depending on a child’s age? Are there studies concerning what kinds of content are most commonly accessed by children, and if so, what do such studies conclude?

We also seek comment on whether there are classes of children who do not have access to new digital media platforms. Does access vary depending on race, ethnicity, geography, parental income, or disability? Does access depend on the educational level of a child’s parents? What studies have been done on these issues? What can government or industry do to ensure that all children have access to digital media?

We invite commenters’ views on which studies are most reliable, what gaps exist in the research, and where the Commission could contribute by commissioning further studies. In particular, we ask commenters to identify whether the studies cited account for the newest media technologies.

Benefits of Electronic Media for Children

Electronic media offer numerous benefits for children. As discussed below in more detail, among these benefits are (i) access to educational content; (ii) acquiring technological literacy needed to compete in a global economy; (iii) developing new skills in the use of technology and the creation of content; (iv) facilitating new forms of communication with family and peers; (v) improving health through telemedicine; and (vi) removing barriers for children with disabilities. We seek further information on the benefits that electronic media offer for children, what actions can be taken to ensure that parents, teachers, and children are aware of these benefits, and the extent to which educational content is offered over the various electronic media platforms.

Key Benefits

Substantial evidence indicates that one significant benefit of media for children is helping children to learn. Research on educational television programs for children demonstrates that programs designed with a specific goal to teach academic or social skills can be effective, with potentially long-lasting effects. A number of studies have concluded that preschoolers who viewed *Sesame Street* had higher levels of school readiness than those who did not. Evidence also shows that children who were regular viewers of the educational program *Blue’s Clues* showed improved problem-solving skills. Research on educational interactive media software and digital games suggests they may have similar positive results. There is also evidence that mobile media, such as cell phones and iPods, can be useful in enabling a personalized learning experience for children, encouraging children to learn outside of school, and reaching underserved children.

Children with digital media skills are also likely to be better positioned to compete in today’s workplace. As a greater number of workplaces incorporate computers and the Internet into everyday work activities, the ability of young people to use these tools becomes critical to ensuring the availability of job opportunities. One study has suggested that teaching at-risk youth marketable skills such as word processing, Web design, desktop publishing, or video production can help them find jobs and resume their education.

For older children and youth, new forms of media have opened up new

ways of communicating with peers and family. Cell phones, text messaging, and social networking sites, for example, have become important means by which many youths communicate with peers and parents. Studies have suggested that these communication tools are used by adolescents primarily to reinforce existing relationships and can have a positive impact on their social connections.

There is also evidence that media tools can improve children's health. One study has noted that a variety of media solutions are being used today to promote better health outcomes for children, including the development of interactive games and social networking programs to help children understand and self-manage chronic conditions. Another study found that media tools can provide a resource for children to help them learn about important health topics, including nutrition, and to influence healthy behavior.

Evidence also suggests that media technology can help those with disabilities by, for example, assisting those with vision impairments to read, providing on-screen translations to the hearing-impaired, and enabling the physically impaired to work or take care of themselves at home.

We seek comment on the benefits identified above as well as other potential gains from children's media use. What do child psychologists, educators, and academics know today about the favorable effects of media on children? Do the benefits to children vary depending on the child's age, socio-economic class, or other factors such as disability? Are there studies other than the ones cited above that are important to consider with respect to the benefits of electronic media for children? Among the studies that have been conducted, which are most reliable or most widely recognized as providing important information on this issue? Do these studies account for the newest media technologies? Are there significant gaps in the understanding of the benefits of electronic media to children that should be filled by further studies? If so, what studies should be done and what role should the Commission play in facilitating further learning about these benefits?

Electronic media are most likely to benefit children if parents, teachers, and children are aware of the possible benefits. We seek further information about the level of awareness among parents, teachers, and children of the benefits of electronic media. While some parents make efforts to ensure that their children are exposed to beneficial media, other parents may not be

engaged with their children's media use, may be unfamiliar with the potential benefits of media use, or may not be technically competent to assist their children with electronic media. What efforts can be taken to ensure that all children receive the benefits of electronic media? What efforts have been made and should be made to educate parents and teachers about how to harness the benefits of electronic media for children?

Educational Content

Electronic media can be used to provide educational content for children, but it is unclear how much educational content is being offered today across electronic media platforms. We invite comment on this issue. Is there enough educational content for children available on electronic media today? Do sufficient marketplace incentives exist to create educational content for children, or is governmental or industry action needed to increase incentives? Is there educational content available for children with particular needs, including, for example, children whose first language is not English? Is there adequate content available for children of different ages?

To the extent there is educational or other beneficial content available for children today, what means do parents, teachers, and children have to select or "white list" this content? In the CSVA Report, we discussed a number of technologies currently available that permit parents or others to select or "white list" content, including tools for the Internet, cell phones, and television. See CSVA Report at paragraphs 36–38, 65, 71, 99, 150. Are there examples of tools that allow parents to find and select educational content available on particular media that stand out as best practices? Could any such best practices be extended to other media?

To the extent commenters believe there is an insufficient amount of educational or other beneficial content available for children today, we invite comment on what steps the government or industry could take to promote the development and availability of this content. Are there any partnerships between commercial entities and public or noncommercial entities that enable the creation of educational content? We note that the Children's Television Act ("CTA") is one example of government action to promote the availability of educational content on one type of medium—broadcast television. We invite comment on whether the Commission's rules implementing the CTA have been effective in promoting the availability of educational content

for children on broadcast television. We note that a 2008 Children Now study concluded that, while stations are generally meeting the three-hour-per-week core programming benchmark, most core programs focus on social-emotional lessons for children rather than cognitive-intellectual topics, such as physical science, history, or cognitive skills, and that relatively few core programs are "highly educational." We ask commenters to describe the quality of core programming provided by commercial television licensees today. Is there a sufficient amount of cognitive/intellectual children's programming available today? Would children benefit from more cognitive/intellectual programming? We also ask commenters to describe the quality of core programming provided on broadcasters' multicast streams, as well as what steps broadcasters take to promote that programming. What are the economics of providing educational content? What is the audience size for this programming? Should the Commission consider an approach that would permit commercial entities to fund the creation of educational content to be provided by others, such as PBS. How would such a regime be implemented and enforced?

Risks of Electronic Media for Children

While electronic media offer numerous benefits for children, they also present risks. As discussed below, among these risks are (i) exposure to exploitative advertising; (ii) exposure to inappropriate content (such as offensive language, sexual content, violence, or hate speech); (iii) impact on health (for example, childhood obesity, tobacco use, sexual behavior, or drug and alcohol use); (iv) impact on behavior (in particular, exposure to violence leading to aggressive behavior); (v) harassment and bullying; (vi) sexual predation; (vii) fraud and scams; (viii) failure to distinguish between who can and who cannot be trusted when sharing information; and (ix) compromised privacy. We seek further information on the risks that the evolving electronic media landscape presents for children, whether parents, teachers, and children are aware of these risks, and what can be done to protect children from them.

Potential Risks

One significant concern with children's exposure to media is the harms that may arise from advertising specifically directed to children and used to influence children's consumption of products. Some of these products may be unhealthy food that can promote obesity. In addition, there is some evidence that younger children

often do not understand the persuasive intent of advertisements, and even older children may have difficulty understanding the intent of newer marketing techniques, such as interactive, embedded, viral, and behavioral advertising that blur the line between commercial and program content.

There is also concern about children's exposure to media content that may be inappropriate, such as offensive language, obscenity, indecency, profanity, or other content that is unsuitable for minors, as well as concern about exposure to content that could influence children to engage in behaviors that pose risks to their health. For example, studies have indicated that heavy exposure of children to violent media content may increase the likelihood of future aggressive and violent behavior, and that youth exposed to smoking in media are more susceptible to viewing smoking favorably and to becoming smokers. Studies have also noted a link between exposure of adolescents to sexual content on television and early sexual behavior, and have found that exposure to alcohol advertising and to electronic media that portray alcohol use increases adolescents' alcohol use. One study has concluded that children who spend more time playing video games are more likely to get into physical fights and be "physically heavier." In addition, as noted above, the growing epidemic of childhood obesity has focused attention on the possible role of media use and food advertising in influencing children's body weight and eating behaviors. While many studies conclude that exposure to particular kinds of media content can pose a risk to children, there is also some evidence that too much time spent with electronic media in general can be harmful to children's health.

The increased use of the Internet by children, including the increased use of social networking sites, creates new risks to minors online, including the danger of sexual solicitation, exposure to online harassment and bullying, frauds and scams, and compromised privacy. One study has concluded, however, that the risks minors face online, including harassment, bullying, and sexual solicitation, "are not radically different in nature or scope than the risks minors have long faced offline, and minors who are most at risk in the offline world continue to be most at risk online." With respect to online sexual solicitation of minors, research has indicated that approximately 13 percent of youths have received sexual solicitations online, and most of these

recipients are between 14 and 17 years of age. Research has also found that most sexual solicitors of children online are other adolescents rather than adults. The percentage of youths who receive sexual solicitations online has declined in recent years, however, and research has suggested that online harassment or cyberbullying of children may pose a more common threat. Although studies differ widely in the number of adolescents that report being victimized by the use of the Internet, text messages, or e-mail to embarrass or threaten them, one study conducted in 2005 found that more than 70 percent of teens had been harassed in the previous year. Concerns have been expressed also about the potential infringement of privacy and potential exploitation of children online, ranging from concerns about children posting personal information online to concerns about commercial organizations targeting children through such practices as "data-mining." One study has concluded that 46 percent of children have disclosed personal information to someone they met online.

We seek comment on these and other possible risks we have not identified. What are the chief harms that can befall children from using electronic media, and how serious are they? What do child psychologists, educators, and academics know today about the risks of media exposure to children? Is there a consensus about the most significant risks? Are there certain risks that are just as likely to be present even when children are not using electronic media? Do the risks vary depending on the child's age, socio-economic class, or other factors? Are there studies other than the ones cited above that are important to consider with respect to the risks electronic media pose to children? Among the studies that have been conducted, which ones are more reliable or more widely recognized as providing important information on this issue? Do these studies account for the newest media technologies? Are there important gaps in the understanding of the risks of electronic media to children that should be filled by further studies? If so, what studies should be done and what role should the Commission play in facilitating further learning about these risks?

In addition, the level of awareness of these risks among parents, teachers, and children is unclear. We seek to learn more about how aware parents, teachers, and children are of the risks of electronic media exposure. What efforts have been made and should be made to educate parents, teachers, and children about these risks?

Impact of Advertisements on Children

Exposure to excessive and exploitative advertisements is a significant risk children face from electronic media. Advertisements of particular concern for children include: (i) Those that promote products specifically to children; (ii) those that promote unhealthy food, thereby contributing to childhood obesity, and (iii) those that contain inappropriate content, such as offensive language, sexual content, and violence. While we discuss below the means parents have to protect children from the risks of electronic media use, those means might be less useful in protecting children from advertisements. For example, household media rules are unlikely to be effective in protecting children from inappropriate advertisements, because parents are usually not aware of the content of a particular advertisement before a child sees it. Similarly, parental control technologies generally block entire programs or Web sites rather than specific commercials contained within otherwise acceptable content for children.

What do child psychologists, educators, and academics know about the effects of advertisements on children? In what ways do these effects vary based on a child's age, socio-economic class, or other factors? Among the studies that have been conducted, which ones are most reliable or most widely recognized as providing important information on this issue? Do these studies consider advertisements carried on newer media technologies, such as the Internet and mobile devices? Do advertisements for beneficial products, such as nutritious foods, produce positive effects for children? Are there significant gaps in the understanding of the effects of advertisements on children that should be filled by further studies? If so, what studies should be done and what role should the Commission play in facilitating further learning about these risks?

New digital media also make possible new forms of advertising that warrant scrutiny into how they impact children. As discussed above, these forms of advertising include interactive advertisements, including advergames, and embedded advertisements, as well as behavioral and viral advertising campaigns. To what extent are children subjected to these new forms of advertising, including when using the Internet and mobile devices? What do child psychologists, educators, and academics know about the effects of these new forms of advertising on

children? Can they have a positive impact if the advertisement is for something beneficial, such as nutritious food? We note that there are pending NPRMs on interactive and embedded advertising in television. See *Children's Television Obligations of Digital Television Broadcasters*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 22943, 22967 (2004) ("2004 Order and FNPRM"); *Sponsorship Identification Rules and Embedded Advertising*, Notice of Inquiry and Notice of Proposed Rule Making, 23 FCC Rcd 10682 (2008). Parties wishing to update the record on the issues of interactive television and embedded advertising in broadcasting and cable programming may file *ex parte* submissions in those proceedings.

The CTA is an example of a governmental action to ensure that one type of medium—television—limits the amount of advertising viewed by children. Specifically, as implemented by the Commission, the CTA requires commercial television licensees, cable operators, and DBS providers to limit the amount of commercial matter that may be aired during children's television programs to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays. In addition, the Commission requires broadcasters to use separations or "bumpers" between programming and commercials to assist children in distinguishing between advertisements and program content. We invite information about the effectiveness of these rules in limiting commercial material viewed by children on television and how they might be improved.

The CTA's commercial limits apply only to broadcast, cable, and satellite television. To what extent are children exposed to excessive and exploitative advertisements on media other than television? What actions, if any, should government take to create incentives to limit the exposure of children to advertisements and to promote associated policies, such as the separations policy, on these other media? Are there examples of voluntary industry efforts to limit the exposure of children to advertisements on these other media? Have these efforts been successful?

The role of advertising in the spread of childhood obesity also warrants further study. The Commission has participated in the Task Force on Media and Childhood Obesity, which included representatives from the media, advertising, food, and beverage industries, along with consumer advocacy groups, healthcare experts,

and academics. The Task Force met in an effort to examine the impact of media on childhood obesity and to explore voluntary recommendations to address the phenomenon. In addition, the Better Business Bureau has created the Children's Food and Beverage Advertising Initiative to provide food and beverage advertisers with a self-regulation mechanism for advertisements aimed at children. The Initiative is aimed at "shifting the mix of advertising messaging directed to children under 12 to encourage healthier dietary choices and healthy lifestyles." Have these voluntary efforts to curtail advertising of unhealthy food to children proven effective? Do these commitments extend beyond television to other media platforms, such as the Internet and mobile devices? Are additional actions needed to address these concerns?

We invite comment also on the extent to which parents are concerned about exposure of children to inappropriate content within advertisements on various media, such as offensive language, sexual content, and violence. To what extent are commercials containing inappropriate content aired during children's television programming or during general audience programming that may be viewed by children, such as sports programming? Is it feasible to block advertisements that may be inappropriate for children on various media platforms? What are the costs and benefits? What likely economic impact would this have on advertiser-supported media? If the benefits outweigh the costs, what actions could government or industry take to ensure that children are not exposed to inappropriate content? What incentives could the government provide to encourage age-appropriate advertising practices? One concern raised previously is the airing during children's television programming of promotions for upcoming television programs that may themselves contain inappropriate content. We note that the Commission's definition of "commercial matter" for purposes of the commercial time limits may discourage the airing of these inappropriate promotional materials. Specifically, the definition of "commercial matter" includes all promotions of television programs or video programming services other than "children's or other age-appropriate programming appearing on the same channel or promotions for children's educational and informational programming on any channel." Accordingly, nonexempted promotional materials aired during programming

produced for children age 12 and younger must be counted as commercial time. Has this rule limited the exposure of young children to inappropriate promotional materials during children's television programming?

Protecting Children From the Risks

Through household media rules and parental control tools, parents have some ability today to protect children from the risks of electronic media use. As discussed below, we seek comment on the level of awareness among parents of these protections and how effective these tools have been in combating risks posed by media consumption. We recognize that these issues may not be resolved solely by technology solutions. Accordingly, we also seek comment on non-technological solutions that will help protect children. In assessing these protections, we urge commenters to consider the impact of media convergence. While media convergence has many benefits, it may also make it more difficult for parents to protect their children from the risks of media exposure. For example, content that parents may block via the V-chip on the home television set, such as a program that is rated TV-14, may be freely accessible to their children on the Internet. Moreover, while indecency regulations apply to radio and television broadcasting, subscription services have generally received different regulatory treatment, requiring parents to take additional actions to protect children when using these services. In addition, children can now access television programming and the Internet on their mobile devices outside the home, where no parent is present. How does the mobile nature of media today affect the ability of parents to monitor their children's media consumption? What strategies have parents used to monitor their children's media exposure outside of the home? Have these strategies been effective? Is there more that government or industry should do to keep pace with this convergence and increase parents' ability to control the content to which their children are exposed? How can or should current laws be updated to reflect this convergence and to keep pace with changes in technology?

We also note that household media rules and parental control technologies require parental involvement in their children's media use. Some parents, however, may be unaware of the risks from electronic media use or choose not to be engaged in their children's media use. Because household media rules and parental control tools will not protect children of these parents, they face increased risk of harm in the digital

world. We invite comment on what can or should government or industry do to protect these children from that harm. Is teaching media literacy to children in schools starting at a young age, as discussed further below, the best way to protect these children? In addition, as children grow older, they may become more media savvy than their parents and may be able to circumvent controls put in place by their parents. What options are there to protect these children from the risks of exposure to electronic media?

Household Media Rules

One means for protecting children from the risks of electronic media consumption is for parents to establish rules governing their children's media use ("household media rules"). What studies describe the extent to which parents have established and implemented household media rules? Have these strategies been successful in protecting children? How can household media rules protect children when they are using technologies outside the home, such as mobile devices? Are different strategies required for newer media, such as texting and social networking sites, than for more traditional media, such as television? Are there particular rules or strategies that can serve as best practices for particular media or across media? Are there resources for parents to learn more about establishing and implementing household media rules?

Technology and Parental Control Tools

Another way to protect children from the risks of electronic media consumption is through the use of parental control technologies. In the CSVA Report, we identified a wide range of parental control tools that exist and are available today with respect to over-the-air television, cable and satellite television, audio-only programming, wireless services, non-networked devices such as DVD players, video games, and the Internet. We found that the record in that proceeding indicated that no single parental control technology available today works across all media platforms. Moreover, even within each media platform, we found that the available technologies vary greatly with respect to certain criteria. Generally, we identified five areas for further study with respect to parental control tools across media platforms: (i) Level of consumer awareness of such tools; (ii) pace of adoption; (iii) ease of use; (iv) familiarity with and understanding of ratings systems; and (v) pace of innovation. As discussed below, we seek comment on each of

these issues in order to increase our understanding of how parental control technologies can best be used to protect children in an evolving electronic media marketplace.

Level of Consumer Awareness of the Tools. We seek comment on the extent to which parents are aware of specific parental control technologies across all media platforms. To what extent does the level of awareness differ among media? What additional promotional and educational efforts would be effective in increasing awareness of these parental control technologies? In the CSVA Report, we noted that estimates of awareness of the V-chip among parents vary from 49 percent to 69 percent. We seek comment on what actions, if any, should Congress, the Commission, or industry take to increase awareness of the V-chip as a tool to protect children from inappropriate content on broadcast television. Would a joint effort between the Commission and industry similar to that undertaken in connection with the DTV transition be effective in familiarizing parents with the available tools? If so, how should such an outreach program be most effectively structured?

Pace of Adoption. We seek comment on the extent to which parents are adopting specific parental control technologies. To the extent that the adoption rate is low, what reasons, if any, besides lack of awareness keep parents from adopting parental control technologies, and to what extent do these reasons differ among media? For example, in the CSVA Report, we noted that adoption of control technologies may be greater for the Internet than for broadcasting and other traditional media. We invite comment on the reasons for this difference in adoption rates. We also seek comment on whether and, if so, what actions could be taken to increase adoption of parental control technologies. In the CSVA Report, we noted that estimates of V-chip adoption vary from 5 percent to 16 percent of parents. We seek comment on what actions, if any, Congress, the Commission, or industry should take to increase adoption of the V-chip. In this regard, we seek data and information about whether parents have doubts about the reliable application of the existing "TV Parental Guidelines" industry rating system by programmers or other responsible entities and, if so, whether those doubts affect parents' interest in using V-chip technology. Would improvements in the operation and visibility of the industry's Oversight Monitoring Board, which fields

complaints about ratings, be helpful in addressing such doubts?

Ease of Use. We seek comment on what, if any, features of specific parental control technologies parents find easy to use and helpful, and what features they find confusing and difficult to use. We seek comment on whether and, if so, how these technologies could be improved to make them easier for parents to use.

Familiarity With and Understanding of the Ratings System. We seek comment on whether parents are familiar with and understand the various ratings systems currently in use and the way content is evaluated for blocking and other purposes in conjunction with specific parental control technologies. To the extent the level of familiarity or understanding is low, we seek comment on whether that lack of familiarity or understanding is impeding use of particular parental control technologies. We also seek comment on whether and, if so, what steps can be taken to increase familiarity and understanding of the various ratings systems. Are there studies or data from other countries that have ratings systems or other parental control technologies? In the CSVA Report, we noted studies indicating that many parents do not understand the existing TV Parental Guidelines used in conjunction with the V-chip. We seek comment on ways to increase understanding of the TV Parental Guidelines. Would the creation of a uniform rating system that would apply to various platforms be an appropriate objective? If so, how should such a system be structured and administered?

Pace of Innovation. We seek comment on the pace of innovation with respect to parental control technologies. Is innovation in parental control technologies proceeding at a pace consistent with other consumer technologies (e.g., computers, mobile phones and broadband devices)? We also seek comment on whether innovation in parental control technologies is proceeding at a pace that ensures that new parental control features and devices are being developed at a rate that meets evolving parental and caregiver needs. What is driving innovation in parental control technologies—is it the force of parental concerns, or is it simply the pace of innovation in media technologies themselves? In the CSVA Report, we noted a number of areas for further study regarding innovation with respect to V-chip technology. Can the V-chip be used to select or "white list" television programs identified as "core" educational programs? How feasible

would it be to add this function to the V-chip and what would be the costs and benefits of doing so? Can the current V-chip technology support an "open V-chip" that would allow parents to select from multiple ratings systems? Is further investment in the V-chip warranted, given the relatively low use of the V-chip and the increasing number of alternative parental control tools available to pay TV subscribers? What steps, if any, should Congress, the Commission, or industry take to give parents access to multiple content ratings for television in addition to ratings assigned by content producers?

Media Literacy

Some experts view increased media literacy and education for parents, teachers, and children as a key way to enable children to enjoy the benefits of electronic media while avoiding the potential harms. We seek comment on how great a role media literacy can play in this respect and what actions can be taken to promote media literacy.

Is There a Minimum Necessary Level of Media Literacy?

We seek comment on whether there is a minimum level of media literacy that parents, teachers, and children must have to ensure that children can participate effectively in modern society and enjoy the benefits of electronic media while avoiding the potential harms. By way of example, some of the necessary elements of media literacy might include knowledge of: (i) The various types of electronic media; (ii) the benefits of the electronic media landscape; (iii) how to access beneficial content; (iv) the risks of the electronic media landscape; (v) how to avoid these risks (for parents, this may include household media rules and use of parental control technologies; for children, this may include the critical thinking skills needed to make smart choices); (vi) how to distinguish between program content and advertising; and (vii) the privacy implications of using various media. Are all of these elements necessary to a minimal level of media literacy? Are there additional necessary elements? Are there studies of what parents, teachers, and children must know to be sufficiently media literate?

Teaching Media Literacy to All Stakeholders

We seek comment on the availability and sufficiency of media literacy training for parents, teachers, and children. To what extent is media literacy a required part of school curricula throughout the nation? Is

media literacy education in schools particularly critical for those at-risk children whose parents are either unaware of the benefits and harms of media consumption or choose not to become involved in monitoring their children's media use? At what age should children begin to be taught media literacy? Is it critical for such education to begin early in a child's development? What roles do the Department of Education and other government or private organizations play in this area? Are there studies or data on the effectiveness of media literacy education and which approaches work best for particular demographics? What are current best practices on teaching media literacy? Are there limitations on the value of teaching media literacy to children? For example, are there certain issues, such as the ability to understand persuasive intent in advertising, that children under a certain age lack the cognitive ability to comprehend? We also note that schools are responsible for students' media consumption while they are in school. How do schools determine whether to use media literacy and/or control tools to protect children while consuming media in schools? What factors do schools consider in determining what is appropriate material for children to access? To what extent are schools blocking content that might be beneficial for children? Are there any studies or data available on the impact on long-range educational and/or career opportunities from limiting children's access to online resources? Is there anything that can and should be done to assist teachers and schools in managing students' media consumption and promoting students' media literacy while they are in school? How are parents and teachers taught media literacy? Are there examples of media literacy programs that could serve as a model for teaching parents and teachers? What role could or should the government, and the Commission in particular, play in ensuring that children, educators, and parents receive appropriate media literacy training? What role should the media industry play in this area?

Resources on Media Literacy

While there is a significant amount of information on media literacy available today, it is unclear whether parents, teachers, and children are aware of this information or whether they can find this information easily. Is there a single source today that pulls together existing information about media literacy? What are the available sources of such information? Should the government,

and the Commission in particular, seek to establish an on-line resource? If so, how can the Commission best promote this resource so that parents and children are aware of it? Are there other governmental or private organizations that are working on or have already prepared such on-line resources? Are they comprehensive? Do they cover the latest technologies?

Other Outreach

We seek comment on other efforts that would be effective in promoting media literacy among parents, teachers, and children. Some examples of these efforts might include promotional campaigns, outreach, and public service announcements ("PSAs"). What contribution could these efforts make toward promoting media literacy?

Coordinating Government Efforts

We recognize that other governmental activities are underway that address one or more of the issues raised here. For example, in the Broadband Data Improvement Act, Congress directed the National Telecommunications and Information Administration ("NTIA") to establish the Online Safety and Technology Working Group ("OSTWG") to examine, among others things, industry efforts to promote online safety through educational efforts, parental control technology, and blocking and filtering software. See Broadband Data Improvement Act, Public Law 110-385, section 214(b), 122 Stat. 4096, 4104 (2008). Specifically, OSTWG is charged with reviewing and evaluating the following issues:

- (1) The status of industry efforts to promote online safety through educational efforts, parental control technology, blocking and filtering software, age-appropriate labels for content or other technologies or initiatives designed to promote a safe online environment for children;
 - (2) The status of industry efforts to promote online safety among providers of electronic communications services and remote computing services by reporting apparent child pornography under section 13032 of title 42, United States Code, including any obstacles to such reporting;
 - (3) The practices of electronic communications service providers and remote computing service providers related to record retention in connection with crimes against children; and
 - (4) The development of technologies to help parents shield their children from inappropriate material on the Internet.
- See *id.* The same law requires the Federal Trade Commission ("FTC") to

carry out a nationwide program to increase public awareness and provide education about strategies to promote the safe use of the Internet by children, including encouraging best practices for Internet safety. The Adam Walsh Child Protection and Safety Act of 2006 authorizes the Attorney General, in consultation with the National Center for Missing and Exploited Children, to carry out a public awareness campaign to demonstrate to children, parents, and community leaders how to protect children better on the Internet. The same law directs the Attorney General to make grants to States, units of local government, and nonprofit organizations to establish programs for educating children and parents in the best ways for children to be safe when on the Internet. Pursuant to the Children's Online Privacy Protection Act, the FTC has adopted rules detailing, among other things, the responsibilities of Web site operators that seek to collect information from children under the age of 13.

The Commission recently partnered with OnGuard Online, a partnership with 11 Federal agencies and 17 groups concerned with safety, hosted by the FTC, which provides practical tips "to help you be on guard against Internet fraud, secure your computer, and protect your personal information." OnGuard Online provides educational material, videos, and games on a wide range of subjects including e-mail scams, identity theft, kids privacy, social networking sites, spyware, and phishing. Much of the material can be downloaded, printed, embedded in third party Web sites, and otherwise widely used and distributed. The Commission looks forward to participating in and contributing to OnGuard Online.

We seek comment on any additional efforts underway, at either the Federal or State level, that address the issues raised in this NOI. What can the Commission do to assist these existing governmental efforts? Are there areas that the government is not currently addressing that the Commission should address? Which of the ongoing governmental activities encompass media platforms other than online media, including television, radio, audio devices, and video games?

Legal Authority

We note that the Commission has varying degrees of statutory authority with respect to different media. We ask

commenters, in proposing any action, to discuss the source and extent of the Commission's authority to take the action, or whether new legislation would be needed to authorize such action. In addition, as discussed above, commenters should discuss the compatibility of any proposed action with the First Amendment.

Procedural Matters

Ex Parte Presentations

This is an exempt proceeding in which ex parte presentations are permitted (except during the Sunshine Agenda period) and need not be disclosed.

Comment Filing Procedures

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR sections 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to

the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

People With Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

Additional Information. For additional information on this proceeding, contact David Konczal, David.Konczal@fcc.gov; Kim Matthews, Kim.Matthews@fcc.gov; or Holly Saurer, Holly.Saurer@fcc.gov; of the Media Bureau, Policy Division, (202) 418-2120.

Ordering Clauses

Accordingly, *it is ordered*, pursuant to the authority contained in Sections 1, 4(i) and (j), 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. sections 151, 154(i) and (j), 303(r), and 403, that this *Notice of Inquiry is adopted*.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. E9-27664 Filed 11-23-09; 8:45 am]

BILLING CODE 6712-01-P

Notices

Federal Register

Vol. 74, No. 225

Tuesday, November 24, 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

Agricultural Marketing Service

[Docket No. AMS-FV-09-0066; FV09-926-1NC]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension of a currently approved information collection for Data Collection, Reporting and Recordkeeping Requirements Applicable to Cranberries Not Subject to the Cranberry Marketing Order, 7 CFR Part 926.

DATES: Comments on this notice must be received by January 25, 2010.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Tel: (202) 205-2829, Fax: (202) 720-8938, or Internet: <http://www.regulations.gov>. 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>.

Small business may request information on this notice by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400

Independence Avenue, SW., STOP 0237, room 1406-S, Washington, DC 20250-0237; telephone (202) 720-2491; Fax (202) 720-8938, or E-mail: Jay.Guerber@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Data Collection Requirements Applicable to Cranberries Not Subject to the Cranberry Marketing Order, 7 CFR Part 926.

OMB Number: 0581-0222.

Expiration Date of Approval: May 31, 2010.

Type of Request: Extension of a currently approved information collection.

Abstract: A Federal marketing order for cranberries (M.O. 929) regulates the handling of cranberries grown in 10 States and is applicable to regulated handlers under the order. Public Law 106-78, enacted October 22, 1999, amended section 8(d) of the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601-674). If a cranberry order is in effect, the amendment authorizes the Secretary to require persons engaged in the handling or importation of cranberries and cranberry products not subject to the reporting requirements of the Federal cranberry marketing order to maintain adequate records and report information on sales, acquisitions, and inventory information to USDA or the Cranberry Marketing Committee (Committee). Such persons include handlers, producer-handlers, processors, brokers, and importers. The Committee collects this information. The data collection and reporting requirements helps the Committee make more informed recommendations to USDA for regulations authorized under the cranberry marketing order, (7 CFR Part 929).

Although a final rule, published in the **Federal Register** on April 4, 2007 (72 FR 16265) suspended the reporting requirements under 7 CFR Part 926, AMS is requesting that the Office of Management and Budget (OMB) approve a one-hour placeholder for future use of this information collection should the suspension be lifted and the reporting requirements re-implemented.

The information collection requirements in this request are essential to carry out the intent of the AMAA, and to administer the program, which was implemented in 2005.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the AMAA as expressed in the order, and the rules and regulations issued under the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters staff, and authorized employees of the Committee. Authorized Committee employees and the industry are the primary users of the information, and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .083 hours per response.

Respondents: Cranberry importers and brokers who acquire and sell cranberries and cranberry products, and maintain inventories of cranberries and cranberry products; and handlers, producer-handlers, and processors not subject to the cranberry marketing order who produce, handle, acquire, sell and maintain beginning and ending inventories of cranberries and cranberry products.

Estimated Number of Respondents: 12.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1 hour.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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.

Comments should reference OMB No. 0581-0222 and the Data Collection and Reporting Requirements Applicable to

Cranberries Not Subject to the Cranberry Marketing Order, 7 CFR Part 926, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW, Washington, DC 20250-0237; Telephone: (202) 205-2829; Fax (202) 720-8938; or Internet: <http://www.regulations.gov>. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 1400 Independence Ave., SW, Washington, DC, room 1406-S.

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

Dated: November 17, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9-28154 Filed 11-23-09; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest, Northern Hills Ranger District, South Dakota, Nautilus Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to implement multiple resource management actions within the Nautilus Project area to implement the amended Black Hills National Forest Land and Resource Management Plan. The Nautilus Project area covers approximately 41,302 acres of National Forest System land and approximately 5,699 acres of interspersed private land northwest of Rapid City, South Dakota. Mountain pine beetle infestations are present within and adjacent to the project area. Therefore, the Nautilus environmental impact statement will be analyzed under the provisions of Title IV of the Healthy Forests Restoration Act. Proposed actions include a combination of vegetation and fuels treatments to reduce mountain pine beetle susceptibility, reduce fire hazard, improve watershed conditions, provide for a diversity of wildlife habitat, and provide for research forestry opportunities. The proposed action includes approximately 7,157 acres of

commercial thinning, 7,311 acres of overstory removal, 10,954 acres of precommercial thinning, 2,134 acres of commercial seed cuts, 191 acres of group selection, 466 acres of individual tree selection, 764 acres of hardwood enhancement, 206 acres of meadow enhancement, 836 acres of old growth management, 354 acres of product-other-than-log thinning, and 411 acres of stand-alone prescribed burning, in addition, approximately 30,629 acres will be analyzed for prescribed burning following timber harvest although it is expected that approximately 10,000 acres of that total will actually be burned over a 10-15 year period. Approximately 15 miles of new road construction would be necessary to carry out the proposed vegetation management actions.

DATES: Comments concerning the scope of the analysis are requested by December 21, 2009. The draft environmental impact statement is expected to be available April 2010 and the final environmental impact statement is expected to be completed by July 2010.

ADDRESSES: Send written comments to: Rhonda O'Byrne, District Ranger, Northern Hills Ranger District, 2014 North Main Street, Spearfish, SD 57783. Telephone number: (605) 642-4622. e-mail: comments-rocky-mountain-black-hills-northern-hills@fs.fed.us with "Nautilus Project" as the subject.

FOR FURTHER INFORMATION CONTACT: Chris Stores, Assistant NEPA Planner, Northern Hills Ranger District, 2014 North Main Street, Spearfish, SD 57783. Telephone number: (605) 642-4622.

SUPPLEMENTARY INFORMATION:

Purpose of and Need for Action

The purpose of and need for the actions proposed in the Nautilus project area is to reduce mountain pine beetle susceptibility, reduce fire hazard, improve watershed conditions, provide for a diversity of wildlife habitat, and provide for research forestry opportunities. All actions are intended to move toward or achieve related Forest Plan Goals and Objectives, consistent with Forest Plan Standards and Guidelines.

Proposed Action

Proposed actions include the following:

Reduce acres at high or medium susceptibility to mountain pine beetle by thinning stands and changing stand structure. Commercial and non-commercial (including prescribed burning) methods may be used.

Reduce the acres at moderate-to-high fire hazard by thinning stands to decrease crown proximity and by reducing fuel accumulations. Thinning may use commercial or non-commercial methods. Fuel reduction treatments could include lopping, chipping, crushing, piling and burning, construction of fuel breaks, and broadcast prescribed burning.

Improve watershed conditions through road closure, meadow enhancement, hardwood enhancement and mitigation of connected disturbed areas.

Provide for a diversity of wildlife habitat through meadow enhancement, hardwood enhancement, seasonal road closures, and patch clear cuts to create open browsing areas.

Provide for opportunities to conduct research forestry in the Black Hills Experimental Forest. Proposed treatments to implement research objectives over the next 10-15 years designed to examine the effectiveness of timber management techniques not typically conducted on the Black Hills National Forest.

Road construction and maintenance activities necessary to access areas proposed for timber harvest. New roads would be closed following harvest and existing roads that are not in the National Forest System could also be closed in conjunction with this project.

The Forest Service is the sole responsible agency for this project; no cooperators are participating in project planning.

Responsible Official

Rhonda O'Byrne, District Ranger, Northern Hills Ranger District, 2014 North Main Street, Spearfish, SD 57783.

Nature of Decision To Be Made

The decision to be made is whether or not to approve the proposed action or alternatives at this time. No Forest Plan amendments are proposed.

Scoping Process

Comments and input regarding the proposed action are being requested from the public and other interested parties in conjunction with this notice of intent. The comment period will be open for thirty days, beginning on the date of publication of this notice of intent. An open house to gather comments from local individuals and groups will be held on December 2, 2009 at 5:30 PM MST at the Community Hall in Nemo, SD. Also, response to the draft EIS will be sought from the interested public beginning approximately in April 2010.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. It is our desire to involve interested parties and especially adjacent landowners in identifying the issues related to proposed activities. Comments will assist in identification of key issues and opportunities to develop project alternatives and mitigation measures.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days (beginning in April 2010) from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, 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. Hanis*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it 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 on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments 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 (40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: November 17, 2009.

Craig Bobzien,

Forest Supervisor, Black Hills National Forest.
[FR Doc. E9-28091 Filed 11-23-09; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service**

[Docket No. APHIS-2009-0087]

Availability of a Draft Environmental Assessment for Oral Rabies Vaccine Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that we have prepared a proposed environmental assessment relative to oral rabies vaccination programs in several States. Since the publication of our original environmental assessment and decision/finding of no significant impact in 2001, we have prepared, and made available to the public for comment, several supplemental environmental assessments and decisions/findings of no significant impact in order to reflect changes in the program. The new environmental assessment made available by this notice analyzes the further expansion the oral rabies vaccination program to include the States of New Mexico and Arizona, which is necessary to effectively combat the gray fox variant of the rabies virus. The new environmental assessment is intended to facilitate planning and interagency coordination in the event of rabies outbreaks, help streamline program management, and clearly communicate to the public the actions involved in the oral rabies vaccination program.

DATES: We will consider all comments that we receive on or before December 24, 2009.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (<http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0087>) to submit or view comments and to view supporting and related materials available electronically.

- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2009-0087, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2009-0087.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (<http://www.aphis.usda.gov>).

FOR FURTHER INFORMATION CONTACT: Dr. Dennis Slate, Rabies Program Coordinator, Wildlife Services, APHIS, 59 Chenell Drive, Suite 7, Concord, NH 03301; (603) 223-9623. To obtain copies of the documents discussed in this notice, contact Mr. Kevin Williams, Operational Support Staff, WS, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737-1234; phone (301) 734-4937, fax (301) 734-5157, or email: (Kevin.E.Williams@aphis.usda.gov).

This notice and the proposed environmental assessment are also posted on the APHIS Web site at (http://www.aphis.usda.gov/regulations/ws/ws_nepa_environmental_documents.shtml).

SUPPLEMENTARY INFORMATION: The Wildlife Services (WS) program in the Animal and Plant Health Inspection Service (APHIS) cooperates with Federal agencies, State and local governments, and private individuals to research and implement the best methods of managing conflicts between wildlife and human health and safety, agriculture, property, and natural resources. Wildlife-borne diseases that can affect domestic animals and humans are among the types of conflicts that APHIS-WS addresses. Wildlife is the dominant reservoir of rabies in the United States.

On December 7, 2000, a notice was published in the **Federal Register** (65 FR 76606-76607, Docket No. 00-045-1)

in which the Secretary of Agriculture declared an emergency and transferred funds from the Commodity Credit Corporation to APHIS-WS for the continuation and expansion of oral rabies vaccination (ORV) programs to address rabies in the States of Ohio, New York, Vermont, Texas, and West Virginia.

On March 7, 2001, we published a notice in the **Federal Register** (66 FR 13697-13700, Docket No. 01-009-1) to solicit public involvement in the planning of a proposed cooperative program to stop the spread of rabies in the States of New York, Ohio, Texas, Vermont, and West Virginia. The notice also stated that a small portion of northeastern New Hampshire and the western counties in Pennsylvania that border Ohio could also be included in these control efforts, and discussed the possibility of APHIS-WS cooperating in smaller-scale ORV projects in the States of Florida, Massachusetts, Maryland, New Jersey, Virginia, and Alabama. The March 2001 notice contained detailed information about the history of the problems with raccoon rabies in eastern States and with gray fox and coyote rabies in Texas, along with information about previous and ongoing efforts using ORV baits in programs to prevent the spread of the rabies variants or "strains" of concern.

Subsequently, on May 17, 2001, we published in the **Federal Register** (66 FR 27489, Docket No. 01-009-2) a notice in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental effects of the ORV programs described in our March 2001 notice. We solicited comments on the EA for 30 days ending on June 18, 2001. We received one comment by that date. The comment was from an animal protection organization and supported APHIS' efforts toward limiting or eradicating rabies in wildlife populations. The commenter did not, however, support the use of lethal monitoring methods or local depopulation as part of an ORV program.

On August 30, 2001, we published a notice in the **Federal Register** (66 FR 45835-45836, Docket No. 01-009-3) in which we advised the public of APHIS' decision and finding of no significant impact (FONSI) regarding the use of oral vaccination to control specific rabies virus strains in raccoons, gray foxes, and coyotes in the United States. That decision allows APHIS-WS to purchase and distribute ORV baits, monitor the effectiveness of the ORV programs, and participate in implementing

contingency plans that may involve the reduction of a limited number of local target species populations through lethal means (i.e., the preferred alternative identified in the EA). The decision was based upon the final EA, which reflected our review and consideration of the comments received from the public in response to our March 2001 and May 2001 notices and information gathered during planning/scoping meetings with State health departments, other State and local agencies, the Ontario Ministry of Natural Resources, and the Centers for Disease Control and Prevention.

Following the August 2001 publication of our original decision/FONSI, we determined there was a need to expand the ORV programs to include the States of Kentucky and Tennessee to effectively stop the westward spread of raccoon rabies. Accordingly, we prepared a supplemental decision/FONSI to document the potential effects of expanding the programs. We published a notice announcing the availability of the supplemental decision/FONSI in the **Federal Register** on July 5, 2002 (67 FR 44797-44798, Docket No. 01-009-4).

Following the publication of the supplemental decision/FONSI in July 2002, we determined the need to further expand the ORV program to include the States of Georgia and Maine to effectively prevent the westward and northward spread of the rabies virus across the United States and into Canada. To facilitate planning, interagency coordination, and program management and to provide the public with our analysis of potential individual and cumulative impacts of the expanded ORV programs, we prepared a supplemental EA that addresses the inclusion of Georgia and Maine, as well as the 2002 inclusion of Kentucky and Tennessee, in the ORV program. In addition, we prepared a new decision/FONSI based on the supplemental EA that was published in the **Federal Register** on June 30, 2003 (68 FR 38669-38670, Docket No. 01-009-5).

Following publication of the 2003 supplemental EA and decision/FONSI, we determined the need to further expand the ORV program to include portions of National Forest System lands, excluding Wilderness Areas, within several eastern States. The National Forest System lands where APHIS-WS involvement could be expanded included the States of Maine, New York, Vermont, New Hampshire, Pennsylvania, Ohio, Virginia, West Virginia, Tennessee, Kentucky, Alabama, Georgia, Florida, North Carolina, South Carolina,

Massachusetts, Maryland, and New Jersey. Cooperative rabies surveillance activities and/or baiting programs were already being conducted on various land classes, with the exception of National Forest System lands, in many of the aforementioned States. The programs' primary goals were to stop the spread of a specific raccoon rabies variant or "strain" of the rabies virus. If not stopped, this strain could potentially spread to much broader areas of the United States and Canada and cause substantial increases in public and domestic animal health costs because of increased rabies exposures. As numerous National Forest System lands are located within current and potential ORV barrier zones, it became increasingly important to bait these large land masses to effectively combat this strain of the rabies virus. In addition, we prepared a new decision/FONSI based on the supplemental EA that was published in the **Federal Register** on February 20, 2004 (69 FR 7904-7905, Docket No. 01-009-6).

Following the 2004 supplemental EA and decision/FONSI for expansion of the ORV program to include portions of National Forest System lands, we determined the need to further expand the ORV program to include 25 eastern States (Maine, New York, Vermont, New Hampshire, Pennsylvania, Ohio, Virginia, West Virginia, Tennessee, Kentucky, Alabama, Georgia, Florida, North Carolina, South Carolina, Massachusetts, Maryland, Connecticut, Rhode Island, Delaware, Indiana, Michigan, Mississippi, Louisiana and New Jersey), the District of Columbia, and Texas to effectively prevent the westward and northward spread of the rabies virus across the United States and into Canada. In addition, we prepared a new decision/FONSI based on the supplemental EA that was published in the **Federal Register** on September 23, 2004 (69 FR 56992-56993, Docket No. 01-009-7).

Following the 2004 supplemental EA and decision/FONSI, we determined the need to expand the ORV program to include portions of National Forest System lands, excluding Wilderness Areas, within the same 25 eastern States and the District of Columbia. As numerous National Forest System lands are located within current and potential ORV barrier zones, it had become increasingly important to bait these large land masses to effectively combat this strain of the rabies virus. Accordingly, we prepared a supplemental EA and decision/FONSI that served to update program needs and evaluate current data. Those documents were made available through

a notice published in the **Federal Register** on December 8, 2005 (70 FR 72977–72978, Docket No. 01–009–8).

In 2007, we prepared a new decision/FONSI to update and replace the previous decision/FONSI of September 9, 2004, for the 2004 supplemental EA. The purpose of the new 2007 decision/FONSI was to clarify the term “contingency actions,” which is used in the 2004 supplemental EA, and to analyze a type of contingency action called trap-vaccinate-release (TVR) that was not analyzed as part of the proposed action in the 2004 supplemental EA. The 2007 decision/FONSI was made available through a notice published in the **Federal Register** on April 27, 2007 (72 FR 20984–20986, Docket No. 01–009–9).

As a result of a recent outbreak of gray fox variant rabies in coyotes west of the original gray fox ORV zone in Texas toward the New Mexico border, and an ongoing outbreak of gray fox variant rabies in western New Mexico and eastern Arizona, APHIS–WS has determined there is a need to further expand the ORV program to include the States of New Mexico and Arizona to effectively combat the gray fox variant of the rabies virus. In addition, the State of Arizona recently released a draft management plan for invasive species that included the rabies virus on its list of invasive species that should be controlled and managed. The purpose of the new 2009 EA that we are making available through this notice is to facilitate planning and interagency coordination, help streamline program management, and to clearly communicate with the public the analysis of individual and cumulative impacts of an expanded APHIS–WS ORV program. The States where APHIS–WS involvement would be continued or expanded include the 26 States noted previously plus New Mexico and Arizona. The program’s primary goals are to stop the spread of specific raccoon (eastern States), coyote (Texas), and gray fox (Texas, New Mexico, and Arizona) rabies variants to new areas. The EA analyzes the proposed action and several alternatives with respect to a number of environmental and other issues raised by involved operating agencies and the public. Analysis of those areas and information not included in the EA, the 2004 supplemental EA, and the associated decisions/FONSIs are being presented in the new 2009 EA and have been incorporated into the decisionmaking process.

The proposed EA that is the subject of this notice, as well as the documents cited above that preceded it, have been

prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS’ NEPA Implementing Procedures (7 CFR part 372).

The EA may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this notice.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 18th day of November 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–28142 Filed 11–23–09; 11:41 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0071]

International Sanitary and Phytosanitary Standard-Setting Activities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with legislation implementing the results of the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade, we are informing the public of the international standard-setting activities of the World Organization for Animal Health, the Secretariat of the International Plant Protection Convention, and the North American Plant Protection Organization, and we are soliciting public comment on the standards to be considered.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (<http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0071>) to submit or view comments and to view supporting and related materials available electronically.

- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS–2009–0071, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0071.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (<http://www.aphis.usda.gov>).

FOR FURTHER INFORMATION CONTACT: For general information on the topics covered in this notice, contact Mr. John Greifer, Associate Deputy Administrator for SPS Management, International Services, APHIS, room 1132, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250; (202) 720–7677.

For specific information regarding standard-setting activities of the World Organization for Animal Health, contact Dr. Michael David, Director, Sanitary International Standards Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 33, Riverdale, MD 20737–1231; (301) 734–5324.

For specific information regarding the standard-setting activities of the International Plant Protection Convention or the North American Plant Protection Organization, contact Ms. Julie E. Aliaga, Program Director, International Phytosanitary Standards, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–0763.

SUPPLEMENTARY INFORMATION:

Background

The World Trade Organization (WTO) was established as the common international institutional framework for governing trade relations among its members in matters related to the Uruguay Round Agreements. The WTO is the successor organization to the General Agreement on Tariffs and Trade. U.S. membership in the WTO was approved by Congress when it enacted the Uruguay Round Agreements Act (Pub. L. 103–465), which was

signed into law by the President on December 8, 1994. The WTO Agreements, which established the WTO, entered into force with respect to the United States on January 1, 1995. The Uruguay Round Agreements Act amended Title IV of the Trade Agreements Act of 1979 (19 U.S.C. 2531 *et seq.*). Section 491 of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2578), requires the President to designate an agency to be responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization. The designated agency must inform the public by publishing an annual notice in the **Federal Register** that provides the following information: (1) The SPS standards under consideration or planned for consideration by the international standard-setting organization; and (2) for each SPS standard specified, a description of the consideration or planned consideration of that standard, a statement of whether the United States is participating or plans to participate in the consideration of that standard, the agenda for U.S. participation, if any, and the agency responsible for representing the United States with respect to that standard.

“International standard” is defined in 19 U.S.C. 2578b as any standard, guideline, or recommendation: (1) Adopted by the Codex Alimentarius Commission (Codex) regarding food safety; (2) developed under the auspices of the World Organization for Animal Health (OIE, formerly known as the Office International des Epizooties) regarding animal health and zoonoses; (3) developed under the auspices of the Secretariat of the International Plant Protection Convention (IPPC) in cooperation with the North American Plant Protection Organization (NAPPO) regarding plant health; or (4) established by or developed under any other international organization agreed to by the member countries of the North American Free Trade Agreement (NAFTA) or the member countries of the WTO.

The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the Secretary of Agriculture as the official responsible for informing the public of the SPS standard-setting activities of Codex, OIE, IPPC, and NAPPO. The United States Department of Agriculture’s (USDA’s) Food Safety and Inspection Service (FSIS) informs the public of Codex standard-setting activities, and USDA’s Animal and Plant Health Inspection Service (APHIS)

informs the public of OIE, IPPC, and NAPPO standard-setting activities.

FSIS publishes an annual notice in the **Federal Register** to inform the public of SPS standard-setting activities for Codex. Codex was created in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization. It is the major international organization for encouraging international trade in food and protecting the health and economic interests of consumers.

APHIS is responsible for publishing an annual notice of OIE, IPPC, and NAPPO activities related to international standards for plant and animal health and representing the United States with respect to these standards. Following are descriptions of the OIE, IPPC, and NAPPO organizations and the standard-setting agenda for each of these organizations. We have described the agenda that each of these organizations will address at their annual general sessions, including standards that may be presented for adoption or consideration, as well as other initiatives that may be underway at the OIE, IPPC, and NAPPO.

The agendas for these meetings are subject to change, and the draft standards identified in this notice may not be sufficiently developed and ready for adoption as indicated. Also, while it is the intent of the United States to support adoption of international standards and to participate actively and fully in their development, it should be recognized that the U.S. position on a specific draft standard will depend on the acceptability of the final draft. Given the dynamic and interactive nature of the standard-setting process, we encourage any persons who are interested in the most current details about a specific draft standard or the U.S. position on a particular standard-setting issue, or in providing comments on a specific standard that may be under development, to contact APHIS. Contact information is provided at the beginning of this notice under **FOR FURTHER INFORMATION CONTACT**.

OIE Standard-Setting Activities

The OIE was established in Paris, France, in 1924 with the signing of an international agreement by 28 countries. It is currently composed of 174 member nations, each of which is represented by a delegate who, in most cases, is the chief veterinary officer of that country. The WTO has recognized the OIE as the international forum for setting animal health standards, reporting global animal disease events, and presenting guidelines and recommendations on

sanitary measures relating to animal health.

The OIE facilitates intergovernmental cooperation to prevent the spread of contagious diseases in animals by sharing scientific research among its members. The major functions of the OIE are to collect and disseminate information on the distribution and occurrence of animal diseases and to ensure that science-based standards govern international trade in animals and animal products. The OIE aims to achieve these through the development and revision of international standards for diagnostic tests, vaccines, and the safe international trade of animals and animal products.

The OIE provides annual reports on the global distribution of animal diseases, recognizes the free status of Member countries for certain diseases, categorizes animal diseases with respect to their international significance, publishes bulletins on global disease status, and provides animal disease control guidelines to Member countries. Various OIE commissions and working groups undertake the development and preparation of draft standards, which are then circulated to Member countries for consultation (review and comment). Draft standards are revised accordingly and are then presented to the OIE International Committee (all the Member countries) during the General Session, which meets annually every May, for review and adoption. Adoption, as a general rule, is based on consensus of the OIE membership.

The next OIE General Session is scheduled for May 23–28, 2010, in Paris, France. Currently, the Deputy Administrator for APHIS’ Veterinary Services program is the official U.S. Delegate to the OIE. The Deputy Administrator for APHIS’ Veterinary Services program intends to participate in the proceedings and will discuss or comment on APHIS’ position on any standard up for adoption. Information about OIE draft Terrestrial and Aquatic Animal Health Code chapters may be found on the Internet at (http://www.aphis.usda.gov/import_export/animals/oie/) or by contacting Dr. Michael David (see **FOR FURTHER INFORMATION CONTACT** above).

OIE Terrestrial Animal Health Code Chapters and Appendices Adopted by the May 2009 General Session

Over 50 Code chapters were amended and/or rewritten, or newly proposed and presented for adoption at the General Session. The following Code

chapters¹ are of particular interest to the United States:

1. Glossary

Several Code chapter definitions were modified, rewritten, or deleted. Modified or rewritten definitions include the definitions for “protection zone,” “early detection system,” “outbreak,” “risk,” “risk communication,” “vaccination,” and “veterinary professional.”

2. Chapter 3.x.x, Vector surveillance

This is a new chapter that is focused on the surveillance of disease agents transmitted by vectors.

3. Chapter 4.3, Zoning and compartmentalization, and Chapter 4.4, Application of compartmentalization

The text in these chapters was modified for clarity in content. No substantive changes were made to these chapters.

4. Chapter 8.5, Foot and mouth disease

The term “buffer” was removed and replaced with the term “protection.” The text was further clarified that an outbreak of FMD within a “protection zone” would not affect the free status of a free zone or country as long as the outbreak is shown to be contained to that protection zone.

5. Chapter 10.4, Avian influenza

Minor changes were made to this chapter, and it was modified for clarity.

6. Chapter 10.13, Newcastle disease

The text in this chapter was modified for clarity.

7. Chapter 11.6, Bovine spongiform encephalopathy

The text in this chapter was modified to remove the 30-month age limit restriction so that deboned skeletal muscle can be freely traded from all countries, regardless of BSE risk, and to allow countries to source bone vertebrae for gelatin production from cattle 30 months of age and younger from countries of either undetermined or controlled risk.

8. Chapter 11.7, Bovine tuberculosis

A new chapter on bovine tuberculosis was adopted. It retains the definition of a “herd,” which provides a country another means to manage the disease in addition to the implementation of compartmentalization.

9. Chapter 11.8, Bovine tuberculosis in farmed Cervidae

This is a new chapter that incorporates many of the recommendations found in the bovine tuberculosis chapter.

10. Chapter 14.9, Scrapie

A new chapter was adopted and a few articles that address surveillance were left as “under study.”

11. Chapter 15.3, Classical swine fever

A new chapter was adopted.

OIE Terrestrial Animal Health Code Chapters and Appendices for Future Review

Existing Terrestrial Animal Health Code chapters that may be further revised and new chapters that may be drafted in preparation for the next General Session in 2010 include the following:

1. Chapter 2.3.1, Bovine brucellosis

2. Chapter 7.x.x, The use of animals in research, testing, teaching

3. Chapter 8.1, Anthrax

4. Chapter 8.5, Foot and mouth disease

Changes may include the concept of compartmentalization.

5. Chapter 15.5, Swine vesicular disease

6. Chapter x.x.x, Communication

OIE Aquatic Animal Health Code Chapters and Appendices up for Adoption

Aquatic Animal Health Code chapters and appendices that have been revised or that are new for adoption at the 2010 General Session include:

1. Chapter 1.3.1, General obligations and Chapter 1.3.2, Certification procedures

Certification procedures will be submitted for comment later in 2009.

2. Chapter x.x.x, Handling and disposal of carcasses and wastes of aquatic animals

This newly proposed chapter is under further review by the OIE.

3. Chapter x.x.x, Infection with abalone herpes-like virus

This new chapter may be proposed for adoption in 2010.

OIE Aquatic Animal Commission Future Work Program

During the next few years, the OIE Aquatic Animal Commission may address the following issues or establish ad hoc groups of experts to update or develop standards for the following issues:

1. International transport of aquatic animal disease agents and pathological materials.

2. Guidelines for aquatic animal surveillance.

The Process

The OIE Code chapters are drafted (or revised) by either the Terrestrial or Aquatic Animal Health Standards Commission or by ad hoc groups composed of technical experts nominated by the Director General of the OIE by virtue of their subject-area expertise. Once a new chapter is drafted or an existing one is revised, the chapter is distributed to Member countries for review and comment. The OIE attempts to provide proposed chapters by late October to allow Member countries sufficient time for comment. Comments are due by late January of the following year. The draft standard is revised by the OIE Code Commission on the basis of relevant scientific comments received from Member countries.

The United States (i.e., USDA/APHIS) intends to review, and where appropriate, comment on all draft chapters and revisions once it receives them from the OIE. USDA/APHIS intends to distribute these drafts to the U.S. livestock and aquaculture industries, veterinary experts in various U.S. academic institutions, other State and Federal agencies, and other interested persons for review and comment. Additional information regarding these draft standards may be obtained by contacting Dr. Michael David (see **FOR FURTHER INFORMATION CONTACT** above).

Generally, if a country has concerns with a particular draft standard, and supports those concerns with sound technical information, the pertinent OIE Code Commission will revise that standard accordingly and present the revised draft for adoption at the General Session in May. In the event that a country's concerns regarding a draft standard are not taken into account, that country may refuse to support the standard when it comes up for adoption at the General Session. However, each Member country is obligated to review and comment on proposed standards, and make decisions regarding the adoption of those standards, strictly on their scientific merits.

Other OIE Topics

Every year at the General Session, at least one technical item is presented. For the May 2010 General Session, the following technical item will be presented:

1. The critical contribution of veterinary activities to the global

¹NOTE: Proposed appendices and chapters not yet assigned by number have been designated an “x” as a temporary placeholder by the OIE.

security of food derived from terrestrial and aquatic animals.

The information in this notice includes all the information available to us on OIE standards currently under development or consideration. Information on OIE standards is available on the Internet at (<http://www.oie.int>). Further, a formal agenda for the next General Session should be available to Member countries by March 2010, and copies will be available to the public once the agenda is published. For the most current information on meeting times, working groups, and/or meeting agendas, including information on official U.S. participation in OIE activities and U.S. positions on standards being considered, contact Dr. Michael David (see **FOR FURTHER INFORMATION CONTACT** above). Those wishing to provide comments on any areas of work under the OIE may do so at any time by responding to this notice (see **ADDRESSES** above) or by providing comments through Dr. Michael David.

IPPC Standard-Setting Activities

The IPPC is a multilateral convention adopted in 1952 for the purpose of securing common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote appropriate measures for their control. Under the IPPC, the understanding of plant protection has been, and continues to be, broad, encompassing the protection of both cultivated and noncultivated plants from direct or indirect injury by plant pests. Activities addressed by the IPPC include the development and establishment of international plant health standards, the harmonization of phytosanitary activities through emerging standards, the facilitation of the exchange of official and scientific information among countries, and the furnishing of technical assistance to developing countries that are signatories to the IPPC.

The IPPC is under the authority of the Food and Agriculture Organization (FAO), and the members of the Secretariat of the IPPC are appointed by the FAO. The IPPC is implemented by national plant protection organizations (NPPOs) in cooperation with regional plant protection organizations (RPPOs); the Commission on Phytosanitary Measures (formerly referred to as the International Commission on Phytosanitary Measures); and the Secretariat of the IPPC. The United States plays a major role in all standard-setting activities under the IPPC and has representation on FAO's highest governing body, the FAO Conference.

The United States became a contracting party to the IPPC in 1972 and has been actively involved in furthering the work of the IPPC ever since. The IPPC was amended in 1979, and the amended version entered into force in 1991 after two-thirds of the contracting countries accepted the amendment. More recently, in 1997, contracting parties completed negotiations on further amendments that were approved by the FAO Conference and submitted to the parties for acceptance. This 1997 amendment updated phytosanitary concepts and formalized the standard-setting structure within the IPPC. The 1997 amended version of the IPPC entered into force after two-thirds of the contracting parties notified the Director General of FAO of their acceptance of the amendment in October 2005. The U.S. Senate gave its advice and consent to acceptance of the newly revised IPPC on October 18, 2000. The President submitted the official letter of acceptance to the FAO Director General on October 4, 2001.

The IPPC has been, and continues to be, administered at the national level by plant quarantine officials whose primary objective is to safeguard plant resources from injurious pests. In the United States, the national plant protection organization is APHIS' Plant Protection and Quarantine (PPQ) program. The steps for developing a standard under the IPPC are described below.

Step 1: Proposals for a new international standard for phytosanitary measures (ISPM) or for the review or revision of an existing ISPM are submitted to the Secretariat of the IPPC in a standardized format on a 2-year cycle. Alternatively, the Secretariat can propose a new standard or amendments to existing standards.

Step 2: After review by the Standards Committee and the Strategic Planning and Technical Assistance Working Group, a summary of proposals is submitted by the Secretariat to the CPM. The CPM identifies the topics and priorities for standard setting from among the proposals submitted to the Secretariat and others that may be raised by the CPM.

Step 3: Specifications for the standards identified as priorities by the CPM are drafted by the Standards Committee. The draft specifications are subsequently made available to members and RPPOs for comment (60 days). Comments are submitted in writing to the Secretariat. Taking into account the comments, the Standards Committee finalizes the specifications.

Step 4: The standard is drafted or revised in accordance with the specifications by a working group designated by the Standards Committee. The resulting draft standard is submitted to the Standards Committee for review.

Step 5: Draft standards approved by the Standards Committee are distributed to members by the Secretariat and RPPOs for consultation (100 days). Comments are submitted in writing to the Secretariat. Where appropriate, the Standards Committee may establish open-ended discussion groups as forums for further comment. The Secretariat summarizes the comments and submits them to the Standards Committee.

Step 6: Taking into account the comments, the Secretariat, in cooperation with the Standards Committee, revises the draft standard. The Standards Committee submits the final version to the CPM for adoption.

Step 7: The ISPM is established through formal adoption by the CPM according to Rule X of the Rules of Procedure of the CPM.

Step 8: Review of the ISPM is completed by the specified date or such other date as may be agreed upon by the CPM.

Each member country is represented on the CPM by a single delegate. Although experts and advisors may accompany the delegate to meetings of the CPM, only the delegate (or an authorized alternate) may represent each member country in considering a standard up for approval. Parties involved in a vote by the CPM are to make every effort to reach agreement on all matters by consensus. Only after all efforts to reach a consensus have been exhausted may a decision on a standard be passed by a vote of two-thirds of delegates present and voting.

Technical experts from the United States have participated directly in working groups and indirectly as reviewers of all IPPC draft standards. The United States also has a representative on the Standards Committee. In addition, documents and positions developed by APHIS and NAPPO have been sources of significant input for many of the standards adopted to date. This notice describes each of the IPPC standards currently under consideration or up for adoption. The full text of each standard will be available on the Internet at (http://www.aphis.usda.gov/import_export/plants/plant_exports/phyto_international_standards.shtml). Interested individuals may review the standards posted on this Web site and submit comments via the Web site.

The next CPM meeting is scheduled for March 22–26, 2010, at FAO Headquarters in Rome, Italy. The Deputy Administrator for APHIS' PPQ program is the U.S. delegate to the CPM. The Deputy Administrator intends to participate in the proceedings and will discuss or comment on APHIS' position on any standards up for adoption. The agenda for the Fifth Session of the Commission of Phytosanitary Measures is as follows:

1. Opening of the session
2. Adoption of the agenda
3. Election of the Rapporteur
4. Report by the CPM chairperson
5. Report by the Secretariat
6. Report of the technical consultation among RPPOs
7. Report of observer organizations
8. Goal 1: A robust international standard-setting and implementation program
 - 8.1 Report by the chairperson of the Standards Committee
 - 8.2 Adoption of international standards—under the regular process
 - 8.3 Adoption of international standards—under the special-track process
 - 8.4 IPPC standard-setting work program (with proposed adjustments)
9. Goal 2: Information exchange systems appropriate to meet IPPC obligations
 - 9.1 Proposed work program for 2010
10. Goal 3: Effective dispute settlement systems
 - 10.1 Report of the chairperson of the Subsidiary Body on Dispute Settlement
11. Goal 4: Improved phytosanitary capacity of members
12. Goal 5: Sustainable implementation of the IPPC
 - 12.1 Report of the fourth meeting of the Strategic Planning and Technical Assistance group
 - 12.2 IPPC/CPM activities
 - 12.2.1 State of membership to the IPPC
 - 12.2.2 Acceptance of documents in electronic format
 - 12.3 Update to the Business Plan 2008–2011
 - 12.4 Financial report and budget
 - 12.4.1 Financial report 2009
 - 12.4.2 Financial report 2009 for the Trust Fund for the IPPC
 - 12.4.3 CPM Operational Plan for 2010
 - 12.4.4 Budget 2010 for the Trust Fund for the IPPC
 - 12.5 Proposal for the adoption of CPM recommendations
13. Goal 6: International promotion of the IPPC and cooperation with relevant regional and international organizations
 - 13.1 Report on the international promotion of the IPPC and cooperation with relevant regional and international organizations

14. Goal 7: Review of the status of plant protection in the world
15. Election of the Bureau
16. Membership of CPM subsidiary bodies
17. Calendar
18. Other business
19. Date and venue of the next meeting
20. Adoption of the report

IPPC Standards Adopted at the CPM-4 Session in 2009

1. Amendments to ISPM No. 5 (Glossary of Phytosanitary Terms)

A. The following new terms and definitions have been adopted to the Glossary of Phytosanitary Terms in ISPM No. 5:

- *Incidence (of a pest)*: Proportion or number of units in which a pest is present in a sample, consignment, field or other defined population.

- *Tolerance level (of a pest)*: Incidence of a pest specified as a threshold for action to control that pest or to prevent its spread or introduction.

- *Phytosanitary security (of a consignment)*: Maintenance of the integrity of a consignment and prevention of its infestation and contamination by regulated pests, through the application of appropriate phytosanitary measures.

- *Corrective action plan (in an area)*: Documented plan of phytosanitary actions to be implemented in an area officially delimited for phytosanitary purposes if a pest is detected or a specified pest level is exceeded or in the case of faulty implementation of officially established procedures.

B. The following terms and definitions have been revised in the Glossary:

- *Compliance procedure (for a consignment)*: Official procedure used to verify that a consignment complies with phytosanitary import requirements or phytosanitary measures related to transit.

- *Intended use*: Declared purpose for which plants, plant products, or other articles are imported, produced, or used.

- *Reference specimen*: Specimen from a population of a specific organism conserved and accessible for the purpose of identification, verification, or comparison.

2. Draft Appendix to ISPM No. 5: Terminology of the Convention on Biological Diversity (CBD) in Relation to the Glossary of Phytosanitary Terms

Terms and definitions from the CBD are based on concepts different from those of the IPPC so similar terms are given distinctly different meanings. The

CBD terms and definitions could not therefore be used directly in the IPPC Glossary. It was decided instead to present these terms and definitions in an Appendix to the Glossary, providing explanations of how they differ from IPPC terminology.

The following CBD terms have been adopted to the Appendix to the IPPC Glossary:

- Alien species
- Introduction
- Invasive alien species
- Establishment
- Intentional introduction
- Unintentional introduction
- Risk analysis

3. Revision of ISPM No. 15 (Regulation of Wood Packaging Material in International Trade)

ISPM No. 15 was adopted in 2002, and modifications to Annex 1 of ISPM No. 15 were adopted by CPM-1 in 2006. The Technical Panel on Forest Quarantine initiated the revision of the standard in 2006. Over 440 comments were received after country consultation. The Standards Committee adjusted the draft and recommended it for adoption by the CPM.

This standard describes phytosanitary measures that reduce the risk of introduction and spread of quarantine pests associated with the movement in international trade of wood packaging material made from raw wood. Wood packaging material covered by this standard includes dunnage but excludes wood packaging made from wood processed in such a way that it is free from pests (e.g., plywood).

4. ISPM No. 32 (Categorization of Commodities According to Their Pest Risk)

This new standard provides criteria for NPPOs of importing countries on categorizing commodities according to their pest risk when considering import requirements. This categorization should help in identifying whether further risk analysis is required or not. Contaminating pests or storage pests that may become associated with the commodity after processing are not considered in this standard.

IPPC Standards Up for Adoption in 2010

It is expected that the following standards will be sufficiently developed to be considered by the CPM for adoption at its 2010 meeting. The United States, represented by the Deputy Administrator for APHIS' PPQ program, will participate in consideration of these standards. The U.S. position on each of these issues

will be developed prior to the CPM session and will be based on APHIS' analysis, information from other U.S. Government agencies, and relevant scientific information from interested stakeholders.

1. Pest-Free Potato (*Solanum spp.*) Micropropagative Material and Minutubers for International Trade

This standard will provide guidance on the production, maintenance, and phytosanitary certification of pest-free potato (*Solanum tuberosum* and related tuber-forming spp.) micropropagative material and minutubers intended for international trade. This standard does not apply to field-grown propagative material of potato or to potatoes intended for consumption or processing.

2. Annex to ISPM No. 26 (Establishment of Pest Free Areas for Fruit Flies (*Tephritidae*))

This Annex provides detailed information regarding trapping under different pest situations for different fruit fly species (*Tephritidae*) of economic importance. The information in this Annex can be used by NPPOs to aid them in developing fruit fly pest-free areas and fruit fly areas of low pest prevalence in line with guidance provided in other ISPMs. It describes the most widely used trapping systems including materials such as traps and attractants, trapping densities, surveying procedures, and procedures including evaluation, data recording, and analysis.

New Standard-Setting Initiatives, Including Those in Development

A number of expert working group meetings or other technical consultations will take place during 2009 and 2010 on the topics listed below. These standard-setting initiatives are under development and may be considered for future adoption. APHIS intends to participate actively and fully in each of these working groups. The U.S. position on each of the topics to be addressed by these various working groups will be developed prior to these working group meetings and will be based on APHIS' technical analysis, information from other U.S. Government agencies, and relevant scientific information from interested stakeholders.

1. Revision of ISPM Nos. 7 (Export certification system) and 12 (Guidelines for phytosanitary certificates)

Existing ISPM Nos. 7 and 12 have been reviewed for amendment to provide specific guidance on their procedures, which cover technical, legal, administrative, and operational

aspects, including export issues related to re-export and consignment in transit.

2. Design and operation of post-entry quarantine stations

This standard describes general guidelines for the design and operation of post-entry quarantine stations that hold in quarantine consignments of plants that may be infested with quarantine pests.

3. Amendment to ISPM No. 5 (Glossary of Phytosanitary Terms)

The Standards Committee, following recommendations by the Technical Panel for the Glossary, is proposing deletion of the term and definition of "beneficial organism" from ISPM No. 5. The current definition in the Glossary for the term "beneficial organism" is: "Any organism directly or indirectly advantageous to plants or plant products, including biological control agents (ISPM No. 3, 2005)."

4. Diagnostic Protocol on *Thrips palmi* (redraft)

This diagnostic protocol, if adopted, will be incorporated as an Annex to ISPM No. 27 (Diagnostic Protocols for Regulated Pests). This Annex provides taxonomic information on *Thrips palmi* to allow for morphological and molecular assay identifications of this pest in the laboratory.

5. Cold treatments for Fruit Flies

The following cold treatments (CT) for fruit flies, if adopted, will be annexed to ISPM No. 28 (Phytosanitary Treatments for Regulated Pests):

- CT of *Citrus sinensis* for *Ceratitis capitata*
- CT of *Citrus reticulata* x *Citrus sinensis* for *Ceratitis capitata*
- CT of *Citrus sinensis* for *Bactrocera tryoni*
- CT of *Citrus reticulata* x *Citrus sinensis* for *Bactrocera tryoni*
- CT of *Citrus limon* for *Bactrocera tryoni*
- CT of *Citrus paradisi* for *Ceratitis capitata*
- CT of *Citrus reticulata* cultivars and hybrids for *Ceratitis capitata*
- CT of *Citrus limon* for *Ceratitis capitata*

For more detailed information on the above topics, which will be addressed by various working groups established by the CPM, contact Ms. Julie E. Aliaga (see **FOR FURTHER INFORMATION CONTACT** above).

APHIS posts draft standards on the Internet (http://www.aphis.usda.gov/import_export/plants/plant_exports/phyto_international_standards.shtml) as they become available and provides

information on the due dates for comments. Additional information on IPPC standards is available on the IPPC Web site at (<http://www.ippc.int/IPP/En/default.htm>). For the most current information on official U.S. participation in IPPC activities, including U.S. positions on standards being considered, contact Ms. Julie E. Aliaga (see **FOR FURTHER INFORMATION CONTACT** above). Those wishing to provide comments on any of the areas of work being undertaken by the IPPC may do so at any time by responding to this notice (see **ADDRESSES** above) or by providing comments through Ms. Aliaga.

NAPPO Standard-Setting Activities

NAPPO, a regional plant protection organization created in 1976 under the IPPC, coordinates the efforts among Canada, the United States, and Mexico to protect their plant resources from the entry, establishment, and spread of harmful plant pests, while facilitating intra- and inter-regional trade. NAPPO conducts its business through panels and annual meetings held among the three member countries. The NAPPO Executive Committee charges individual panels with the responsibility for drawing up proposals for NAPPO positions, policies, and standards. These panels are made up of representatives from each member country who have scientific expertise related to the policy or standard being considered. Proposals drawn up by the individual panels are circulated for review to Government and industry officials in Canada, the United States, and Mexico, who may suggest revisions. In the United States, draft standards are circulated to industry, States, and various government agencies for consideration and comment. The draft standards are posted on the Internet at (http://www.aphis.usda.gov/import_export/plants/plant_exports/phyto_international_standards.shtml). Once revisions are made, the proposal is sent to the NAPPO Working Group and the NAPPO Standards Panel for technical reviews, and then to the Executive Committee for final approval, which is granted by consensus.

The annual NAPPO meeting is scheduled for October 19–23, 2009, in Chicago, IL, USA. The NAPPO Executive Committee meeting will take place on October 19, 2009, and a session will be held on October 20, 2009, to solicit comments from industry groups so that suggestions can be incorporated into the NAPPO workplan for the 2010 NAPPO year. The Associate Deputy Administrator for PPQ is a member of the NAPPO Executive Committee. The Associate Deputy Administrator intends

to participate in the proceedings and will discuss or comment on APHIS' position on any standard up for adoption or any proposals to develop new standards.

The work plan for 2009 was established after the October 2008 Annual Meeting in Guadalajara, Mexico. The Associate Deputy Administrator for PPQ participated in establishing this NAPPO work plan (see panel assignments below). Below is a summary of current panel assignments as they relate to the ongoing development of NAPPO standards. The United States (i.e., USDA/APHIS) intends to participate actively and fully in the work of each of these panels. The U.S. position on each topic will be guided and informed by the best scientific information available on each of these topics. For each of the following panels, the United States will consider its position on any draft standard after it reviews a prepared draft. Information regarding the following NAPPO panel topics, assignments, activities, and updates on meeting times and locations may be obtained from the NAPPO homepage at (<http://www.nappo.org>) or by contacting Ms. Julie E. Aliaga (see **FOR FURTHER INFORMATION CONTACT** above).

1. Accreditation Panel

The panel revised RSPM No. 9 (The Accreditation of Laboratories for Phytosanitary Testing) and developed a regional phytosanitary standard on authorization to perform other phytosanitary procedures (e.g., inspection, testing, and treatments) entitled RSPM No. 28 (Guidelines for Authorization).

2. Biological Control Panel

The panel is developing an Annex to RSPM No. 26 to describe the certification process for non-*Apis* pollinators, including an approved list of non-*Apis* pollinators in NAPPO countries. It is preparing a discussion paper on the risk associated with the importation and movements of honeybee-collected pollen, risk assessment, management measures, and research needs.

3. Biotechnology Panel

The panel has organized a symposium for the 2009 NAPPO Annual Meeting event. The topic of the symposium is "Living Modified Organisms and Plant Health." The panel is considering a proposal to determine whether it is appropriate to revise RSPM No. 14 (Importation and Release into the Environment of Transgenic Plants in NAPPO Member Countries) at this time,

with particular focus on pest risk analysis of transgenic crops and the implications for importation of products with different intended uses.

4. Citrus Panel

The panel convened a NAPPO workshop on citrus quarantine pests, including citrus leprosis, citrus variegated chlorosis, and citrus greening (Huanglongbing), in July 2009, and invited the participation of regional and international experts to exchange the latest research and regulatory information. The panel has developed a diagnostic protocol for Huanglongbing.

5. Electronic Phytosanitary Certification Panel

The panel organized an international workshop to share information on e-certification initiatives in different countries and regions of the world. It continues the harmonization of systems development towards a functioning e-certification capability for use among NAPPO countries.

6. Forestry Panel

The panel has completed a NAPPO standard on preventing the entry of Asian gypsy moth into North America, RSPM No. 33 (Guidelines for Regulating the Movement of Ships and Cargo from Areas Infested with the Asian Gypsy Moth). It has drafted a discussion paper assessing the risk associated with imported wooden handicraft items and possible risk management measures. The panel reviewed the risk and risk management options for wood products imported into NAPPO countries and has drafted a standard on the import of Christmas trees.

7. Fruit Panel

This panel has reviewed RSPM No. 17 (Guidelines for the Establishment, Maintenance, and Verification of Fruit Fly Free Areas in North America). They have established a technical advisory group to the panel to develop a discussion paper that summarizes the distribution of *Rhagoletis* spp. in the NAPPO region, their potential for establishment, their host range, and other pertinent characteristics. The panel completed a new draft standard, Guidelines for the Development of Phytosanitary Treatment Protocols for Arthropod Pests of Fresh Fruits and Vegetables. This draft will be circulated by panel members for internal consideration by the NAPPO member countries. The final draft will be submitted for country consultation.

8. Fruit Tree and Grapevine Panel

This panel, created by the merger of two existing panels, has combined RSPM No. 25 (Guidelines for International Movement of Pome and Stone Fruit Trees into a NAPPO Member Country) and RSPM No. 15 (Guidelines for the Importation of Grapevines into a NAPPO Member Country) into one standard and is working on the Annexes to RSPM No. 25. The panel is developing a diagnostic protocol for the detection of plum pox virus by enzyme-linked immunosorbent assay and is developing a treatment protocol for methyl bromide fumigation of fruit trees to contain the oriental fruit moth. The panel continues to provide technical assistance to the National Clean Plant Network.

9. Grains Panel

The panel has finished reviewing RSPM No. 21 (Harmonized Procedure for Morphologically Distinguishing Teliospores of Karnal Bunt, Ryegrass Bunt and Rice Bunt) and continues to work on the review of RSPM No. 13 (Guidelines to Establish, Maintain and Verify Karnal Bunt Pest Free Areas in North America).

10. Invasive Species Panel

The panel's technical advisory group continues to review comments on RSPM No. 31 (Pathways Risk Analysis). It has completed a position paper describing NAPPO's role in invasive alien species, including the documentation of relevant Federal legislative authority for the regulation of aquatic plants in North America. The panel completed a discussion paper on RSPM No. 32 (Pest Risk Assessment for Plants for Planting as Quarantine Pests).

11. Pest Risk Analysis Panel

This panel has developed a NAPPO Pest Risk Analysis template and supported the Forestry Panel in drafting RSPM No. 33. It has also assisted the Invasive Species Technical Advisory Group in completing RSPM No. 31.

12. Phytosanitary Alert System (PAS) Panel

The panel continues to post timely pest alerts on the NAPPO Web site and is refining the official pest reporting process and content. The panel conducted outreach, including the completion of a PAS brochure and a survey of PAS subscribers.

13. Plants for Planting

The panel continues to work on solutions for the implementation of RSPM No. 24 (Integrated Pest Risk Management Measures for the

Importation of Plants for Planting in NAPPO Member Countries). It collaborated with the Accreditation Panel to finalize RSPM No. 28 (Guidelines for Authorization).

14. Potato Panel

This panel continues to revise RSPM No. 3 (Requirements for the Importation of Potatoes into a NAPPO Member Country), including the Annexes.

15. Seeds Panel

This newly reconstituted panel has developed a discussion paper addressing problems related to the re-export of seeds and has developed procedures to facilitate their re-export in the Americas, in collaboration with the North American seed industry, the Seed Association of the Americas, and Comité de Sanidad Vegetal del Cono Sur.

16. Standards Panel

The panel coordinated the review of new and amended NAPPO standards and implementation plans; exchanged and discussed comments on draft ISPMs within NAPPO and with other RPPOs to build consensus on draft ISPMs and other IPPC-related issues, as appropriate; reviewed draft RSPMs prepared by panels and made recommendations on their suitability for adoption by the Executive Committee; and reviewed NAPPO position papers and policy documents to verify current relevance.

The PPQ Associate Deputy Administrator, as the official U.S. delegate to NAPPO, intends to participate in the adoption of these regional plant health standards, including the work described above, once they are completed and ready for such consideration.

The information in this notice contains all the information available to us on NAPPO standards currently under development or consideration. For updates on meeting times and for information on the working panels that may become available following publication of this notice, go to the NAPPO Web site on the Internet at (<http://www.nappo.org>) or contact Ms. Julie Aliaga (see **FOR FURTHER INFORMATION CONTACT** above). Information on official U.S. participation in NAPPO activities, including U.S. positions on standards being considered, may also be obtained from Ms. Aliaga. Those wishing to provide comments on any of the topics being addressed by any of the NAPPO panels may do so at any time by responding to this notice (see

ADDRESSES above) or by transmitting comments through Ms. Aliaga.

Done in Washington, DC, this 18th day of November 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9-28143 Filed 11-23-09; 8:17 am]

BILLING CODE 3410-34-S

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108-447); Cancellation

AGENCY: Bighorn National Forest, USDA Forest Service.

ACTION: Cancellation of Notice [FR Doc. E9-26300 Filed 11-2-09; 8:45 am].

SUMMARY: The Bighorn National Forest, Powder River Ranger District, has cancelled notification of fee charge proposal for the West Tensleep Trailhead. This corrects FR Doc. E9-26300.

DATES: Cancellation effective immediately.

ADDRESSES: Forest Supervisor, Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, WY 82801.

FOR FURTHER INFORMATION CONTACT: Craig Cope, Powder River Ranger District Recreation Staff Office, 307-684-7806.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VIII, Pub. L. 108-447) directed the Secretary of Agriculture to publish a six month advance notice in the Federal Register whenever new recreation fee areas are established.

The Bighorn National Forest will give further consideration to this proposal and issue a new notice at a later date.

Dated: November 17, 2009.

William T. Bass,

Forest Supervisor, Bighorn National Forest.

[FR Doc. E9-28087 Filed 11-23-09; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: NIST Construction Grant Program Applicant Requirements.

Form Number(s): NIST-1101, NIST-1101A, and NIST-1102.

OMB Control Number: 0693-0055.

Type of Request: Regular submission (extension).

Burden Hours: 125,000.

Number of Respondents: 250.

Average Hours per Response: 500.

Needs and Uses: The NIST

Construction Grant Program (Program) is a competitive financial assistance (grant) program for research science buildings through the construction of new buildings or expansion of existing buildings. For purposes of this program, (1) "research science building" means a building or facility whose purpose is to conduct scientific research, including laboratories, test facilities, measurement facilities, research computing facilities, and observatories; and (2) "expansion of existing buildings" means that space to conduct scientific research is being expanded from what is currently available for the supported research activities.

This request is for the information collection requirements associated with requesting proposals. The information will be used to make final selections of funding recipients.

Affected Public: Not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Required to obtain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395-3123.

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 Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395-5806 or via the Internet at Jasmeet_K_Seehra@omb.eop.gov.

Dated: November 19, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-28121 Filed 11-23-09; 8:45 am]

BILLING CODE 3510-13-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: 2010 Census Coverage Measurement, Person Interview and Person Interview Reinterview.

Form Number(s): All data will be collected using automated instruments on computers.

OMB Control Number: None.

Type of Request: New collection.

Burden Hours: 99,619.

Number of Respondents: 362,250.

Average Hours per Response: 15 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget to conduct the Census Coverage Measurement (CCM) Person Interview (PI) and Person Interview Reinterview (PIRI) operations as part of the 2010 Census. The CCM program will provide estimates of net coverage error and components of coverage error (omissions and erroneous enumerations) for housing units and persons in housing units. The data collection and matching methodologies for previous coverage measurement programs were designed only to measure net coverage error, which reflects the difference between omissions and erroneous inclusions.

The 2010 CCM will be comprised of two samples selected to measure census coverage of housing units and the household population: The population sample (P sample) and the enumeration sample (E sample). The primary sampling unit is a block cluster, which consists of one or more contiguous census blocks. The P sample is a sample of housing units and persons obtained independently from the census for a sample of block clusters. The E sample is a sample of census housing units and enumerations in the same block cluster as the P sample. The results of the housing unit matching operations will be used to determine which CCM and Census addresses will be eligible to go to the CCM Person Interview (PI) Operation. The PI Operations will contain approximately 362,250 sample addresses. The Person Interview Reinterview Operation will be a sample of those cases with an estimate 36,225 sample addresses.

The automated PI instrument will be used to collect the following information for persons in housing units only:

1. Roster of people living at the housing unit at the time of the CCM PI Interview.

2. Census Day (April 1, 2010) address information from people who moved into the sample address since Census Day.

3. Other addresses where a person may have been counted on Census Day.

4. Other information to help us determine where a person should have been counted as of Census Day (relative to Census residence rules). For example, enumerators will probe for persons who might have been left off the household roster; ask additional questions about persons who moved from another address on Census Day to the sample address; collect additional information for persons with multiple addresses; and collect information on the addresses of other potential residences for household members.

5. Demographic information for each person in the household on Interview Day or Census Day, including name, date of birth, sex, race, Hispanic origin, and relationship.

6. Name and above information for any person who has moved out of the sample address since Census Day (if known).

We also will conduct a quality control operation—PI Reinterview (PIRI) on 10 percent of the PI cases. The purpose of the operation is to confirm that the PI enumerator conducted a PI interview with an actual household member or a valid proxy respondent and conduct a full person interview when falsification is suspected. If PIRI results indicate falsified information by the original enumerator, all cases worked by the original enumerator are reworked by reassigning the cases to a different PI enumerator.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141 and 193.

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: November 18, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-28097 Filed 11-23-09; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN 0648-XR39

**Endangered and Threatened Species;
Recovery Plans**

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

ACTION: Extension of public comment period.

SUMMARY: On October 7, 2009, we, NMFS, announced the release of the Draft Central Valley Salmon and Steelhead Recovery Plan (Draft Plan) for public review and comment. The Draft Plan addresses the Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*) Evolutionarily Significant Unit (ESU), the Central Valley spring-run Chinook salmon (*O. tshawytscha*) ESU, and the Distinct Population Segment (DPS) of Central Valley Steelhead (*Oncorhynchus mykiss*). NMFS is soliciting review and comment from the public and all interested parties on the Draft Plan. As part of that proposal, we provided a 60-day comment period, ending on December 5, 2009. We have received requests for an extension of the public comment period. In response to these requests, we are extending the comment period for the proposed action an additional 60 days.

DATES: Information and comments on the subject action must be received by February 3, 2009.

ADDRESSES: Please send written comments to Brian Ellrott, National Marine Fisheries Service, 650 Capitol Mall, Suite 8-300, Sacramento, CA 95816. Comments may also be submitted by e-mail to: CentralValleyPlan.SWR@noaa.gov. Include in the subject line of the e-mail comment the following identifier: Comments on Central Valley Salmon and Steelhead Draft Plan. Comments may be submitted via facsimile (fax) to (916) 930-3629.

Persons wishing to review the Draft Plan can obtain an electronic copy (i.e., CD-ROM) from Aimee Diefenbach by calling (916) 930-3600 or by e-mailing a request to aimee.diefenbach@noaa.gov with the subject line "CD-ROM Request for Central Valley Salmon and Steelhead Recovery Draft Plan." Electronic copies of the Draft Plan are also available on-line on the NMFS website <http://swr.nmfs.noaa.gov/recovery/central.htm>.

FOR FURTHER INFORMATION CONTACT: Howard Brown, NMFS Sacramento River Basin Branch Chief at (916) 930-3608 or Brian Ellrott at (916) 930-3612.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2009, we published a Notice of Availability of the Draft Central Valley Salmon and Steelhead Recovery Plan (Draft Plan) for public review and comment (74 FR 51553). The Draft Plan addresses the Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*) Evolutionarily Significant Unit (ESU), the Central Valley spring-run Chinook salmon (*O. tshawytscha*) ESU, and the Distinct Population Segment (DPS) of Central Valley Steelhead (*Oncorhynchus mykiss*). NMFS is soliciting review and comment from the public and all interested parties on the Draft Plan. As part of that proposal, we provided a 60-day comment period, ending on December 5, 2009. Public meetings were held in Chico, CA and Sacramento, CA on October 20 and 21, respectively. We have received requests for an extension of the public comment period. In response to these requests, we are extending the comment period for the proposed action an additional 60 days. Information and comments must be received by February 3, 2009.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: November 18, 2009.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9-28174 Filed 11-23-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-904]

Certain Activated Carbon From the People's Republic of China: Extension of Time Limits for Preliminary Results of the Second Antidumping Duty Administrative Review

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

EFFECTIVE DATE: November 24, 2009.

FOR FURTHER INFORMATION CONTACT: Robert Palmer, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-9068.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 2009, the Department of Commerce ("the Department") published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China ("PRC") covering the period April 1, 2008, through March 31, 2009. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 74 FR 25711 (May 29, 2009).

On August 10, 2009, the Department selected two mandatory respondents in the above-referenced administrative review pursuant to section 777A(c)(2)(B) of the Tariff Act of 1930, as amended ("the Act"). See Memorandum to James C. Doyle, Director, Office 9, from Katie Marksberry, Case Analyst, RE: Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Selection of Respondents for Individual Review, dated August 10, 2009.

On August 19, 2009, one of the two original mandatory respondents filed a letter with the Department withdrawing its request for a review. See Letter from Calgon Carbon Tianjin Co., Ltd. ("CCT") to the Department regarding Activated Carbon from the PRC—Withdrawal of Request for Administrative Review, dated August 19, 2009. On August 21, 2009, Petitioners¹ filed a letter withdrawing their request for review of CCT. See Letter from Petitioners to the Department regarding Second Administrative Review of the Antidumping Duty Order on Certain

Activated Carbon from the PRC (August 21, 2009). Therefore, on September 18, 2009, we selected Ningxia Huahui Activated Carbon Co., Ltd. ("Huahui") as a mandatory respondent. See Memorandum to James C. Doyle, Director, Office 9, through Catherine Bertrand, Program Manager, Office 9, from Katie Marksberry, Case Analyst, Office 9 RE: Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Selection of Additional Mandatory Respondent, dated September 18, 2009. The preliminary results of this administrative review are currently due on December 31, 2009.

Statutory Time Limits

Section 751(a)(3)(A) of the Act requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. Consistent with section 751(a)(3)(A) of the Act, the Department may extend the 245-day period to 365 days if it is not practicable to complete the review within a 245-day period.

Extension of Time Limit of Preliminary Results

The preliminary results are currently due on December 31, 2009. This administrative review covers two mandatory respondents, one of whom has numerous suppliers which requires the Department to gather and analyze a significant amount of information pertaining to each supplier's manufacturing methods. Moreover, because the department selected Huahui after the request for review was withdrawn for CCT, the receipt of Huahui's initial questionnaire is within close proximity of the unextended preliminary results. The current due date does not afford the Department adequate time to gather, analyze, request supplementary information, and allow parties to comment and provide information on appropriate surrogate values regarding Huahui's responses.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department finds that it is not practicable to complete the preliminary results within the original time period and thus the Department is extending the time limit for issuing the preliminary results by 120 days until April 30, 2010. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act and 19 CFR 351.213(h)(2).

¹ Calgon Carbon Corporation and Norit Americas Inc. ("Petitioners").

Dated: November 18, 2009.

John M. Andersen,

*Acting Deputy Assistant Secretary for
Antidumping and Countervailing Duty
Operations.*

[FR Doc. E9-28179 Filed 11-23-09; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XT05

Marine Mammals; File No. 14791

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Douglas Nowacek, Ph.D., Duke University Marine Lab, Beaufort, NC 28516, has applied in due form for a permit to conduct scientific research North Atlantic right whales (*Eubalaena glacialis*).

DATES: Written, telefaxed, or e-mail comments must be received on or before December 24, 2009.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 14791 from the list of available applications.

These documents are also available 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; Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281-9328; fax (978) 281-9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824-5312; fax (727) 824-5309.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713-0376, or by email to NMFS.PrComments@noaa.gov. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request

to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Carrie Hubbard, (301) 713-2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226).

The primary research objective is to determine (1) natural behavioral patterns right whales exhibit to approaching vessels and (2) the ability of right whales to localize and detect vessels and other sounds in their environment. Researchers would conduct passive recording, attach a digital sound recording tag (DTAG) via suction cup, and collect samples of exhaled air and sloughed skin on up to 40 right whales per year. Up to 90 right whales may be incidentally harassed during the research. The research would take place along the eastern seaboard of the U.S. and the permit would be issued for five years.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 19, 2009.

P. Michael Payne,

*Chief, Permits, Conservation and Education
Division, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. E9-28158 Filed 11-23-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XS99

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee, on December 8-9, 2009, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, December 8 at 10 a.m. and Wednesday, December 9, 2009 at 8:30 a.m.

ADDRESSES: The meeting will be held at the Seaport Hotel, One Seaport Lane, Boston, MA 02210; telephone: (617) 385-4000; fax: (617) 385-4001.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Tuesday, December 8, 2009

The Scientific and Statistical Committee (SSC) will discuss SSC policies and procedures and review and possibly revise the Council research recommendations.

Wednesday, December 9, 2009

The SSC will finalize its recommendations to the Habitat Plan Development Team concerning the PDT's analyses of gear effects, vulnerability assessment and adverse impacts evaluations associated with Draft Habitat Omnibus 2, an action that will update all New England Council fishery management plan essential fish habitat (EFH) designations and include measures to reduce adverse impacts on EFH.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978)

465-0492, at least 5 days prior to the meeting date.

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

Dated: November 19, 2009.

William D. Chappell,

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

[FR Doc. E9-28133 Filed 11-23-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XS92

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on December 15-16, 2009. The Council will convene on Tuesday, December 15, 2009, from 9 a.m. to 5 p.m., and the Administrative Committee will meet from 5:15 p.m. to 6 p.m. They will reconvene on Wednesday, December 16, 2009, from 9 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at the El Conquistador Resort, 1000 El Conquistador Avenue, Las Croabas, Fajardo, Puerto Rico 00738.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918-1920; telephone: (787) 766-5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 133rd regular Council Meeting to discuss the items contained in the following agenda:

December 15, 2009 - 9 a.m. to 5 p.m.

- Call to Order
- Adoption of Agenda
- Consideration of the 132nd Council Meeting Verbatim Transcription
- Executive Director's Report
- ACLs/AMs Report/Discussion
- National Meeting of the Regional Fishery Management Councils' Scientific and Statistical Committee Report

PUBLIC COMMENT PERIOD

December 15, 2009 - 5:15 p.m. to 6 p.m.

- Administrative Committee Meeting

- AP/SSC/HAP Membership
- Budget
- FY 2009
- Budget Petition: 5-years (2010-14)
- Other Business

December 16, 2009 - 9 a.m. to 5 p.m.

- Continuation of ACLs/AMs Report/Discussion (if needed)
- Enforcement Reports
- Puerto Rico
- U.S. Virgin Islands - DPNR
- NOAA/NMFS
- U.S. Coast Guard
- Administrative Committee Recommendations
- Meetings Attended by Council Members and Staff
- PUBLIC COMMENT PERIOD (5-MINUTES PRESENTATIONS)
- Other Business
- Next Council Meeting

The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

The meetings are open to the public, and will be conducted in English. However, simultaneous translation (English/Spanish) will be provided. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/or other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918-1920, telephone: (787) 766-5926, at least five days prior to the meeting date.

Dated: November 19, 2009.

William D. Chappell,

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

[FR Doc. E9-28147 Filed 11-23-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Open Meeting

The Materials Technical Advisory Committee (MTAC) will meet on December 10, 2009, 10 a.m., in the Herbert C. Hoover Building, Room 6087B, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to advanced materials and related technology.

Agenda

1. Opening remarks and Introductions.
 2. Report on Update 2009 by Chemical and Biological Controls Division Personnel.
 3. Report on Missile Technology Control Regime Technical Experts Meeting and Plenary of November, 2009.
 4. Report on Composite Working Group and Export Control Classification Review Subgroup.
 5. Report on Status of 1.C.8 Proposal and Others at Wassenaar Arrangement.
 6. Presentation on Exports Controls for Biological Agents and Processing Equipment.
 7. New Business.
 8. Public Comments from Teleconference and Physical Attendees.
- The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at Yspringer@bis.doc.gov no later than December 3, 2009.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via e-mail.

For more information contact Yvette Springer on (202) 482-2813.

Dated: November 18, 2009.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E9-28191 Filed 11-23-09; 8:45 am]

BILLING CODE 3510-JT-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XT06

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Reef Fish Limited Access Privilege Program Advisory Panel.

DATES: The meeting will convene at 8:30 a.m. on Monday, December 14, 2009 and conclude by 4:30 p.m.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607, telephone: (813) 348-1630.

FOR FURTHER INFORMATION CONTACT: Dr. Assane Diagne, Economist; Gulf of Mexico Fishery Management Council; telephone: (813) 348-1630.

SUPPLEMENTARY INFORMATION: The Reef Fish Limited Access Privilege Program Advisory Panel will meet to discuss issues related to the design, adoption, implementation, and, evaluation of a reef fish limited access program for the commercial and recreational sectors.

Copies of the agenda and other related materials can be obtained by calling (813) 348-1630.

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: November 19, 2009.

William D. Chappell,

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

[FR Doc. E9-28150 Filed 11-23-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology and Research Advisory Committee; Notice of Partially Closed Meeting

The Emerging Technology and Research Advisory Committee (ETRAC) will meet on December 9, 2009, 8:30 a.m., Room 6087B, and on December 10, 2009, 8:30 a.m., Room 3884, at the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on emerging technology and research activities, including those related to deemed exports.

Agenda

Wednesday, December 9

Open Session

1. Opening Remarks.
2. Recap of ETRAC Methodology Work.
3. Deemed Export Control Methodology.
4. Public Comments.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 § 10(a)(1) and 10(a)(3).

Thursday, December 10

Open Session

1. Deemed Export Control Methodology.

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at Yspringer@bis.doc.gov no later than December 2, 2009.

A limited number of seats will be available for the public session.

Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on November 18, 2009, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 § 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482-2813.

Dated: November 19, 2009.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E9-28198 Filed 11-23-09; 8:45 am]

BILLING CODE 3510-JT-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XT00

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council), its Surfclam / Ocean Quahog / Tilefish Committee; its Dogfish Committee; its Squid, Mackerel, Butterfish Committee; its Demersal and Coastal Migratory Committee; its Monkfish Committee; and, its Executive Committee will hold public meetings.

DATES: The meetings will be held Tuesday, December 8, 2009 through Thursday, December 10, 2009. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Sheraton Suites Hotel, 422 Delaware Avenue, Wilmington, DE 19801; telephone: (302) 654-8300.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New St., Room 2115, Dover, DE 19904; telephone: (302) 674-2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674-2331 ext. 19.

SUPPLEMENTARY INFORMATION:

Tuesday, December 8, 2009

From 8:30 a.m. until 5 p.m., the Council will convene jointly with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, Black Sea Bass and Dogfish Boards to discuss and develop recreational management measures for Summer Flounder, Scup, and Black Sea Bass, and commercial management measures for Dogfish.

Wednesday, December 9, 2009

From 8 a.m. until noon, the Council will meet to discuss and develop Accountability Measures (AM) for Surfclam, Ocean Quahog, Tilefish, Dogfish, Mackerel, and Butterfish.

From 1 p.m. until 1:15 p.m., the Council will present its 2009 annual award recognitions.

From 1:15 p.m. until 4 p.m., the Council will meet to discuss and develop AMs for Summer Flounder, Scup, Black Sea Bass, and Monkfish.

From 4 p.m. until 5:30 p.m., officials from National Marine Fisheries Service's (NMFS) Northeast Fisheries Science Center (NEFSC) will provide the Council with a presentation on Catch Shares.

Thursday, October 10, 2009

From 8 a.m. until 9 a.m., the Executive Committee will meet.

From 9 a.m. until 10 a.m., the Council will receive a presentation from a senior NOAA Advisor on NOAA's Catch Share Policy.

From 10 a.m. until 11:30 a.m., the Council will hold its regular Business Session.

From 11:30 until 12 p.m., an informal question and answer session will be convened regarding MPA nominations and designations.

From 1 p.m. until 2:15 p.m., public comments will be taken and considered regarding the selection of sites for MPA designation.

From 2:15 p.m. until 3:30 p.m., the Council will receive Committee reports and conduct any continuing and/or new business.

Agenda items by day for the Council's Committees and the Council itself are:

On Tuesday, December 8 - The Council will convene jointly with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board. They will review and discuss the Monitoring Committee's and Advisory Panel's recommendations on summer flounder, scup, and black sea bass recreational management measures, and develop and approve recreational management measures for the 2010 summer flounder, scup, and black sea bass recreational fisheries. Jointly with the ASMFC's Dogfish Board, the Council will review and discuss the Spiny Dogfish Monitoring Committee's and the SSC's advice and recommendations for the spiny dogfish quota and related management measures for the 2010/11 fishing year, and adopt quota and related management measures for the 2010/11 fishing year.

On Wednesday, December 9 - The Council will convene to discuss Accountability Measures (AM) to be included in the Council's ACL/AM Omnibus Amendment with its Surfclam / Ocean Quahog / Tilefish Committee, its Dogfish Committee, and its Squid, Mackerel, and Butterfish Committee. The Council will then award its 2009 Fisheries Achievement Award (FAA) and its Ricks E Savage Award. The Council will meet with its Demersal and Coastal Migratory Committee and the Monkfish Committee to discuss and recommend draft Accountability Measures (AM) to be included in the Council's ACL/AM Omnibus Amendment. The Council will then receive a presentation from a NMFS NEFSC Official on performance monitoring and evaluation of catch shares in terms of their social, cultural and economic impacts on regional fisheries.

On Thursday, December 10 - The Executive Committee will meet to review the draft standards for reconsideration by the SSC of ABC advice previously provided by that Committee. The Council will then convene to receive a presentation by Dr. Lubchenko's Senior Advisor and Catch Share Task Force Chairperson on NOAA's draft-interim policy on Catch Shares. The Council will open its regular business session to approve the October Council meeting minutes and receive various organizational reports. A question / answer session will then be held regarding MPA nominations, followed by a public comment concerning the Council's selection of sites for MPA designation. The Council

will hear Committee reports and discuss any continuing and / or new business.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Bryan, (302) 674-2331 ext 18, at least 5 days prior to the meeting date.

Dated: November 19, 2009.

William D. Chappell,

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

[FR Doc. E9-28134 Filed 11-23-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XT02

Fisheries of the Exclusive Economic Zone Off Alaska; Catch Accounting in the Longline Catcher/Processor Pacific Cod Fishery

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

ACTION: Notice of public workshop.

SUMMARY: NMFS announces a workshop to solicit feedback from owners and operators of longline catcher/processors (freezer longliners) engaged in the Pacific cod fisheries off Alaska. We are interested in feedback concerning improved catch accounting measures, specifically the feasibility of using motion-compensated scales for determining the weight of cod brought onboard; as well as other issues associated with improved estimation of Pacific cod catch and associated bycatch. The workshop is open to the public, but NMFS is particularly seeking participation by people who are

knowledgeable about the operations of cod freezer longliners.

DATES: The public workshop will be held on Tuesday, December 1, 2009, from 10 a.m. to 1 p.m. Alaska standard time.

ADDRESSES: The workshop will be held at the Unalaska Public Library Alaskan Room, 64 Eleanor Drive, Unalaska, Alaska.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 928-774-4362 or Jennifer Watson, 907-586-7537.

SUPPLEMENTARY INFORMATION: The North Pacific Fishery Management Council has requested that NMFS prepare a discussion paper on improved catch accounting in the longline catcher/processor sector of the Pacific cod fishery off Alaska. Pacific cod and associated bycatch in this fishery are currently accounted for using data collected by NMFS-certified observers. Because only a portion of sets in the fishery are observed, the data from observed sets are extrapolated to estimate catch from unobserved sets and for unobserved trips. In order to improve catch and bycatch accounting in this fishery, a group representing many of the freezer-longline vessel owners, the Freezer Longline Coalition, has suggested that Pacific cod be accounted for using the weight of processed product coupled with an estimate of drop-offs (fish which are caught but that do not enter the factory) made by a NMFS-certified observer. NMFS staff believes that cod catch can best be accounted for using motion-compensated scales to weigh Pacific cod prior to processing coupled with an observer estimate of drop-offs. However, there are issues associated with available space and product quality that may make this approach less practical in this fishery than in others where the use of motion-compensated scales is required. New approaches to catch accounting may lead to increased duties for observers as well as necessitating additional work space for observers.

In order to inform the discussion paper that NMFS staff will be preparing on this issue, we seek input into the vessel-specific difficulties associated with the use of motion-compensated scales to weigh all retained cod; and issues associated with providing additional space for an observer sampling station.

This workshop is open to the public, but NMFS is particularly seeking input from people who work on freezer longliners and are familiar with vessel operations. The workshop has been timed to coincide with a period when a large number of freezer longliners will

be in Dutch Harbor/Unalaska. As part of the process of gathering information on this issue, NMFS staff will be available before and after the meeting to tour individual vessels and discuss specific issues related to available space and the feasibility of weighing catch prior to processing.

Special Accommodations

The workshop will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jennifer Watson, 907-586-7537, at least 10 working days prior to the meeting date.

Dated: November 18, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9-28162 Filed 11-23-09; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE

Office of the Secretary

FY 2010 Grant Competition Announcement; Promoting Student Achievement at Schools Impacted by Military Force Structure Changes

AGENCY: Department of Defense Education Activity (DoDEA).

ACTION: Grant competition announcement.

SUMMARY: The Department of Defense Education Activity (DoDEA) announces and requests concept papers for the FY 2010 Promoting Student Achievement at Schools Impacted by Military Force Structure Changes grant competition. Approximately \$20 million is expected to be awarded, depending on availability of funding. The period of performance is expected to be 40 months (01 Jun 10–30 Sep 13). Awards will be based on military student enrollment and will range in size from \$100,000 to \$2,500,000, depending on the number of military students at the target schools. The Department's aim is to enhance the education of military students, but funds may be used to raise student achievement for all students at the target school(s).

SUPPLEMENTARY INFORMATION: Project activities will occur at military-connected schools that serve installations which have been and are experiencing significant military growth due to force structure changes. Projects will enhance student learning opportunities, student achievement, and/or educator professional development in one of the following

areas: ELA/R (English language arts/reading) or STEM (science, technology, engineering, and/or mathematics).

Local educational agencies (LEAs) may only apply to receive funds for their elementary school(s) with a military student population of at least 25 percent and for their secondary school(s) with a military student population of at least 15 percent. LEAs self-certify the numbers and percentages of students.

Concept papers will be disseminated to eligible LEAs by e-mail on or about December 1, 2009. They will be due on or about January 27, 2010. The concept papers will be reviewed in February, 2010. Full proposals will be disseminated to selected LEAs on or about March 1, 2010 and will be due on April 22, 2010. Awards are expected to be made June 1–15, 2010. The Department may take into account geographic distribution and military service representation when making grant awards.

Authorization:

- Section 574(d) of Public Law 109–364, as amended by Section 553 of Public Law 110–417; title 10 U.S.C. 2192(b) and 2193a.

CFDA Number

- CFDA 12.556: Support for K–12 Student Achievement at Military-Connected Schools.

K–12 Education

The Department of Defense considers the education of the dependents of members of the Armed Forces to be a critical quality of life issue. K–12 education concerns are often cited as a key reason for requesting changes in assignment and for deciding not to reenlist.

Eligibility

Eligibility is determined through a two-tier process. The first tier, selection of installations, was determined by the Military Services and DoDEA using data provided by the Military Services as of October 2009. Installations had to have growth of 400 or more military students over the 2009–10 and 2010–11 school years in order to qualify. If an installation qualified, the Military Services listed the LEAs that served it. See attached list. LEAs were not involved in the determination of installation growth. LEAs that were listed must meet the requirements of the second tier of eligibility in order to submit a concept paper/full application.

The second tier of eligibility is based on the size and percentage of the military student population measured at the school, not the district, level and on

whether or not schools have already received DoDEA funds.

- *Percentage:* LEAs may only apply to receive funds for elementary school(s) with a military student population of at least 25 percent and secondary school(s) with a military student population of at least 15 percent. LEAs self-certify the numbers and percentages.

- *Size:* LEAs with 4,500 or more total (military and non-military) students or 450 or more military students must target either their eligible elementary schools or their eligible secondary schools. LEAs with fewer than 4,500 total (military and non-military) students and fewer than 450 military students may target their eligible elementary and/or eligible secondary schools.

- *Definition:* *Military student* is defined as an elementary or secondary school student who is a dependent of a member of the Armed Forces or a civilian employee of the Department of Defense who is employed on Federal property. LEAs usually use Impact Aid data to determine their military student population.

- *Current Awardees:* Current awardees of DoDEA grant funds are eligible to apply for FY10 funds if they meet the aforementioned criteria and if they apply for schools that have not already been targeted/listed in their grant awards.

Eligibility Appeals

DoDEA will not entertain petitions from LEAs. If such a request is made, it will be referred to the appropriate Military Service.

DoDEA Point-of-Contact

- Mr. Brian Pritchard, Contracts and Grants Liaison, DoDEA e-mail: brian.pritchard@hq.dodea.edu, telephone: 703-588-3345.

Application Process

The two-step application process consists of a concept paper and full application. Each concept paper will be scored by a team of reviewers. Only LEAs with the highest scoring concept papers will be invited to submit full applications.

Only an eligible LEA may submit a concept paper. Each concept paper must target one or more schools that meet the eligibility requirements listed above. Although the Department's aim is to enhance the education of military students, project funds may be used to raise student achievement for all students in the target school(s).

Application Focus Areas

DoDEA seeks proposals that use research-based practices to enhance student learning opportunities, student achievement, and/or educator professional development. Proposals must focus on one of the following subject areas: ELA/R (English language arts/reading) or STEM (science technology, engineering, and/or mathematics). Student achievement in the focus area must include measurements of performance on state norm- and/or criterion-referenced assessments.

Evaluation

Proposals must have a strong evaluation plan with data disaggregated at the school level for the military student population.

Anticipated Awards

It is anticipated grants will be funded at the rate of \$1,250 per military student (for the entire grant period) with a minimum award of \$100,000 and a maximum award of \$2,500,000. It is anticipated that LEAs will receive official award documentation between June 1-15, 2010.

Funding Restrictions

A maximum of 25 percent of grant funds may be used for the employment of full-time equivalent (FTE) staff. No grants funds may be allocated for administrative or indirect costs. Awards are expected to take the form of grants to each selected LEA.

Proposal Evaluation and Selection

Concept papers, limited to six pages in length, will consist of an overview of the district, needs assessment, project goals, project plan, evaluation concept, personnel, and budget.

Full proposals will consist of two abstracts (50 and 200 words), 15-page narrative (consisting of a needs assessment, research basis, project goals, personnel, implementation plan, evaluation plan, sustainability, and budget narrative), budget, bibliography, up to three resumes, and up to two letters of support.

Both the concept papers and full applications will be evaluated by a team of professionals. Approximately one month after the submission of the concept papers, DoDEA will inform districts whether or not they have been invited to submit a full application.

Competitive Preference Priorities With Points

Five additional points may be awarded to LEAs that have low student

achievement as shown by standardized tests and related measures.

Federal Forms

For the full application only, school districts will have to complete Standard Form 424, 424-A, 424-B, and Certification regarding Lobbying. A full application is defined as having all applicable data correctly completed to include the CAGE number. If an LEA does not have a CAGE number, it must be obtained prior to submission of the full application via <http://www.ccr.gov>.

Expected Dates and Procedures

Application E-mailed to LEAs (listed below): 01 Dec 10.

Deadline for submission of concept papers: 27 Jan 10, 5 p.m. (EST).

Deadline for submission of full proposals: 22 Apr 10, 5 p.m. (EST).

Submission

Concept papers and full applications must be submitted directly to DoDEA. Detailed submission procedures will be presented in the concept paper and full applications.

Proposal Compliance

Failure to adhere to deadlines to be specified in the forthcoming application may result in proposal rejection. Any proposal received after the exact time and date specified for receipt will not be considered. DoDEA, at its sole discretion, may accept a late proposal if it determines that no competitive advantage has been conferred and that the integrity of the competitive grants process will not be compromised.

Local Educational Agencies (LEAs)* Associated With Military Installations Experiencing Significant Military Student Growth During the 2009-10 and 2010-11 School Years

Aberdeen Proving Ground, MD (2)

Cecil County Public Schools (PS), Harford County PS.

Andrews AFB, MD (1)

Prince Georges County PS.

Brooks City AFB, TX (15)

Alamo Heights Independent School District (ISD), East Central ISD, Edgewood ISD, Fort Sam Houston ISD, Harlandale ISD, Judson ISD, Lackland ISD, North East ISD, Northside ISD, Randolph Field ISD, San Antonio ISD, Somerset ISD, South San Antonio ISD, Southside ISD, Southwest ISD.

Cannon AFB, NM (1)

Clovis Municipal Schools.

* The nine LEAs associated with Fort Sam Houston and Brooks City AFB are listed twice.

Detroit Arsenal, MI (7)

Anchor Bay School District (SD), Centerline SD, L'Anse Cruese SD, Mount Clemons Community SD, Oak Park SD, Pontiac SD, Warren Woods PS.

Eglin AFB, FL (4)

Okaloosa PS, Santa Rosa PS, Walton PS, Escambia County SD.

Fort Belvoir, VA (3)

Fairfax County PS, Prince William County PS, Stafford County PS.

Fort Benning, GA (6)

Chattahoochee County Schools, Harris County PS, Lee County PS, Muscogee County SD, Phenix City PS, Russell County SD.

Fort Bliss, TX (9)

Anthony SD, Canutillo SD, Clint SD, El Paso ISD, Fabens SD, San Elizario SD, Socorro SD, Tornillo SD, Ysleta SD.

Fort Bragg, NC (5)

Cumberland County Schools, Harnett County Schools, Hoke County Schools, Lee County Schools, Moore County Schools.

Fort Carson, CO (21)

Calhan SD RJ-1, Canon City Fremont SD RE-1, Cheyenne Mountain SD 12, Douglas County SD RE-1, Edison SD JT-54, Elbert SD D-200, Elizabeth School District C-1, Ellicott SD D-22, Fountain-Fort Carson SD 8, Fremont RE-2, Hanover SD 28, Harrison SD 2, Kiowa SD RE-1, Lewis Palmer SD RE-1, Manitou Springs SD 14, Miami-Yoder SD JT-60, Peyton SD JT-23, Pueblo County SD 60, Pueblo County SD 70, Widefield SD 3, Woodland Park SD RE-2.

Fort Dix, NJ (1)

Pemberton Township SD.

Fort Knox, TN (8)

Breckinridge County Schools, Bullitt County Schools, Elizabethtown ISD, Grayson County Schools, Hardin County Schools, LaRue County Schools, Meade County Schools, Nelson County Schools.

Fort Lee, VA (6)

Chesterfield County Schools, Colonial Heights PS, Dinwiddie County Schools, Hopewell City PS, Petersburg City PS, Prince George County PS.

Fort Lewis, WA (20)

Auburn SD, Bethel SD, Clover Park SD, Dieringer SD, Eatonville SD, Federal Way SD, Fife SD, Franklin Pierce SD, North Thurston SD, Olympia SD, Peninsula SD, Puyallup SD, Rainer SD,

Steilacoom Historical SD, Sumner SD, Tacoma SD, Tenino SD, Tumwater SD, University Place SD, Yelm Community Schools.

Fort Meade, MD (1)

Anne Arundel County PS.

Fort Riley, KS (17)

Abilene Unified School District (USD) 435, Blue Valley-Randolph USD 384, Centre USD 397, Chapman USD 473, Clay County USD 379, Geary County USD 475, Herrington USD 487, Manhattan-Ogden USD 383, Mill Creek USD 329, Morris County USD 417, Riley County USD 378, Rock Creek USD 323, Rural Vista USD 481, Salina USD 305, Solomon USD 393, Topeka USD 501, Wamego USD 320.

Fort Sam Houston, TX (10)

Alamo Heights ISD, East Central ISD, Edgewood ISD, Fort Sam Houston ISD, Harlandale ISD, Judson ISD, North East ISD, Northside ISD, Schertz-Cibolo-Universal City ISD, Southwest ISD.

Fort Stewart, GA (2)

Chatham County Schools, Liberty County Schools.

Hill AFB, UT (3)

Davis SD, Ogden City SD, Weber SD.

Maxwell-Gunter AFB, AL (3)

Montgomery PS, Autauga County SD, Elmore County Public School System.

MCB Camp Lejeune, NC (7)

Carteret County Schools, Craven County Schools, Duplin County Schools, Jones County Schools, Onslow County Schools, Pamlico County Schools, Pender County Schools.

NAS Jacksonville, FL (7)

Atlantic Beach Schools, Clay County Schools, Duval County Schools, Jacksonville Beach Schools, Middleburg Central SD, Neptune Beach Elementary SD, Orange Park SD.

NS San Diego, CA (25)

Cajon Valley Union Elementary SD, Chula Vista Elementary SD, Coronado USD, Del Mar Union Elementary SD, Del Mar Union SD, Escondido Union Elementary SD, Escondido Union High SD, Grossmont Union High SD, La Mesa-Spring Valley SD, Lakeside Union SD, Lemon Grove Elementary SD, National Elementary SD, Poway USD, Rancho Santa Fe SD, San Diego USD, San Dieguito Union High, San Dieguito Union SD, Santee Elementary SD, Santee SD, South Bay Union Elementary SD, South Bay Union SD, Sweetwater Union High SD, Sweetwater Union SD, Valley Center-Pauma USD, Warner USD.

Presidio of Monterey, CA (3)

Carmel USD, Monterey Peninsula USD, Pacific Grove USD.

Redstone Arsenal, AL (3)

Huntsville City Schools, Madison City Schools, Madison County Schools.

Wright-Patterson AFB, OH (25)

Beavercreek City PS, Bethel PS, Brookville PS, Centerville City PS, Dayton City PS, Fairborn City PS, Greenon Local Schools, Huber Heights City PS, Kettering City PS, Mad River Local PS, Miamisburg City PS, Northmont City PS, Northridge Local PS, Oakwood City PS, Springboro Community City PS, Springfield City PS, Sugar Creek Local PS, Tecumseh Local SD, Tipp City Exempted Village Schools, Trotwood-Madison City Schools, Troy PS, Valley View PS, Vandalia-Butler PS, Xenia Community City PS, Yellow Springs Schools.

Dated: November 19, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9-28124 Filed 11-23-09; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Office of the Secretary****Defense Health Board (DHB) Meeting; DoD Task Force on the Prevention of Suicide by Members of the Armed Forces**

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150, and in accordance with section 10(a)(2) of Public Law, the following meeting is announced:

Name of Committee: DoD Task Force on the Prevention of Suicide by Members of the Armed Forces, a subcommittee of the Defense Health Board (DHB).

Dates: December 15, 2009 (subject to the availability of space, the meeting is open to the public).

Times: 9 a.m.-4 p.m.

Place of Meeting: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Purpose of the Meeting: The purpose of the meeting is to receive briefings regarding current Service efforts related to the investigation of suicides among members of the Armed Services.

Agenda: On December 15, 2009, the DoD Task Force on the Prevention of Suicide by Members of the Armed Forces will receive briefings from Service experts and others related to their procedures on investigations within the safety and risk management areas. Task Force members will also receive briefings on the processes used by the Services in conducting suicide investigations.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject availability of space, the DoD Task Force on the Prevention of Suicide by Members of the Armed Forces meeting December 15, 2009 is open to the public. Any member of the public wishing to provide input to the Task Force on the Prevention of Suicide by Members of the Armed Forces should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statement should be not longer than two type-written pages and must address the following detail: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer (DFO) at the address under **FOR FURTHER INFORMATION CONTACT**. However, if the written statement is not received at least 10 calendar days prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the Task Force on the Prevention of Suicide by Members of the Armed Forces until the next open meeting.

The DFO will review all timely submissions with the Task Force on the Prevention of Suicide by Members of the Armed Forces Co-Chairpersons, and ensure they are provided to members of the Task Force before the meeting that is subject to this notice. After reviewing the written comments, the Co-Chairpersons and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The DFO, in consultation with the Task Force on the Prevention of Suicide by Members of the Armed Forces Co-Chairpersons, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Task Force

on the Prevention of Suicide by Member of the Armed Forces.

Additional information, agenda updates, and meeting registration are available online at the Defense Health Board Web site, <http://www.ha.osd.mil/dhb>. The public is encouraged to register for the meeting. If special accommodations are required to attend (sign language, wheelchair accessibility) please contact Ms. Severine Bennett at (202) 374–5755 or bennett_severine@bah.com by December 1, 2009.

FOR FURTHER INFORMATION CONTACT: Col. JoAnne McPherson, Executive Secretary, DoD Task Force on Suicide Prevention by Members of the Armed Forces, Three Skyline Place, 5201 Leesburg Pike, Suite 400, Falls Church, Virginia 22041, (703) 824–7007, Fax: (703) 824–3832, JoAnne.Mcpherson@pentagon.af.mil.

Written statements may be sent to the mailing address under this caption, e-mailed to: dhb@ha.osd.mil, or faxed to: (703) 681–3317.

Dated: November 19, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–28173 Filed 11–23–09; 8:45 am]

BILLING CODE 5001–06–P

ELECTION ASSISTANCE COMMISSION

Submission for OMB Review— Evaluation of EAC Educational Products; Comment Request

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: On September 8, 2009, the EAC published a notice in accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. EAC announced an information collection and sought public comment on the provisions thereof. The EAC, pursuant to 5 CFR 1320.5(a)(iii), intends to submit this proposed information collection (Evaluation of EAC Educational Products) to the Director of the Office of Management and Budget for approval. The Evaluation of EAC Educational Products (Evaluation) asks election officials questions concerning the effectiveness, use, and overall satisfaction with the educational products by State and local election officials. The results of the evaluation will be used internally as a decision-making tool to guide the EAC's determination about future updates and reprints of these work products. Section

202 of HAVA requires EAC to serve as a national clearinghouse and resource for the compilation of information related to the administration of Federal elections. Section 202(3) authorizes EAC to conduct studies and to carry out other duties and activities to promote the effective administration of Federal elections.

DATES: Written comments must be submitted on or before 4 p.m. EDT on December 24, 2009.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The information collection tool is available on the EAC Web site (<http://www.eac.gov>).

Additional Information: Please note that the Office of Management and Budget (OMB) has up to 60 days to approve or disapprove the information collection, but may respond after 30 days. Comments on the proposed information collection should be submitted to OMB within 30 days of this notice. Comments should be sent to the attention of Alex Hunt, Desk Officer for the U.S. Election Assistance Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments sent to OMB should also be sent to EAC at producteval@eac.gov.

Obtaining a Copy of the Surveys and Focus Group Protocol: To obtain a free copy of the surveys and focus group protocol: (1) Access the EAC Web site at <http://www.eac.gov>; (2) write to the EAC (including your address and phone number) at U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005, ATTN: Educational Products Evaluation.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Lynn-Dyson or Ms. Shelly Anderson at (202) 566–3100.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Evaluation of EAC Educational Products; OMB Number Pending.

Needs and Uses: This proposed information collection activity is

necessary to meet requirements of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301). This data collection effort is authorized under the Help America Vote Act (HAVA). Section 202 of HAVA requires EAC to serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal elections. Section 202(3) authorizes EAC to conduct studies and to carry out other duties and activities to promote the effective administration of Federal elections. Since 2004, the EAC has issued guidance on various topics to assist State and local election officials in managing and administering elections. This guidance includes a number of management guidelines, best practices, and other related reports. The specific products to be evaluated include: Effective Designs for the Administration of Federal Elections (Ballot Designs); Successful Practices—Poll Worker Recruitment, Training, and Retention; A Guidebook to Recruiting College Poll Workers; State Poll Worker Requirements Compendium; Election Management Guidelines; Quick Start Guides; Election Terminology Glossaries in Six Languages; and A Voter's Guide to Federal Elections. The Evaluation Contractor will conduct an evaluation of the effectiveness, use, and overall satisfaction with the aforementioned products by State and local election officials. The results of the evaluation will be used internally as a decision-making tool to guide the EAC's determination about future updates and reprints of these work products. The evaluation will include the use of surveys and focus groups.

There is one online survey for local election officials and one online survey for State election officials. Each survey is estimated to take 40 minutes to complete.

Affected Public (Respondents): State governments, the District of Columbia, Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands, and local entities.

Affected Public: State and local government.

Number of Respondents: 5,000.

Responses per Respondent: 1.

Estimated Burden per Response: 40 minutes.

Estimated Total Annual Burden Hours: 2,000 hours.

Frequency: One-time data collection.

There will be three focus groups held with approximately 10 participants per group. Each focus group meeting is expected to last one and one-half hours.

Affected Public: Local government.

Number of Respondents: 30.

Responses per Respondent: 1.
Estimated Burden per Response: 1.5 hours.

Estimated Total Annual Burden Hours: 45 hours.

Frequency: One-time data collection.

The following categories of information will be requested of local and State election officials via the surveys and focus groups:

- Familiarity with the EAC educational products;
- Use of EAC educational products;
- The impact of having used EAC educational products on administrative and/or election processes; and,
- Recommendations for improving existing products and/or creation of additional products.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. E9-28104 Filed 11-23-09; 8:45 am]

BILLING CODE 6820-KF-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11480-017]

Haida Corporation, Haida Energy, Inc.; Notice of Application for Transfer of License and Soliciting Comments and Motions To Intervene

November 17, 2009.

On November 6, 2009, Haida Corporation (transferor) and Haida Energy, Inc. (transferee) filed an application for transfer of license of the Reynolds Creek Hydroelectric Project located on Reynolds Creek, near the town of Hydaburg, on Prince of Wales Island, in southeast Alaska.

Applicants seek Commission approval to transfer the license for the Reynolds Creek Hydroelectric Project from the transferor to the transferee.

Applicant Contact: Transferor: Mr. Alvin Edenshaw, President, Haida Corporation, P.O. Box 89, Hydaburg, AK 99922, (907) 230-8780. Mr. Donald H. Clarke, Law Offices of GKRSE, 1500 K Street, NW., Suite 330, Washington, DC 20005, (202) 408-5400.

Transferee: Mr. Alvin Edenshaw, President, Haida Energy, Inc., P.O. Box 89, Hydaburg, AK 99922, (907) 230-8780. Mr. Robert Grimm, President, Alaska Power & Telephone Company, P.O. Box 3222, Port Townsend, WA 98368, (360) 385-1733. Mr. Donald H. Clarke, Law Offices of GKRSE, 1500 K Street, NW., Suite 330, Washington, DC 20005, (202) 408-5400.

FERC Contact: Christopher Chaney, (202) 502-6778.

Deadline for filing comments and motions to intervene: December 18, 2009. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii)(2008) and the instructions on the Commission's website 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 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-11480) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-28116 Filed 11-23-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13583-000]

Crane & Company; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

November 17, 2009.

On September 3, 2009, Crane & Company filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Byron Weston Dam No. 2 Hydroelectric Generation Project No. 13583, to be located on the East Branch of the Housatonic River, in Berkshire County, Massachusetts.

The proposed project would consist of: (1) The existing 30-foot-high, 75-foot-long Byron Weston Dam No. 2; (2) an existing 1.2-acre impoundment with a normal water surface elevation of 1,112 feet mean sea level; (3) a new turbine and generator with a capacity of 175 kilowatts; (4) a new trash rack; (5) a refurbished 6-foot-diameter penstock and a new 15-foot-long, 4-foot-diameter penstock; (6) an existing 27-by-29-foot, four-story powerhouse; (7) an existing

25-foot-long, 8-foot-wide tailrace; (8) and appurtenant facilities. The project would have an estimated annual generation of 837 megawatt-hours.

Applicant Contact: James Noel, Crane & Company, 30 South Street, Dalton, MA 01226, (413) 684-6319.

FERC Contact: Brandon Cherry, (202) 502-8328.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing application: 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 "eFiling" 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 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-13583) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-28115 Filed 11-23-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

November 10, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10-58-001.

Applicants: Questar Pipeline Company.

Description: Questar Pipeline Company submits Substitute Seventh Revised Sheet 7.01 to FERC Gas Tariff, First Revised Volume 1 to be effective 11/1/09.

Filed Date: 10/22/2009.

Accession Number: 20091023-0016.

Comment Date: 5 p.m. Eastern Time on Monday, November 16, 2009.

Docket Numbers: RP08-426-011.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits Fourth Revised Sheet No 388 to FERC Gas Tariff, Second Revised Volume No 1A.

Filed Date: 10/29/2009.

Accession Number: 20091030-0129.

Comment Date: 5 p.m. Eastern Time on Monday, November 16, 2009.

Docket Numbers: RP00-327-008.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission Segmentation Report.

Filed Date: 10/30/2009.

Accession Number: 20091030-5097.

Comment Date: 5 p.m. Eastern Time on Monday, November 16, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-28110 Filed 11-23-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

November 16, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10-137-000.

Applicants: Eastern Shore Natural Gas Company.

Description: Eastern Shore Natural Gas Company submits Seventieth Revised Sheet No. 7 *et al* to its FERC Gas tariff, Second Revised Volume No. 1, to be effective 11/1/09.

Filed Date: 11/12/2009.

Accession Number: 20091113-0139.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 24, 2009.

Docket Numbers: RP10-138-000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Eleventh Revised Sheet No. 99 to FERC Gas Tariff, Third Revised Volume No. 1, to be effective 11/12/09.

Filed Date: 11/12/2009.

Accession Number: 20091113-0140.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 24, 2009.

Docket Numbers: RP10-139-000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Substitute Original Sheet No. 77 to FERC Gas Tariff, Third Revised Volume No. 1.

Filed Date: 11/12/2009.

Accession Number: 20091113-0141.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 24, 2009.

Docket Numbers: RP10-140-000.

Applicants: Freebird Gas Storage, LLC.

Description: Freebird Gas Storage, LLC submits First Revised Sheet 100 *et al* to FERC Gas Tariff, First Revised Volume 1, to be effective 12/1/09.

Filed Date: 11/12/2009.

Accession Number: 20091113-0102.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 24, 2009.

Docket Numbers: RP10-141-000.

Applicants: T.W. Phillips Pipeline Corporation.

Description: TW Phillips Pipeline Corp submits Original Sheet 1 *et al* to FERC Gas Tariff, Original Volume 1, to be effective 1/1/10.

Filed Date: 11/12/2009.

Accession Number: 20091113-0101.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 24, 2009.

Docket Numbers: RP10-142-000.
Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits Tenth Revised Sheet 8A *et al* to FERC Gas Tariff, Second Revised Volume 1, to be effective 11/12/09.

Filed Date: 11/12/2009.

Accession Number: 20091113-0149.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 24, 2009.

Docket Numbers: RP10-142-001.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits Seventh Revised Sheet 8 *et al* FERC Gas Tariff, Second Revised Volume 1, to be effective 11/12/09.

Filed Date: 11/13/2009.

Accession Number: 20091113-0158.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 24, 2009.

Docket Numbers: RP10-143-000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, LP submits Sixth Revised Sheet 6 of its FERC Gas Tariff, First Revised Volume 1, to be effective 11/15/09.

Filed Date: 11/13/2009.

Accession Number: 20091113-0157.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 25, 2009.

Docket Numbers: RP10-144-000.

Applicants: Discovery Gas Transmission LLC.

Description: Discovery Gas Transmission LLC submits Eighteenth Revised Sheet No 20 to FERC Gas Tariff, Original Volume No 1.

Filed Date: 11/13/2009.

Accession Number: 20091113-0159.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 25, 2009.

Docket Numbers: RP10-145-000.

Applicants: The State of Alaska.

Description: Petition of the State of Alaska for Expedited Grant of Limited Waiver.

Filed Date: 11/12/2009.

Accession Number: 20091112-5243.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 24, 2009.

Docket Numbers: CP10-18-000.

Applicants: Columbia Gulf Transmission Company and Gulf South Pipeline Company, LP.

Description: Abbreviated Joint Application of Columbia Gulf Transmission Company and Gulf South Pipeline Company, LP for permission and approval to abandon Natural Gas Exchange Service.

Filed: 11/10/2009.

Accession Number: 20091110-5118.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-28109 Filed 11-23-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

November 16, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10-40-001.

Applicants: Southern Natural Gas Company.

Description: Southern Natural Gas Company submits Fourth Revised Sheet 231 to its FERC Gas Tariff, Seventh Revised Volume 1 under RP10-40.

Filed Date: 11/10/2009.

Accession Number: 20091113-0142.

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: RP10-111-001.

Applicants: Equitrans, L.P.
Description: Equitrans, LP submits Substitute Seventh Revised Tariff Sheet 317 *et al.* to FERC Gas Tariff, Original Volume 1.

Filed Date: 11/12/2009.

Accession Number: 20091113-0103.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 24, 2009.

Docket Numbers: RP10-96-001.

Applicants: Equitrans, L.P.

Description: Equitrans, LP submits Substitute Sixth Revised Tariff Sheet 317 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 11/1/09.

Filed Date: 11/12/2009.

Accession Number: 20091113-0104.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 24, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-28107 Filed 11-23-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

November 17, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10-21-000.

Applicants: Noble Great Plains Windpark, LLC.

Description: Noble Great Plains Windpark, LLC, Application for Authorization of Transaction Pursuant to Section 203 of the Federal Power Act, Request for Waivers of Filing Requirements, Confidential Treatment of Transaction Documents.

Filed Date: 11/13/2009.

Accession Number: 20091113-5152.

Comment Date: 5 p.m. Eastern Time on Friday, December 04, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10-8-000.

Applicants: Star Point Wind Project LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Star Point Wind Project LLC.

Filed Date: 11/17/2009.

Accession Number: 20091117-5022.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 08, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97-2801-028; ER96-719-027; ER99-2156-020; ER07-1236-004.

Applicants: PacifiCorp; MidAmerican Energy Company; Cordova Energy Company LLC; Yuma Cogeneration Associates.

Description: PacifiCorp *et al* submits supplement to the Notice of Change in

Status re market based rate authority filed on 10/2/09.

Filed Date: 11/09/2009.

Accession Number: 20091112-0098.

Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: ER00-1026-020; ER00-33-015; ER01-1315-009; ER01-2401-015; ER01-751-015; ER05-442-007; ER09-1278-002; ER09-38-003; ER98-2184-018; ER98-2185-018; ER98-2186-019; ER99-1761-009; ER99-1773-013; ER99-2284-013.

Applicants: Indianapolis Power & Light Company; AES Placerita, Inc.; AES Ironwood LLC; AES Red Oak LLC; Mountain View Power Partners, LLC; Condon Wind Power, LLC; AES Armenia Mountain Wind, LLC; AES Energy Storage, LLC; AES Huntington Beach, L.L.C.; AES Alamitos, Inc.; AES Redondo Beach, L.L.C.; AES Eastern Energy, LP; AES Creative Resources LP; AEE 2 LLC.

Description: The AES Corporation submits revised tariff sheets updating seller category designation for the Northwest Power Pool Regions *et al*.

Filed Date: 11/06/2009.

Accession Number: 20091110-0042.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER01-2659-015; ER03-674-014; ER05-453-005; ER05-89-013; ER07-650-003; ER95-1528-021; ER96-1088-048.

Applicants: Wisconsin Public Service Corporation, Upper Peninsula Power Company, Wisconsin River Power Company, Integrys Energy Services, Inc., WPS Power Development, LLC, Quest Energy, LLC, Combined Locks Energy Center, LLC.

Description: Integrys Energy Group, Inc submits Supplement to their June 18, 2009 Application for renewal of their market-based rate *etc*.

Filed Date: 11/09/2009.

Accession Number: 20091112-0093.

Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: ER06-615-056; ER09-556-004; ER08-367-009.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits informational filing to reflect revised accepted effective date.

Filed Date: 11/13/2009.

Accession Number: 20091116-0243.

Comment Date: 5 p.m. Eastern Time on Friday, December 04, 2009.

Docket Numbers: ER06-1071-001.

Applicants: Kuehne Chemical Company, Inc.

Description: Kuehne Chemical Company, Inc submits amended market power analysis.

Filed Date: 11/06/2009.

Accession Number: 20091112-0092.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER06-1185-003.

Applicants: Pace Global Asset Management, LLC.

Description: Pace Global Asset Management, LLC’s amended, revised market based rate tariff, updated market power analysis, and application for status as a Category 1 Seller.

Filed Date: 11/12/2009.

Accession Number: 20091116-0206.

Comment Date: 5 p.m. Eastern Time on Thursday, December 03, 2009.

Docket Numbers: ER08-1439-002; EL09-32-002.

Applicants: New Brunswick Power Generation Corporation.

Description: New Brunswick Power Generation Corporation submits additional information re NBP’s 8/10/09 compliance filing.

Filed Date: 11/09/2009.

Accession Number: 20091112-0108.

Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: ER09-633-002; ER99-1248-001; ER08-851-003; ER01-1784-011; ER03-222-010; ER08-333-004.

Applicants: SWG Colorado, LLC; Harbor Cogeneration Co; Valencia Power, LLC; Fountain Valley Power, LLC; Las Vegas Cogeneration II, LLC; Las Vegas Cogeneration LP.

Description: Southwest Generation Operating Co, LLC submits revisions to market-based rate tariffs in compliance with Order 697 and 697-A.

Filed Date: 11/06/2009.

Accession Number: 20091110-0043.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER09-650-002.

Applicants: PJM Interconnection LLC.

Description: PJM Interconnection, LLC submits response to the 10/8/09 notice requesting additional information.

Filed Date: 11/09/2009.

Accession Number: 20091112-0091.

Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: ER09-1543-003.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits Second Revised Sheet 496 *et al* to FERC Electric Tariff, Fourth Revised Volume 1.

Filed Date: 11/09/2009.

Accession Number: 20091110-0139.

Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: ER09-1581-003.

Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits revisions to the Amended and Restated Generator Interconnection Agreement with Northern States Power Company.

Filed Date: 11/09/2009.

Accession Number: 20091110-0137.

Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: ER10-25-001.

Applicants: Xcel Energy Services Inc.

Description: Xcel Energy Services Inc submits Attachment A as the cancellation coversheet for the Volume 5 Tariff.

Filed Date: 11/06/2009.

Accession Number: 20091110-0044.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER10-192-001.

Applicants: Public Service Company of Colorado.

Description: Public Service Company of Colorado submits errata to the 10/30/09.

Filed Date: 11/06/2009.

Accession Number: 20091110-0045.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER10-231-000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits revisions to its Market Administration and Control Area Services Tariff.

Filed Date: 11/06/2009.

Accession Number: 20091110-0039.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER10-232-000.

Applicants: Los Medanos Energy Center, LLC.

Description: Los Medanos Energy Center, LLC submits notice of termination of Rate Schedule FERC No 2.

Filed Date: 11/06/2009.

Accession Number: 20091110-0041.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER10-233-000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Facilities Maintenance Agreement.

Filed Date: 11/06/2009.

Accession Number: 20091110-0040.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER10-235-000.

Applicants: E. ON U.S. LLC.

Description: E ON U.S., LLC submits amendment to the interconnection agreement with East Kentucky Power Cooperative.

Filed Date: 11/06/2009.

Accession Number: 20091110-0141.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER10-238-000.

Applicants: Upper Peninsula Power Company.

Description: Upper Peninsula Power Company submits revisions to Attachments D and E of its Original Rate Schedule FERC 54 for provision of Load-Following Full Requirement Service to Alger Delta Cooperative Electric Association.

Filed Date: 11/09/2009.

Accession Number: 20091110-0131.

Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: ER10-239-000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Transmission Interconnection Agreement for Points of Delivery dated 10/26/09 with Garkane Energy Cooperative, Inc designated as Rate Schedule FERC 654 etc.

Filed Date: 11/09/2009.

Accession Number: 20091110-0133.

Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: ER10-240-000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Network Integration Transmission Service Agreement dated 11/2/09 with Tri-State Generation and Transmission Association, Inc designated as Service Agreement 628, Seventh Revised Volume 11 etc.

Filed Date: 11/09/2009.

Accession Number: 20091110-0132.

Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: ER10-241-000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Transmission Interconnection Agreement for Points of Delivery at Foote Creek dated 10/26/09 with Tri-State Generation and Transmission Association, Inc etc.

Filed Date: 11/09/2009.

Accession Number: 20091110-0134.

Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: ER10-242-000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits revised pages to its Open Access Transmission Tariff to implement a rate change for Oklahoma Gas and Electric Company etc.

Filed Date: 11/09/2009.

Accession Number: 20091110-0135.

Comment Date: 5 p.m. Eastern Time on Monday, November 30, 2009.

Docket Numbers: ER10-243-000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits a revised rate sheet to the Amended and Restated Mandalay Generating Station Radial Lines Agreement between CE and RRI Energy Mandalay, Inc.

Filed Date: 11/10/2009.

Accession Number: 20091110-0126.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 01, 2009.

Docket Numbers: ER10-244-000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits a revised rate sheet to the Ameresco Chiquita Energy, LLC Service Agreement for Wholesale Distribution Service, Service Agreement 199 etc.

Filed Date: 11/10/2009.

Accession Number: 20091110-0125.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 01, 2009.

Docket Numbers: ER10-247-000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co submits a Transmission Facilities Agreement for the Ravenswood Bore Bay Tunnel Project.

Filed Date: 11/10/2009.

Accession Number: 20091112-0140.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 01, 2009.

Docket Numbers: ER10-248-000.

Applicants: Allegheny Power.

Description: PJM Interconnection, LLC submits the Second Revised Sheet No. 313A to FERC Electric Tariff, Sixth Revised Volume No. 1.

Filed Date: 11/10/2009.

Accession Number: 20091112-0139.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 01, 2009.

Docket Numbers: ER10-249-000.

Applicants: Illinois Power Company & Ameren Illinois.

Description: Illinois Power Co etc. submits a revised Exhibit A to the Joint Ownership Agreement.

Filed Date: 11/10/2009.

Accession Number: 20091112-0138.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 01, 2009.

Docket Numbers: ER10-250-000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits Original Rate Schedule FERC 319 to be effective 1/1/10.

Filed Date: 11/10/2009.

Accession Number: 20091112-0123.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 01, 2009.

Docket Numbers: ER10-251-000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits Original Service Agreement 279 to its FERC Electric Tariff, 2nd Revised Volume 6.

Filed Date: 11/10/2009.

Accession Number: 20091112-0124.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 01, 2009.

Docket Numbers: ER10-252-000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Co submits an Interconnection Agreement with Lee County, Florida.

Filed Date: 11/10/2009.

Accession Number: 20091112-0141.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 01, 2009.

Docket Numbers: ER10-254-000.

Applicants: Tucson Electric Power Company.

Description: Tucson Electric Power Co submits an Agreement for the Interconnection of the Electrical System etc.

Filed Date: 11/12/2009.

Accession Number: 20091113-0136.

Comment Date: 5 p.m. Eastern Time on Thursday, December 03, 2009.

Docket Numbers: ER10-255-000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Co submits the revised power sales agreement with North Carolina Electric Membership Corp.

Filed Date: 11/12/2009.

Accession Number: 20091113-0138.

Comment Date: 5 p.m. Eastern Time on Thursday, December 03, 2009.

Docket Numbers: ER10-257-000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation submits the fully executed Letter Agreement dated 8/28/09 with Oklahoma Gas and Electric.

Filed Date: 11/13/2009.

Accession Number: 20091113-0150.

Comment Date: 5 p.m. Eastern Time on Friday, December 04, 2009.

Docket Numbers: ER10-258-000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation submits fully executed Letter Agreement dated 8/28/09 with Oklahoma Gas and Electric.

Filed Date: 11/13/2009.

Accession Number: 20091113-0151.

Comment Date: 5 p.m. Eastern Time on Friday, December 04, 2009.

Docket Numbers: ER10-259-000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits Letter Agreement to Facilitate Installation of the Series Reactors.

Filed Date: 11/13/2009.

Accession Number: 20091113-0152.

Comment Date: 5 p.m. Eastern Time on Friday, December 04, 2009.

Docket Numbers: ER10-260-000.

Applicants: Southwestern Public Service Company.

Description: Southwestern Public Service Co submits a revised rate schedule No. 102.

Filed Date: 11/12/2009.

Accession Number: 20091113-0156.

Comment Date: 5 p.m. Eastern Time on Thursday, December 03, 2009.

Docket Numbers: ER10-261-000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed Large Generator Interconnection Agreement with Transmission Provider, Taloga Wind, LLC etc.

Filed Date: 11/12/2009.

Accession Number: 20091113-0153.

Comment Date: 5 p.m. Eastern Time on Thursday, December 03, 2009.

Docket Numbers: ER10-262-000.

Applicants: MMC Chula Vista LLC.

Description: MMC Chula Vista LLC submits notice of cancellation of FERC Electric Tariff, Original Volume No. 1.

Filed Date: 11/13/2009.

Accession Number: 20091116-0195.

Comment Date: 5 p.m. Eastern Time on Friday, December 04, 2009.

Docket Numbers: ER10-263-000.

Applicants: MMC Escondido LLC.

Description: MMC Escondido LLC submits notice of cancellation of its FERC Electric Tariff, Original Volume No. 1.

Filed Date: 11/13/2009.

Accession Number: 20091116-0194.

Comment Date: 5 p.m. Eastern Time on Friday, December 04, 2009.

Docket Numbers: ER10-264-000.

Applicants: MMC Mid-Sun, LLC.

Description: MMC Mid-Sun, LLC submits notice of cancellation of FERC Electric Tariff, Original Volume No. 1.

Filed Date: 11/13/2009.

Accession Number: 20091116-0193.

Comment Date: 5 p.m. Eastern Time on Friday, December 04, 2009.

Docket Numbers: ER10-265-000.

Applicants: Western Kentucky Energy Corporation.

Description: Western Kentucky Energy Corporation submits notice of cancellation of its First revised Rate Schedule FERC No. 1.

Filed Date: 11/13/2009.

Accession Number: 20091116-0192.

Comment Date: 5 p.m. Eastern Time on Friday, December 04, 2009.

Docket Numbers: ER10-266-000.

Applicants: Trans Bay Cable LLC.

Description: Trans Bay Cable LLC submits initial Transmission Owner Tariff, FERC Electric Tariff Original Volume No. 1.

Filed Date: 11/13/2009.

Accession Number: 20091116-0191.

Comment Date: 5 p.m. Eastern Time on Friday, December 04, 2009.

Docket Numbers: ER10-267-000.

Applicants: Southwest Power Pool Inc.

Description: Southwest Power Pool, Inc. submits revisions to membership agreement.

Filed Date: 11/13/2009.

Accession Number: 20091116-0190.

Comment Date: 5 p.m. Eastern Time on Friday, December 04, 2009.

Docket Numbers: ER10-268-000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits amendments to Schedule 12-Appendix for the PJM Tariff.

Filed Date: 11/13/2009.

Accession Number: 20091116-0196.

Comment Date: 5 p.m. Eastern Time on Friday, December 04, 2009.

Docket Numbers: ER99-2311-013; ER97-2846-016.

Applicants: Carolina Power & Light Company; Florida Power Corporation.

Description: Amended Notice of Change in Status of Florida Power Corporation, et al.

Filed Date: 11/13/2009.

Accession Number: 20091113-5084.

Comment Date: 5 p.m. Eastern Time on Friday, December 04, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08-27-004.

Applicants: E.ON U.S. LLC.

Description: E.ON US. LLC submits revisions to Attachment K of their joint Open Access Transmission Tariff etc, to be effective 11/18/09.

Filed Date: 11/06/2009.

Accession Number: 20091110-0136.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-28106 Filed 11-23-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

November 12, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10-130-000.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits the

Annual Report of Penalty Revenue Credits.

Filed Date: 11/06/2009.

Accession Number: 20091110-0127.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 18, 2009.

Docket Numbers: RP10-131-000.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits an Amended and Restated Firm Transportation Service Agreement.

Filed Date: 11/06/2009.

Accession Number: 20091110-0128.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 18, 2009.

Docket Numbers: RP10-132-000.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline, LLC submits Fourth Revised Sheet 6 to its FERC Gas Tariff, Second Revised Volume 1 to be effective 12/9/09.

Filed Date: 11/09/2009.

Accession Number: 20091110-0052.

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: RP10-133-000.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline, LLC submits Seventh Revised Sheet 8B *et al.* to its FERC Gas Tariff, Second Revised Volume 1, to be effective 12/9/09.

Filed Date: 11/09/2009.

Accession Number: 20091110-0053.

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: RP10-134-000.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company submits Fifty-First Revised Sheet 18 *et al.* to FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 11/09/2009.

Accession Number: 20091110-0049.

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: RP10-135-000.

Applicants: Honeoye Storage Corporation.

Description: Honeoye Storage Corporation submits the Second Revised Sheet No. 8 *et al.* to FERC Gas Tariff, Original Volume No. 1A.

Filed Date: 11/09/2009.

Accession Number: 20091110-0130.

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: RP10-136-000.

Applicants: Iroquois Gas Transmission System, LP.

Description: Iroquois Gas Transmission System, LP submits First

Revised Sheet No. 8B to FERC Gas Tariff, First Revised Volume No. 1.

Filed Date: 11/09/2009.

Accession Number: 20091110-0129.

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-28108 Filed 11-23-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER10-225-000]

Major Energy Electric Services, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

November 17, 2009.

This is a supplemental notice in the above-referenced proceeding of Major Energy Electric Services, 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 December 7, 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 Street, 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. E9-28117 Filed 11-23-09; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2003-0004; FRL-8798-7]

Access to Confidential Business Information by Science Applications International Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Science Applications International Corporation (SAIC), to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI). **DATES:** Access to the confidential data will occur no sooner than December 1, 2009.

FOR FURTHER INFORMATION CONTACT: For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Scott Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8257; fax number: (202) 564-8251; e-mail address: sherlock.scott@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this Notice Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific

entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPPT-2003-0004. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>.

II. What Action is the Agency Taking?

Under Contract Number GS-35F-4461G, contractor SAIC of 10260 Campus Point Drive, San Diego, CA, will assist the Office of Pollution Prevention and Toxics (OPPT) in designing and developing graphical user interface screens. The screens will be transferred from the development environment to the EPA Confidential Business environment. Users will input data into a repository in the Confidential Business environment via use of the input screens.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract

Number GS-35F-4461G, SAIC will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. SAIC personnel will be given access to information submitted to EPA under all sections of TSCA.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide SAIC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters in accordance with EPA's TSCA CBI Protection Manual.

Access to TSCA data, including CBI, will continue until September 27, 2012. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

SAIC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental Protection,
Confidential Business Information.

Dated: November 18, 2009.

Matthew Leopard,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E9-28170 Filed 11-23-09; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2009-0089; FRL-8984-4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Unregulated Contaminant Monitoring in Public Water Systems (Renewal); EPA ICR No. 2192.03, OMB Control No. 2040-0270

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 24, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA-HQ-OW-2009-0089 to (1) EPA online using <http://www.regulations.gov> (our preferred method), by e-mail to OW-Docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, United States Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OW-2009-0089, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Brenda D. Parris, Technical Support Center, Office of Ground Water and Drinking Water, United States Environmental Protection Agency, Office of Water, 26 West Martin Luther King Drive (MS 140), Cincinnati, OH 45268, telephone (513) 569-7961; e-mail address parris.brenda@epa.gov. For general information, contact the Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426-4791. The Hotline is open Monday through Friday, excluding legal holidays, from 10 a.m. to 4 p.m., Eastern Time.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 9, 2009, (74 FR 27312) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OW-2009-0089, which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the Water Docket, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the Water Docket is (202) 566-2426.

Use EPA's electronic docket and comment system at <http://www.regulations.gov>, to submit or view public comments, access the index

listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov> as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

Title: Unregulated Contaminant Monitoring in Public Water Systems (Renewal).

ICR numbers: EPA ICR No. 2192.03, OMB Control No. 2040-0270.

ICR Status: This ICR is scheduled to expire on November 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Safe Drinking Water Act (SDWA), as amended in 1996, directs EPA to establish criteria for a program to monitor not more than 30 unregulated contaminants every five years. EPA published the first group of contaminants in the Unregulated Contaminant Monitoring Regulation (*i.e.*, UCMR 1), which established a revised approach for UCMR implementation, in the **Federal Register** dated September 17, 1999, (64 FR 50556). EPA published the second group of contaminants in UCMR 2, in the **Federal Register** dated January 4, 2007, (72 FR 367). This regulation met the SDWA requirement by identifying 25 new priority contaminants to be monitored during the UCMR 2 cycle of 2007-2011.

Under UCMR 2, Assessment Monitoring uses more common analytical method technologies used by drinking water laboratories. All public

water systems (PWSs) serving more than 10,000 people, and 800 representative PWSs serving fewer than 10,001 people are required to monitor for the 10 "List 1" contaminants during a 12-month period between January 2008–December 2010. Screening Survey monitoring uses more specialized analytical method technologies not as widely used by drinking water laboratories. All PWSs serving more than 100,000 people, 320 representative PWSs serving 10,001–100,000 people, and 480 representative PWSs serving fewer than 10,001 people are required to monitor for the 15 "List 2" contaminants during a 12-month period between January 2008–December 2010.

This notice proposes renewal of the currently approved UCMR 2 ICR (OMB Control No. 2040–0270), which covers the period of 2007–2009. This ICR renewal accounts for activities over a three-year period (2010–2012), as is customary. Note that the complete five-year UCMR 2 cycle of 2007–2011 overlaps with the applicable ICR renewal period only during 2010 and 2011. Public water systems will only be involved in active monitoring during 2010 (i.e., one-third of this ICR period), with reporting continuing into 2011 for some.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5.8 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Public water systems.

Estimated Number of Respondents: 1,694 (1,638 PWSs and 56 State primacy agencies).

Frequency of Response: On Occasion.

Estimated Total Annual Hour Burden: 9,761.

Estimated Total Annual Cost: \$3,250,616 includes an estimated labor cost of \$387,096 and \$2,863,520 for

capital and operation & maintenance costs.

Changes in the Estimates: There is decrease of 30,625 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to the fact that the complete five-year UCMR 2 cycle of 2007–2011 overlaps with the applicable ICR renewal period only during 2010 and 2011. In this time, there will be fewer PWSs participating and the schedule of activities will have changed.

Dated: November 16, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–28145 Filed 11–23–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0660; FRL–8797–5]

Pesticide Experimental Use Permits; Receipt of Applications; Comment Requests

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of applications 86414–EUP–E and 86414–EUP–R from Washington State University Long Beach Research Unit requesting experimental use permits (EUPs) for the pesticide Imidacloprid. The Agency has determined that the permits may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on these applications.

DATES: Comments must be received on or before December 24, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0660, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays).

Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0660. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joanne Edwards, Registration Division

(7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6736; e-mail address: edwards.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

Under section 5 of FIFRA, 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain EUPs before testing new pesticides or new uses of pesticides if they conduct experimental field tests on 10 acres or more of land or one acre or more of water.

Pursuant to 40 CFR 172.11(a), the Agency has determined that the following EUP applications may be of regional and national significance, and therefore is seeking public comment on the EUP applications:

Submitter: Washington State University Long Beach Research Unit, (86414-EUP-E and 86414-EUP-R).

Pesticide Chemical: Imidacloprid.

Summary of Request: Washington State University Long Beach Research Unit is applying for two EUPs for the use of Imidacloprid to investigate the efficacy and non-target effects of the pesticide against burrowing shrimp in oyster and manila clam beds in Willapa Bay and Grays harbor, Washington state. For 86414-EUP-R, the total quantity of product (Nuprid 2F, EPA Reg. No. 228-484, containing 21.4% liquid imidacloprid) to be used is up to 80 pounds of active ingredient on up to 100 acres. For 86414-EUP-E, the total quantity of product (Mallet 0.5G, EPA Reg. No. 228-501, containing 0.5%

granular imidacloprid) to be used is up to 300 pounds of active ingredient on up to 30 acres.

A copy of the applications and any information submitted is available for public review in the docket established for these EUP applications as described under **ADDRESSES**.

Following the review of the applications and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP requests, and if issued, the conditions under which it is to be conducted. Any issuance of EUPs will be announced in the **Federal Register**.

List of Subjects

Environmental protection,
Experimental use permits.

Dated: November 12, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9-28152 Filed 11-23-09; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8982-8]

Tentative Approval and Solicitation of Request for a Public Hearing for Public Water Supply Supervision Program Revision for the U.S. Virgin Islands

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Virgin Islands is revising its approved Public Water System Supervision Program to adopt EPA's National Primary Drinking Water Regulations. The EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, the EPA intends to approve these program revisions. All interested parties may request a public hearing.

DATES: This determination to approve the U.S. Virgin Island's primacy program revision application is made pursuant to 40 CFR 142.12(d)(3). It shall become final and effective unless (1) a timely and appropriate request for a public hearing is received or (2) the Regional Administrator elects to hold a public hearing on his own motion. Any interested person, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the Regional Administrator at the address shown below by

December 24, 2009. If a substantial request for a public hearing is made within the requested thirty day time frame, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective December 24, 2009.

ADDRESSES: Any request for a public hearing shall include the following information: (1) Name, address and telephone number of the individual, organization or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity. Requests for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region 2, 290 Broadway, New York, New York 10007–1866.

All documents relating to this determination are available for inspection between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, at the following offices:
Office of the Commissioner, Department of Planning and Natural Resources, 45 Mars Hill, Frederiksted, St. Croix, U.S. Virgin Islands 00840–4474.
U.S. Environmental Protection Agency—Region 2, 24th Floor Drinking Water Ground Water Protection Section, 290 Broadway, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT:

Michael J. Lowy, Drinking Water Ground Water Protection Section, U.S. Environmental Protection Agency—Region 2, (212) 637–3830.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the United States Environmental Protection Agency (EPA) has determined to approve an application by the U.S. Virgin Islands Department of Planning and Natural Resources (DPNR) to revise its Public Water System Supervision Primacy Program to incorporate regulations no less stringent than the EPA's National Primary Drinking Water Regulations (NPDWR) for the following rules: Drinking Water; Maximum Contaminant

Level Goals and National Primary Drinking Water Regulations for Lead and Copper; Final Rule, promulgated by EPA June 30, 1994 (59 FR 33860), Drinking Water; National Primary Drinking Water, Synthetic Organic Chemicals and Inorganic Chemicals; National Primary Drinking Water Implementation; Monitoring for Unregulated Contaminants; Final Rule, promulgated by EPA July 1, 1994 (59 FR 34320), National Primary Drinking Water Regulations; Analytical Methods for Regulated Drinking Water Contaminants; Final Rule, promulgated by EPA December 5, 1994, National Primary and Secondary Drinking Water Regulations; Analytical Methods for Regulated Drinking Water Contaminants, promulgated by EPA June 29, 1995 (60 FR 34083), National Primary Drinking Water Regulations; Analytical Methods for Radionuclides; Final Rule, promulgated by EPA March 5, 1997 (63 FR 10175), Revisions to State Primacy Requirements to Implement Safe Drinking Water Act Amendments; Final Rule, promulgated by EPA April 28, 1998 (63 FR 23361), Revision of Existing Variance and Exemption Regulations To Comply With Requirements of the Safe Drinking Water Act; Final Rule, promulgated by EPA August 14, 1998 (63 FR 43833), National Primary Drinking Water Regulation: Consumer Confidence Reports; Final Rule, promulgated by EPA August 19, 1998 (63 FR 44511) with the following Technical Corrections promulgated by EPA: June 29, 1999 (64 FR 34732), September 14, 1998 (64 FR 49671), November 27, 2002 (67 FR 70850), and December 9, 2002 (67 FR 73011), National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts; Final Rule, promulgated by EPA December 16, 1998 (63 FR 69389), National Primary Drinking Water Regulations: Interim Enhanced Surface Water Treatment; Final Rule, promulgated by EPA December 16, 1998 (63 FR 69477), Suspension of Unregulated Contaminant Monitoring Requirements for Small Public Water Systems; Final Rule, promulgated by EPA January 8, 1999 (64 FR 1499), National Primary and Secondary Drinking Water Regulations; Analytical Methods for Chemical and Microbiological Contaminants and Revisions to Laboratory Certification Requirements; Final Rule, promulgated by EPA December 1, 1999 (64 FR 67449), National Primary Drinking Water Regulations for Lead and Copper; Final Rule, promulgated by EPA January 12, 2000 (65 FR 1950), Revisions to the

Interim Enhanced Surface Water Treatment Rule and the Stage 1 Disinfectants and Disinfection Byproducts, and Revisions to State Primacy Requirements to Implement the Safe Drinking Water Act Amendments; Final Rule, promulgated by EPA April 14, 2000 (65 FR 20304), National Primary Drinking Water Regulations: Public Notification Rule; Final Rule, promulgated by EPA May 4, 2000 (65 FR 25982), with the following Technical Corrections promulgated by EPA: June 21, 2000 (65 FR 38629), June 30, 2000 (65 FR 40520), Removal of the Maximum Contaminant Level Goal for Chloroform from the National Primary Drinking Water Regulations; Final Rule, promulgated by EPA May 30, 2000 (65 FR 34404), National Primary Drinking Water Regulations; Radionuclides; Final Rule, promulgated by EPA December 7, 2000, (65 FR 76708), Revisions to the Interim Enhanced Surface Water Treatment Rule, the Stage 1 Disinfectants and Disinfection Byproducts Rule and Revisions to State Primacy Requirements to Implement the Safe Drinking Water Act Amendments; Final Rule, promulgated by EPA January 16, 2001 (66 FR 3770), National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring; Final Rule, promulgated by EPA January 22, 2001 (66 FR 6976), with the following Minor Clarification promulgated by EPA March 25, 2003 (68 FR 14502), Revisions to the Interim Enhanced Surface Water Treatment Rule, the Stage 1 Disinfectants and Disinfection Byproducts Rule and Revisions to State Primacy Requirements to Implement the Safe Drinking Water Act Amendments; Final Rule, promulgated by EPA February 12, 2001 (66 FR 9903), National Primary Drinking Water Regulations; Filter Backwash Recycling Rule; Final Rule, promulgated by EPA June 8, 2001 (66 FR 31086), National Primary Drinking Water Regulations; Long Term 1 Enhanced Surface Water Treatment Rule; Final Rule, promulgated by EPA January 14, 2002 (67 FR 1812), National Primary Drinking Water Regulations; Methods Update; Final Rule, promulgated by EPA October 23, 2002 (67 FR 65220), National Primary Drinking Water Regulations: Minor Revisions to Public Notification Rule, Consumer Confidence Report Rule and Primacy Rule; Final Rule, promulgated by EPA November 27, 2002 (67 FR 70850), with the following Technical Correction promulgated by EPA December 9, 2002 (67 FR 73011), National Primary and Secondary

Drinking Water Regulations: Approval of Additional Method for the Detection of Coliforms and E. Coli in Drinking Water: Final Rule, promulgated by EPA February 13, 2004 (69 FR 7156), National Primary Drinking Water Regulations: Minor Corrections and Clarification to Drinking Water Regulations; National Primary Drinking Water Regulations for Lead and Copper: Final Rule, promulgated by EPA June 29, 2004 (69 FR 38850), National Primary Drinking Water Regulations: Analytical Method for Uranium, promulgated by EPA August 25, 2004 (69 FR 5217), National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule; Final Rule, promulgated by EPA January 4, 2006 (71 FR 388), with the following Technical Corrections promulgated by EPA January 27, 2006 (71 FR 4644), June 29, 2006 (71 FR 37168), and June 29, 2009 (74 FR 30953), National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule; Final Rule, promulgated by EPA January 5, 2006 (71 FR 654), with the following Technical Corrections promulgated by EPA January 30, 2006 (71 FR 4968) and February 6, 2006 (71 FR 6136), National Primary Drinking Water Regulations: Ground Water Rule, Final Rule, promulgated by EPA November 8, 2006 (71 FR 67427), and the following Technical Correction promulgated by EPA November 21, 2006 (71 FR 67427), and National Primary Drinking Water Regulations for Lead and Copper: Short-Term Revisions and Clarifications; Final Rule, promulgated by EPA October 10, 2007 (72 FR 5782).

The application demonstrates that the U.S. Virgin Islands has adopted drinking water regulations which satisfy the NPDWRs for the above. The USEPA has determined that the U.S. Virgin Island's regulations are no less stringent than the corresponding Federal Regulations and that the U.S. Virgin Island's DPNR continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

Authority: (Section 1413 of the Safe Drinking Water Act, as amended, 40 U.S.C. 300g-2, and 40 CFR 142.10, 142.12(d) and 142.13)

Dated: October 14, 2009.

George Pavlou,

Acting Regional Administrator, Region 2.

[FR Doc. E9-28146 Filed 11-23-09; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Revision of a Currently Approved Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC 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. The FDIC hereby gives notice that it is seeking public comment on proposed revisions to its "Forms Related to Processing Deposit Insurance Claims" information collection (OMB No. 3064-0143). At the end of the comment period, any comments and recommendations received will be analyzed to determine the extent to which the FDIC should modify the proposed revisions prior to submission to OMB for review and approval.

DATES: Comments must be submitted on or before January 25, 2010.

ADDRESSES: Interested parties are invited to submit written comments. All comments should refer to the name of the collection. Comments may be submitted by any of the following methods:

- <http://www.FDIC.gov/regulations/laws/federal/notices.html>.
- *E-mail:* comments@fdic.gov.
- *Mail:* Leneta G. Gregorie (202.898.3719), Counsel, Federal Deposit Insurance Corporation, PA1730-3000, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at

the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the FDIC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact Leneta G. Gregorie, by telephone at (202) 898-3719 or by mail at the address identified above. In addition, copies of the proposed revised Forms 7200/05 and 7200/09, and proposed new Form 7200/18 can be obtained at the FDIC's Web site (<http://www.fdic.gov/regulations/laws/federal/>).

SUPPLEMENTARY INFORMATION: The FDIC is proposing to make minor revisions to simplify and clarify three of the forms used in support of deposit insurance activities related to failed banks.

Title: Forms Related to Processing of Deposit Insurance Claims.

Forms Currently In Use:

Declaration for Testamentary Deposit (Single Grantor), Form 7200/03;

Declaration for Public Unit Deposit, Form 7200/04;

Declaration for Trust, Form 7200/05;

Declaration of Independent Activity, Form 7200/06;

Declaration of Independent Activity for Unincorporated Association, Form 7200/07;

Declaration for Joint Ownership Deposit, Form 7200/08;

Declaration for Testamentary Deposit (Multiple Grantors), Form 7200/09;

Declaration for Defined Contribution Plan, Form 7200/10;

Declaration for IRA/KEOGH Deposit, Form 7200/11;

Declaration for Defined Benefit Plan, Form 7200/12;

Declaration of Custodian Deposit, Form 7200/13;

Declaration for Health and Welfare Plan, Form 7200/14;

Declaration for Plan and Trust, Form 7200/15.

ESTIMATED NUMBER OF RESPONDENTS AND BURDEN HOURS

FDIC document	Hours per response	Number of respondents	Burden hours
Declaration for Testamentary Deposit (Single Grantor), Form 7200/03	0.50	1000	500
Declaration for Public Unit Deposit, Form 7200/04	0.50	500	250
Declaration for Trust, Form 7200/05	0.50	900	450
Declaration of Independent Activity, Form 7200/06	0.50	25	12.5
Declaration of Independent Activity for Unincorporated Association, Form 7200/07	0.50	25	12.5
Declaration for Joint Ownership Deposit, Form 7200/08	0.50	25	12.5

ESTIMATED NUMBER OF RESPONDENTS AND BURDEN HOURS—Continued

FDIC document	Hours per response	Number of respondents	Burden hours
Declaration for Testamentary Deposit (Multiple Grantors), Form 7200/09	0.50	500	250
Declaration for Defined Contribution Plan, Form 7200/10	1.0	50	50
Declaration for IRA/KEOGH Deposit, Form 7200/11	0.50	50	25
Declaration for Defined Benefit Plan, Form 7200/12	1.0	200	200
Declaration of Custodian Deposit, Form 7200/13	0.50	50	25
Declaration for Health and Welfare Plan, Form 7200/14	1.0	200	200
Declaration for Plan and Trust, Form 7200/15	0.50	1300	650
Sub-total		4,825	2,638
Additional Burden for Deposit Brokers Only			138
New Form To Be Added:			
Declaration for Irrevocable Trust, Form 7200/18	0.50	200	100
Total		5,095	2,875

General Description of Collection: The collection involves forms used by the FDIC to obtain information from individual depositors and deposit brokers necessary to supplement the records of failed depository institutions to make determinations regarding deposit insurance coverage for depositors of failed institutions. The information provided allows the FDIC to identify the actual owners of an account and each owner’s interest in the account.

Current Action: The FDIC is proposing modifications, which may be considered substantive and material, to the following forms: Declaration for Trust, Form 7200/05, and Declaration for Testamentary Deposit (Multiple Grantors), Form 7200/09. In addition, the FDIC proposes to add to the collection the following new form: Declaration for Irrevocable Trust, Form 7200/18. Specifically, with respect to Form 7200/05, the FDIC is changing the title of the form to “Declaration for Revocable Trust,” thereby eliminating use of the form for irrevocable trusts; deleting the request for information on ownership interest (by percentage or dollar amount); adding a request for information on beneficiary type (i.e., individual, charity, or non-profit) and adding, for charitable or non-profit organizations, a request that the respondent indicate whether the charity or non-profit is recognized by the IRS. The FDIC believes that the changes to Form 7200/05 do not render it any more or less burdensome than the existing form; therefore, the estimated time to complete the form is unchanged. There is, however, an estimated decrease (of 200) in the number of respondents because the form will no longer be used to collect information for irrevocable trusts. With respect to Form 7200/09, the FDIC is proposing to eliminate the request for information regarding the

relationship of each beneficiary to the grantors; eliminate the requirement to provide a date of death for any named beneficiaries who are deceased; add a request for information on beneficiary type (i.e., individual, charity, or non-profit) and add, for charitable or non-profit organization beneficiaries, a request that the respondent indicate whether the charity or non-profit is recognized by the IRS. The FDIC believes that changes to Form 7200/09 do not render it any more or less burdensome than the existing form; therefore, the current burden estimates remain unchanged. With respect to new Form 7200/18, it does collect information regarding irrevocable trusts that previously was collected on Form 7200/05. However, unlike old Form 7200/05, new Form 7200/18 does not request information on the ownership interest (percentage or dollar amount) of beneficiaries, or the date of death or any deceased beneficiaries, but does collect information on the beneficiary type (i.e., individual, charity or non-profit) and, for charitable or non-profit organizations, on whether the entity is recognized by the IRS. The estimated response time for new Form 7200/18 is 30 minutes and the estimated number of respondents is 200.

Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC’s functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use

of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 19th day of November 2009.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E9–28129 Filed 11–23–09; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Revision of a Currently Approved Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC 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. The FDIC hereby gives notice that it is seeking public comment on proposed revisions to its “Forms Related to Processing Deposit Insurance Claims” information collection (OMB No. 3064–0143). At the end of the comment period, any comments and recommendations received will be analyzed to determine the extent to which the FDIC should modify the proposed revisions prior to submission to OMB for review and approval.

DATES: Comments must be submitted on or before January 25, 2010.

ADDRESSES: Interested parties are invited to submit written comments. All comments should refer to the name of the collection. Comments may be submitted by any of the following methods:

- <http://www.FDIC.gov/regulations/laws/federal/notices.html>.

- E-mail: comments@fdic.gov.

- Mail: Leneta G. Gregorie (202.898.3719), Counsel, Federal Deposit Insurance Corporation, PA1730-3000, 550 17th Street, NW., Washington, DC 20429.

- Hand Delivery: Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the FDIC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and

Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact Leneta G. Gregorie, by telephone at (202) 898-3719 or by mail at the address identified above. In addition, copies of the proposed revised Forms 7200/05 and 7200/09, and proposed new Form 7200/18 can be obtained at the FDIC's Web site (<http://www.fdic.gov/regulations/laws/federal/>).

SUPPLEMENTARY INFORMATION: The FDIC is proposing to make minor revisions to simplify and clarify three of the forms used in support of deposit insurance activities related to failed banks.

Title: Forms Related to Processing of Deposit Insurance Claims.

Forms Currently in Use

Declaration for Testamentary Deposit (Single Grantor), Form 7200/03.

Declaration for Public Unit Deposit, Form 7200/04.

Declaration for Trust, Form 7200/05.
Declaration of Independent Activity, Form 7200/06.

Declaration of Independent Activity for Unincorporated Association, Form 7200/07.

Declaration for Joint Ownership Deposit, Form 7200/08.

Declaration for Testamentary Deposit (Multiple Grantors), Form 7200/09.

Declaration for Defined Contribution Plan, Form 7200/10.

Declaration for IRA/KEOGH Deposit, Form 7200/11.

Declaration for Defined Benefit Plan, Form 7200/12.

Declaration of Custodian Deposit, Form 7200/13.

Declaration for Health and Welfare Plan, Form 7200/14.

Declaration for Plan and Trust, Form 7200/15.

ESTIMATED NUMBER OF RESPONDENTS AND BURDEN HOURS

FDIC document	Hours per response	Number of respondents	Burden hours
Declaration for Testamentary Deposit (Single Grantor), Form 7200/03	0.50	1000	500
Declaration for Public Unit Deposit, Form 7200/04	0.50	500	250
Declaration for Trust, Form 7200/05	0.50	900	450
Declaration of Independent Activity, Form 7200/06	0.50	25	12.5
Declaration of Independent Activity for Unincorporated Association, Form 7200/07	0.50	25	12.5
Declaration for Joint Ownership Deposit, Form 7200/08	0.50	25	12.5
Declaration for Testamentary Deposit (Multiple Grantors), Form 7200/09	0.50	500	250
Declaration for Defined Contribution Plan, Form 7200/10	1.0	50	50
Declaration for IRA/KEOGH Deposit, Form 7200/11	0.50	50	25
Declaration for Defined Benefit Plan, Form 7200/12	1.0	200	200
Declaration of Custodian Deposit, Form 7200/13	0.50	50	25
Declaration for Health and Welfare Plan, Form 7200/14	1.0	200	200
Declaration for Plan and Trust, Form 7200/15	0.50	1300	650
Sub-total		4,825	2,638
Additional Burden for Deposit Brokers Only			138
New Form To Be Added:			
Declaration for Irrevocable Trust, Form 7200/18	0.50	200	100
Total		5,095	2,875

General Description of Collection: The collection involves forms used by the FDIC to obtain information from individual depositors and deposit brokers necessary to supplement the records of failed depository institutions to make determinations regarding deposit insurance coverage for depositors of failed institutions. The information provided allows the FDIC to identify the actual owners of an account and each owner's interest in the account.

Current Action: The FDIC is proposing modifications, which may be considered substantive and material, to the following forms: Declaration for Trust, Form 7200/05, and Declaration

for Testamentary Deposit (Multiple Grantors), Form 7200/09. In addition, the FDIC proposes to add to the collection the following new form: Declaration for Irrevocable Trust, Form 7200/18. Specifically, with respect to Form 7200/05, the FDIC is changing the title of the form to "Declaration for Revocable Trust," thereby eliminating use of the form for irrevocable trusts; deleting the request for information on ownership interest (by percentage or dollar amount); adding a request for information on beneficiary type (*i.e.*, individual, charity, or non-profit) and adding, for charitable or non-profit organizations, a request that the respondent indicate whether the charity

or non-profit is recognized by the IRS. The FDIC believes that the changes to Form 7200/05 do not render it any more or less burdensome than the existing form; therefore, the estimated time to complete the form is unchanged. There is, however, an estimated decrease (of 200) in the number of respondents because the form will no longer be used to collect information for irrevocable trusts. With respect to Form 7200/09, the FDIC is proposing to eliminate the request for information regarding the relationship of each beneficiary to the grantors; eliminate the requirement to provide a date of death for any named beneficiaries who are deceased; add a request for information on beneficiary

type (i.e., individual, charity, or non-profit) and add, for charitable or non-profit organization beneficiaries, a request that the respondent indicate whether the charity or non-profit is recognized by the IRS. The FDIC believes that changes to Form 7200/09 do not render it any more or less burdensome than the existing form; therefore, the current burden estimates remain unchanged. With respect to new Form 7200/18, it does collect information regarding irrevocable trusts that previously was collected on Form 7200/05. However, unlike old Form 7200/05, new Form 7200/18 does not request information on the ownership interest (percentage or dollar amount) of beneficiaries, or the date of death or any deceased beneficiaries, but does collect information on the beneficiary type (i.e., individual, charity or non-profit) and, for charitable or non-profit organizations, on whether the entity is recognized by the IRS. The estimated response time for new Form 7200/18 is 30 minutes and the estimated number of respondents is 200.

Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 19th day of November 2009.

Valerie J. Best,

Assistant Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. E9-28130 Filed 11-23-09; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0132]

Federal Acquisition Regulation; Information Collection; Contractors' Purchasing Systems Reviews

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning contractors' purchasing systems reviews (CPSRs).

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before January 25, 2010.

ADDRESSES: Submit comments, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Rhonda Cundiff, Procurement Analyst, Contract Policy Branch, GSA, (202) 501-0044 or e-mail Rhonda.cundiff@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective of a contractor purchasing systems review (CPSR), as discussed in Part 44 of the FAR, is to evaluate the efficiency and effectiveness with which the contractor spends

Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

B. Annual Reporting Burden

Number of Respondents: 1,580.

Responses per Respondent: 1.

Total Responses: 1,580.

Average Burden per Response: 17.

Total Burden Hours: 26,860.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0132, Contractors' Purchasing Systems Reviews, in all correspondence.

Dated: November 17, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9-28192 Filed 11-23-09; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0007]

Federal Acquisition Regulation; Information Collection; Summary Subcontract Report

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning summary subcontract report.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on

valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 25, 2010.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Rhonda Cundiff, Procurement Analyst, Contract Policy Branch, GSA, (202) 501-0044 or email Rhonda.cundiff@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with the Small Business Act (15 U.S.C. 631, *et seq.*), contractors receiving a contract for more than \$10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed \$500,000 (\$1 million for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and are implemented in FAR Subpart 19.7.

B. Annual Reporting Burden

Number of Respondents: 4,253.

Responses per Respondent: 1.66.

Total Responses: 7,059.

Average Burden Hours per Response: 15.90.

Total Burden Hours: 112,253.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control Number 9000-0007, Summary Subcontract Report, in all correspondence.

Dated: November 16, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9-28193 Filed 11-23-09; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

[OMB Control No. 9000-0083]

**Federal Acquisition Regulation;
Submission for OMB Review;
Qualification Requirements**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of reinstatement request for an information collection requirement regarding an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to reinstate a previously approved information collection requirement concerning Qualification Requirements.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 25, 2010.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503 and a copy to General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000-0083, Qualification Requirements, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Millisa Gary, Procurement Analyst, Contract Policy Branch, GSA, (202) 501-0699 or Millisa.gary@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Qualified Products Program, an end item, or a component thereof, may be required to be prequalified. The solicitation at FAR 52.209-1, Qualification Requirements, requires offerors who have met the qualification requirements to identify the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known).

The contracting officer uses the information to determine eligibility for award when the clause at 52.209-1 is included in the solicitation. The offeror must insert the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known). Alternatively, items not yet listed may be considered for award upon the submission of evidence of qualification with the offer.

B. Annual Reporting Burden

Respondents: 2,207.

Responses per Respondent: 100.

Annual Responses: 220,700.

Hours per Response: .25.

Total Burden Hours: 55,175.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC, 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0083, Qualification Requirements, in all correspondences.

Dated: November 17, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9-28182 Filed 11-23-09; 8:45 am]

BILLING CODE 6820-EP-P

**GENERAL SERVICES
ADMINISTRATION**

[FMR Bulletin PBS-2009-B3]

**Federal Management Regulation;
Resignations of Federal Buildings**

AGENCY: Public Buildings Service (P), GSA.

ACTION: Notice of a bulletin.

SUMMARY: The attached bulletin announces the redesignation of a Federal building.

Expiration Date: This bulletin expires May 2010. However, the building redesignations announced by this bulletin will remain in effect until canceled or superseded.

FOR FURTHER INFORMATION CONTACT: U.S. General Services Administration, Public Buildings Service (P), Attn: Anthony E. Costa, 1800 F Street, NW., Washington, DC 20405; e-mail: anthony.costa@gsa.gov; telephone: (202) 501-1100.

Dated: November 10, 2009.

Paul F. Prouty,
Acting Administrator of General Services.

U.S. General Services Administration
FMR Bulletin PBS-2009-B3;
Redesignations of Federal Buildings

To: Heads of Federal Agencies.
Subject: Designations and Redesignations of Federal Buildings.

1. *What is the purpose of this bulletin?* This bulletin announces the redesignation of a Federal building.

2. *When does this bulletin expire?* This bulletin expires May 2010. However, the building redesignation announced in this bulletin will remain in effect until canceled or superseded.

3. *Redesignation.* The former and new names of the redesignated building are as follows:

Former Name: Federal Building and United States Courthouse, 211 East 7th Avenue, Eugene, OR 97401.

New Name: Federal Building, 211 East 7th Avenue, Eugene, OR 97401.

4. *Whom should we contact for further information regarding redesignation of this Federal building?*

U.S. General Services Administration, Public Buildings Service (P), Attn: Anthony E. Costa, 1800 F Street, NW., Washington, DC 20405; telephone number: (202) 501-1100; e-mail: anthony.costa@gsa.gov.

Paul F. Prouty,
Acting Administrator of General Services.

[FR Doc. E9-28184 Filed 11-23-09; 8:45 am]

BILLING CODE 6820-23-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Program Performance Standards—Final rule.

OMB No.: 0970-0148.

Description: Head Start Program Performance Standards require Head Start and Early Head Start Programs and Delegate Agencies to maintain program records. The Administration for Children and Families, Office of Head Start, is proposing to renew, without changes, the authority to require certain record keeping in all programs as provided for in 45 CFR part 1304 Head Start Program Performance Standards. These standards prescribe the services that Head Start and Early Head Start programs provide to enrolled children and their families.

Respondents: Head Start and Early Head Start grantees and delegate agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Standard	2,590	16	41.80	1,732,192

Estimated Total Annual Burden Hours: 1,732,192.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address:* infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**.

Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-7245,

Attn: Desk Officer for the Administration for Children and Families.

Dated: November 18, 2009.

Robert Sargis,
Reports Clearance Officer.

[FR Doc. E9-28085 Filed 11-23-09; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Procedures for Requests to use Child Care and Development Fund for Construction or Major Renovation of Child Care Facilities.

OMB No.: 0970-0160.

Description: The Child Care and Development Block Grant Act, as

amended, allows Indian Tribes to use Child Care and Development Fund (CCDF) grant awards for construction and renovation of child care facilities. A tribal grantee must first request and receive approval from the Administration for Children and Families (ACF) before using CCDF funds for construction or major renovation. This information collection contains the statutorily-mandated uniform procedures for the solicitation and consideration of requests, including instructions for preparation of environmental assessments in conjunction with the National Environmental Policy Act. The proposed draft procedures update the procedures that were originally issued in August 1997 and last updated in May 2007. Respondents will be CCDF tribal grantees requesting to use CCDF funds for construction or major renovation.

Respondents: Tribal Child Care Lead Agencies acting on behalf of Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Construction or Major Renovation of Tribal Child Care Facilities	10	1	20	200

Estimated Total Annual Burden Hours: 200.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should

be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-7245, Attn: Desk Officer for the Administration for Children and Families.

Dated: November 19, 2009.
Robert Sargis,
Reports Clearance Officer.
 [FR Doc. E9-28187 Filed 11-23-09; 8:45 am]
BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Eligibility Verification.

OMB No.: New Collection.

Description: The requirements for establishing proof of eligibility for the enrollment of children in Head Start programs are documented in 45 CFR 1305.4 (e). Each child's record must include a signed document by an employee identifying those documents which were reviewed to determine eligibility. Presently there is no uniform document which the employee must sign. This form will be used to facilitate an efficient and accurate determination of childrens' eligibility for Head Start enrollment.

Respondents: Head Start grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Eligibility Verification	1,600	750	0.08	96,000

Estimated Total Annual Burden Hours: 96,000

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-7245, Attn: Desk Officer for the

Administration for Children and Families.

Dated: November 18, 2009.
Robert Sargis,
Reports Clearance Officer.
 [FR Doc. E9-28105 Filed 11-23-09; 8:45 am]
BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Advisory Committee on Childhood Lead Poisoning Prevention, Department of Health and Human Services, has been renewed for a 2-year period through October 31, 2011.

For information, contact Dr. Mary Jean Brown, Designated Federal Officer, Advisory Committee on Childhood Lead Poisoning Prevention, Department of Health and Human Services, 1600 Clifton Road, NE., M/S F60, Atlanta, GA 30333, Telephone: 770/488-7492 or Fax 770/488-3635.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 13, 2009.
Elaine L. Baker,
Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.
 [FR Doc. E9-28073 Filed 11-23-09; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Office of the Director (OD)/Office of the Chief of Public Health Practice (OCPHP)/Office of Minority Health and Health Disparities (OMHD)

In accordance with Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of September 23, 2004, Consultation and Coordination with Indian Tribal Governments, the Centers for Disease Control (CDC) OD/OCPHP/OMHD announces the following meeting and Tribal Consultation Session:

Name: Tribal Consultation Advisory Committee (TCAC) Meeting and the 4th Biannual Tribal Consultation Session.

Times and Dates: TCAC Meeting on January 26–27, 2010 from 8 a.m.–5:30 p.m. and the 4th Biannual CDC Tribal Consultation Session on January 28, 2010 from 8–6 p.m.

Place: CDC Headquarters, 1600 Clifton Road NE., Building 19, Room 3B; Atlanta, GA 30329.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 125 people.

Purpose: CDC established their Tribal Consultation Policy in October of 2005 with the primary purpose of providing guidance across the agency to work effectively with American Indian/Alaska Native (AI/AN) tribes, communities, and organizations to enhance AI/AN access to CDC programs. In October of 2005, an Agency Advisory Committee (CDC/ATSDR Tribal Consultation Advisory Committee—TCAC) was established to provide a complementary venue wherein tribal representatives and CDC staff will exchange information about public health issues in Indian Country, identifying urgent public health issues in Indian country, and discuss collaborative approaches to these issues. Within the CDC Consultation Policy, it is stated that CDC will conduct government-to-government consultation with elected tribal officials or their designated representatives and also confer with tribal and Alaska Native organizations and AI/AN urban and rural communities before taking actions and/or making decisions that affect them. Consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension. CD believes that consultation is integral to a deliberative process that results in effective collaboration and informed decision making with the ultimate goal of reaching consensus on issues. Although formal responsibility for the agency's overall government-to-government consultation activities rests within the Office of the Director (OD), other

OD Offices and National Center leadership shall actively participate in TCAC meetings and HHS-sponsored regional and national tribal consultation sessions as frequently as possible.

Matters To Be Discussed: The TCAC will convene their advisory committee meeting with discussions and presentations from various CDC senior leadership on activities and areas identified by TCAC members and other tribal leaders as priority public health issues. The Biannual Tribal Consultation Session will engage CDC Senior leadership from the Office of the Director and various CDC Offices and National Centers including the Financial Management Office (FMO), National Center for Environmental Health and the Agency for Toxic Substances (NCEH/ATSDR), Coordinating Office for Terrorism and Preparedness and Emergency Response (COTPER), Office of Enterprise Communications (OEC), and the proposed Office of State and Local Support. Opportunities will be provided during the Consultation Session for tribal testimony. Tribal Leaders are encouraged to submit written testimony by COB on January 15, 2010 to CAPT Pelagie (Mike) Snesrud, Senior Tribal Liaison for Policy and Evaluation, Office of Minority Health and Health Disparities, 1600 Clifton Road NE., MS E-67 Atlanta, GA 30329, telephone 404-498-2343, e-mail: pws8@cdc.gov, fax 404-498-2355. Depending on the time available it may be necessary to limit the time of each presenter.

Please reference the web links of <http://www.cdc.gov/omhd/TCAC/AAC.html> and <http://www.cdc.gov/omhd/TCP/Consultations/BiannualConsultations.htm> to review information about the TCAC and CDC's Tribal Consultation Policy.

FOR FURTHER INFORMATION CONTACT:

Capt. Pelagie (Mike) Snesrud, Senior Tribal Liaison for Policy and Evaluation, Office of Minority Health and Health Disparities, 1600 Clifton Road, NE., Mailstop E-67, Atlanta, GA 30333, telephone (404)498-2343, fax (404)498-2355, e-mail: pws8@cdc.gov.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: November 13, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9-28139 Filed 11-23-09; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I-212; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I-212, Application for Permission To Reapply for Admission into the United States after Deportation or Removal; OMB Control No. 1615-0018.

The Department Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 25, 2010.

During this 60-day period, USCIS will be evaluating whether to revise the Form I-212. Should USCIS decide to revise Form I-212 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I-212.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Officer, 111 Massachusetts Avenue, NW., Washington, DC 20529-2210. Comments may also be submitted to DHS via facsimile to 202-272-8352 or via e-mail at rfs.regs@dhs.gov. When submitting comments by e-mail, please make sure to add OMB Control No. 1615-0018 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-212; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information provided on Form I-212 is used by USCIS to adjudicate applications filed by aliens requesting consent to reapply for admission to the United States after deportation, removal or departure, as provided under section 212 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 4,200 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8,400 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: <http://www.regulations.gov/>.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529-2210, Telephone number 202-272-8377.

Dated: November 18, 2009.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9-28111 Filed 11-23-09; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I-191; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I-191, Application for Advance Permission to Return to Unrelinquished Domicile; OMB Control No. 1615-0016.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 25, 2010.

During this 60-day period, USCIS will be evaluating whether to revise the Form I-191. Should USCIS decide to revise Form I-191 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I-191.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Officer, 111 Massachusetts Avenue, NW., Washington, DC 20529-2210.

Comments may also be submitted to DHS via facsimile to 202-272-8352 or via e-mail at rfs.regs@dhs.gov. When submitting comments by e-mail, please make sure to add OMB Control No. 1615-0016 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Advance Permission to Return to Unrelinquished Domicile.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-191; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I-191 is necessary for USCIS to determine whether the applicant is eligible for discretionary relief under section 212(c) of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 300 responses at 15 minutes (.25) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 75 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: <http://www.regulations.gov/>.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529-2210, Telephone number 202-272-8377.

Dated: November 18, 2009.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9-28112 Filed 11-23-09; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I-929; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant; OMB Control No. 1615-0106.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 25, 2010.

During this 60-day period, USCIS will be evaluating whether to revise the Form I-929. Should USCIS decide to revise Form I-929 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I-929.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Officer, 111 Massachusetts Avenue, NW., Washington, DC 20529-2210. Comments may also be submitted to DHS via facsimile to 202-272-8352 or via e-mail at rfs.regs@dhs.gov. When submitting comments by e-mail, please make sure to add OMB Control No. 1615-0106 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Petition for Qualifying Family Member of a U-1 Nonimmigrant.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-929; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Section 245(m) of the Immigration and Nationality Act (Act) allows certain qualifying family members who have never held U nonimmigrant status to seek lawful permanent residence or apply for immigrant visas. Before such family members may apply for adjustment of status or seek immigrant visas, the U-1 nonimmigrant who has been granted adjustment of status must file an immigrant petition on behalf of the qualifying family member using Form I-929. Form I-929 is necessary for USCIS to make a determination that the eligibility requirements and conditions are met regarding the qualifying family member.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: <http://www.regulations.gov/>.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529-2210, Telephone number 202-272-8377.

Dated: November 18, 2009.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9-28113 Filed 11-23-09; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS-2009-OMM-0006]

MMS Information Collection Activity: 1010-0091, Facilities Located Seaward of the Coast Line; Extension of a Collection, Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of an information collection (1010-0091).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR 254, Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by December 24, 2009.

ADDRESSES: You should submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010-0091), either by fax (202) 395-5806 or e-mail (OIRA_DOCKET@omb.eop.gov).

Please also send a copy to MMS by either of the following methods:

- <http://www.regulations.gov>. In the entry titled "Enter Keyword or ID," enter docket ID MMS-2009-OMM-0006 then click search. Under the tab "View By Docket Folder" you can submit public comments and view supporting and related materials available for this collection of information. Include your name and address. Submit comments to <http://www.regulations.gov> by December 24, 2009. The MMS will post all comments.

- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please

reference "Information Collection 1010-0091" in your comment and include your name and address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787-1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the ICR and the regulation that requires the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 254, Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.

OMB Control Number: 1010-0091.

Abstract: The Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990 (OPA), requires that a spill-response plan be submitted for offshore facilities prior to February 18, 1993. The OPA specifies that after that date, an offshore facility may not handle, store, or transport oil unless a plan has been submitted. This authority and responsibility are among those delegated to the Minerals Management Service (MMS) by Executive Order 12777. Regulations at 30 CFR 254 establish requirements for spill-response plans for oil-handling

facilities seaward of the coast line, including associated pipelines.

The MMS uses the information collected under 30 CFR 254 to determine compliance with OPA by owners/operators. Specifically, MMS needs the information to:

- Determine effectiveness of the spill-response capability of owners/operators.
- Review plans prepared under the regulations of a State and submitted to MMS to satisfy the requirements to ensure that they meet minimum requirements of OPA.
- Verify that personnel involved in oil-spill response are properly trained and familiar with the requirements of the spill-response plans and to witness spill-response exercises.
- Assess the sufficiency and availability of contractor equipment and materials.
- Verify that sufficient quantities of equipment are available and in working order.
- Oversee spill-response efforts and maintain official records of pollution events.
- Assess the efforts of owners/operators to prevent oil spills or prevent substantial threats of such discharges.

No proprietary, confidential, or sensitive information is collected. However, we will protect any information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. Responses are mandatory.

Frequency: On occasion, monthly, annually, biennially, and triennially.

Estimated Number and Description of Respondents: Respondents comprise owners or operators of facilities located in both State and Federal waters seaward of the coast line and oil spill response companies.

Estimated Reporting and Recordkeeping "Hour" Burden: The estimated annual hour burden for this information collection is a total of 35,070 hours. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 254 and NTLs	Reporting requirement	Hour burden	Average No. of annual responses	Annual burden hours
Subpart A—General				
1(a) thru (d); 2(a); 3 thru 5; 7; 20 thru 29; 44(b).	Submit spill response plan for OCS facilities and related documents.	120	26 new plans	3,120
1(e)	Request MMS jurisdiction over facility landward of coast line (no recent request received).	0.5	2 requests	1
2(b)	Submit certification of capability to respond to worst case discharge or substantial threat of such.	15	1 certification	15
2(c); 30	Submit revised spill response plan for OCS facilities at least every 2 years; notify MMS of no change.	36	177 revised plans	6,372
2(c)	Request deadline extension for submission of revised plan.	1	1 No change	1
8	Appeal MMS orders or decisions	4	11 extensions	44
		Exempt under 5 CFR 1320.4(a)(2), (c)		0
Subtotal			218 responses	9,553
Subpart C—Related Requirements for OCS Facilities				
40	Make records of all OSRO-provided services, equipment, personnel available to MMS.	5	20 records	100
41	Conduct annual training; retain training records for 2 years.	25	197 owners/operators	4,925
42(a) thru (e)	Conduct triennial response plan exercise; retain exercise records for 3 years.	110	134 exercises	14,740
42(f)	Inform MMS of the date of any exercise (triennial)	1	170 notifications	170
43	Inspect response equipment monthly; retain inspection & maintenance records for 2 years.	3.5	55 inspections x 12 months = 660.	2,310
46(a) NTL	Notify NRC of all oil spills from owner/operator facility	Burden would be included in the NRC inventory		0
46(b)	Notify MMS of oil spills of one barrel or more from owner/operator facility; submit follow-up report; after catastrophic event may be requested to meet w/ MMS to discuss storm recovery strategies/pollution.	2	61 notifications & reports.	122
46(c)	Notify MMS & responsible party of oil spills from operations at another facility.	2	24 notifications	48

Citation 30 CFR 254 and NTLs	Reporting requirement	Hour burden	Average No. of annual responses	Annual burden hours
Subtotal .....	.....	.....	1,266 responses	22,415
Subpart D—Oil Spill Response Requirements for Facilities Located in State Waters Seaward of the Coast Line				
50; 51	Submit response plan for facility in State waters by modifying existing OCS plan.	42	10 plans	420
50; 52	Submit response plan for facility in State waters following format for OCS plan.	100	9 plans	900
50; 53	Submit response plan for facility in State waters developed under State requirements.	89	18 plans	1,602
54	Submit description of oil-spill prevention procedures and demonstrate compliance.	5	36 submissions	180
Subtotal .....	.....	.....	73 responses	3,102
Total Hour Burden	.....	.....	1,557 responses	35,070

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no paperwork non-hour cost burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency “* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *”. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on May 1, 2009, we published a **Federal Register** notice (74 FR 20332) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, 30 CFR 254.9 displays the OMB control number, specifies that the public may comment at anytime on the collection of information required in the 30 CFR 254 regulations, and provides the address to which they should send

comments. We have received no comments in response to those efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by December 24, 2009.

Public Comment Procedures: 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.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: October 21, 2009.
E.P. Danenberger,
Chief, Office of Offshore Regulatory Programs.
 [FR Doc. E9–28178 Filed 11–23–09; 8:45 am]
BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO35000.L1430000.FR0000.24–1A; OMB Control Number 1004–0029]

Information Collection; Color-of-Title Application

AGENCY: Bureau of Land Management.
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 1004–0029 under the Paperwork Reduction Act. The respondents are individuals, groups, and corporations who provide information to the BLM in support of applications for land under the Color-of-Title Act.

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 December 24, 2009.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0029), 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: Bureau Information Collection Clearance Officer (WO–630), Department of the Interior, 1849 C Street, N.W., 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: Alzata L. Ransom, Lands and Realty Group, at (202) 912–7341. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8339, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION:
Title: Color-of-Title Application (43 CFR Subparts 2540 and 2541).
OMB Number: 1004–0029.
Abstract: The Bureau of Land Management proposes to extend the

currently approved collections of information, which enable the agency to determine whether or not applicants are qualified to obtain tracts of public land due to peaceful, adverse possession in good faith for more than 20 years.

60-Day Notice: On May 21, 2009, the BLM published a 60-day notice (74 FR 23879) requesting comments on the proposed information collection. The comment period ended on July 20, 2009. One comment was received. The comment did not address, and was not germane to, this information collection; rather, it was a general invective about the Department of the Interior, the BLM, and Washington politicians. Therefore, we have no response to the comment.

Current Action: This proposal is being submitted to extend the expiration date of November 30, 2009.

Type of Review: 3-year extension.

Affected Public: Individuals, groups, and corporations.

Obligation to Respond: Required to obtain or retain benefits.

Annual Responses: 10.

Annual Burden Hours: 30.

A filing fee of \$10 is associated with each of these information collections. The BLM requests comments on the following subjects:

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 collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be 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 1004-0029 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,

Acting Information Collection Clearance Officer.

[FR Doc. E9-28180 Filed 11-23-09; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029-0057 and 1029-0087

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for 30 CFR Part 882—Reclamation of private lands; and Form OSM-76—Abandoned Mine Land Problem Area Description form. These information collection activities were previously approved by the Office of Management and Budget (OMB), and assigned clearance numbers 1029-0057 and 1029-0087, respectively.

DATES: Comments on the proposed information collection must be received by January 25, 2010.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202-SIB, Washington, DC 20240. Comments may also be submitted electronically to jtrelease@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To receive a copy of either information collection request, contact John A. Trelease, at (202) 208-2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in (1) 30 CFR Part 882, Reclamation on private lands; and (2) Form OSM-75, Abandoned Mine Land Problem Area Description form. OSM

will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submissions of the information collection requests to OMB.

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.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; (4) the Bureau form number; and (5) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: 30 CFR Part 882—Reclamation on Private Lands.

OMB Control Number: 1029-0057.

Summary: Public Law 95-87 authorizes Federal, State, and Tribal governments to reclaim private lands and allows for the establishment of procedures for the recovery of the cost of reclamation activities on privately owned lands. These procedures are intended to ensure that governments have sufficient capability to file liens so that certain landowners will not receive a windfall from reclamation.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State governments and Indian tribes.

Total Annual Responses: 1.

Total Annual Burden Hours: 120.

Title: OSM-76—Abandoned Mine Land Problem Area Description Form.

OMB Control Number: 1029-0087.

Summary: This form will be used to update the Office of Surface Mining Reclamation and Enforcement's inventory of abandoned mine lands. From this inventory, the most serious problem areas are selected for

reclamation through the apportionment of funds to States and Indian tribes.

Bureau Form Number: OSM-76.

Frequency of Collection: On occasion.

Total Annual Responses: 1,800.

Total Annual Burden Hours: 4,000.

Description of Respondents: State governments and Indian tribes.

Dated: November 17, 2009.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. E9-28089 Filed 11-23-09; 8:45 am]

BILLING CODE 4310-05-M

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 Final Environmental Impact Statement (Final EIS).

SUMMARY: The Bureau of Reclamation, as the National Environmental Policy Act Federal lead agency, has prepared the Delta-Mendota Canal/California Aqueduct Intertie (Intertie) Final EIS. The Intertie is a proposed action in the August 2000 CALFED Bay-Delta Program Programmatic Record of Decision. The Intertie Final 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 Central Valley Project's (CVP) Jones Pumping Plant to less than its authorized pumping capacity of 4,600 cubic feet per second.

A notice of availability of the Draft EIS was published in the **Federal Register** on July 14, 2009 (74 FR 34031). The written comment period on the Draft EIS ended on August 31, 2009. The Final EIS contains responses to all comments received and reflects comments and any additional information received during the review period.

DATES: Reclamation will not make a decision on the Proposed Action until at least 30 days after release of the Final EIS. After the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all the factors leading to that decision.

ADDRESSES: Copies of the Final EIS may be requested from Mr. Louis Moore, Bureau of Reclamation, 2800 Cottage

Way, Sacramento, CA 95825; by calling 916-978-5106 (TDD 916-978-5608); or by e-mailing wmoore@usbr.gov. The Final EIS is also accessible from the following Web site: <http://www.usbr.gov/mp/intertie/docs/index.html>.

FOR FURTHER INFORMATION CONTACT: Mr. Louis Moore at the phone number or e-mail address above.

SUPPLEMENTARY INFORMATION: The Final 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 Final EIS evaluates constructing and operating a pipeline connecting between the 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 Final 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.

Public hearings were held on August 4, 2009 in Sacramento, California and on August 5, 2009 in Stockton, California.

Copies of the Final 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.

Before including your name, address, phone number, e-mail address, or other personal identifying information in any correspondence, you should be aware that your entire correspondence, including your personal identifying

information, may be made publicly available at any time. While you can ask us in your correspondence to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 30, 2009.

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. E9-28138 Filed 11-23-09; 8:45 am]

BILLING CODE 4310-MN-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB02000.L51010000.ER0000.F0900080; NVN-86292; 09-08807; TAS:14X5017]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Tonopah Solar Energy, LLC Crescent Dunes Solar Energy Project, Nye County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management (BLM), Battle Mountain District Office, Tonopah Field Office, Nevada intends to prepare an environmental impact statement (EIS) for the Crescent Dunes Solar Energy Project located on public lands in Nye County, Nevada.

DATES: Submit comments on or before December 24, 2009. The BLM will announce public scoping meetings to identify relevant issues through local news media and the BLM Web site, http://www.blm.gov/nv/st/en/fo/battle_mountain_field.html, at least 15 days prior to each meeting. The BLM will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments on issues related to the proposed project by the following methods:

- *E-mail:* crescent_dunes@blm.gov
- *Fax:* (775) 482-7810 (attention: Tim Coward)
- *Mail or Hand Delivery:* Bureau of Land Management, Tonopah Field Office, Attn: Tim Coward, Project Manager, 1553 South Main Street, P.O. Box 911, Tonopah, NV 89049.

Documents pertinent to this project may be examined at the Tonopah Field Office.

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to the mailing list, contact Tim Coward, (775) 482-7800, or e-mail crescent_dunes@blm.gov.

SUPPLEMENTARY INFORMATION: Tonopah Solar Energy, LLC has submitted a right-of-way application to the BLM to build a solar power generation facility, with a net generating capacity of up to 180 megawatts (MW) of electricity based on concentrating solar power technology (CSP). The proposed solar power plant, including the heliostat array, power tower, power block, and associated facilities would be built on about 1,600 acres of public land, northwest of Tonopah, Nevada. The project is proposed to be built entirely on lands administered by the BLM Battle Mountain District, Tonopah Field Office.

The solar facility would include a large field of heliostats or mirrors to reflect the sun's energy onto a central solar receiver or tower; a conventional steam turbine to generate electricity; thermal storage tanks to store hot and cold liquid salt; a hybrid cooling system; associated equipment such as pumps, transformers, heat exchangers, and buildings; and associated linear facilities including an eight-mile transmission line, access road and possible water supply pipeline.

The heliostat array would be a circular field with a radius of approximately 4,400 feet. The proposed array would consist of approximately 17,350 heliostats, each approximately 670 square feet in size. The heliostats would be arranged in arcs around the central solar receiver or tower. The central solar receiver or tower would be a concrete structure, approximately 538 feet high, supporting a cylindrical receiver, approximately 95 feet tall. The total height of the receiver would be approximately 633 feet. A 20-foot tall maintenance crane would be mounted on top of the receiver. The primary components of the power block include a solar steam generator system; a solar preheater; an evaporator; a steam turbine; and feedwater heaters. A hybrid cooling system would be employed at the site. The hybrid cooling system would consist of an air-cooled condenser augmented with a wet cooling system designed to minimize water consumption. The proposal includes a thermal storage system using liquid salt held in tanks to store solar heat energy for later steam generation, as well as associated pumps and piping.

The bulk of the electric power produced by the facility would be transmitted to the electric grid under the control of the Sierra Pacific Power Company, doing business as NV Energy, and delivered to the Anaconda 230-kilovolt (kV) Substation, located about 8 miles north of the site. A high voltage overhead transmission line would be

constructed to deliver power from the plant switchyard to the Anaconda substation. It is proposed that the new transmission line would parallel an existing transmission line that crosses the northwest corner of the site. Access to the site would be provided from State Route 89. Buildings and enclosures planned for the project include a steam generator area building, a steam turbine enclosure building, an electrical building, an administration and maintenance building, and a heliostat assembly building with a warehouse. On-site storage for spare components would be required for maintenance uses. In addition, on-site storage facilities for water pretreatment chemicals, cooling water treatment chemicals, and boiler water treatment chemicals would be necessary. The proposed project would be designed for a life of 30 years.

The EIS will analyze the site-specific impacts of the proposed project on air quality, biological resources (including special status species) cultural resources, water resources, geological resources, paleontological resources, public health, socioeconomics, soils, traffic and transportation, and visual resources. It will also analyze the geological hazards, hazardous materials handling, land use, waste management, and worker safety and fire protection potentially associated with the proposed project. Native American Tribal consultations will be conducted and Tribal concerns will be given due consideration. The EIS will include the consideration of any impacts on Indian trust assets.

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. Federal, State, and local agencies, as well as individuals or organizations that may be interested in or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM, to participate as a cooperating agency.

Authority: 43 CFR Part 2800.

Thomas J. Seley,

Field Manager, Tonopah Field Office.

[FR Doc. E9-28188 Filed 11-23-09; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ9120000.L1220000.AL00006100 241A]

Notice of Reestablishment of Arizona Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reestablishment of Arizona Resource Advisory Council.

SUMMARY: Notice is hereby given that the Secretary of the Interior (Secretary) has reestablished the Bureau of Land Management (BLM) Resource Advisory Council for the state of Arizona.

FOR FURTHER INFORMATION CONTACT:

Allison Sandoval, Legislative Affairs and Correspondence (600), Bureau of Land Management, 1620 L Street, NW., MS-LS-401, Washington, DC 20036, telephone (202) 912-7434.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972, Public Law 92-463. The BLM has re-established the Arizona Advisory Council.

CERTIFICATION STATEMENT: I hereby certify that the reestablishment of the BLM Resource Advisory Councils is necessary and in the public interest in connection with the Secretary's responsibilities to manage the lands, resources, and facilities administered by the BLM.

Ken Salazar,

Secretary of the Interior.

[FR Doc. E9-28186 Filed 11-23-09; 8:45 am]

BILLING CODE 4310-32-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as a Reservation for the Nottawaseppi Huron and of Potawatomi Indians of Michigan

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation; Correction.

SUMMARY: The Bureau of Indian Affairs (BIA) published a document in the **Federal Register** of November 13, 2007, concerning the Assistant Secretary—Indian Affairs proclaiming approximately 78.26 acres as the Nottawaseppi Huron Band of Potawatomi Indian Reservation. The document contained an error in the legal description.

DATES: *Effective Date:* November 24, 2009.

FOR FURTHER INFORMATION CONTACT: Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, MS-4639 MIB, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208-7737.

SUPPLEMENTARY INFORMATION:

Corrections

In the **Federal Register** of November 13, 2007, in FR Doc. E7-22158, on page 63924, in the second column, line seven, change "North 60 degrees 2' 31" East" to "North 60 degrees 25' 31" East," such that line seven reads as follows:

Degrees 25' 31" East, 347.43 feet; thence.

Dated: October 21, 2009.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. E9-28157 Filed 11-23-09; 8:45 am]

BILLING CODE 4310-W7-P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Notice of Availability of Draft Environmental Impact Statement, Flood Control Improvements and Partial Levee Relocation, Presidio Flood Control Project, Presidio, TX

AGENCY: United States Section, International Boundary and Water Commission (USIBWC).

ACTION: Notice of Availability of Draft Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, the United States Section, International Boundary and Water Commission (USIBWC) has prepared a Draft Environmental Impact Statement (Draft EIS) for flood control improvements to the Presidio Flood Control Project, Presidio, Texas (Presidio FCP). The EIS analyzes potential impacts of the No Action Alternative and six action alternatives under consideration. Site-specific information is used to evaluate environmental consequences that may result from implementing improvements in the upper, middle and lower reaches of the Presidio FCP. The following environmental resources are assessed in the Draft EIS: Biological resources, cultural resources, water resources, land use, socioeconomic resources and transportation, environmental health issues (air quality, noise, public health, and environmental hazards), and

cumulative impacts. A public hearing will be held in the City of Presidio to receive comments on the Draft EIS from interested organizations and individuals through transcription by a certified court reporter. Written comments may be submitted at the public hearing, or mailed to the USIBWC during the public review period to the contact and address below.

DATES: Written comments are requested by January 12, 2010. The Draft EIS for the Presidio Flood Control Project will be available to agencies, organizations and the general public on November 20, 2009. A copy of the Draft EIS will be available for review at the City of Presidio Library, 2440 O'Reilly Street, Presidio, Texas 79845, and will also be posted at the USIBWC Web site at <http://www.ibwc.gov>. The USIBWC will conduct a public hearing at the Presidio Activities Center, 1200 East O'Reilly Street, Presidio, Texas 79845, on December 10, 2009, from 5 p.m. to 7 p.m. CST. The hearing date and location will also be announced in local newspapers two weeks prior to the hearing date.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Borunda, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C-100, El Paso, Texas 79902 or e-mail: danielborunda@ibwc.gov.

SUPPLEMENTARY INFORMATION: The Draft EIS analyzes potential effects of the No Action Alternative and flood control improvement alternatives for the Presidio FCP. The following six action alternatives are under consideration: (1) Retaining the current levee alignment, repairing structural levee damage and raising some levee segments as required to ensure full protection from a 25-year flood event; (2) 100-year flood protection of the City of Presidio and agricultural lands along the Presidio FCP by raising the levee system along its entire length and current alignment; (3) raising the entire levee system for 100-year flood protection, retaining current levee alignment in the upper and middle reaches of the Presidio FCP but partially relocating approximately 3.4 miles of the levee in the lower reach; (4) 100-year flood protection of the City of Presidio by raising the levee system in the upper and middle reaches of the Presidio FCP, in conjunction with a new 1.3-mile spur levee starting at mile 9.2 to connect the raised levee section to elevated terrain south of the City of Presidio; a 25-year flood protection would be retained in the lower reach along agricultural lands; (5) 100-year flood protection of the City of Presidio

by raising in place the levee system along the upper and middle reaches of the Presidio FCP, constructing a new 1.4-mile spur levee at mile 8.5, and retaining the 25-year flood protection in the lower reach; and (6) raising the levee along the upstream sections of the levee system to provide 100-year flood protection to the City of Presidio and retaining the 25-year flood protection of agricultural lands in the lower reach, as in the two previous alternatives, and constructing a new 2.9-mile-long spur levee in the middle reach, starting at levee mile 7.3, along a railroad track.

Five copies of the Draft EIS for the Presidio FCP have been filed with USEPA, Region 6 Office of Federal Activities, in accordance with 40 CFR parts 1500-1508 and USIBWC procedures. The public comment period of the Draft EIS will end January 12, 2010.

Dated: November 18, 2009.

Pamela Barber,

Legal Counsel.

[FR Doc. E9-28136 Filed 11-23-09; 8:45 am]

BILLING CODE 7010-01-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Mohammed F. Abdel-Hameed, M.D.; Revocation of Registration

On April 4, 2008, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Mohammed F. Abdel-Hameed, M.D. (Respondent), of Orlando, Florida. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BA6015158, as a practitioner, and proposed the denial of any pending applications for modification or renewal of the registration, on the ground that Respondent's "continued registration is inconsistent with the public interest" as that term is defined in 21 U.S.C. 823(f) and 824(a)(4). Show Cause Order at 1.

The Show Cause Order specifically alleged that while Respondent is licensed as a physician only in Florida, he prescribed controlled substances for internet customers "throughout the United States from approximately June 2002, through September 2004, on the basis of online questionnaires and/or telephone consultations," such that he issued prescriptions "without a legitimate medical purpose and outside the usual course of professional practice, in violation of 21 CFR 1306.04(a) and 21 U.S.C. 841(a)(1)." *Id.*

at 1. The Show Cause Order further alleged that Respondent's writing of controlled substance prescriptions "violated state laws that prohibit the unauthorized practice of medicine, including unlicensed, out-of-state physicians issuing controlled substance prescriptions to state residents" in such States as California and Alabama. *Id.* at 1–2.

The Show Cause Order was served on Respondent by FedEx to Respondent's last-known address on April 11, 2008; on April 14, 2008, FedEx delivered the Order. GX 2, at 2; GX 3. Because more than 30 days have passed and neither Respondent, nor any other person purporting to represent him, has requested a hearing, I find that Respondent has waived his right to a hearing. 21 CFR 1301.43(d). I therefore enter this Decision and Final Order based on relevant evidence contained in the investigative file. *See* 21 CFR 1301.43(e), 1301.46.

Having considered the record in this matter, I find that Respondent's continued registration is inconsistent with the public interest. Accordingly, Respondent's registration will be revoked and any pending applications for renewal or modification will be denied. I make the following findings.

Findings

Respondent is the holder of DEA Certificate of Registration, BA6015158, which authorizes him to dispense controlled substances in schedules II through V, as a practitioner, with a registered location in Orlando, Florida. Respondent's registration does not expire until June 30, 2010.

Respondent earned a Ph.D. in genetics and an M.D. from the University of California. In 1990, Respondent began practicing medicine in the Orlando, Florida area. Throughout the time at issue in this proceeding, Respondent was licensed as a physician in only the State of Florida. GX 7, at 17; GX 10, at 2.

On November 4, 2004, two DEA Diversion Investigators (DIs) interviewed Respondent. GX 5, at 1. In the interview, Respondent indicated that sometime in late 2002, Ken Shobola, the sole owner of Ken Drugs, Inc. ("Ken Drugs"), contracted with him to work as an internet prescribing physician for Ken Drugs. *Id.*; GX 7, at 10. Respondent worked part-time—20 hours per week—for Ken Drugs/Kenady Medical Clinic,¹ for which he received

a bi-weekly paycheck. GX 5, at 2. Respondent handled both internet-initiated calls and some walk-in patients. *Id.*

Respondent also indicated to the DIs that he was operating under a Ken Drugs/Kenady Medical Clinic policy dated October 8, 2004, under which internet prescribing physicians are not expected to prescribe controlled substances to internet clients until the patients/clients are first seen by a physician or a physician's assistant. *Id.*

In September 2002, DEA, in conjunction with other law enforcement agencies, commenced a criminal investigation of various web sites which were believed to be engaged in the distribution of controlled substances in violation of federal law, as well as Ken Drugs, Kenadee Group, Inc., pharmacist Kenneth Shobola, and various physicians including Respondent. GX 7, at 14. As part of the investigation, on March 27, 2003, investigators conducted a trash run at the Ken Drugs pharmacy which was located on Waters Avenue in Tampa, Florida. *Id.* at 18. The investigators found prescription labels bearing the name "Dr. Fathi Hamid." *Id.* Subsequently, in June 2004, Investigators obtained records from the Kenady Medical Clinic, a Tampa-based clinic owed by Shobola, which included prescription records signed by "Hamid" and which bore Respondent's DEA registration number. *Id.* at 22.

As part of their investigation, DEA and the cooperating agencies conducted seventeen undercover purchases of controlled substance prescriptions and refills for hydrocodone, Xanax, and Soma. *Id.* at 18–19. Whether the officers initiated contact through <http://www.medsviaweb.com> or by contacting Ken Drugs directly, each purchase included the payment of \$120 or \$125 for a telephonic consultation fee with a purportedly licensed physician. *Id.* at 19. After payment of the fee, each undercover officer talked by telephone to an employee of Kenaday Group,² who advised the individual that he or she would have to fax his/her medical record accompanied by a photocopy of his/her driver's license. *Id.* Regardless of whether the officer actually faxed in his/her medical records, the employee would notify the individual that a doctor would soon be available for a consultation, after which, according to the employee, the prescribed controlled substances would arrive via UPS or

FedEx. *Id.* On all but one of the buys, the phone consultation was recorded and transcribed. *Id.*

Throughout the undercover purchases, officers dealt with one of three physicians but not with Respondent. *See Id.* In each instance, the telephonic consultation lasted only a few minutes. *Id.* at 19–20. In general, the physicians inquired whether the purchaser had faxed the requested medical records to Kenaday Group, the nature of the medical complaint, what drugs or medications the purchaser had taken in the past, and what medications the purchaser currently desired. *Id.* at 20.

The officers, however, rarely faxed in their medical records. *Id.* When they did, the purchaser's age conflicted with the age given on the photocopied driver's license. *Id.* Nevertheless, on each occasion, the physicians prescribed schedule III controlled substances containing hydrocodone, which was expeditiously shipped and delivered to the officer. *Id.* In no instance was an undercover officer required to obtain a physical examination by a doctor associated with Ken Drugs, Kenady Medical Clinic, or Kenaday Group. *Id.*

On October 7, 2003, the Winchester, Kentucky Police Department interviewed E.C., who had used eighteen names and seven addresses to receive drug shipments from Ken Drugs. *Id.* E.C. confessed that he was addicted to hydrocodone and that his source for controlled substances was Ken Drugs. *Id.* According to E.C., he initially consulted with one of the other three doctors, who requested that he send medical records. *Id.* at 20–21. Although E.C. never sent the requested records, Ken Drugs dispensed controlled substances to him. *Id.* at 21.

On November 20, 2003, the Cabell County, West Virginia Department of Public Safety detained C.W. for traffic violations. *Id.* In an interview, C.W. stated that he and his wife had been obtaining hydrocodone 7.5 mg. and 10 mg. tablets and Xanax 1 mg. and 2 mg. tablets from Ken Drugs. *Id.* In order to obtain a larger quantity of controlled substances, C.W. and his wife submitted to Ken Drugs the names, addresses, drivers' licenses, and medical records of friends and relatives, as well as falsified medical records including MRIs and test results which were obtained from internet sites. *Id.*

In June 2004, the law enforcement agencies obtained records from Kenady Medical Clinic corresponding to some of the fictitious names given by Mr. and Mrs. C.W. *Id.* at 22. Among these records were prescriptions written by

¹ Kenady Medical Clinic, Inc., is a Florida corporation incorporated by Kenneth Shobola in April 2002. In the period under consideration in this decision, Mr. Shobola was the president and registered agent of the corporation. GX 7, at 16.

² Kenadee Group, Inc., a/k/a Kenaday Group, is a Florida corporation incorporated by Kenneth Shobola in September 2000. GX 7, at 16, 19. Mr. Shobola was president of Kenadee Group. *Id.*

“Fathi Hamid” under Respondent’s DEA registration number. *Id.*

On September 21, 2004, a search warrant was executed at the Ken Drugs pharmacy on Habana Avenue in Tampa, Florida. The Investigators obtained computer records which showed that between the dates of September 4, 2002, and December 12, 2003, Respondent had issued 992 controlled substance prescriptions. Respondent issued these prescriptions to residents of 38 States and Puerto Rico.

More specifically, between April 2, 2003, and December 1, 2003, Respondent wrote 147 prescriptions for schedule III drugs containing hydrocodone and 13 diazepam prescriptions for residents of California. Between April 2, 2003, and December 4, 2003, he wrote 54 prescriptions for combination hydrocodone drugs for residents of Georgia. Between April 4, 2003, and December 11, 2003, he wrote 24 prescriptions for combination hydrocodone drugs for residents of Texas. Between June 2, 2003, and October 27, 2003, he wrote 21 prescriptions for combination hydrocodone drugs for residents of Alabama. Between April 4, 2003, and December 5, 2003, he wrote nineteen prescriptions for combination hydrocodone drugs for residents of North Carolina. *Id.*

Combination schedule III controlled substances containing hydrocodone heavily predominated in the 992 prescriptions Respondent wrote. As I have noted in numerous other decisions, the drugs are highly popular drugs with abusers. *See Southwood Pharmaceuticals, Inc.*, 72 FR 36487, 36504 (2007) (noting 2004 survey of the National Institute of Drug Abuse which found that “9.3 percent of twelfth graders reported using Vicodin, a brand name Schedule III controlled substance without a prescription in the previous year”); *William R. Lockridge*, 71 FR 77791, 77796 (2006) (noting that in 2002, the abuse of hydrocodone products resulted in more than 27,000 emergency room visits).

Discussion

Section 304(a) of the Controlled Substances Act (CSA) provides that a registration to “dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.” 21 U.S.C. 824(a)(4). In making the public interest determination, the

CSA requires consideration of the following factors:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant’s experience in dispensing * * * controlled substances.

(3) The applicant’s conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f).

“[T]hese factors are * * * considered in the disjunctive.” *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors, and I may give each factor the weight I deem appropriate in determining whether to revoke an existing registration. *Id.* Moreover, I am “not required to make findings as to all the factors.” *Hoxie v. DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall v. DEA*, 412 F.3d 165, 173–74 (DC Cir. 2005).

Having considered all of the factors, I acknowledge that the record contains no evidence that the State of Florida has taken action against Respondent’s medical license (factor one) or that Respondent has been convicted of an offense related to controlled substances (factor three).³ However, the record contains substantial evidence that Respondent’s experience in dispensing controlled substances (factor two) and his record of compliance with applicable Federal and state laws (factor four) is characterized by his repeated violation of the CSA’s prescription requirement, as well as his repeated violation of state laws and regulations prohibiting the unlicensed practice of medicine and setting the standards for prescribing controlled substances and dangerous drugs. Accordingly, I conclude that Respondent’s continued registration would be inconsistent with the public interest and will revoke his registration.

³This Agency has long held that a State’s failure to take action against a practitioner’s authority to dispense controlled substances is not dispositive in determining whether the continuation of a registration would be consistent with the public interest. *See Mortimer B. Levin*, 55 FR 8209, 8210 (1990). The absence of a criminal conviction is likewise not dispositive of the public interest inquiry. *See, e.g., Edmund Chein*, 72 FR 6580, 6593 n.22 (2007).

Factors Two and Four—Respondent’s Experience in Dispensing Controlled Substances and Record of Compliance With Applicable Controlled Substance Laws

The primary issue in this case is whether the controlled-substance prescriptions which Respondent wrote in 2003, pursuant to his arrangement with Ken Drugs/Kenady Medical Clinic, were lawful prescriptions under the CSA. Under a longstanding DEA regulation, a prescription for a controlled substance is not “effective” unless it is “issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.” 21 CFR 1306.04(a). This regulation further provides that “an order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of [21 U.S.C. 829] and * * * the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.” *Id.* As the Supreme Court recently explained: “The prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.” *Gonzalez v. Oregon*, 546 U.S. 243, 274 (2006) (citing *United States v. Moore*, 423 U.S. 122, 135, 143 (1975)).

Under the CSA, for a physician to act “in the usual course of * * * professional practice” and to issue a prescription for a “legitimate medical purpose,” he or she must be authorized to “practice medicine and to dispense drugs in connection with his [or her] professional practice,” and he or she must also have established a bona fide doctor-patient relationship with the individual for whom the prescription is written. *Moore*, 423 U.S. at 140–43. *See also Patrick W. Stodola*, 74 FR 20727, 20731 (2009); *Joseph Gaudio*, 74 FR 10083, 10090 (2009). *See also Dispensing and Purchasing Controlled Substances Over the Internet*, 66 FR 21181 (2001).

A “physician who engages in the unauthorized practice of medicine” under state laws—such as an out-of-state physician who lacks the license to prescribe to a State’s residents—“is not a practitioner acting in the usual course of * * * professional practice” under the CSA. *United Prescription Services, Inc.*, 72 FR 50397, 50407 (2007) (citing 21 CFR 1306.04(a)). This rule derives directly from the text of the CSA which

defines the term “practitioner” as “a physician * * * licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to * * * dispense * * * a controlled substance.” 21 U.S.C. 802(21). *See also Moore*, 423 U.S. at 140–41 (“In the case of a physician [the CSA] contemplates that *he is authorized by the State to practice medicine* and to dispense drugs in connecting with his professional practice.”) (emphasis added). A controlled-substance prescription issued by a physician who lacks the license or authority required to practice medicine within a State is therefore unlawful under the CSA. *See* 21 CFR 1306.04(a).

As to the issue of a bona fide doctor-patient relationship, at the time of the prescriptions at issue in this case, the CSA generally looked to state law to determine its elements.⁴ *See Stodola*, 74 FR at 20731; *Kamir Garces-Mejias*, 72 FR 54931, 54935 (2007); *see also* Dispensing and Purchasing Controlled Substances Over the Internet, 66 FR at 21182–83. As the DEA elaborated in the 2001 Guidance:

For purposes of state law, many state authorities, with the endorsement of medical societies, consider the existence of the following four elements as an indication that a legitimate doctor/patient relationship has been established:

- A patient has a medical complaint;
- A medical history has been taken;
- A physical examination has been performed; and
- Some logical connection exists between the medical complaint, the medical history, the physical examination, and the drug prescribed.

66 FR at 21182–83.

As found above, Respondent wrote 147 prescriptions for schedule III controlled substances containing hydrocodone and thirteen prescriptions for diazepam for residents of California between April 2, 2003, and December 1, 2003. These prescriptions were filled by Ken Drugs pursuant to Respondent’s

contractual arrangement with Ken Drugs/Kenady Medical Clinic.

In 2000, California enacted a law specifically prohibiting the prescribing or dispensing of a dangerous drug “on the Internet for delivery to any person in [California], without an appropriate prior examination and medical indication therefore, except as authorized by Section 2242.” Cal. Bus. & Prof. Code § 2242.1.⁵ Moreover, in 2003, the Medical Board of California expressly held that a “physician cannot do a good faith prior examination based on a history, a review of medical records, responses to a questionnaire and a telephone consultation with the patient, without a physical examination of the patient.” *In re John Steven Opsahl, M.D.*, Decision and Order, at 3 (Med Bd. Cal. 2003) (available by query at <http://publicdocs.medbd.ca.gov/pd1/mbc.aspx>). The California Board further held that “[a] physician cannot determine whether there is a medical indication for prescription of a dangerous drug without performing a physical examination.” *Id.*

In addition, well before Respondent’s issuance of the prescriptions, the California Board had cited an out-of-state physician for violating state law by prescribing to state residents through the internet. Citation Order, Carlos Gustavo Levy (Nov. 30, 2001). As Respondent did not hold a California license, he clearly violated California law and the CSA when he wrote controlled-substance prescriptions for California residents. Moreover, because Respondent did not perform physical examinations of the California residents, his prescriptions were not issued in the usual course of professional practice and lacked a legitimate medical purpose and thus violated the CSA for this reason as well. *See* 21 CFR 1306.04(a).

Respondent wrote 54 prescriptions to residents of Georgia for schedule III controlled substances which contain hydrocodone. Under Georgia law (which was in effect when he issued the prescriptions), an individual “who is physically located in another state” and who “through the use of any means, including electronic * * * or other means of telecommunication, through which medical information or data is transmitted, performs an act that is part of a patient care service located in this state * * * that would affect the diagnosis or treatment of the patient” is “engaged in the practice of medicine” in Georgia. Ga. Code Ann. § 43–34–31.1. Such practice of medicine requires the individual to have “a license to practice medicine in [Georgia]” and subjects him

or her to “regulation by the board.” *Id.* By issuing controlled substance prescriptions to Georgia residents via telephone and the internet without having a Georgia license to practice medicine, Respondent violated both Georgia law and the CSA.

In addition, under the regulation of the Georgia Composite State Board of Medical Examiners, it is “unprofessional conduct” to “[p]rovid[e] treatment and/or consultation recommendations via electronic or other means unless the licensee has performed a history and physical examination of the patient adequate to establish differential diagnoses and identify underlying conditions and/or contraindications to the treatment recommended.” Ga. Comp. R. & Regs. 360–3–.02(6) (2002). Respondent’s failure to perform a physical examination on the Georgia residents he prescribed to thus violated Georgia law and the CSA for this reason as well. *See* 21 CFR 1306.04(a).

Respondent wrote 24 prescriptions to residents of Texas for schedule III controlled substances containing hydrocodone. Texas law provides that individuals who are “physically located in another jurisdiction but who, through the use of any medium, including an electronic medium, perform[] an act that is part of a patient care service initiated in [Texas] * * * and that would affect the diagnosis or treatment of the patient” are engaged in the practice of medicine. Tex. Occup. Code § 151.056(a); *see also* Tex. Occup. Code § 155.001 (requiring a license to engage in the practice of medicine). In order to issue prescriptions for controlled substances, such individuals must also obtain a state registration to dispense such drugs, which in turn requires them to be licensed under the laws of Texas. Tex. Health & Safety Code §§ 481.061(a) & 481.063(d).

More specifically, Texas regulations provide that “[p]hysicians who treat and prescribe through the Internet are practicing medicine and must possess appropriate licensure in all jurisdictions where patients reside.” Tex. Admin. Code 174.4(c). Because Respondent was not licensed to practice medicine in Texas and did not hold a Texas Controlled Substances Registration, his prescriptions to the Texas residents violated Texas law and the CSA. *See* 1306.04(a).

Respondent issued 21 prescriptions to residents of Alabama for schedule III controlled substances containing hydrocodone. Notably, Alabama law defines the practice of medicine to mean “[t]o diagnose, treat, correct, advise or prescribe for any human disease,

⁴ On October 15, 2008, President Bush signed into law the Ryan Haight Online Pharmacy Consumer Protection Act of 2008, Public Law 110–425, 122 Stat. 4820 (2008). Section 2 of the Act prohibits the dispensing of a prescription controlled substance “by means of the Internet without a valid prescription,” and defines “[t]he term ‘valid prescription’ [to] mean[] a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by * * * a practitioner who has conducted at least 1 in-person medical evaluation of the patient.” 122 Stat. 4820. Section 2 further defines “the term ‘in-person medical evaluation’ [to] mean[] a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.” *Id.* These provisions do not, however, apply to Respondent’s conduct.

⁵ This statute became effective on January 1, 2001.

ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, by any means or instrumentality.” Ala. Code § 34–24–50(1). Under Alabama law, “the practice of medicine * * * across state lines” as it applies to “[t]he rendering of treatment to a patient located within [Alabama] by a physician located outside [Alabama] as a result of transmission of individual patient data by electronic or other means from this state to such physician or his or her agent” constitutes the “practice of medicine,” such that “[n]o person shall engage in the practice of medicine * * * across state lines in [Alabama]” unless he or she has “been issued a special purpose license to practice medicine * * * across state lines.” Ala. Code § 34–24–501 & 34–24–502(a). As Respondent did not possess a special purpose license from Alabama, his prescribing over the internet to these patients constituted violations of Alabama law. In issuing these controlled-substance prescriptions, Respondent acted outside the usual course of professional practice and violated the CSA. See 21 CFR 1306.04(a).

Respondent wrote nineteen prescriptions for schedule III drugs containing hydrocodone to residents of North Carolina. Under North Carolina law prior to 2007, “prescribing medication by use of the internet or a toll-free number,” was “regarded as practicing medicine” in North Carolina. N.C. Gen. Stat. Ann. 90–18(b).⁶ As such, it subjected a practitioner to North Carolina law and the regulation of the North Carolina Medical Board. *Id.* North Carolina prohibits the practice of medicine without the appropriate license and registration and makes out-of-state violators guilty of a “Class I felony.” N.C. Gen. Stat. Ann. 90–18(a). Respondent’s prescribing to North Carolina residents via the internet clearly violated North Carolina law.

Additionally, in February 2001, the North Carolina Medical Board issued its position statement, “Contact with Patients Before Prescribing,” which stated that “prescribing drugs to an individual the prescriber has not personally examined is inappropriate.” Contact with Patients before Prescribing, at 1 (available at http://www.ncmedboard.org/position_statements/). The Board further explained that “[o]rdinarily, this will require that the physician personally perform an appropriate history and physical examination, make a diagnosis,

and formulate a therapeutic plan, a part of which might be a prescription.” *Id.* As Respondent failed to perform physical examinations of these patients, his conduct was not in the usual course of professional practice. He consequently violated the CSA in writing these prescriptions as well. See 21 CFR 1306.04(a).

As the foregoing demonstrates, Respondent repeatedly violated state laws and regulations prohibiting the unlicensed practice of medicine and establishing standards of medical practice by prescribing controlled substances to persons he never physically examined and who resided in States where he was not licensed to practice and prescribe drugs. In issuing the prescriptions, Respondent also acted outside of “the usual course of professional practice” and lacked “a legitimate medical purpose” and thus repeatedly violated the CSA. I therefore conclude that Respondent has committed acts which render his continued registration “inconsistent with the public interest.” 21 U.S.C. 824(a)(4). Accordingly, Respondent’s registration will be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. §§ 823(f) and 824(a), as well as 28 CFR 0.100(b) and 0.104, I hereby order that DEA Certificate of Registration, BA6015158, issued to Mohammed F. Abdel-Hameed, M.D., be, and it hereby is, revoked. I further order that any pending application to renew or modify the registration be, and it hereby is, denied. This order is effective December 24, 2009.

Dated: November 17, 2009

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–28189 Filed 11–23–09; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 09–32]

Harrell E. Robinson, M.D.; Revocation of Registration

On February 26, 2009, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Harrell E. Robinson, M.D. (Respondent), of Santa Ana, California. The Order proposed the revocation of Respondent’s DEA Certificate of Registration, AR8613487, which authorizes him to dispense

controlled substances in schedules II through V as a practitioner, on the ground that Respondent’s continued registration is “inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f), 824(a)(4).” Show Cause Order at 1. The Order also proposed the denial of any pending applications for renewal or modification of Respondent’s registration. *Id.*

Specifically, the Show Cause Order alleged that from February 2007 through October 2008, Respondent “purchased approximately 613,000 dosage units of hydrocodone combination products and unlawfully distributed these drugs to an unregistered individual in exchange for \$10,000 per month * * * in violation of 21 U.S.C. 841(a)(1).” *Id.* In addition, the Show Cause Order alleged that from September 2007 through October 2008, Respondent “purchased approximately 397,000 dosage units of hydrocodone combination products using the DEA registration numbers of two other practitioners in violation of 21 U.S.C. 843(a)(2) and (3).” *Id.* at 2. Further, Respondent allegedly then “distributed these drugs to an unregistered individual, in violation of 21 U.S.C. 841(a)(1).” *Id.*

Based on the above, I further concluded that Respondent’s “continued registration while these proceedings are pending constitutes an imminent danger to the public health and safety.” Show Cause Order at 2. Consequently, pursuant to my authority under 21 U.S.C. 824(d) and 21 CFR 1301.36(e), I immediately suspended Respondent’s registration, with the suspension to remain in effect until the issuance of this Final Order. *Id.*

Respondent requested a hearing on the allegations. The case was placed on the docket of the Agency’s Administrative Law Judges (ALJ) and a hearing was scheduled for May 12, 2009. On April 9, 2009, the ALJ ordered Respondent to file a prehearing statement no later than May 4, 2009. ALJ at 2 n.1; ALJ Ex. 3. The same day, the ALJ’s law clerk faxed Respondent a letter advising him of his right to counsel. ALJ at 2 n.1; ALJ Ex. 4.

On May 1, Respondent requested an extension of time to file his prehearing statement, advising that he was retaining counsel that afternoon. ALJ at 2 n.1. On May 4, the ALJ granted Respondent an extension of time to May 7, noting that the hearing was set for May 12 and that Respondent had not asked for a postponement of the hearing. *Id.*

On May 6, Respondent filed a request to postpone the hearing; in response, the ALJ’s law clerk “left a telephone message for Respondent advising that

⁶ This provision was deleted, effective October 1, 2007, by S.L. 2007–346, section 23.

before [the ALJ] could act on his request to postpone the hearing, his attorney must contact [the ALJ's] office and that all communication with [the ALJ's] office should be accomplished through the attorney." *Id.* However, no attorney contacted the ALJ's office on Respondent's behalf. Accordingly, on May 7, the ALJ denied Respondent's request to postpone the hearing. *Id.*; ALJ Ex. 6.

On May 12, 2009, the hearing was held as originally scheduled in Arlington, Virginia. ALJ at 2. At the hearing, the Government was represented by counsel. *Id.* By contrast, neither Respondent, nor anyone purporting to represent him, appeared, and thereafter, Respondent "filed nothing further" with the office of the ALJ. *Id.* at 2 & 2 n.1; *see also* 21 CFR 1301.43(d) ("If any person entitled to a hearing * * * files [a request for a hearing] and fails to appear at the hearing, such person shall be deemed to have waived the opportunity * * * to participate in the hearing, unless such person shows good cause for such failure.").

At the hearing, the Government called witnesses to testify and introduced documentary evidence. ALJ at 2. Thereafter, the Government filed proposed findings of fact, conclusions of law, and argument.

On May 29, 2009, the ALJ issued her Opinion and Recommended Ruling. On June 24, noting that neither party had filed exceptions to the opinion, the ALJ forwarded the matter to me for final agency action.

In her discussion of the public interest factors, the ALJ noted that "[t]here is no indication that Respondent is not fully licensed to practice medicine in California." ALJ at 17. She therefore found that "this factor weighs in favor of a finding that his continued registration would be in the public interest." *Id.* The ALJ further explained, however, that because "state licensure is a necessary but not sufficient condition for DEA registration," this factor was "not dispositive." *Id.* As for factors two and four—Respondent's experience in dispensing controlled substances and compliance with applicable laws—the ALJ concluded that Respondent violated 21 U.S.C. 841 by distributing hydrocodone combination products at unregistered locations to unregistered persons who were not legitimate patients and by arranging with other physicians to use their DEA registration numbers to purchase hydrocodone combination products which were also distributed unlawfully. *Id.* at 17–18. She also concluded that Respondent

violated 21 U.S.C. 822(a)(1) by distributing the products without a registration to do so. *Id.* at 18. Furthermore, the ALJ concluded that Respondent violated 21 CFR 1301.71(a) by not maintaining effective controls against diversion of controlled substances. *Id.* Finally, the ALJ determined that Respondent had violated California State Business and Professions Code sections 2242 and 2241.5 in that (1) he failed to physically examine the individual to whom he had distributed the drugs and to determine that she had a medical indication for treatment with hydrocodone combination products, and that (2) he failed to maintain records of his handling of controlled substances as required by state law. *Id.* Accordingly, the ALJ found that "these factors weigh in favor of a finding that Respondent's continued registration would be inconsistent with the public interest." *Id.*

Noting that the record did not include any evidence that Respondent had been convicted under any federal or state law relating to the manufacture, distribution, or dispensing of controlled substances, the ALJ concluded that the Respondent's conviction record "although not dispositive, weighs against finding that Respondent's registration would be inconsistent with the public interest." *Id.* at 18–19. Finally, crediting the Diversion Investigator's (DI's) testimony that Respondent had "told him that Respondent's status as a physician allowed him to order hydrocodone and that his orders were acceptable because the drugs were going to poor people," the ALJ concluded that "[t]his ludicrous attempt to justify his activities indicates that Respondent has neither respect for nor a willingness to accept the responsibilities adherent to a DEA registration." *Id.* at 19. Accordingly, she found that factor five—such other conduct which may threaten public health or safety—weighed "in favor of a finding that Respondent's continued registration would not be consistent with the public interest." *Id.*

Considering all the factors together, the ALJ concluded that "a preponderance of the evidence establishes that Respondent's continued registration with the DEA would be inconsistent with the public interest." *Id.* The ALJ therefore recommended that I revoke Respondent's registration and deny any pending applications. *Id.*

On August 6, 2009, the Government filed a Motion to Reopen Record. The basis of the motion was that on June 22, 2009, Respondent, in a proceeding before the Medical Board of California

("the Board"), "signed a stipulation which acknowledged that the Board could establish a factual basis for a series of allegations contained in a Fourth Amended Accusation, which included twelve (12) causes of action against him." Gov't Mot. at 2. In support of its motion, the Government attached a copy of the Fourth Amended Accusation and the Board's Decision and Order of July 20, 2009. *Id.*

The Board's Decision and Order provided that the attached Stipulated Surrender of License and Order of June 22, 2009, was "adopted by the Medical Board of California * * * as its Decision" in the matter. Gov't Mot., Exh. A, at 1. The Decision provided that the Stipulated Surrender of License and Order "shall become effective at 5 p.m. on September 30, 2009." *Id.* (emphasis in original).

Because the Board's order is clearly material to the public interest inquiry, *see* 21 U.S.C. 823(f)(1), was not available at the time of the hearing, and therefore could not have been presented at the original hearing, I conclude that the Government has set forth a *prima facie* case for reopening the record. *Cf. INS v. Abudu*, 485 U.S. 94, 97 (1988). I therefore grant the Government's motion to reopen the record and admit the Board's order to the record.

Having considered the record in its entirety, I hereby issue this Decision and Final Order. I adopt the ALJ's findings of fact and conclusions of law except as expressly noted herein. I further adopt the ALJ's recommended sanction. I make the following findings.

Findings

Respondent is the holder of DEA Certificate of Registration, AR8613487, which prior to the issuance of the Order of Immediate Suspension, authorized him to dispense controlled substances in schedules II through V as a practitioner at the registered location of 1523 North Broadway in Santa Ana, California. GX 1; Tr. 110. While the registration certificate indicates that the registration was to expire on April 30, 2008; on March 12, 2008, Respondent submitted a renewal application. GX 9, at 1. Because Respondent timely filed his renewal application, and his registration was not then suspended, Respondent retains a current registration (albeit one which is suspended) pending the issuance of this Final Order. *See* 5 U.S.C. 558(c); 21 CFR 1301.36(i).

In February 2008, Respondent also applied for registrations at the locations of 145 South Chaparral in Anaheim Hills, California, and 1421 North Broadway in Santa Ana. *Id.* at 111, 134,

136; GX 7. Both the 1523 North Broadway and the 1421 North Broadway locations were owned by a Dr. Joy Johnson, but she “delegated” the responsibility for leasing the premises to Ms. Magdalena Annan, an individual identified as having hired Respondent as the medical director of the clinic on 1523 North Broadway. Tr. 100, 141.

At the hearing, an Agency Investigator (DI) testified that he visited the 1523 North Broadway location, which was a house converted into a business premises; on the front of the house was a sign indicating the business name as the Madre Maria Ines Teresa Health Center. Tr. 75. Although the DI observed the property for between two and three hours, he never saw an individual who appeared to be a patient entering or exiting the premises. *Id.* at 75–76.

The DEA Investigation

DEA commenced investigating Respondent in November 2007 because he was the sixth largest purchaser of hydrocodone combination products among California physicians for the year 2007. Tr. 55–56, 63; GX 34. Respondent was known to have purchased controlled substances from four different wholesalers, including Top RX, Inc., the Harvard Drug Group, and A.F. Hauser. Tr. 59–60.

The DI confirmed through a Compliance Officer for Top Rx, Inc. (Top RX), a Tennessee drug wholesaler, that Respondent had purchased 336,000 dosage units¹ of hydrocodone products² from Top RX between February 2 and November 12, 2007. Tr. 63–64; GXs 14 & 15. At least one order was paid for with a check in the name of Madre Maria Ines Teresa Health Center, 1523 Broadway Street, Santa Ana, California; the holder of that checking account was Magdalena (“Maggie”) Annan. Tr. 72–73; GX 16, at 96. According to the Compliance Officer, the “contact name” on the account was “Maggee.” GX 14.

In some cases, Ms. Annan ordered the hydrocodone products, and her name was listed as the accounts payable manager on Respondent’s account with Top RX and the Harvard Drug Group.

¹ The ALJ found that Respondent had purchased only 228,700 dosage units from Top Rx, finding that the Compliance Officer had “advised” the DI as to that number. ALJ at 3. The DI did not so testify, and the letter from Compliance Officer did not include any total of drug dosage units. See GX 14. Rather, only the letter’s attachment provided the data from the orders. See GX 15. In totaling those orders, I find that Respondent bought 336,000 dosage units from Top Rx.

² Throughout this Order any reference to hydrocodone products refers to schedule III drugs which combine hydrocodone with another active pharmaceutical ingredient such as acetaminophen.

Tr. 64–65; 73–74; 99–100; GXs 16 & 27. On other occasions, Respondent personally ordered the hydrocodone combination products. *Id.* at 10–12, 14.

By January 2008, Respondent ceased to purchase hydrocodone combination products from Top RX. Instead, in December 2007, he started purchasing the same type of drugs from Harvard Drug Group (Harvard), a wholesaler in Michigan. Tr. 8, 79. Mr. S. S., Harvard’s Vice President for Regulatory Affairs, testified that Respondent opened an account with Harvard in December 2007, indicating that it was an account for a clinic he owned. Tr. 11. To open the account, on December 26, 2007, Respondent signed an affidavit in which he attested that he was not engaged in business as an Internet pharmacy, that he did not dispense prescriptions by mail to patients, that he was located in an area accessible to the public, and that walk-in customers were welcome. Tr. 29; GX 24. On his credit application to Harvard, Respondent listed the accounts payable manager as “Maggie.” GX 27. S.S. testified that he did not know who this individual was. Tr. 43.

In January 2008, Respondent opened a second account with Harvard, indicating that he owned a second medical clinic whose medical director, Scott Bickman, M.D.,³ would also be purchasing controlled substances under his own DEA registration. Tr. 11; GX 28. While the drugs ordered by Dr. Bickman were to be shipped to the second clinic (145 Chaparral Court in Anaheim Hills), bills were to be sent to Respondent’s main office. Tr. 11–12, 20; GX 30, at 9. Respondent was listed on the invoices as the person billed. GX 30, at 9, 20.

At some point, Respondent opened a third account in the name of Thomas Mitchell, M.D. Tr. 14, 30. Both Drs. Bickman and Mitchell provided Harvard with affidavits similar to that provided by Respondent when he opened the account. Tr. 29–30; GXs 25 & 26.

S.S. testified that Harvard sends its local DEA office (Detroit) computer-generated reports of orders that the company considers excessive. Tr. 47. He also testified that Harvard “reported” Drs. Robinson and Bickman “pretty much every month from January 2008 onward.” *Id.* at 49. He additionally testified that Harvard imposes a quota on the quantity of hydrocodone combination products that a customer may receive in a given month. *Id.* at 48.

The evidence further shows that hydrocodone combination products were the sole products that were

³ Dr. Bickman was the sixth largest purchaser of hydrocodone products in California for 2008. Tr. 57; GX 36.

purchased from Harvard by Respondent and Drs. Bickman and Mitchell. GX 29; Tr. 25. Respondent ordered the drugs by telephone, a matter confirmed to the DI by G.B., an inside sales representative for Harvard, as well as by e-mail from S.S. to the DI. Tr. 18–19, 116–17; GX 31, at 3.⁴

During the months of March through May 2008, S.S. provided e-mail alerts to the DI regarding Respondent’s ordering for the three clinics. See GX 31. On March 18, S.S. e-mailed the DI, indicating that “last night” Respondent had called and left a message to order more hydrocodone combination products. GX 31, at 9. S.S. wrote: “We have not shipped this order as account has reached its total quantity allowed for Hydrocodone items for the month.” *Id.* Again, on March 18, S.S. e-mailed as follows:

I spoke with [Respondent] this afternoon. I explained our company’s policy when his orders get cut off when they order group [sic] of products (Controlled Drugs) which reaches 25,000 tablets a month. He insisted that his other clinic in Anaheim Hills has not reached his monthly limit and wants his order shipped at that location. We ran reports to find out what quantity he has purchased at his Anaheim Hills clinic. We have so far shipped 17,500 tablets of Hydrocodone so since he wants balanced [sic] of order shipped, here is what we have shipped today * * *

This will be his last shipment for the month. I have explained to him that any additional orders for Hydrocodone must be placed with other wholesale distributors as we will not be able to ship any quantity to either of his clinic [sic] until April 1st.

Id. at 11.

On April 15, S.S. again e-mailed the DI indicating that Respondent had placed an order for his Anaheim Hills clinic and that Respondent “also asked if we can ship similar order to his other location but we have refused to ship because that location has already reached its monthly purchase limits for above items.” *Id.* at 20. Similarly, on April 22, S.S. advised the DI by e-mail that Respondent “called to place additional orders but we refused to fill orders as he has reached his monthly maximum limit that he could get so we have not filled any additional orders since our last shipment.” *Id.* at 26. S.S. further advised that Respondent “may be purchasing from other wholesalers.” *Id.*

⁴ Sometime prior to March 2008, the DI had contacted S.S. and asked him to provide historical information on Respondent’s purchases. Tr. 78–79. Starting in March 2008, the DI asked S.S. to provide advanced notice of controlled substance deliveries to Respondent and Drs. Mitchell and Bickman. Tr. 14, 16, 79; GX 31. S.S. complied with this request, typically, by e-mail. See *id.*

In October 2008, Harvard generated computer printouts of the controlled substances orders it had received from Respondent, Dr. Mitchell and Dr. Bickman. The printouts showed that Respondent had ordered 263,500 dosage units⁵ of hydrocodone between December 11, 2007 and October 10, 2008; that Dr. Bickman ordered 213,000 dosage units⁶ of hydrocodone between December 18, 2007 and October 15, 2008; and that Dr. Mitchell ordered 43,500 dosage units⁷ of hydrocodone between July 31 and October 15, 2008. GX 29. Most of the orders were for 10-milligram strength product; others were for 7.5-milligram strength product. *Id.*

The DI testified that Respondent purchased about 800,000 pills using his, Dr. Bickman's, and Dr. Mitchell's DEA registrations. Tr. 113–14.⁸ According to DEA's Automated Reports and Consolidated Ordering System (ARCOS), Respondent purchased a total of 641,400 dosage units of hydrocodone products under his name between February 2, 2007 and October 10, 2008 (the period of his ordering from Top RX and Harvard). GX 37. ARCOS data further indicates that 265,500 dosage units of hydrocodone products were purchased under Dr. Bickman's DEA registration between October 8, 2007, and September 29, 2008.⁹ GX 38; Tr. 158. Finally, ARCOS data indicates that 51,500 dosage units of hydrocodone products were purchased under Dr. Mitchell's DEA registration between August 22 and October 15, 2008. GX 39; Tr. 158.

Based on the evidence establishing that Respondent had entered into arrangements with Drs. Bickman and Mitchell to use their registration numbers, I find that the purchases made under their registrations are attributable to Respondent. I further find that between February 2, 2007 and October 10, 2008, Respondent purchased a total of 958,400 dosage units of hydrocodone products.

⁵ The ALJ found only 93,000 dosage units. ALJ at 5. The ALJ appears to have multiplied the bottle-count (500) by the number of orders rather than by the number of bottles per order.

⁶ The ALJ found only 77,000 dosage units. ALJ at 5. See *supra* note 4 for the explanation of the discrepancy.

⁷ The ALJ found only 16,500 dosage units. ALJ at 5. See *supra* note 4 for the explanation of the discrepancy.

⁸ This figure includes the approximately 336,000 tablets obtained from Top RX and the approximately 263,500 obtained from Harvard on his own account, plus the approximately 213,000 and 43,500 obtained from Harvard on the accounts of Drs. Bickman and Mitchell. The ALJ's figures are therefore rejected as inconsistent with the evidence.

⁹ A comparison of ARCOS data with the Harvard data suggests that Dr. Bickman's account was used to order from an additional wholesaler.

Agency Investigators, with the help of officers from the Costa Mesa, California Police Department, conducted surveillance of the delivery of packages from Harvard to Respondent's clinics on five occasions. Tr. 80–81. In the first such instance, in mid-February 2008, the DHL driver could not complete the delivery. *Id.* at 83.

However, at 9 a.m. on March 12, during a surveillance of the Anaheim Hills clinic, Investigators observed a delivery which was taken into the office. *Id.* Later that morning, at about 11:45 a.m., Respondent arrived in his car and went into the office; fifteen minutes later he emerged with the box, and placed it in the trunk of his car. *Id.* at 83–84. Moments later, Respondent got into another car in the parking lot which was driven by a woman, who then drove him to his car, where he retrieved the box and placed it in the trunk of the woman's car. *Id.* at 84–85, 87. Respondent and the woman then drove approximately twenty miles to pick up two children at a school and then returned with the children to the Anaheim Hills clinic. *Id.* at 86–87. Some ten or fifteen minutes later, the woman and children got back in the car and drove to Respondent's residence at 1880 Seabiscuit Run, Yorba Linda, California. *Id.* at 87. The woman parked the car in the garage, leaving the children and the box in the car. *Id.* at 87–88.

Moments later, the woman emerged, drove to the 1421 North Broadway clinic, and parked at the rear of the building. *Id.* at 88. After going into the office, she returned to the car with another woman, and put the box in a third car. *Id.* The other woman then drove away with the box. *Id.* at 88–89. The second woman drove approximately five miles to another house in Santa Ana where another woman got in the car with her; the two then drove to the Madre Maria Ines Teresa Health Center, where they entered the building and left the box in the car. *Id.* at 89. The surveillance ended at that point. *Id.*

On March 20, Investigators conducted a third surveillance at the Anaheim Hills clinic. *Id.* at 94–95. The surveillance began at approximately 8:45 a.m.; about one hour later, a woman arrived in a Mercedes-Benz and walked into the building. *Id.* at 95. Respondent arrived by car at about 11:15 a.m. and also entered the building. *Id.* DHL delivered a box at 11:40 a.m. *Id.* At 1:30 p.m., two women and a man left the office carrying the box and a flower arrangement, which they placed in the trunk of one of the cars. *Id.* The women drove to a restaurant a few blocks away, dined,

and then drove to the 1421 North Broadway location, taking the flower arrangement inside. *Id.* at 96. One of the women returned to the car, driving it to a shopping center in Santa Ana. *Id.* As the car lacked license plates, the officers copied the vehicle identification number (VIN) and determined from the Department of Motor Vehicles that the car was registered in Respondent's name. *Id.* at 96–97. The woman returned to the car, drove elsewhere to pick up two children, went to a pharmacy and then to the Seabiscuit Run address arriving there at about 5:45 p.m. *Id.* at 97. Surveillance terminated some fifteen minutes later. *Id.* The DI testified that the woman driving the car was Alinka Robinson, Respondent's wife. *Id.* at 98.

On May 9, law enforcement officers conducted a fourth surveillance. *Id.* at 104. A box was delivered at 10:12 a.m., and Respondent arrived at his office by car at approximately 12:15 p.m. *Id.* At around 2:15 p.m., Respondent placed the box in his car and returned to the office; at about 4:30 p.m., Respondent again left the office and drove to a bank and a restaurant. *Id.* In the restaurant parking lot, Respondent parked next to a black Humvee that investigators identified as belonging to Ms. Annan. *Id.* at 105–06. Respondent moved three boxes from his car to the Humvee and talked for about fifteen minutes with Ms. Annan in her car; Respondent then returned to his car and drove away. *Id.* at 105. The investigators followed Ms. Annan to her home in Santa Ana, but the boxes remained in her car until the surveillance terminated at 6:30 p.m. *Id.* The DI testified that he had opened this box before it was delivered and that it contained bottles of hydrocodone. *Id.* at 107–08.

On May 14, the fifth and final surveillance was conducted at the 1523 North Broadway location in Santa Ana. *Id.* at 106. At 9:24 a.m., DHL delivered a box. Later, Respondent arrived, and at about 11:20 a.m., Ms. Annan arrived in a black Mercedes-Benz. At around noon, Ms. Annan and another woman put the box in Ms. Annan's car and returned to the building. *Id.* at 106–07. At approximately 12:40 p.m., Ms. Annan left the building and drove to her home, where she stayed until surveillance terminated at 6:30 p.m. *Id.* at 107.

On October 16, 2008, investigators executed search warrants at the 1523 and 1421 North Broadway locations in Santa Ana, at the 145 South Chaparral location in Anaheim Hills, and at Ms. Annan's and Respondent's residences. *Id.* at 110. During the search, the Investigators did not find any records documenting the disposition of the hydrocodone products Respondent had

purchased such as dispensing records. *Id.* at 112. While there were some purchase invoices at Ms. Annan's residence, Ms. Annan does not hold a DEA registration. *Id.* at 122–23.

During the search of the 1421 North Broadway location, the Investigators found a box of hydrocodone products which had been delivered that very day. *Id.* at 124–25; GX 40. At the South Chaparral location, which was an operating medical clinic, they found patient records but no records documenting the receipt and dispensing of the hydrocodone products Respondent had purchased. Tr. 126.

The DI interviewed Respondent, who reported that he had given the hydrocodone products to Ms. Annan, who had told him “that she was taking these pills into Mexico to give them to either the Catholic health clinics or a doctor down there for poor or people who can't get medication on their own.” *Id.* at 114. Respondent provided the name of a doctor, but no address. *Id.* at 114–15. However, the DIs were unable to verify Respondent's story. *Id.* at 115. Respondent does not hold either a distributor's or an exporter's registration under the Controlled Substances Act. *Id.* at 115; GX 1.

Respondent further stated that Ms. Annan had hired him as medical director of a clinic, for which she paid him \$10,000 per month, but that he “rarely went to the clinic at all as far as seeing patients or to do records.” *Id.* He indicated that he had given Ms. Annan permission to order drugs and that she would either place the orders or tell him which orders to place. *Id.* at 116. He would then “transfer the boxes to her, the pills to her.” *Id.* Respondent paid for the orders with a credit card but then was reimbursed in cash by Ms. Annan. *Id.* at 117. According to the DI, Respondent said that “because he was a doctor he was allowed to order these pills and that because they were being delivered to Mexico for poor people it was okay.” *Id.* at 119. At no point did Respondent attempt to confirm Ms. Annan's statements about where the drugs were going. *Id.*

According to Respondent, Ms. Annan approached him in 2007, and requested that he open another clinic through which he could order more pills. *Id.* at 118. At that point, Respondent opened the second clinic at the South Chaparral location in Anaheim Hills and asked Dr. Bickman to serve as the medical director so he could order supplies and drugs under his registration. *Id.* Later, Ms. Annan and Respondent “approached” Dr. Mitchell about a third location, the 1421 North Broadway site, “as a third office to buy pills.” *Id.* Respondent

reportedly paid Drs. Bickman and Mitchell \$2,000 per month and \$1,000 per month, respectively; both physicians knew that Respondent was ordering controlled substances in their names and using their DEA registration numbers to do so. *Id.* at 120–21.¹⁰

During the execution of the search warrants, another DI interviewed Ms. Annan at her residence. *Id.* at 145. Ms. Annan denied that she had ever received anything from Respondent, that Respondent had ever put anything in her vehicle, and that he had ever given her money. *Id.* According to Ms. Annan, Respondent paid half the rent for the Madre Maria Ines Teresa Health Center and he also paid her referral fees for patients that she referred to him for plastic surgery. *Id.* at 146. She indicated that she had worked for a number of physicians and that the physicians had always ordered their own drugs. *Id.*

While executing the warrant at Ms. Annan's residence, Investigators found a black garbage bag in her kitchen which contained medications, including some controlled substances. *Id.* at 147–48. Ms. Annan indicated that she was taking them to the Department of Health Services for destruction. *Id.* at 148. Ms. Annan also directed investigators to a hall closet containing miscellaneous drugs which she alleged she had brought home from the office of a Dr. Marini on instructions from the Anaheim Police Department, due to break-ins at the doctor's office. *Id.* at 148–49. Ms. Annan denied that she sold drugs. *Id.* at 150.

The State Proceeding

On June 3, 2009, the Executive Director of the Medical Board of California (“the Board”) filed a Fourth Amended Accusation with the Board, citing twelve different causes for discipline against Respondent's state medical license. Gov't Mot. Ex. A, at 10, 18–37. On June 22, 2009, Respondent signed a Stipulated Surrender of License and Order, in which he agreed that the Board “could establish a factual basis for the First [Cause for Discipline] * * * in the Fourth Amended Accusation and that those allegations constitute cause for discipline.” Gov't Mot., Ex. A, at 4.

¹⁰ This is further confirmed by two notes written by Dr. Bickman to Harvard. A note dated February 21, 2008, signed by Scott Bickman, M.D., requested that Harvard “[p]lease change the previous ordering arrangement for my account to holding all orders until I have been notified and give verbal authorization for them to be honored by The Harvard Group.” GX 22, at 2. Then, in a note dated February 27, 2008, Dr. Bickman requested that Harvard “DISREGARD ALL PREVIOUS FAXES DEMANDING MANAGEMENT OF MY ACCOUNT AND ALLOW DR. ROBINSON'S OFFICE TO PLACE ORDERS AS NEEDED.” GX 23, at 2.

Furthermore, Respondent, “[g]a[ve] up his right to contest that cause for discipline exists based on those charges.”¹¹ *Id.*

The First Cause for Discipline specifically alleged that between February 2007 and October 2008, Respondent “purchased approximately 613,000 dosage units of hydrocodone and unlawfully distributed them to an unregistered individual in exchange for \$10,000.00 per month in violation of 21 U.S.C. 841(a)(1).” *Id.* at 10. It further alleged that “[f]rom September 2007 through October 2009, [R]espondent purchased approximately 397,000 dosage units¹² of hydrocodone using the DEA registration numbers of two other practitioners in violation of 21 U.S.C. 843(a)(2) and (3),” and “then distributed these drugs to an unregistered individual in violation of 21 U.S.C. 841(a)(1).” *Id.*

The First Cause also alleged that in an interview on or about October 16, 2008, Respondent admitted that he had diverted the aforementioned hydrocodone products to “Magdalena ‘Maggie’ Annan”; that he had given Ms. Annan “permission for her to order drugs” such that “Annan would place the orders or would tell [R]espondent what to order and then [R]espondent would give the hydrocodone to her”; that Annan “was reimbursing [R]espondent for the cost of the narcotics and paying [R]espondent \$10,000.00 a month to work as her medical director * * * at 1523 North Broadway in Santa Ana”; and that Respondent “rarely went to Annan's clinic to see patients and/or review medical records.” *Id.* at 10–11.

The First Cause further alleged that Annan asked Respondent to open a second medical clinic on South Chaparral so that they could order more pills and that Respondent asked another physician, Dr. Scott Bickman, to be the medical director of this clinic and paid him \$2,000.00 per month; that Respondent then approached another physician, Dr. Thomas Mitchell, about opening a third medical clinic at 1421

¹¹ The Stipulated License Surrender further stated that the “admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceeding in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal, civil, administrative, or other proceeding.” *Id.* DEA is not, however, bound by the stipulation. See *Edmund Chein*, 72 FR 6580, 6590 (2007), *aff'd Chein v. DEA*, 533 F.3d 828 (D.C. Cir. 2008) (stipulated settlement agreed to by a state board does not bind DEA). In any event, in enforcing the registration provisions of the CSA, DEA acts as a professional licensing agency.

¹² This figure is even larger than the ARCOS figures of 265,500 dosage units for Dr. Bickman and 51,500 dosage units for Dr. Mitchell.

North Broadway, Santa Ana, and paid him for "\$1,000.00 per month for permission to use [his] DEA registration to purchase narcotics and have them shipped to the 1421 North Broadway office"; and that while Annan "claimed she was taking the hydrocodone to Mexico to give to either the Catholic health services or a doctor for poor people who could not get medication on their own," Respondent "did not know the name of the organization that Annan was allegedly giving the narcotics to and made no efforts to verify Annan's claim." *Id.* at 11.

In the Stipulated Surrender, Respondent agreed to surrender his California Physician's and Surgeon's Certificate and that he would "lose all rights and privileges as a Physician and Surgeon in California as of September 30, 2009." Stipulated Surrender and Order at 4. On July 20, 2009, the Medical Board of California adopted the Stipulated Surrender of License and Order as its decision. The Board further ordered that its decision would become effective at 5:00 p.m. on September 30, 2009. Gov't Mot. Ex. A, at 1.

Discussion

As an initial matter, I note that Respondent initially requested a hearing in this matter. ALJ Ex. 2. While Respondent was provided with notice of the date, time and place of the hearing, he failed to appear. ALJ Ex 1, at 1. Accordingly, pursuant to 21 CFR 1301.43(d), I conclude that Respondent has waived his right to a hearing.

Section 304(a) of the Controlled Substances Act (CSA) provides that a registration to "dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section." 21 U.S.C. 824(a)(2). Moreover, section 303(f) of the CSA provides that "[t]he Attorney General may deny an application for a [practitioner's] registration if he determines that the issuance of such a registration would be inconsistent with the public interest." 21 U.S.C. 823(f). In making the public interest determination, the CSA requires the consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to

the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. *Id.*

"[T]hese factors are * * * considered in the disjunctive." Robert A. Leslie, M.D., 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors and may give each factor the weight I deem appropriate in determining whether to revoke an existing registration or to deny an application either to renew an existing registration or for a new registration. *Id.* Moreover, I am "not required to make findings as to all of the factors."

Volkman v. DEA, 567 F.3d 215, 222 (6th Cir. 2009); see also *Morall v. DEA*, 412 F.3d 165, 173-74 (D.C. Cir. 2005).¹³

Factor One—The Recommendation of the State Licensing Board

At the time the ALJ rendered her recommended decision, Respondent had yet to sign the Stipulated Surrender of License, and the Board had not entered its Decision rendering the surrender of Respondent's state medical license effective at 5 p.m. on September 30, 2009. Based on her finding that "[t]here is no indication that Respondent is not fully licensed to practice medicine in California," the ALJ concluded that this factor weighed "in favor of a finding that [Respondent's] continued registration would be in the public interest." ALJ at 17.

However, subsequent to the ALJ's decision, Respondent agreed to surrender his state medical license and that he would "lose all rights and privileges as a Physician and Surgeon in California as of September 30, 2009." Stipulated Surrender and Order at 4. Accordingly, I conclude that Respondent no longer holds authority to dispense controlled substances in California, the State in which he practiced medicine. Because the possession of authority under state law to dispense controlled substances is an essential condition for holding a registration under the CSA, Respondent is not entitled to maintain his DEA registration.¹⁴ See 21 U.S.C. 823(f),

¹³ The CSA further provides that "[t]he Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health or safety." 21 U.S.C. 824(d).

¹⁴ I therefore reject the ALJ's findings as to factor one. Having also considered factor two (Respondent's experience in dispensing controlled

824(a)(3), 802(21). In accordance with long settled Agency precedent, Respondent's loss of his state authority requires that his CSA registration be revoked. See *John B. Freitas*, D.O., 74 FR 17524, 17525 (2009) (collecting cases). While this provides reason alone to revoke Respondent's registration, see 21 U.S.C. 824(a)(3), because Respondent is not permanently barred from seeking reinstatement of his State license, I conclude that a discussion of the remaining and relevant public interest factors is warranted.

Factors Four and Five—Respondent's Compliance With Applicable Controlled Substances Laws and Such Other Conduct Which May Threaten Public Health and Safety

Under the CSA, a registered practitioner is authorized to dispense, 21 U.S.C. 823(f), which is defined as "to deliver a controlled substance to an ultimate user * * * by, or pursuant to the lawful order of, a practitioner." *Id.* § 802(10). See also *Rose Mary Jacinta Lewis*, 72 FR 4035, 4040 (2007) ("A practitioner's registration * * * grants its holder authority to obtain controlled substances for the limited purposes of conducting research or dispensing them to an ultimate user.") (citing 21 U.S.C. 802(10) & (21), 822(b)).

The CSA further defines the "[t]he term 'distribute' [as] mean[ing] to deliver (other than by administering or dispensing) a controlled substance." *Id.* § 802(11). Moreover, "[p]ersons registered * * * under [the CSA] to * * * dispense controlled substances * * * are authorized possess * * * or dispense such substances [only] to the extent authorized by their registration and in conformity with the other provisions of" the Act. 21 U.S.C. 822(b); see also 21 CFR 1301.13(e) ("Any person who engages in more than one group of independent activities shall obtain a separate registration for each group of activities"); compare 21 U.S.C. 823(e) (requiring registration "to distribute controlled substances in schedules" III-V), with *id.* § 823(f) (requiring registration "to dispense" controlled substances" in schedules III-V). Except for when distributing to another registered practitioner in accordance with 21 CFR 1307.11(a), a practitioner may only engage in dispensing. 21 U.S.C. 822(b).

Accordingly, a practitioner who delivers a controlled substance to a non-

substances) and factor three (Respondent's conviction record under laws relating to controlled substances), I conclude that it is not necessary to make findings as to either factor.

registered person outside of the course of professional practice and without a legitimate medical purpose in doing so violates Federal law. *See* 21 U.S.C. 841(a) (“Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally * * * to * * * dispense * * * a controlled substance.”). *Cf. id.* § 844(a) (“It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice[.]”).

The evidence clearly establishes that Respondent violated Federal law by distributing controlled substances to Ms. Annan. *See id.* § 841(a). As found above, in a period just exceeding twenty months, Respondent ordered 640,000 dosage units of schedule III controlled substances containing hydrocodone on his own account, or allowed his co-conspirator Ms. Annan to do so.

During an interview with a DI, Respondent admitted that that he had distributed the drugs to Ms. Annan, who does not hold a DEA registration. Moreover, Respondent did not maintain that he had dispensed the drugs to Ms. Annan in the course of his professional practice and pursuant to the rendering of legitimate medical treatment.¹⁵ *See* 21 U.S.C. 802(21) (defining the term “practitioner” as meaning “a physician * * * licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to dispense * * * a controlled substance in the course of professional practice”); *id.* § 822(c) (authorizing “an ultimate user” to possess a controlled substance” for purposes of legitimate medical treatment without holding a registration); *id.* § 802(27) (“The term ‘ultimate user’ means a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household.”). Moreover, Respondent admitted that he was paid \$10,000 a month by Ms. Annan in exchange for his obtaining the drugs for her. Undoubtedly, the drugs found their way into the illicit market, either here or in Mexico.¹⁶

¹⁵ Respondent’s distributions of hydrocodone to Ms. Annan averaged approximately 47,000 dosage units a month. This quantity would supply a significant number of drug abusers.

¹⁶ While Respondent maintained that Annan claimed that she was taking the drugs to Mexico to give to either “Catholic health services or a doctor for poor people,” he did nothing to verify her story, which even if it was true, still implicated her in

The evidence further shows that Respondent ordered more than 300,000 dosage units using the DEA registrations of Drs. Bickman and Mitchell (which drugs were also distributed to Ms. Annan), and did so in furtherance of a conspiracy with Ms. Annan to enable her to circumvent the maximum order ceilings of several drug wholesalers. In addition to constituting violations of 21 U.S.C. 841(a), this conduct was unlawful for the further reason that federal law prohibits a person from “knowingly or intentionally” using “in the course of the * * * distribution * * * of a controlled substance, or * * * us[ing] for the purpose of acquiring or obtaining a controlled substance, a registration number which is * * * issued to another person.” 21 U.S.C. 843(a)(2).

Respondent also violated Federal law and DEA regulations because he failed to maintain records documenting the receipt, sale, delivery, and disposition of controlled substances. *See* 21 U.S.C. 827(a)(1) (requiring that “every registrant * * * shall * * * as soon * * * as such registrant first engages in the manufacture, distribution, or dispensing of controlled substances, and every second year thereafter, make a complete and accurate record of all stocks thereof on hand”) & (a)(3) (“every registrant under this subchapter * * * distributing, or dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substance * * * received, sold, delivered, or otherwise disposed of by him”).

Moreover, Respondent was required to maintain these records for at least two years. *Id.* § 827(b) (“every inventory or other record required under this section * * * shall be kept and be available, for at least two years, for inspection and copying”). *See also* 21 CFR 1304.03 (“Each registrant shall maintain the records and inventories and shall file the reports required by this part, except as exempted by this section.”); *id.* § 1304.04 (mandating that records be maintained for at least two years and be available for inspection and copying).¹⁷

criminal activity. *See* 21 U.S.C. 953(a) (prohibiting the exporting of any narcotic drug in schedule * * * III unless” various requirements are met including that the consignee in the country of import hold “a permit or license to import such drug [which] has been issued by the country of import”); 957(a) (requiring registration to “export from the United States any controlled substance”); 960(a) (rendering unlawful the knowing or intentional exportation of a controlled substance in violation of sections 953 or 957). However, as found above, the record amply demonstrates the absurdity and disingenuousness of Respondent’s contention.

¹⁷ In her recommended decision, the ALJ concluded that the CSA’s recordkeeping provisions

As found above, during the execution of the search warrants, the Investigators did not find any of the required records at either Respondent’s registered location or at the two other clinics. *See* 21 CFR 1304.04.¹⁸ I thus conclude that Respondent violated Federal law and DEA regulations for this reason as well. *See* 21 U.S.C. 842(a)(5) (“It shall be unlawful for any person * * * to refuse or negligently fail to make, keep, or furnish any record, * * * statement, invoice, or information required under this subchapter.”).

Even if Respondent had not committed the above violations of Federal law and DEA regulations, I would nonetheless find that he committed acts which constitute “conduct which may threaten the public health and safety” and which render his registration “inconsistent with the public interest.” *Id.* §§ 823(f)(5) & 824(a)(4). More specifically, even if there had been no conspiracy between Respondent and Ms. Annan to unlawfully acquire and distribute the drugs, he would still be liable for the acts she committed while being allowed to use his registration.

Under DEA precedent, a registrant who entrusts his registration to another person is strictly liable for the latter’s misuse of his registration. *See Rose*

“do not apply” to Respondent. ALJ at 18–10 n.22. Apparently, the ALJ reasoned that because Respondent was not registered as a distributor, the recordkeeping provisions applicable to distributors did not apply to him, and that while he was registered as a practitioner, because his conduct did not involve dispensing, but rather distribution, the recordkeeping requirements applicable to a practitioner also did not apply. *Id.* Under the ALJ’s strange logic, any practitioner who engages in the criminal distribution of controlled substances would be immunized for failing to maintain records documenting his receipt and distribution of controlled substances.

The ALJ did not cite any authority to support her reasoning. Contrary to the ALJ’s understanding, the CSA itself requires that “every registrant * * * manufacturing, distributing, or dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substance manufactured, received, sold, delivered, or otherwise disposed of by him.” 21 U.S.C. 827(a)(3). This provision does not make a registrant’s recordkeeping obligations dependent on whether the activities he engages in are permitted by, or exceed, the authority of his registration.

Moreover, as I have previously explained, “[r]ecordkeeping is one of the CSA’s central features,” and “a registrant’s accurate and diligent adherence to this obligation is absolutely essential to protect against the diversion of controlled substances.” *Paul H. Volkman*, 73 FR30630, 30644 (2008), *aff’d* 567 F.3d 215, 224 (6th Cir. 2009). Because the ALJ’s conclusion is clearly contrary to the text of the CSA and would gut an essential feature of the Act, I reject it.

¹⁸ While the Investigators found some invoices at Ms. Annan’s residence, Respondent was not authorized to keep his records there. *See* 21 CFR 1304.04(a)(1).

Mary Jacinta Lewis, M.D., 72 FR 4035 (2007) (affirming immediate suspension of practitioner's registration when she allowed an unregistered person to use her registration to order controlled substances, supposedly for exportation to HIV-AIDS patients in Nigeria). DEA has repeatedly revoked the registrations of practitioners for such conduct. See also Paul Volkman, 73 FR 30630, 30644 & n.42 (2008); Anthony L. Cappelli, 59 FR 42288 (1994). Respondent is thus liable for Ms. Annan's acts of unlawful possession, distribution, and/or exportation of the controlled substances that she obtained under his registration.

As the forgoing demonstrates, Respondent engaged in the knowing and intentional diversion of controlled substances and is an egregious violator of the CSA. In essence, he leased his DEA registration to Ms. Annan to enable her to obtain extraordinary quantities of schedule III narcotics containing hydrocodone, a drug which is highly popular with drug abusers and which was undoubtedly distributed through illegitimate channels. Moreover, in furtherance of the conspiracy, Respondent also paid other doctors to obtain their DEA numbers so that he could order even more drugs for her.

Respondent's conduct does not remotely resemble the legitimate practice of medicine. Rather, he engaged in a criminal conspiracy to distribute controlled substances. His conduct clearly constituted "an imminent danger to the public health or safety," 21 U.S.C. 824(d), as well as acts which render his continued registration "inconsistent with the public interest." *Id.* § 824(a)(4). For these reasons (as well as my finding that he lacks authority under California law to dispense controlled substances, *id.* § 824(a)(3)), Respondent's registration will be revoked and his pending applications will be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I order that DEA Certificate of Registration, AR8613487, issued to Harrell E. Robinson, M.D., be, and it hereby is, revoked. I further order that Respondent's pending applications for the renewal or modification of this registration, as well as for additional registrations, be, and they hereby are, denied.

Dated: November 17, 2009.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. E9-28190 Filed 11-23-09; 8:45 am]

BILLING CODE 4410-09-P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 10-01]

Notice of the December 11, 2008 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 10 a.m. to 12 p.m., Wednesday, December 9, 2009.

PLACE: Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Romell Cummings via e-mail at Board@mcc.gov or by telephone at (202) 521-3600.

STATUS: Meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board of Directors (the "Board") of the Millennium Challenge Corporation ("MCC") will hold a meeting to consider the selection of countries that will be eligible for FY 2010 Millennium Challenge Account ("MCA") assistance under Section 607 of the Millennium Challenge Act of 2003 (the "Act"), codified at 22 U.S.C. 7706; discuss proposed restructuring of the Mongolia Compact; and certain administrative matters. The agenda items are expected to involve the consideration of classified information and the meeting will be closed to the public.

Dated: November 20, 2009.

Henry C. Pitney,

(Acting) Vice President and General Counsel,
Millennium Challenge Corporation.

[FR Doc. E9-28268 Filed 11-20-09; 4:15 pm]

BILLING CODE 9211-03-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

Notice: (09-101).

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

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mrs. Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mrs. Lori Parker, NASA PRA Officer, NASA Headquarters, 300 E Street SW., JF000, Washington, DC 20546, (202) 358-1351, Lori.Parker-1@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Pursuant to 35 U.S.C. 209, applicants for a license under a patent or patent application must submit information in support of their request for a license. NASA uses the submitted information to grant the license.

II. Method of Collection

The current paper-based system is used to collect the information. It is deemed not cost effect to collect the information using a Web site form since the applications submitted vary significantly in format and volume.

III. Data

Title: Application for Patent License.
OMB Number: 2700-0039.

Type of review: Extension of currently approved collection.

Affected Public: Business or other for-profit, and individuals or households.

Number of Respondents: 60.

Responses per Respondent: 1.

Annual Responses: 60.

Hours per Request: 10 hours.

Annual Burden Hours: 600.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection.

They will also become a matter of public record.

Lori Parker,

NASA Clearance Officer.

[FR Doc. E9-28122 Filed 11-23-09; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

Notice: (09-102).

ACTION: Notice of information collection.

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

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JF000, Washington, DC 20546, (202) 358-1351, *Lori.Parker-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA grants patent licenses for the commercial application of NASA-owned inventions. Each licensee is required to report annually on its activities in commercializing its licensed invention(s) and on any royalties due. NASA attorneys use this information to determine if a licensee is achieving and maintaining practical application of the licensed inventions as required by its license agreement.

II. Method of Collection

The current paper-based system is used to collect the information. It is deemed not cost effective to collect the information using a Web site form since the reports submitted vary significantly in format and volume.

III. Data

Title: Patent License Report.

OMB Number: 2700-0010.

Type of review: Extension of currently approved collection.

Affected Public: Business or other for-profit; individuals or households.

Number of Respondents: 90.

Responses per Respondent: 1.

Annual Responses: 90.

Hours per Request: 0.5 hour.

Annual Burden Hours: 45.

Frequency of Report: Annually.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

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

Lori Parker,

NASA Clearance Officer.

[FR Doc. E9-28123 Filed 11-23-09; 8:45 am]

BILLING CODE 7510-13-P

THE NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Proposed Collection, Museums for America Grant Program Evaluation

AGENCY: Institute of Museum and Library Services.

ACTION: Notice, request for comments, collection of information

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time

and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments concerning the proposed IMLS study of the impacts of the IMLS Museums for America Grant Program.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 15, 2010. IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to: Erica Pastore, Program Analyst, Institute of Museum and Library Services, 1800 M St., NW., Washington, DC 20036. Telephone: 202-653-4647, Fax: 202-653-4611 or by e-mail at *epastore@imls.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services (IMLS) is an independent Federal grant-making agency and is the primary source of federal support for the Nation's 123,000 libraries and 17,500 museums. IMLS provides a variety of grant programs to assist the Nation's museums and libraries in improving their operations and enhancing their services to the public. IMLS is responsible for identifying national needs for, and trends of, museum and library services funded by IMLS; reporting on the impact and effectiveness of programs conducted with funds made available by IMLS in addressing such needs; and identifying,

and disseminating information on, the best practices of such programs. (20 U.S.C. 9108). This Notice is to solicit comments on a program evaluation of the IMLS Museums for America Grant Program, which began in 2004.

II. Current Actions

A current IMLS research initiative is an analysis of grants made to museums through the Museums for America program between 2004 and 2009. The goal is to assess the outcomes and impact of such grants on institutions and their communities. As part of this research initiative, a survey, which is the subject of this Notice, will be undertaken to solicit information from past successful and unsuccessful grant applicants about the application process and the subsequent results on their programs. A small number of museum staff will be interviewed by phone or in person as part of the project case studies. These information collections will be developed based on what is needed to undertake an analysis and case studies of grant results. The information IMLS collects will build on, but not duplicate existing or ongoing collections.

Agency: Institute of Museum and Library Services.

Title: Museums for America Grant Program Evaluation.

OMB Number: To be determined.

Agency Number: 3137.

Frequency: One time.

Affected Public: Museums.

Number of Respondents: To be determined.

Estimated Time per Respondent: To be determined.

Total Burden Hours: To be determined.

Total Annualized capital/startup costs: To be determined.

Total Annual costs: To be determined.

FOR FURTHER INFORMATION CONTACT: Erica Pastore, Program Analyst, Office of Policy, Planning, Research and Communication, Institute of Museum and Library Services, 1800 M St., NW., Washington, DC 20036, e-mail: epastore@imls.gov or telephone (202) 653-4647.

Dated: November 17, 2009.

Kim Miller,

Management Analyst, Office of Policy, Planning, Research, and Communication.

[FR Doc. E9-28001 Filed 11-23-09; 8:45 am]

BILLING CODE 7036-01-P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting; Agenda

TIME AND DATE: 9:30 a.m., Tuesday, December 8, 2009.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED: 8023A Highway Accident Report—Motorcoach Rollover on U.S. Highway 59, Near Victoria, Texas, January 2, 2008 (HWY-08-MH-011)

NEWS MEDIA CONTACT: Telephone: (202) 314-6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314-6305 by Friday, December 4, 2009.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at <http://www.nts.gov>.

FOR FURTHER INFORMATION CONTACT: Candi Bing, (202) 314-6403.

Dated: Friday, November 20, 2009.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. E9-28260 Filed 11-20-09; 4:15 pm]

BILLING CODE 7533-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of November 23, 30, December 7, 14, 21, 28, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of November 23, 2009

There are no meetings scheduled for the week of November 23, 2009.

Week of November 30, 2009—Tentative

Friday, December 4, 2009

9:30 a.m. Meeting with the Advisory Committee on Reactor Safeguards (Public Meeting). (Contact: Antonio Dias, 301-415-6805.)

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

Week of December 7, 2009—Tentative

Tuesday, December 8, 2009

9:30 a.m. Briefing on the Proposed Rule: Enhancements to Emergency Preparedness Regulations (Public Meeting). (Contact: Lauren Quiñones, 301-415-2007.)

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

Week of December 14, 2009—Tentative

There are no meetings scheduled for the week of December 14, 2009.

Week of December 21, 2009—Tentative

There are no meetings scheduled for the week of December 21, 2009.

Week of December 28, 2009—Tentative

There are no meetings scheduled for the week of December 28, 2009.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415-1292. Contact person for more information: Rochelle Baval, (301) 415-1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/about-nrc/policy-making/schedule.html>.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301-492-2279, TDD: 301-415-2100, or by e-mail at rohn.brown@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969), or send an e-mail to darlene.wright@nrc.gov.

Dated: November 19, 2009.

Rochelle C. Baval,

Office of the Secretary.

[FR Doc. E9-28240 Filed 11-20-09; 11:15 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION**Sunshine Act Meetings**

TIME AND DATE: 11 a.m., Wednesday, December 2, 2009.

PLACE: Commission conference room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268-0001.

STATUS: Open (most matters) and closed (several matters).

MATTERS TO BE CONSIDERED: 1. Review of postal-related Congressional actions (open).

2. Reports on international activities (open).

3. Status of PRC's annual report (open).

4. Review of active cases (open).

5. Review of possible future rulemakings (open).

6. Report on recent activities of Joint Periodical Task Force and status of report to the Congress pursuant to section 708 of the Postal Accountability and Enhancement Act of 2006 (open).

7. Status of pending litigation—*USPS v. PRC* (closed).

8. Personnel matters—Discussion of salaries and discussion of senior staff goals (closed).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, general counsel, Postal Regulatory Commission, 202-789-6820 or stephen.sharfman@prc.gov.

Dated: November 20, 2009.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9-28229 Filed 11-20-09; 11:15 am]

BILLING CODE 7710-FW-S

SMALL BUSINESS ADMINISTRATION**Reporting and Recordkeeping Requirements Under OMB Review**

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 24, 2009. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83-1), supporting statement, and other

documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205-7044.

SUPPLEMENTARY INFORMATION:

Title: Disaster Survey Worksheet.

SBA Form Number: 987.

Frequency: On Occasion.

Description of Respondents:

Applications who warrant Disaster Declaration.

Responses: 2,640.

Annual Burden: 219.

Title: Surety Bond Guarantee Assistance.

SBA Form Numbers: 990, 991, 994, 994B, 994F, 994H.

Frequency: On Occasion.

Description of Respondents: Surety Bond Companies.

Responses: 17,916.

Annual Burden: 1,959.

Title: U.S. Small Business Administration for Section 504 Loan.

SBA Form Number: 1244.

Frequency: On Occasion.

Description of Respondents: 504 Participants.

Responses: 9,100.

Annual Burden: 21,210.

Title: PCLP Quarterly Loan Loss Reserve Report and PCLP Guarantee Requests.

SBA Form Number: 2233, 2234 Parts A, B, C.

Frequency: On Occasion.

Description of Respondents: PCLP Lenders.

Responses: 1,700.

Annual Burden: 1,612.

Title: Servicing Agent Agreement.

SBA Form Number: 1506.

Frequency: On Occasion.

Description of Respondents: Certified Development Companies and SBA Borrowers.

Responses: 8,403.

Annual Burden: 8,403.

Title: Request for Information Concerning Portfolio Financing.

SBA Form Number: 857.

Frequency: On Occasion.

Description of Respondents: SBIC Investment Companies.

Responses: 2,160.

Annual Burden: 2,160.

Title: Financial Institution Confirmation Form.

SBA Form Number: 860.

Frequency: On Occasion.

Description of Respondents: SBIC Investment Companies.

Responses: 1,500.

Annual Burden: 750.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E9-28128 Filed 11-23-09; 8:45 am]

BILLING CODE 8025-01-P

COMMODITY FUTURES TRADING COMMISSION**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61027]

Joint Order Modifying the Listing Standards Requirements Under Section 6(h) of the Securities Exchange Act of 1934 and the Criteria Under Section 2(a)(1) of the Commodity Exchange Act

The Securities Exchange Act of 1934 (“Exchange Act”) and the Commodity Exchange Act (“CEA”) set forth the types of securities on which security futures¹ can be based. The Exchange Act provides that it is unlawful for any person to effect transactions in security futures that are not listed on a national securities exchange or a national securities association registered pursuant to Section 15A of the Exchange Act.² The Exchange Act further provides that such exchange or association is permitted to trade only security futures that conform with listing standards filed with the Securities and Exchange Commission (“SEC”) and that meet the criteria specified in Section 2(a)(1)(D)(i) of the CEA.³ Section 2(a)(1)(D)(i) of the CEA permits the Commodity Futures Trading Commission (“CFTC”) to designate a board of trade as a contract market with respect to, or to register as a derivatives transaction execution facility to list or execute, transactions in security futures if the board of trade and the applicable contract meet the criteria specified in that section. Similarly, the Exchange Act requires that the listing standards filed with the SEC by an exchange or

¹ Security futures are futures contracts on single securities and narrow-based security indexes. See Section 3(a)(55)(A) of the Exchange Act, 15 U.S.C. 3(a)(55)(A), and Section 1a(31) of the CEA, 7 U.S.C. 1a(31).

² Section 6(h)(1) of the Exchange Act, 15 U.S.C. 78f(h)(1).

³ Section 6(h)(2) of the Exchange Act, 15 U.S.C. 78f(h)(2). See also 7 U.S.C. 2(a)(1)(D)(i).

association meet specified requirements.⁴

Among other things, the Exchange Act and the CEA require that any security underlying a security future, including each component security of a narrow-based security index, except as otherwise provided in a rule, regulation, or order, be registered pursuant to Section 12 of the Exchange Act.⁵ In 2006, the SEC and CFTC (together, the "Commissions") adopted SEC Rule 6h-2⁶ and an amendment to CEA Rule 41.21,⁷ respectively, to permit security futures to be based on individual debt securities or narrow-based indexes composed of such securities.⁸ However, because most debt securities are not registered under Section 12 of the Exchange Act,⁹ few security futures based on debt securities can be listed.

In addition, the Exchange Act¹⁰ and the CEA¹¹ require that security futures be based upon common stock and such other equity securities as the Commissions may jointly determine to be appropriate. Pursuant to this authority, the Commissions previously issued joint orders to permit depository shares¹² and shares of Exchange-Traded Funds, Trust Issued Receipts, and shares of registered closed-end management investment companies¹³ to underlie security futures (together, the "Prior Joint Orders"). There are, however, other types of securities that underlie listed options that are neither common stock nor covered by the Prior Joint Orders.

Section 6(h)(4)(A) of the Exchange Act¹⁴ and Section 2(a)(1)(D)(v)(I) of the

CEA¹⁵ provide that the Commissions, by rule, regulation, or order, may jointly modify the listing standard requirements specified in Sections 6(h)(3)(A) and (D) of the Exchange Act¹⁶ and the criteria specified in Sections 2(a)(1)(D)(i)(I) and (III) of the CEA¹⁷ to the extent that such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors. For the reasons and subject to the conditions discussed below, the Commissions believe that jointly modifying these requirements to permit any security that is eligible to underlie options traded on a national securities exchange to also underlie security futures, and to permit debt securities that are not registered under Section 12 of the Exchange Act ("unregistered debt securities") to underlie security futures, will foster the development of fair and orderly markets, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

I. Discussion

A. Security Futures Based on Securities Eligible To Underlie Options Traded on a National Securities Exchange

Section 6(h)(3)(D) of the Exchange Act¹⁸ and Section 2(a)(1)(D)(i)(III) of the CEA¹⁹ require that security futures be based upon common stock and such other equity securities as the Commissions jointly determine appropriate. Section 6(h)(4)(A) of the Exchange Act²⁰ and Section 2(a)(1)(D)(v)(I) of the CEA²¹ provide that the Commissions, by rule, regulation, or order, may jointly modify this requirement to the extent that such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

The Commissions now believe that modifying the requirement in Section 6(h)(3)(D) of the Exchange Act and Section 2(a)(1)(D)(i)(III) of the CEA to permit any security that is eligible to underlie options traded on a national securities exchange to also underlie security futures will foster the development of fair and orderly markets in security futures products, is

appropriate in the public interest, and is consistent with the protection of investors.

To be eligible to underlie options traded on a national securities exchange, and, pursuant to this order, eligible to underlie security futures, a security must meet securities options listing standards of a national securities exchange. Options listing standards of a national securities exchange are rules of an exchange, and, as such, must be filed with the SEC pursuant to Section 19(b) of the Exchange Act,²² and comply with Section 6(b) of the Exchange Act.²³ Section 6(b)(5) of the Exchange Act,²⁴ in particular, 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 remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The SEC may not approve an options exchange's proposed rule, including a proposed options listing standard, unless the SEC finds that it is consistent with the requirements of the Exchange Act, including Section 6(b),²⁵ and the rules and regulations under the Exchange Act. Accordingly, the Commissions believe that it is appropriate in the public interest and consistent with the protection of investors to modify the listing standard requirements in Section 6(h)(3)(D) of the Exchange Act and Section 2(a)(1)(D)(i)(III) of the CEA to permit any security that is eligible to underlie options traded on a national securities exchange to also underlie security futures. In addition, the Commissions believe that this modification of the listing standard requirements in the Exchange Act and the CEA will reduce impediments to the listing of security futures by allowing the creation of potentially useful new financial instruments, thereby fostering the development of fair and orderly markets in security futures. The Commissions believe, further, that it is appropriate, in the public interest, and consistent with the protection of investors to permit the listing and trading of security futures based on any security that is eligible to underlie an exchange-listed option because such security futures may facilitate price discovery in, and be a useful hedge for, the underlying securities, including

⁴ Section 6(h)(3) of the Exchange Act, 15 U.S.C. 78f(h)(3).

⁵ Section 6(h)(3)(A) of the Exchange Act, 15 U.S.C. 78f(h)(3)(A), and Section 2(a)(1)(D)(i)(I) of the CEA, 7 U.S.C. 2(a)(1)(D)(i)(I).

⁶ 17 CFR 240.6h-2.

⁷ 17 CFR 41.21.

⁸ See Securities Exchange Act Release No. 54106 (July 6, 2006) 71 FR 39534 (July 13, 2006) ("2006 Rulemaking").

⁹ In this regard, the Commissions note that, in a 2005 request for exemptive relief to permit its members, brokers, and dealers to trade certain unregistered debt securities, the New York Stock Exchange ("NYSE") estimated that, out of over 22,000 publicly offered corporate bond issues having a par value in excess of \$3 trillion, only 8% of the \$3 trillion par value of these debt securities was registered under the Exchange Act. See Securities Exchange Act Release No. 51998 (July 8, 2005), 70 FR 40748 (July 14, 2005). The SEC granted the NYSE's request for exemptive relief, subject to certain conditions. See Securities Exchange Act Release No. 54766 (November 16, 2006), 71 FR 67657 (November 22, 2006) (File No. S7-06-05) ("NYSE Exemption").

¹⁰ 15 U.S.C. 78f(h)(3)(D).

¹¹ 7 U.S.C. 2(a)(1)(D)(i)(III).

¹² See Securities Exchange Act Release No. 44725 (August 20, 2001).

¹³ See Securities Exchange Act Release No. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002).

¹⁴ 15 U.S.C. 78f(h)(4)(A).

¹⁵ 7 U.S.C. 2(a)(1)(D)(v)(I).

¹⁶ 15 U.S.C. 78f(h)(3)(A) and (D).

¹⁷ 7 U.S.C. 2(a)(1)(D)(i)(I) and (III).

¹⁸ 15 U.S.C. 78f(h)(3)(D).

¹⁹ 7 U.S.C. 2(a)(1)(D)(i)(III).

²⁰ 15 U.S.C. 78f(h)(4)(A).

²¹ 7 U.S.C. 2(a)(1)(D)(v)(I).

²² 15 U.S.C. 78s(b).

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78s(b).

certain unregistered debt securities.²⁶ Finally, the Commissions note that all security futures will continue to be required to meet the requirements of Sections 6(h)(3)(B), (C), and (E)–(L) of the Exchange Act²⁷ and Sections 2(a)(1)(D)(i)(II) and (IV)–(XI) of the CEA.²⁸

Unless the Commissions jointly determine otherwise, some securities eligible to underlie options traded on a national securities exchange currently may not be eligible to underlie security futures because such securities may not be common stock or covered by the Prior Joint Orders. By permitting any security eligible to underlie options to also underlie security futures, the Commissions are modifying the listing standard requirements in the Exchange Act and the criteria in the CEA to eliminate the requirement that any security underlying security futures, including each component security of a narrow-based security index, be common stock or such other equity securities as the Commissions may jointly determine. Instead, as long as a security may underlie options traded on a national securities exchange and the listing standards and the criteria for futures on such security meet the requirements of Sections 6(h)(3)(B), (C), and (E)–(L) of the Exchange Act and Sections 2(a)(1)(D)(i)(II) and (IV)–(XI) of the CEA, such security may underlie security futures.²⁹

Further, Section 6(h)(2) of the Exchange Act³⁰ provides that a national

securities exchange or a national securities association is permitted to trade only security futures that (A) conform with listing standards that the exchange or association files with the SEC under Section 19(b) of the Exchange Act, and (B) meet the criteria specified in Section 2(a)(1)(D)(i) of the CEA.³¹ Such security futures listing standards must also meet the requirements specified in Section 6(h)(3) of the Exchange Act,³² including the requirement that the listing standards for security futures be no less restrictive than comparable listing standards for options traded on a national securities exchange or a national securities association.³³ Before listing and trading security futures on any security eligible to underlie options traded on a national securities exchange, a national securities association must file with the SEC, pursuant to Section 19(b)(7) of the Exchange Act³⁴ and Rule 19b–7 thereunder,³⁵ a proposed rule change relating to its listing standards. An exchange or an association also must concurrently file its proposed listing standards with the CFTC pursuant to Section 19(b)(7)(B) of the Exchange Act.³⁶

B. Security Futures Based on Unregistered Debt Securities

Section 6(h)(3)(A) of the Exchange Act³⁷ and Section 2(a)(1)(D)(i)(I) of the CEA³⁸ require that any security underlying security futures, including each component security of a narrow-based security index, be registered pursuant to Section 12 of the Exchange Act. Thus, although options are permitted to be listed on unregistered debt securities under exchange listing standards,³⁹ such securities would not be permitted to underlie security futures without modifying this requirement. As stated above, Section 6(h)(4)(A) of the Exchange Act and Section 2(a)(1)(D)(v)(I) of the CEA provide that the Commissions by rule, regulation, or order, may jointly modify this requirement to the extent that the modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is

consistent with the protection of investors.

Pursuant to this authority, the Commissions previously adopted SEC Rule 6h–2⁴⁰ and amended CEA Rule 41.21⁴¹ to modify the statutory listing standards for security futures to permit the trading of security futures based on debt securities and indexes composed of certain debt securities.⁴² These rules permit the listing and trading of new and potentially useful financial products. The Commissions similarly believe that modifying the statutory listing standards for security futures to permit, under certain conditions, the trading of security futures based on certain unregistered debt securities, and narrow-based indexes composed of such securities, will reduce impediments to the listing of security futures based on debt securities and serve the public interest by allowing the creation of potentially useful new financial instruments, thereby fostering the development of fair and orderly markets in security futures. The Commissions also believe it is appropriate, in the public interest, and consistent with the protection of investors to permit, subject to the conditions discussed below, the listing of such security futures because they may facilitate price discovery in, and be a useful hedge for, debt securities.

An issuer of debt securities that are registered under Section 12 of the Exchange Act must provide comprehensive public information. This joint order may permit the listing and trading of security futures on debt securities that are not registered under Section 12 of the Exchange Act. However, because the Commissions believe that the public interest and the protection of investors is served by having information about the underlying debt securities and their issuers available, the Commissions are placing certain conditions on this order. In particular, as discussed below, this order is conditioned on an issuer of unregistered debt securities that underlie security futures being subject to the periodic reporting requirements of the Exchange Act. This condition is designed to ensure that information about the issuers and their securities is available to investors and futures traders.

More specifically, the listing and trading of security futures on unregistered debt would be permissible so long as the following four conditions

²⁶ The listing standards applicable to options generally require, among other things, that the underlying security be registered under Section 12 of the Exchange Act, be an NMS Stock, as defined in Regulation NMS under the Exchange Act, 17 CFR 242.600(b)(47), and have a substantial number of outstanding shares that are widely held and actively traded. *See, e.g.*, CBOE Rule 5.3 (Criteria for Underlying Securities). To date, the only securities not registered under Section 12 of the Exchange Act (other than U.S. government securities) that the SEC has approved to underlie exchange-listed options are certain corporate debt securities. *See* Securities Exchange Act Release No. 55976 (June 28, 2007), 72 FR 37551 (July 10, 2007) (order approving a proposal by the CBOE to list options on certain unregistered corporate debt securities). Among other things, these corporate debt securities must have substantial trading volume, initial principal amount, and outstanding float; the issuer of the corporate debt security must have at least one class of equity security registered under Section 12(b) of the Exchange Act; and the issuer's equity securities must satisfy the exchange's criteria to underlie options. *See* CBOE Rule 5.3.12.

²⁷ 15 U.S.C. 78f(h)(3)(B), (C) and (E)–(L).

²⁸ 7 U.S.C. 2(a)(1)(D)(i)(II) and (IV)–(XI).

²⁹ The Commissions note that Section 6(h)(3)(C) of the Exchange Act, 15 U.S.C. 78f(h)(3)(C), which will continue to apply, requires that listing standards for security futures be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association.

³⁰ 15 U.S.C. 78f(h)(2).

³¹ 7 U.S.C. 2(a)(1)(D)(i).

³² 15 U.S.C. 78f(h)(3).

³³ *See* Section 6(h)(3)(C) of the Exchange Act, 15 U.S.C. 78f(h)(3)(C).

³⁴ 15 U.S.C. 78s(b)(7).

³⁵ 17 CFR 240.19b–7.

³⁶ 15 U.S.C. 78s(b)(7)(B).

³⁷ 15 U.S.C. 78f(h)(3)(A).

³⁸ 7 U.S.C. 2(a)(1)(D)(i)(I).

³⁹ *See supra* note 26.

⁴⁰ 17 CFR 240.6h–2.

⁴¹ 17 CFR 41.21.

⁴² *See* 2006 Rulemaking, *supra* note 8.

are satisfied.⁴³ First, the offer and sale of the underlying debt securities must have been registered under the Securities Act of 1933 (“Securities Act”).⁴⁴ This condition is designed so that participants in the security futures market have access to the detailed disclosure in the Securities Act registration statement for the debt securities underlying these security futures.

Second, the issuer of such securities must have at least one class of equity securities registered under Section 12(b) of the Exchange Act.⁴⁵ The debt securities of a wholly-owned subsidiary of a parent company with at least one class of equity securities registered under Section 12(b) of the Exchange Act may also underlie a security future.⁴⁶ This condition is designed so that there is public availability of information about the issuer and the securities, even though the particular debt securities underlying the security future are not registered under Section 12 of the Exchange Act. Because any security registered under Section 12(b) is listed on a national securities exchange, this condition assures that a national securities exchange is responsible for monitoring the listed securities of the issuer of the debt securities underlying a security future and enforcing compliance by that issuer with comprehensive listing standards of the applicable national securities exchange.

Third, the transfer agent for the debt securities underlying the security future must be registered under Section 17A of the Exchange Act.⁴⁷ This condition is designed so that the transfer agents providing services to issuers of debt securities underlying security futures are subject to SEC oversight and the requirements of the Exchange Act, including Section 17A, and the rules thereunder. Fourth, the indenture for the unregistered debt securities underlying the security future must be qualified under the Trust Indenture Act of 1939 (“Trust Indenture Act”).⁴⁸ This condition is designed so that the specific protections afforded to debt holders under the Trust Indenture Act apply to debt securities that underlie security futures. The trust indenture for underlying debt securities registered under the Securities Act is qualified under the Trust Indenture Act at the

time of registration of those underlying debt securities.

As a result, by modifying the listing standard requirements such that the debt securities need not be registered under Section 12 of the Exchange Act, provided that the conditions set forth above are satisfied, the Commissions are increasing the types of debt securities on which security futures may be based while preserving the requirement that information important in making investment and trading decisions is available.

II. Conclusion

For the reasons discussed above, the Commissions by order are jointly modifying the requirement in Section 6(h)(3)(D) of the Exchange Act⁴⁹ and the criteria specified in Section 2(a)(1)(D)(i)(III) of the CEA⁵⁰ to permit any security to underlie a security future, provided such security is eligible to underlie options traded on a national securities exchange.

In addition, for the reasons discussed above, the Commissions by order are jointly modifying the requirement specified in Section 6(h)(3)(A) of the Exchange Act⁵¹ and the criterion specified in Section 2(a)(1)(D)(i)(I) of the CEA⁵² to permit an unregistered debt security, or a narrow-based index composed of unregistered debt securities, to underlie a security future if the following conditions are met:

(1) Each such security is a note, bond, debenture, or evidence of indebtedness that is not an equity security as defined in Section 3(a)(11) of the Exchange Act;⁵³

(2) The issuer of each such security has registered the offer and sale of the security under the Securities Act;

(3) The issuer of each such security, or the issuer’s parent if the issuer is a wholly-owned subsidiary (as such terms are defined in Rule 1–02 of SEC Regulation S–X),⁵⁴ has at least one class of common or preferred equity security registered under Section 12(b) of the Exchange Act⁵⁵ and listed on a national securities exchange;

(4) The transfer agent of each such security is registered under Section 17A of the Exchange Act;⁵⁶ and

(5) The trust indenture for each such security has been qualified under the Trust Indenture Act of 1939.⁵⁷

Accordingly, *It is ordered*, pursuant to Section 6(h)(4) of the Exchange Act and Section 2(a)(1)(D)(v)(I) of the CEA, that the requirements in Sections 6(h)(3)(A) and 6(h)(3)(D) of the Exchange Act and the criteria in Sections 2(a)(1)(D)(i)(I) and 2(a)(1)(D)(i)(III) of the CEA are modified, subject to the conditions set forth above, *provided however*, this order does not affect the CFTC’s exclusive jurisdiction under Section 2(a)(1)(C) of the CEA over any futures contract based on an index that is not a “narrow-based security index,” as defined in section 3(a)(55) of the Exchange Act and Section 1a(25) of the CEA. Accordingly, nothing in this order shall affect or limit the exclusive authority and jurisdiction of the CFTC with respect to any futures contract, now or in the future, including the CFTC’s authority to approve any futures contract that is based upon an index that is not a “narrow-based security index.”

Dated: November 19, 2009.

By the Commodity Futures Trading Commission.⁵⁸

David A. Stawick,
Secretary.

By the Securities and Exchange Commission.

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9–28164 Filed 11–23–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61021; File No. SR–NYSEArca–2009–103]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change Regarding Listing and Trading of RP Short Duration ETF

November 17, 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 November 6, 2009, NYSE Arca, Inc. (“NYSE Arca” or the “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

⁵⁸ Because the Commissions are jointly modifying the listing requirements to permit security futures on any security that is eligible to underlie options contracts traded on a national securities exchange, this order supersedes and replaces the Prior Joint Orders. *See supra* notes 12 and 13.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

⁴³ These four conditions are consistent with the conditions in the NYSE Exemption, *supra* note 9.

⁴⁴ 15 U.S.C. 77a *et seq.*

⁴⁵ 15 U.S.C. 78(b).

⁴⁶ The terms “parent” and “wholly-owned” have the same meanings as in Rule 1–02 of SEC Regulation S–X, 17 CFR 210.1–02.

⁴⁷ 15 U.S.C. 78q–1.

⁴⁸ 15 U.S.C. 77aaa–77bbbb.

⁴⁹ 15 U.S.C. 78f(h)(3)(D).

⁵⁰ 7 U.S.C. 2(a)(1)(D)(i)(III).

⁵¹ 15 U.S.C. 78f(h)(3)(A).

⁵² 7 U.S.C. 2(a)(1)(D)(i)(I).

⁵³ 15 U.S.C. 78c(a)(11).

⁵⁴ 17 CFR 210.1–02.

⁵⁵ 15 U.S.C. 78j(b).

⁵⁶ 15 U.S.C. 78q–1.

⁵⁷ 15 U.S.C. 77aaa–77bbbb.

by the Exchange. 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

Pursuant to the provisions of Section 19(b)(1) of the Act, NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc., proposes to list and trade under NYSE Arca Equities Rule 8.600 the shares of the RP Short Duration ETF, a series of the Grail Advisors ETF Trust. The shares of the ETF are collectively referred to herein as the "Shares."

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyx.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

The Exchange proposes to list and trade the Shares of the RP Short Duration ETF ("ETF" or "Fund") under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.³ The ETF will be an actively

³ The Commission approved NYSE Arca Equities Rule 8.600 and the listing and trading of certain funds of the PowerShares Actively Managed Funds Trust on the Exchange pursuant to Rule 8.600 in Securities Exchange Act Release No. 57619 (April 4, 2008) 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25). The Commission also previously approved listing and trading on the Exchange, or trading on the Exchange pursuant to unlisted trading privileges ("UTP") of the following actively managed funds under Rule 8.600: Securities Exchange Act Release Nos. 57626 (April 4, 2008), 73 FR 19923 (April 11, 2008) (SR-NYSEArca-2008-28) (order approving trading pursuant to UTP of Bear Stearns Active ETF); 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving listing of twelve actively-managed funds of the WisdomTree Trust); 59826 (April 28, 2009), 74 FR 20512 (May

managed exchange traded fund which is a series of Grail Advisors ETF Trust ("Trust"). The Trust is registered with the Commission as an investment company.⁴

Description of the Shares and the Fund

Grail Advisors, LLC is the Fund's investment manager ("Manager"). RiverPark Advisors, LLC ("RP") serves as the primary sub-adviser and Cohanzick Management, LLC ("Cohanzick") serves as sub-adviser to the ETF. The Bank of New York Mellon Corporation is the administrator, Fund accountant, transfer agent and custodian for the ETF. ALPS Distributors, Inc. serves as the distributor of Creation Units for the ETF on an agency basis.

RP Short Duration ETF

The investment objective of the ETF is current income with potential capital appreciation consistent with the preservation of capital.

The ETF invests, under normal circumstances, at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in debt securities. These securities include short- and intermediate-term securities issued by the U.S. Government, its agencies and instrumentalities, or corporate bonds or notes that Cohanzick, the ETF's sub-adviser, believes are consistent with the ETF's investment objective. Under normal circumstances, the ETF invests at least 65% of its assets in investment grade obligations, including securities issued or guaranteed by the U.S. Government, its agencies and instrumentalities. Investment-grade securities are securities rated BBB or BAA (or higher) by Standard & Poor's or Moody's, respectively, or the equivalent by a nationally recognized statistical rating organization rating that security (a "rating agency"). The ETF may invest up to 25% of its net assets in high yield securities or below investment-grade securities, commonly known as "junk bonds," rated BB or BA (or lower) by Standard & Poor's or Moody's, respectively, or the equivalent by a rating agency or, if unrated, determined

4, 2009) (SR-NYSEArca-2009-22) (order approving listing of Grail American Beacon Large Cap Value ETF); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR-NYSEArca-2009-55) (order approving listing of Dent Tactical ETF); 60717 (September 24, 2009), 74 FR 50853 (October 1, 2009) (SR-NYSEArca-2009-74) (order approving listing of four Grail Advisors RP ETFs).

⁴ See Registration Statement on Form N-1A for the Trust filed with the Securities and Exchange Commission on October 7, 2009 (File Nos. 333-148082 and 811-22154) (the "Registration Statement"). The description of the ETF and the Shares contained herein are based on information in the Registration Statement.

by Cohanzick to be of comparable quality.

The ETF expects to maintain an average-weighted effective maturity of three years or less.⁵ Due to the nature of securities in which the ETF invests, Cohanzick may make frequent changes to the portfolio and the ETF's portfolio turnover may be relatively higher than comparable fixed income funds.

In selecting portfolio securities for the ETF, in addition to considering economic factors such as the effect of interest rates and term structure on the ETF's investments, Cohanzick applies a "bottom-up" credit analysis. This means that Cohanzick looks at income-producing securities one at a time to determine if a security is a reasonable or an attractive investment opportunity, and if it is consistent with the ETF's investment objective. The credit analysis may include, but is not limited to, considering the current yield and yield-to-maturity of a potential investment relative to similar securities of a similar rating, positive and/or negative credit events that have occurred recently or may occur in the future, and fundamental analysis in determining value versus perceived credit rating or market pricing.

The ETF may not invest more than 20% of its net assets in bank loans. The ETF expects to invest only in U.S. dollar denominated securities.

Under adverse market conditions, the ETF may, for temporary defensive purposes, invest up to 100% of its assets in cash or cash equivalents, including investment grade short-term obligations. To the extent the Fund invokes this strategy, its ability to achieve its investment objective may be affected adversely.

The Fund will not invest in non-U.S. equity securities.

Investment Policies of the ETF

The Registration Statement enumerates investment policies which may be changed with respect to the ETF only by a vote of the holders of a majority of the ETF's outstanding voting securities. Among these policies are the following: (1) Regarding diversification, the ETF may not invest more than 5% of its total assets (taken at market value) in securities of any one issuer, other

⁵ According to the Registration Statement, "effective" maturity differs from actual maturity, which may be longer. In calculating the "effective" maturity, Cohanzick estimates the effect of expected principal payments and call provisions on securities held in the portfolio. This gives the portfolio managers additional flexibility in the securities they purchase, but could also result in more volatility than if the ETF were to calculate and make investments based on an actual maturity target.

than obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities, or purchase more than 10% of the voting securities of any one issuer, with respect to 75% of the ETF's total assets; and (2) regarding concentration, the ETF may not invest more than 25% of its total assets in the securities of companies primarily engaged in any one industry or group of industries provided that: (i) This limitation does not apply to obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities; and (ii) municipalities and their agencies and authorities are not deemed to be industries. The ETF may not invest more than 15% of its net assets in illiquid securities, including time deposits and repurchase agreements that mature in more than seven days.⁶ For this purpose, "illiquid securities" are securities that the ETF may not sell or dispose of within seven days in the ordinary course of business at approximately the amount at which the ETF has valued the securities.

In addition to the investment strategies described in the prospectus for the ETF, the ETF may enter into dollar rolls, delayed delivery transactions and forward commitment transactions and may buy and sell "when issued" securities, as described in the Registration Statement. The ETF may invest in mortgage- or other asset-backed securities. Mortgage-related securities include mortgage pass-through securities, collateralized mortgage obligations ("CMOs"), commercial mortgage-backed securities, mortgage dollar rolls, CMO residuals, stripped mortgage-backed securities ("SMBs") and other securities that directly or indirectly represent a participation in, or are secured by and payable from, mortgage loans on real property. In pursuing its individual objectives, the ETF may, to the extent permitted by their investment objective and policies, purchase and sell (write) both put options and call options on securities, swap agreements, securities indexes, and enter into interest rate and index futures contracts and purchase and sell options on such futures contracts ("futures options") for hedging purposes or to seek to replicate the composition and performance of a particular index, except that the ETF does not intend to enter into transactions involving currency futures or options.

⁶ This is a non-fundamental investment restriction applicable to each Fund and may be changed with respect to a Fund by a vote of a majority of the Board.

The ETF also may enter into swap agreements with respect to interest rates and indexes of securities. The ETF may invest in structured notes. If other types of financial instruments, including other types of options, futures contracts, or futures options are traded in the future, the ETF also may use those instruments, provided that their use is consistent with the ETF's investment objective. The ETF may, to the extent specified in the Registration Statement, purchase and sell both put and call options on fixed income or other securities or indexes in standardized contracts traded on foreign or domestic securities exchanges, boards of trade, or similar entities, or on an over-the-counter market, and agreements, sometimes called cash puts, which may accompany the purchase of a new issue of bonds from a dealer. The ETF will write call options and put options only if they are "covered."

The ETF may invest in futures contracts and options thereon with respect to, but not limited to, interest rates and security indexes. The ETF will only enter into futures contracts and futures options which are standardized and traded on a U.S. exchange, board of trade, or similar entity, or quoted on an automated quotation system. According to the Registration Statement, neither the Trust nor the Fund are deemed to be "commodity pools" or "commodity pool operators" under the Commodity Exchange Act⁷ ("CEA"), and are not subject to registration or regulation as such under the CEA.

The ETF may engage in swap transactions, including, but not limited to, swap agreements on interest rates or security indexes and specific securities. The ETF also may enter into options on swap agreements ("swap options"); purchase or otherwise receive warrants or rights; enter into repurchase agreements with banks and broker-dealers; and invest a portion of its assets in cash or cash items pending other investments or to maintain liquid assets required in connection with some of the ETF's investments. These cash items may include money market instruments, such as securities issued by the U.S. Government and its agencies, bankers' acceptances, commercial paper, and bank certificates of deposit.

The ETF may invest in pooled real estate investment vehicles and other real estate-related investments such as securities of companies principally engaged in the real estate industry. The ETF may invest in the securities of other investment companies to the extent permitted by law. Subject to applicable

⁷ 7 U.S.C. 1.

regulatory requirements, the ETF may invest in shares of both open- and closed-end investment companies (including money market funds and ETFs). The ETF also may invest in private investment funds, vehicles, or structures.

Commentary .07 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio.⁸ In addition, Commentary .07 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Grail Advisors, LLC is affiliated with a broker-dealer, Grail Securities, LLC, and has implemented a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio. RP and Cohanzyck are not affiliated with a broker-dealer.⁹ Any

⁸ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the investment adviser is subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act.

⁹ The Exchange represents that Grail Advisors, LLC, as the investment adviser of the Funds, RP as the primary sub-adviser, and Cohanzyck as a sub-adviser, and their respective related personnel, are subject to Investment Advisers Act Rule 204A-1. This Rule specifically requires the adoption of a code of ethics by an investment adviser to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable Federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A-1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment adviser to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and

Continued

additional Fund sub-advisers that are affiliated with a broker-dealer will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio.

Availability of Information

The ETF's Web site (<http://www.grailadvisors.com>), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the ETF: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),¹⁰ and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session¹¹ on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the "Disclosed Portfolio") held by the ETF that will form the basis for the ETF's calculation of NAV at the end of the business day.¹² The Web site and information will be publicly available at no charge.

In addition, for the ETF, an estimated value, defined in NYSE Arca Equities

implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

¹⁰The Bid/Ask Price of the ETF is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the NAV. The records relating to Bid/Ask Prices will be retained by the ETF and its service providers.

¹¹The Core Trading Session is 9:30 a.m. to 4 p.m. Eastern time.

¹²Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

Rule 8.600 as the "Portfolio Indicative Value," that reflects an estimated intraday value of the ETF's portfolio, will be disseminated. The Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the ETF on a daily basis and to provide a close estimate of that value throughout the trading day.

Information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association high-speed line.

On a daily basis, the Fund will disclose on the its Web site for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's Web site at <http://www.sec.gov>. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.

Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers.

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms

relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Initial and Continued Listing

The Shares will be subject to NYSE Arca Equities Rule 8.600(d), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Shares must be in compliance with Rule 10A-3¹³ under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value per Share will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Shares of the Fund will be halted if the "circuit breaker" parameters in NYSE Arca Equities Rule 7.12 are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading

¹³ See 17 CFR 240.10A-3.

increment for Shares on the Exchange will be \$0.01.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which includes Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of ISG.¹⁴

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to

¹⁴ For a list of the current members of ISG, see <http://www.isgportal.org>. The Exchange notes that not all of the components of the Disclosed Portfolio for the Fund may trade on exchanges that are members of ISG.

various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹⁵ 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 of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in NYSE Arca Equities Rule 8.600 are intended to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

¹⁵ 15 U.S.C. 78f(b)(5).

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2009-103 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2009-103. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File

Number SR–NYSEArca–2009–103 and should be submitted on or before December 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9–28118 Filed 11–23–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61022; File No. SR–NYSEArca–2009–101]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change Amending Equities Rule 5.2(j)(3)

November 17, 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 November 5, 2009, NYSE Arca, Inc. (“NYSE Arca” or the “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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), the initial listing standards for Investment Company Units. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange’s Web site at <http://www.nyse.com>, at the Exchange’s principal office and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

The Exchange proposes to amend Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) to amend the index weight requirements and adopt notional volume traded per month³ to the initial listing standards for Investment Company Units, commonly referred to as exchange traded funds. The Exchange proposes to amend the minimum component stock weight requirement for monthly trading volumes from 90% to 70% of the weight of the underlying index. In addition, the Exchange’s proposal to adopt an alternative notional volume traded per month listing standard is based upon NYSE Arca Equities Rule 5.2(j)(6), the Exchange listing standards for Equity Index-Linked Securities.⁴

Currently for U.S. indexes, Commentary .01(a)(A)(2) to Rule 5.2(j)(3) provides that Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 90% of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.

The Exchange proposes to amend the minimum component stock weight requirements from 90% to 70% of the weight of the underlying index or portfolio. Further, the Exchange is proposing adopt and average minimum trading volume of 250,000 shares over a six month period instead of in each of the last six months and to adopt a notional volume traded per month of \$25,000,000 averaged over the last six months as an option for meeting the listing requirements. Proposed Commentary .01(a)(A)(2) to Rule 5.2(j)(3) sets forth:

- Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 70% of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum monthly trading volume of 250,000

³ The notional volume traded per month is the number of shares traded globally in a calendar month multiplied by the monthly closing price.

⁴ See Securities Exchange Act Release No. 58376 (August 18, 2008), 73 FR 49726 (August 22, 2008) (SR–NYSEArca–2008–70).

shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months;

Currently for international or global indexes, Commentary .01(a)(B)(2) to Rule 5.2(j)(3) provides that Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 90% of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.

The Exchange proposes to amend the minimum component stock weight requirements from 90% to 70% of the weight of the underlying index or portfolio. Further, the Exchange is proposing adopt and average minimum trading volume of 250,000 shares over a six month period instead of in each of the last six months and to adopt a notional volume traded per month of \$25,000,000 averaged over the last six months as an option for meeting the listing requirements. Further, the Exchange proposes to clarify that the component stock trading volumes are determined on a global basis. Proposed Commentary .01(a)(B)(2) to Rule 5.2(j)(3) sets forth:

- Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 70% of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months;

With regard to the Exchange’s proposal to amend the minimum component stock weight requirement for monthly trading volumes from 90% to 70% of the weight of the underlying index, the Exchange believes the proposed standard reasonably ensures that securities with substantial monthly trading volumes account for a substantial portion of the underlying index and, when applied in conjunction with the other applicable listing requirements, remain sufficiently broad-based in scope to minimize potential manipulation. The Exchange notes that the Commission has previously approved the listing and trading of Investment Company Units based upon indices that were composed of stocks that did not meet the 90% monthly trading volume weight.⁵ Instead, these

⁵ See Securities and [sic] Exchange Act Release No. 46306 (August 2, 2002), 69 [sic] FR 51916 (August 9, 2002) (SR–NYSE–2002–28) (approving the following funds for trading pursuant to unlisted

¹⁶ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

indices would meet the proposed 70% monthly trading volume weight criteria.

With respect to adopting, as an alternative to monthly trading volume, the notional volume traded for each of the last six months to the initial and listing standards for both domestic and international indexes, the Exchange believes that notional volume traded averaged per month is a better measure of the liquidity of component stocks of the underlying index or indexes.⁶ Specifically, notional volume nullifies the volume discrepancies that generally occur between low priced and high priced stocks.⁷

With respect to adopting a six-month average, instead of in each of the last six-months, criteria for volume and notional volume, the Exchange believes that the averaged six month period is a better indicator of the current liquidity on an index and serves to eliminate seasonal volume fluctuations of component securities.⁸ Further, investors, exchange traded fund issuers and third-party index sponsors would also benefit from NYSE Arca's ability to list—without the delay associated with a stand-alone rule filing—Investment Company Units based on a broader group of indexes promoting competition.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁹ of the Securities Exchange

trading privileges on the NYSE: (1) Vanguard Total Stock Market VIPERS; (2) iShares Russell 2000 Index Funds; (3) iShares Russell 2000 Value Index Funds; and (4) iShares Russell 2000 Growth Index Fund; Securities Exchange Act Release No. 55953 (June 25, 2007), 72 FR 36084 (July 2, 2007) (SR-NYSE-2007-46) (approving listing on NYSE of HealthShares Orthopedic Repair Exchange-Traded Fund); Securities Exchange Act Release No. 56695 (October 24, 2007), 72 FR 61413 (October 30, 2007) (SR-NYSEArca-2007-111) (approving listing on NYSE Arca of HealthShares Ophthalmology Exchange-Traded Fund); Securities Exchange Act Release No. 60137 [sic] (February 27, 2009), 72 [sic] FR 9862 (March 6, 2009) (SR-NYSEArca-2009-13) (approving [sic] listing on NYSE Arca of iShares MSCI All Peru Index Fund); and Securities Exchange Act Release No. 60137 (June 18, 2009), 72 FR 30351 [sic] (June 25, 2009) (SR-NYSEArca-2009-54) (approving [sic] listing on NYSE Arca of iShares MSCI All Peru Capped Index Fund).

⁶ Telephone conversation on November 12, 2009 between Timothy J. Malinowski, Director, NYSE Euronext and Christopher W. Chow, Special Counsel and Andrew Madar, Special Counsel, Commission.

⁷ For example, a stock priced at \$10 per share that trades 2,500,000 shares in a month has a notional volume of \$25,000,000. Conversely, a stock priced at \$100 per share that trades 250,000 shares in a month has a notional volume of \$25,000,000.

⁸ See Footnote 4. Telephone conversation on November 12, 2009 between Timothy J. Malinowski, Director, NYSE Euronext and Christopher W. Chow, Special Counsel and Andrew Madar, Special Counsel, Commission.

⁹ 15 U.S.C. 78f(b).

Act of 1934 ("Act") in general, and furthers the objectives of Section 6(b)(5)¹⁰ 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 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, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to foster investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2009-101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2009-101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSEArca-2009-101 and should be submitted on or before December 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-28119 Filed 11-23-09; 8:45 am]

BILLING CODE 8011-01-P

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61000; File No. SR-BSECC-2009-005]

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Restated Certificate of Incorporation of The NASDAQ OMX Group, Inc.

November 13, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder² notice is hereby given that on October 1, 2009, Boston Stock Exchange Clearing Corporation (“BSECC”) 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 BSECC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

BSECC is filing this proposed rule change with regard to proposed changes to the Restated Certificate of Incorporation (“Certificate”) of its parent corporation, The NASDAQ OMX Group, Inc. (“NASDAQ OMX”). The proposed rule change will be implemented as soon as practicable following filing with the Commission. The text of the proposed rule change is available at <http://www.nasdaqtrader.com/Trader.aspx?id=BSECCIE2009>.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSECC 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. BSECC 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 is proposing to file the Certificate of Designation described below. Under Article Fourth, Paragraph B of the Certificate, NASDAQ OMX’s Board of Directors may authorize the issuance of preferred stock, establish the number of shares to be included in such series, and fix the designation, powers, preferences and rights of the shares of such series, and the qualifications, limitations, and restrictions thereof. As provided in Articles XI and XII of the NASDAQ OMX By-Laws, proposed amendments to the Certificate are to be reviewed by the Board of Directors of each self-regulatory subsidiary of NASDAQ OMX, and if any such proposed amendment must under Section 19 of the Act and the rules promulgated thereunder be filed with, or filed with and approved by the Commission before such amendment may be effective, then such amendment shall not be effective until filed with or filed with and approved by the Commission, as the case may be. Senior management of NASDAQ, PHLX, and BX, through delegated authority of their governing boards, have determined that the proposed change should be filed with the Commission, and the governing boards of BSECC and SCCP have each reviewed the proposed change and determined that it should be filed with the Commission.³ Under Delaware law, the amendment of the Certificate by the filing of a Certificate of Designation does not require approval by the stockholders of NASDAQ OMX.

The issuance of the Series A Preferred is part of a transaction between NASDAQ OMX and one of its existing shareholders, Silver Lake Partners (“Silver Lake”), whereby Silver Lake agreed to convert all of the 3.75% Series A Convertible Notes due 2012 (“Notes”) held by certain of its affiliates (“Silver Lake Affiliates”) into shares of NASDAQ OMX common stock (“Common Stock”) prior to the maturity date of such Notes.⁴ As an inducement to convert the Notes, NASDAQ OMX has delivered a cash payment and has agreed to deliver 1,600,000 shares of

Series A Preferred to the Silver Lake Affiliates (“Transaction”). Effective September 28, 2009, the Silver Lake Affiliates converted Notes into 8,246,680 shares of Common Stock. As a result, Silver Lake no longer holds any Notes and through certain of the Silver Lake Affiliates currently is the beneficial owner of shares of Common Stock that equal less than five percent (5%) of the outstanding voting securities of NASDAQ OMX.

Under the Certificate of Designation, up to two million shares will be designated for issuance as shares of Series A Preferred. The Series A Preferred will be senior in preference and priority to the Common Stock and on parity with all other classes and series of preferred stock.

The Series A Preferred will have limited voting rights and will not have the right to vote on any matters that are subject to the vote of the holders of Common Stock. The approval of at least a majority of the then outstanding shares of Series A Preferred will be required to approve any amendment to the Certificate or the NASDAQ OMX By-Laws that would adversely affect the rights, preferences, or privileges of the Series A Preferred (including any change in the dividends payable or liquidation preference). In addition, any amendments to reduce the dividend payable to the Series A Preferred, to increase the number of authorized shares of the Series A Preferred, or to change certain specified provisions of the Certificate of Designation will require the written consent of 75% of the then outstanding shares of Series A Preferred, voting together as a class.

The shares of Series A Preferred will be convertible into shares of Common Stock. Under the applicable NASDAQ listing rules, approval by the stockholders of NASDAQ OMX (“Shareholder Approval”) is required to permit the conversion of the Series A Preferred.⁵ NASDAQ OMX intends to seek Shareholder Approval at the company’s 2010 annual meeting of stockholders.

Upon the date of Shareholder Approval, the Series A Preferred will mandatorily convert into shares of Common Stock as provided in the Certificate of Designation.⁶ In the event

³ NASDAQ, PHLX, BX, BSECC, and SCCP are each submitting this filing pursuant to Section 19(b)(3)(A)(iii) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ Under Article Fourth, Section C.1(b) of the Certificate, the Notes are entitled to vote on an as-converted basis on matters that are submitted to a vote of the stockholders of NASDAQ OMX, voting together with the holders of the Common Stock and any other shares of capital stock entitled to vote.

⁵ Pursuant to NASDAQ Listing Rule 5635(c), shareholder approval is required when an equity compensation arrangement is made pursuant to which stock may be acquired by an issuer’s officers, directors, employees, or consultants. Pursuant to agreements relating to the issuance of the Notes, a Silver Lake representative currently serves on the NASDAQ OMX Board of Directors.

⁶ The number of shares of Common Stock to be issued upon conversion is variable. To the extent

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

that Shareholder Approval is not obtained, the Series A Preferred will accrue cumulative dividends, accrued on a daily basis and compounded quarterly, at a per annum rate equal to 12%. In addition, in the event that Shareholder Approval is not obtained, the Series A Preferred will be subject to optional redemption by NASDAQ OMX subject to the terms of the Certificate of Designation. The Series A Preferred will be mandatorily redeemable by NASDAQ OMX on the fourth anniversary of the original issuance date and will be redeemable at the option of the holders upon a Fundamental Change (as defined in the Certificate of Designation).

The issuance of Series A Preferred will result in no substantive change in the ownership or governance structure of NASDAQ OMX since the Series A Preferred will have no voting rights other than the limited rights described above. The Transaction also has resulted in the conversion of most of the outstanding Notes into Common Stock.⁷

2. Statutory Basis

BSECC believes that the proposed rule change is consistent with the provisions of Section 17A of the Act,⁸ in general, and with Section 17A(b)(3)(A) of the Act,⁹ in particular, in that it is designed to ensure that BSECC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions. BSECC believes that the proposed rule change and the issuance of Series A Preferred to existing investors will result in no substantive change to the corporate ownership structure of its parent NASDAQ OMX.

B. Self-Regulatory Organization's Statement on Burden on Competition

BSECC 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.

that the conversion results in Silver Lake obtaining beneficial ownership of shares of voting securities in excess of five percent (5%) of the then-outstanding shares of stock entitled to vote, Silver Lake will be subject to the existing voting restrictions in Article Fourth, Section C.3 of the Certificate. This provision provides that no person who is the beneficial owner of voting securities of NASDAQ OMX in excess of five percent (5%) of the then-outstanding shares of stock generally entitled to vote ("Excess Securities") may vote such Excess Securities.

⁷ Prior to the Transaction, the Silver Lake Affiliates held approximately \$119.5 million in aggregate principal amount of the outstanding Notes. Another holder continues to hold approximately \$500,000 in aggregate principal amount of the outstanding Notes.

⁸ 15 U.S.C. 78q-1.

⁹ 15 U.S.C. 78q-1(b)(3)(A).

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)(iii) of the Act¹⁰ and subparagraph (f)(3) of Rule 19b-4 thereunder.¹¹ 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, as amended, 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-BSECC-2009-005 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-BSECC-2009-005. 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 offices 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-BSECC-2009-005, and should be submitted on or before December 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-28094 Filed 11-23-09; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61001; File No. SR-SCCP-2009-04]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Restated Certificate of Incorporation of the NASDAQ OMX Group, Inc.

November 13, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² notice is hereby given that on October 1, 2009, Stock Clearing Corporation of Philadelphia ("SCCP") 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 SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

SCCP is filing this proposed rule change with regard to proposed changes to the Restated Certificate of Incorporation ("Certificate") of its

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁰ 15 U.S.C. 78s(b)(3)(a)(iii).

¹¹ 17 CFR 240.19b-4(f)(3).

parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX"). The proposed rule change will be implemented as soon as practicable following filing with the Commission. The text of the proposed rule change is available at <http://www.nasdaqtrader.com/Trader.aspx?id=SCCPApprovedRules>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP 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. SCCP 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 is proposing to file the Certificate of Designation described below. Under Article Four, Paragraph B of the Certificate, NASDAQ OMX's Board of Directors may authorize the issuance of preferred stock, establish the number of shares to be included in such series, and fix the designation, powers, preferences and rights of the shares of such series, and the qualifications, limitations, and restrictions thereof. As provided in Articles XI and XII of the NASDAQ OMX By-Laws, proposed amendments to the Certificate are to be reviewed by the Board of Directors of each self-regulatory subsidiary of NASDAQ OMX, and if any such proposed amendment must under Section 19 of the Act and the rules promulgated thereunder be filed with or filed with and approved by the Commission before such amendment may be effective, then such amendment shall not be effective until filed with or filed with and approved by the Commission, as the case may be. Senior management of NASDAQ, PHLX, and BX, through delegated authority of their governing boards, have determined that the proposed change should be filed with the Commission, and the governing boards of BSECC and SCCP have each reviewed the proposed change and determined that it should be filed with

the Commission.³ Under Delaware law, the amendment of the Certificate by the filing of a Certificate of Designation does not require approval by the stockholders of NASDAQ OMX.

The issuance of the Series A Preferred is part of a transaction between NASDAQ OMX and one of its existing shareholders, Silver Lake Partners ("Silver Lake"), whereby Silver Lake agreed to convert all of the 3.75% Series A Convertible Notes due 2012 ("Notes") held by certain of its affiliates ("Silver Lake Affiliates") into shares of NASDAQ OMX common stock ("Common Stock") prior to the maturity date of such Notes.⁴ As an inducement to convert the Notes, NASDAQ OMX has delivered a cash payment and has agreed to deliver 1,600,000 shares of Series A Preferred to the Silver Lake Affiliates ("Transaction"). Effective September 28, 2009, the Silver Lake Affiliates converted Notes into 8,246,680 shares of Common Stock. As a result, Silver Lake no longer holds any Notes and through certain of the Silver Lake Affiliates currently is the beneficial owner of shares of Common Stock that equal less than five percent (5%) of the outstanding voting securities of NASDAQ OMX.

Under the Certificate of Designation, up to two million shares will be designated for issuance as shares of Series A Preferred. The Series A Preferred will be senior in preference and priority to the Common Stock and on parity with all other classes and series of preferred stock.

The Series A Preferred will have limited voting rights and will not have the right to vote on any matters that are subject to the vote of the holders of Common Stock. The approval of at least a majority of the then outstanding shares of Series A Preferred will be required to approve any amendment to the Certificate or the NASDAQ OMX By-Laws that would adversely affect the rights, preferences, or privileges of the Series A Preferred (including any change in the dividends payable or liquidation preference). In addition, any amendments to reduce the dividend payable to the Series A Preferred, to increase the number of authorized shares of the Series A Preferred, or to change certain specified provisions of the Certificate of Designation will

³ NASDAQ, PHLX, BX, BSECC and SCCP are each submitting this filing pursuant to Section 19(b)(3)(A)(iii) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ Under Article Four, Section C.1(b) of the Certificate, the Notes are entitled to vote on an as-converted basis on matters that are submitted to a vote of the stockholders of NASDAQ OMX, voting together with the holders of the Common Stock and any other shares of capital stock entitled to vote.

require the written consent of 75 percent of the then outstanding shares of Series A Preferred, voting together as a class.

The shares of Series A Preferred will be convertible into shares of Common Stock. Under the applicable NASDAQ listing rules, approval by the stockholders of NASDAQ OMX ("Shareholder Approval") is required to permit the conversion of the Series A Preferred.⁵ NASDAQ OMX intends to seek Shareholder Approval at the company's 2010 annual meeting of stockholders.

Upon the date of Shareholder Approval, the Series A Preferred will mandatorily convert into shares of Common Stock as provided in the Certificate of Designation.⁶ In the event that Shareholder Approval is not obtained, the Series A Preferred will accrue cumulative dividends, accrued on a daily basis and compounded quarterly, at a per annum rate equal to 12%. In addition, in the event that Shareholder Approval is not obtained, the Series A Preferred will be subject to optional redemption by NASDAQ OMX subject to the terms of the Certificate of Designation. The Series A Preferred will be mandatorily redeemable by NASDAQ OMX on the fourth anniversary of the original issuance date and will be redeemable at the option of the holders upon a Fundamental Change (as defined in the Certificate of Designation).

The issuance of Series A Preferred will result in no substantive change in the ownership or governance structure of NASDAQ OMX since the Series A Preferred will have no voting rights other than the limited rights described above. The Transaction also has resulted in the conversion of most of the outstanding Notes into Common Stock.⁷

⁵ Pursuant to NASDAQ Listing Rule 5635(c), shareholder approval is required when an equity compensation arrangement is made pursuant to which stock may be acquired by an issuer's officers, directors, employees, or consultants. Pursuant to agreements relating to the issuance of the Notes, a Silver Lake representative currently serves on the NASDAQ OMX Board of Directors.

⁶ The number of shares of Common Stock to be issued upon conversion is variable. To the extent that the conversion results in Silver Lake obtaining beneficial ownership of shares of voting securities in excess of five percent (5%) of the then-outstanding shares of stock entitled to vote, Silver Lake will be subject to the existing voting restrictions in Article Fourth, Section C.3 of the Certificate. This provision provides that no person who is the beneficial owner of voting securities of NASDAQ OMX in excess of five percent (5%) of the then-outstanding shares of stock generally entitled to vote ("Excess Securities") may vote such Excess Securities.

⁷ Prior to the Transaction, the Silver Lake Affiliates held approximately \$119.5 million in aggregate principal amount of the outstanding Notes. Another holder continues to hold

2. Statutory Basis

SCCP believes that the proposed rule change is consistent with the provisions of Section 17A of the Act,⁸ in general, and with Section 17A(b)(3)(A) of the Act,⁹ in particular, in that it is designed to ensure that SCCP is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions. SCCP believes that the proposed rule change and the issuance of Series A Preferred to existing investors will result in no substantive change to the corporate ownership structure of its parent NASDAQ OMX.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP 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)(iii) of the Act¹⁰ and subparagraph (f)(3) of Rule 19b-4 thereunder.¹¹ 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, as amended, 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

approximately \$500,000 in aggregate principal amount of the outstanding Notes.

⁸ 15 U.S.C. 78q-1.

⁹ 15 U.S.C. 78q-1(b)(3)(A).

¹⁰ 15 U.S.C. 78s(b)(3)(a)(iii).

¹¹ 17 CFR 240.19b-4(f)(3).

- Send an e-mail to rule-comments@sec.gov. Please include File Number R-SCCP-2009- 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-SCCP-2009-04. 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 offices 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-SCCP-2009-04, and should be submitted on or before December 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-28095 Filed 11-23-09; 8:45 am]

BILLING CODE 8011-01-P

¹² 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61016; File No. SR-ISE-2009-96]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Program To Expose All-Or-None Orders Until December 31, 2009

November 17, 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 November 13, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules to implement a broadcast message that will inform market participants when a non-marketable all-or-none limit order is placed on the limit order book. The text of the proposed rule change is as follows, with deletions in [brackets] and additions italicized:

Rule 717. Limitations on Orders

* * * * *

Supplementary Material to Rule 717

.01-.03 No Change.

.04 A non-marketable all-or-none limit order shall be deemed "exposed" for the purposes of paragraphs (d) and (e) one second following a broadcast notifying [members] *market participants* that such an order to buy or sell a specified number of contracts at a specified price has been received in the options series. This provision shall be in effect on a pilot basis expiring [November 9, 2009] *December 31, 2009*.

* * * * *

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 self-regulatory organization 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

(a) *Purpose*—Pursuant to ISE Rule 717(d) and (e), Electronic Access Members must expose agency orders on the Exchange for at least one second before entering a contra-side proprietary order or a contra-side order that was solicited from a broker-dealer, or utilize one of the Exchange's execution mechanisms that have one second exposure periods built into the functionality.³

The Exchange operates an integrated system that consolidates all market maker quotes and orders, and automatically disseminates the best bid and offer. If a limit order is designated as all-or-none ("AON"), the contingency that the order must be executed in full makes it ineligible for display in the best bid or offer. Nevertheless, such orders are maintained in the system and remain available for execution after all other trading interest at the same price has been exhausted.⁴ Upon the receipt of a non-marketable all-or-none limit order, the system automatically will send a broadcast message to all market participants notifying them that an all-or-none order to buy or to sell a specified number of contracts at a specified price has been placed on the book.

On July 9, 2009, the Exchange adopted a proposed rule change on a three-month pilot basis to specify that a non-marketable all-or-none limit order is deemed "exposed" for the purposes of Rule 717(d) and (e) one second following a broadcast notifying members that such an order to buy or sell a specified number of contracts at a specified price has been received in the options series. The Exchange subsequently extended the pilot, which is set to expire on November 9, 2009.⁵ The Exchange now proposes to extend the pilot through the end of the year, until December 31, 2009. During the extension, the broadcast message will be

made available to any market participant, not just members.⁶ Thus, all of the terms of the order will be disclosed to all market participants.

(b) *Basis*—The basis under the Securities Exchange Act of 1934 ("Exchange Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and 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, under the proposed rule change all-or-none orders will continue to be exposed to all market participants so that there is a greater opportunity for them to interact with such orders.

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 on 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 proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

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.⁹ However, Rule 19b-4(f)(6)(iii)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. ISE has requested that the Commission waive the 30-day operative delay. The Commission notes that waiver of the operative delay will permit the pilot to continue until December 31, 2009 without further delay, and will provide all market participants, instead of only ISE members, with the opportunity to receive ISE's broadcast message with information about the terms of new AON orders. The Commission also notes that no comments were received to date on the existing pilot. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.¹¹

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

Send an e-mail to rule-comments@sec.gov. Please include File No. SR-ISE-2009-96 on the subject line.

Paper Comments

Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

⁹ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange satisfied this requirement.

¹⁰ *Id.*

¹¹ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³ See ISE Rule 716(d) (Facilitation Mechanism), Rule 716(e) (Solicited Order Mechanism) and Rule 723 (Price Improvement Mechanism for Crossing Transactions).

⁴ Supplementary Material .02 to ISE Rule 713.

⁵ See Securities Exchange Act Release No. 60866 (October 22, 2009), 74 FR 55879 (October 29, 2009).

⁶ The AON broadcast message is available through the Exchange's application programming interface ("API"). Any member or non-member connecting to the API can receive the AON broadcast message. The Exchange is not proposing to adopt a fee associated with receiving this message, and any future fee would be filed with the Commission.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-ISE-2009-96. 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 ISE. 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-ISE-2009-96 and should be submitted on or before December 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-28098 Filed 11-23-09; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61024; File No. SR-CBOE-2009-025]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Related to the Simple Auction Liaison (SAL)

November 18, 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 May 4, 2009, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 13, 2009, the Exchange filed Amendment No. 1 to the proposal, which replaced the original filing in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.13A, *Simple Auction Liaison (SAL)*, to revise the Designated Primary Market-Maker (“DPM”)/Lead Market-Maker (“LMM”) participation entitlement formula that is applicable to SAL executions in Hybrid 3.0 classes. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Office of the Secretary, CBOE and at the Commission.

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

The purpose of Amendment No. 1, which replaces the original filing in its entirety, is to modify the proposed rule change so that the revised DPM/LMM participation entitlement formula applicable to SAL executions in selected Hybrid 3.0 classes will operate on a 1-year pilot basis.

SAL is a feature within CBOE's Hybrid System that auctions marketable orders for price improvement over the

national best bid or offer (“NBBO”). For Hybrid 3.0 Classes, the Exchange determines, on a class-by-class basis, which electronic matching algorithm from Rule 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System*, shall apply to SAL executions (e.g., pro-rata, price-time, UMA priority with public customer, participation entitlement and/or market turner priority overlays). Additionally, the Exchange may establish, on a class-by-class basis, a DPM/LMM participation entitlement that is applicable only to SAL executions. Pursuant to Rules 8.15B and 8.87, the participation entitlement generally is 50% when there is one other Market-Maker also quoting at the best bid/offer on the Exchange, 40% when there are two Market-Makers also quoting at the best bid/offer on the Exchange, and 30% when there are three or more Market-Makers also quoting at the best bid/offer on the Exchange. In addition, the participation entitlement must be in compliance with Rule 6.45B(a)(i)(2). In relevant part, Rule 6.45B(a)(i)(2) provides that the DPM or LMM may not be allocated a total quantity greater than the quantity that it is quoting (including orders not part of quotes) at that price. In addition, if pro-rata priority is in effect and the DPM or LMM's allocation of an order pursuant to its participation entitlement is greater than its percentage share of quotes/orders at the best price at the time that the participation entitlement is granted (the “pro-rata share”), the DPM or LMM shall not receive any further allocation of that order. The rule also provides that the participation entitlement shall not be in effect unless public customer priority is in effect in a priority sequence ahead of the participation entitlement and then the participation entitlement shall only apply to any remaining balance.³ In addition, responses to SAL auctions are capped to the size of the Agency Order for allocation purposes pursuant to Rule 6.13A.

Thus, for example, assume an incoming agency order to buy 250 contracts is received and at the conclusion of the SAL auction the LMM is offered at the best price for 200 contracts, 1 customer is offered at the best price for 50 contracts and 4 other Maker-Makers are offered at the best price for 140 contracts each. In this

³ Rule 6.45B(a)(i)(2) also provides that, to be entitled to their participation entitlement, the DPM/LMM's order and/or quote must be at the best price on the Exchange. For purposes of SAL executions, the Exchange interprets this to mean that the DPM/LMM must be at the best price at both the start and the conclusion of the SAL auction.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹² 17 CFR 200.30-3(a)(12).

scenario, the customer would be allocated 50 contracts, the LMM would be allocated 60 contracts (30% × 200 remaining contracts), and the 4 other Market-Makers would be allocated the remaining 140 contract balance on a pro-rata basis with each receiving 35 contracts.

In order to offer additional incentives for DPMs or LMMs to support and participate in SAL auctions in Hybrid 3.0 classes (which currently only includes options on the Standard and Poor's 500 Index, SPX), and thus offer additional opportunities for price improvement, we are proposing to modify the DPM/LMM entitlement when the pro-rata algorithm is in effect for SAL in selected Hybrid 3.0 classes as part of a pilot program that will operate on a 1-year basis. For such pro-rata classes, after all public customer orders in the book at the best bid/offer and the DPM/LMM participation entitlement have been satisfied, the DPM/LMM shall be eligible to participate in any remaining balance on a pro-rata basis (regardless of whether its participation entitlement is greater than its pro-rata share).

Using the example above, the customer would be allocated 50 contracts, the LMM would be allocated 60 contracts (30% × 200 remaining balance), and the LMM and 4 other Market-Makers would be allocated the remaining 140 contract balance on a pro-rata basis with each receiving 28 contracts (140 remaining balance / (MM1's 140 contract offer + MM2's 140 contract offer + MM3's 140 contract offer + MM4's 140 contract offer + LMM's 140 decremented contract offer) × applicable pro-rata share). Thus, the LMM would receive a total of 88 contracts under the revised algorithm.

As part of the pilot program, on a quarterly basis the Exchange will evaluate the number of SAL executions in each pilot class where the DPM/LMM participation entitlement was applied and the allocation was greater than what it would have been under the pre-pilot allocation algorithm, *i.e.*, the allocation was greater than (i) the DPM/LMM's pro-rata share as calculated prior to the pilot and (ii) the DPM/LMM's participation entitlement share as calculated prior to the pilot. The Exchange will reduce the DPM/LMM participation entitlement for the class if the number of SAL executions that exceeded the benchmark is more than 1% of the total number of SAL executions in the class evaluated during the quarter. This evaluation will be based on a random sampling of three days for each month in each quarter. The "benchmark" will be 60% where

there is one Market-Maker also quoting at the best bid/offer on the Exchange; 40% where there are two Market-Makers also quoting at the best bid/offer on the Exchange; and 40% where there are three or more Market-Makers also quoting at the best bid/offer on the Exchange. The benchmark percentages, which in some instances are greater than CBOE's DPM/LMM participation entitlement percentages contained in Rules 8.15B and 8.87 (see discussion above), are based on the market-maker participation entitlement percentages that are available on other options exchanges.⁴

During the pilot, the Exchange will submit a quarterly report containing certain data related to this evaluation to the Commission and any such data submitted will be provided on a confidential basis. The report will be submitted within 10 business days of the conclusion of each quarter. The report will provide data on the total number of SAL executions evaluated during the period. It will also provide data on SAL executions where a DPM/LMM participation entitlement was applied and the allocation was greater than it would have been under the pre-pilot allocation algorithm, including information on the number of Market-Makers also quoting at the NBBO and on the actual allocation percentage the DPM/LMM received per execution as compared to the benchmark. For purposes of the report, the "actual allocation percentage" will be calculated by adding the participation entitlement contracts plus the pro-rata share contracts, and dividing the sum by the number of contracts executed on SAL less public customer orders that were satisfied.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁵ in general and furthers the objectives of Section 6(b)(5) of the Act⁶ in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

⁴ See, e.g., International Securities Exchange Rule 7.13.01(b) (provides a 60% participation right if there is only one other Professional Order or market maker quotation at the best price) and NYSE Arca, Inc. Rule 6.76A(a)(1)(A)(i) (provides a 40% participation right regardless of the number of other market participants at the best price).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest. In particular, the Exchange believes that the proposed change would provide additional incentives for DPMs or LMMs to support and participate in SAL auctions in Hybrid 3.0 classes, which would result in additional opportunities to provide orders executions at improved prices.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2009-025 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-CBOE-2009-025. 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 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-CBOE-2009-025 and should be submitted on or before December 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-28100 Filed 11-23-09; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61017; File No. SR-BX-2009-072]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fee Schedule of the Boston Options Exchange Facility

November 17, 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 November

12, 2009, NASDAQ OMX BX, Inc. (the "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. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act³ 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 Exchange proposes to amend the Fee Schedule of the Boston Options Exchange Group, LLC ("BOX"). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet website at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently submitted a proposed rule change, SR-BX-2009-071, which made several changes to the BOX Fee Schedule.⁵ Certain of these changes eliminated references to outbound P/A Orders from the Fee Schedule as these order types are no longer sent by BOX.⁶ Some of the text

that was removed from the Fee Schedule in SR-BX-2009-071 should not have been removed but rather amended to reflect applicability to Eligible Orders that are routed away by Routing Brokers.

The Exchange proposes to once again include the specific language in the BOX Fee Schedule, as appropriate, to reflect its applicability to Eligible Orders routed to Away Exchanges by Routing Brokers. Specifically, the Exchange proposes to exempt outbound Eligible Orders routed to Away Exchanges by Routing Brokers from the fees and credits of Section 7 of the BOX Fee Schedule, as these transactions are deemed to neither 'add' nor 'take' liquidity from the BOX Book.⁷ Additionally, the Exchange proposes to impose a fee of \$0.50 per contract for all Eligible Orders routed to Away Exchanges by Routing Brokers in excess of 4,000 contracts per month for an individual BOX Options Participant, as was imposed for outbound P/A Orders.⁸

Additionally, the Exchange proposes a clarifying change to text of Section 7(d) of the BOX Fee Schedule regarding the volume discount applied to executions in Price Improvement Period ("PIP") auctions of the Participant that initiated the PIP which occur at a price at least better than the NBBO. To clarify the application of the volume discount the Exchange proposes that the final sentence of Section 7(d) will read as follows: "This discount is calculated monthly for the Participant's previous calendar month's executions in PIP auctions which it initiated and which were filled at a price at least better than the NBBO."

("Decentralized Plan"). See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4-546) (Order Approving the National Market System Plan Relating to Options Order Protection and Locked/Crossed Market Plan). Instead of routing P/A Orders BOX now sends Eligible Orders to Away Exchange(s), when such Away Exchange(s) display the Best Bid or Best Offer, in accordance with the Decentralized Plan, via certain non-affiliated third party routing broker/dealers ("Routing Broker(s)"). See Securities Exchange Act Release No. 60832 (October 16, 2009), 74 FR 54607 (October 22, 2009) (SR-BX-2009-66).

⁷ See Securities Exchange Act Release No. 60504 (August 14, 2009), 74 FR 42724 (August 24, 2009) (SR-BX-2009-047).

⁸ See Securities Exchange Act Release No. 60610 (September 1, 2009), 74 FR 46285 (September 8, 2009) (SR-BX-2009-058). The Exchange stated in SR-BX-2009-58 that "exempting all outbound P/A Orders from fees may tempt BOX Options Participants to increase non executable order flow to BOX in order to avoid fees on other exchanges." The Exchange proposed the \$0.50 fee "to eliminate the abusive use of this exemption." As proposed in SR-BX-2009-58, the proposed re-inclusion of this fee will have no effect on the billing of orders of non-BOX Options Participants.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See Securities Exchange Act Release No. 60934 (November 4, 2009), 74 FR 58358 (November 12, 2009) (SR-BX-2009-071). The BOX Fee Schedule can be found on the BOX Website at <http://www.bostonoptions.com>.

⁶ The Exchange is a participant in the Options Order Protection and Locked/Crossed Market Plan

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁹ in general, and Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest, as well Section 6(b)(4) of the Act,¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The proposed changes will result in clarification of the fees charged for trading activity on BOX.

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act¹² and Rule 19b-4(f)(2) thereunder,¹³ because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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-2009-072 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-2009-072. 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 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-BX-2009-072 and should be submitted on or before December 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-28099 Filed 11-23-09; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61005; File No. SR-ISE-2009-90]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change by International Securities Exchange, LLC Relating to Changes to the U.S. Exchange Holdings, Inc. Corporate Documents and International Securities Exchange Trust Agreement in Connection With the Form 1 Applications of EDGA Exchange, Inc. and EDGX Exchange, Inc.

November 16, 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 November 9, 2009, the International Securities Exchange, LLC ("ISE" 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. 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

In connection with a transaction³ which closed on December 23, 2008, the International Securities Exchange, LLC ("Exchange" or "ISE") merged the ISE Stock Exchange, LLC, a Delaware limited liability company, with and into Maple Merger Sub, LLC, a Delaware limited liability company and a wholly-owned subsidiary of Direct Edge Holdings LLC ("Direct Edge"). As part of the same transaction, the parent company of the Exchange, International Securities Exchange Holdings, Inc. ("ISE Holdings"), purchased a 31.54% equity interest in Direct Edge. ISE Holdings is a direct wholly-owned subsidiary of

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities and Exchange Act Release No. 59135 (December 22, 2008); 73 FR 79954 (December 30, 2008) (SR-ISE-2008-85).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

U.S. Exchange Holdings, Inc., a Delaware corporation (“U.S. Exchange Holdings”), which in turn is a wholly-owned subsidiary of Eurex Frankfurt. Eurex Frankfurt is a wholly-owned subsidiary of Eurex Zürich AG (“Eurex Zürich”), which in turn is jointly owned by Deutsche Börse AG (“Deutsche Börse”) and SIX Swiss Exchange (“SIX”). SIX is owned by SIX Group (Eurex Frankfurt, Eurex Zürich, Deutsche Börse, SIX, SIX Group, and U.S. Exchange Holdings, Inc. are collectively referred to herein as the “Upstream Owners”).

On May 7, 2009, Direct Edge’s direct subsidiaries, EDGA Exchange, Inc. (“EDGA”) and EDGX Exchange, Inc. (“EDGX,” and together with EDGA, the “DE Exchanges”), each filed a Form 1 Application⁴ (the “Form 1 Applications”) with the Securities and Exchange Commission (the “Commission”), to own and operate a registered national securities exchanges. Each of the Upstream Owners will take appropriate steps to incorporate provisions regarding ownership, jurisdiction, books and records, and other issues related to their control of EDGA and EDGX. Specifically, each of the non-U.S. Upstream Owners (*i.e.*, Deutsche Börse, Eurex Frankfurt, Eurex Zürich, SIX, and SIX Group,) will adopt resolutions to incorporate those concepts with respect to itself, as well as its board members, officers, employees, and agents (as applicable). The U.S. Upstream Owner, U.S. Exchange Holdings, will include appropriate provisions in its governing documents to incorporate those concepts with respect to itself, as well as its directors, officers, employees, and agents (as applicable).

In this filing, the Exchange is submitting to the Commission: (i) Amendments to the Certificate of Incorporation and Bylaws of U.S. Exchange Holdings (the “Corporate Documents”); and (ii) amendments to the Trust Agreement dated as of December 19, 2007, among ISE Holdings, U.S. Exchange Holdings, Wilmington Trust Company, as Delaware trustee, and Sharon Brown-Hruska, Robert Schwartz and Heinz Zimmermann, as trustees (the “ISE Trust Agreement”). The text of the proposed rule change is available on the Exchange’s Web site <http://www.ise.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

⁴ See Securities and Exchange Act Release No. 60651 (September 11, 2009); 74 FR 179 (September 17, 2009) (File No. 10–193 and 10–194).

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

In this filing, the Exchange is submitting to the Commission: (i) Amendments to the Certificate of Incorporation and Bylaws of U.S. Exchange Holdings (the “Corporate Documents”); and (ii) amendments to the Trust Agreement dated as of December 19, 2007, among ISE Holdings, U.S. Exchange Holdings, Wilmington Trust Company, as Delaware trustee, and Sharon Brown-Hruska, Robert Schwartz and Heinz Zimmermann, as trustees (the “ISE Trust Agreement”).

U.S. Exchange Holdings’ Corporate Documents

The Exchange proposes to amend certain provisions of the Corporate Documents of U.S. Exchange Holdings in connection with the contemplated ownership and operation of the DE Exchanges. As a result of ISE Holdings owning a 31.54 percent equity interest in Direct Edge and possessing certain contractual rights and obligations with respect to Direct Edge, ISE Holdings’ parent company, U.S. Exchange Holdings, will control, indirectly, EDGA and EDGX. Accordingly, the Exchange proposes to broaden certain references that are currently limited to ISE (the sole registered national securities exchange indirectly controlled by U.S. Exchange Holdings) to also reflect ISE Holdings’ indirect ownership of EDGA and EDGX. Thus, the Exchange proposes to replace certain references to ISE with each “Controlled National Securities Exchange.” These references appear in the ownership and voting limitations sections of the Corporate Documents, as well as other miscellaneous sections, including, but not limited to, the confidentiality section, the books and records section,

the compliance with laws section, the jurisdiction section, and the amendments section.

ISE Trust Agreement

The Exchange proposes to amend certain provisions of the ISE Trust Agreement in connection with the contemplated ownership and operation of the DE Exchanges. The ISE Trust serves four general purposes: (i) To accept, hold and dispose of Trust Shares⁵ on the terms and subject to the conditions set forth therein, (ii) determine whether a Material Compliance Event⁶ has occurred or is continuing; (iii) determine whether the occurrence and continuation of a Material Compliance Event requires the exercise of the Call Option;⁷ and (iv) transfer Deposited Shares from the Trust to the Trust Beneficiary⁸ as provided in Section 4.2(h) therein. Accordingly, the Exchange proposes to broaden certain references that are currently limited to ISE (the sole registered national securities exchange controlled by ISE Holdings) to also reflect ISE Holdings’ indirect ownership of the EDGA and EDGX. Thus, the Exchange proposes to replace certain references to ISE with each “Controlled National Securities Exchange.” These references appear in Article II through Article VIII, inclusive.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Exchange Act,⁹ in general, and with Sections 6(b)(1) and (b)(5),¹⁰ in particular, in that the proposal enables

⁵ Under the ISE Trust Agreement, the term “Trust Shares” means either Excess Shares or Deposited Shares, or both, as the case may be.

Under the ISE Trust Agreement, the term “Excess Shares” means that a Person obtained an ownership or voting interest in ISE Holdings in excess of certain ownership and voting restrictions pursuant to Article Four of the Certificate of Incorporation of ISE Holdings, through ownership of one of the Upstream Owners, without obtaining the approval of the Commission.

Under the ISE Trust Agreement, the term “Deposited Shares” means shares that are transferred to the Trust pursuant to the Trust’s exercise of the Call Option.

⁶ Under the ISE Trust Agreement, the term “Material Compliance Event” means, with respect to a non-U.S. Upstream Owner, as any state of facts, development, event, circumstance, condition, occurrence or effect that results in the failure of any of the non-U.S. Upstream Owners to adhere to their respective commitments under the resolutions in any material respect.

⁷ Under the ISE Trust Agreement, the term “Call Option” means the option granted by the Trust Beneficiary to the Trust to call the Voting Shares as set forth in Section 4.2 therein.

⁸ Under the ISE Trust Agreement, the term “Trust Beneficiary” means U.S. Exchange Holdings, Inc.

⁹ See 15 U.S.C. 78f.

¹⁰ See 15 U.S.C. 78f(b)(3), [5] [sic].

the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Exchange Act, the rules and regulations thereunder, and SRO rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Moreover, the proposed rule change will ensure that U.S. Exchange Holdings, the direct parent company of ISE Holdings and indirect affiliate of the DE Exchanges, will not act in a way that is inconsistent with the DE Exchanges' obligations under the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-ISE-2009-90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2009-90. 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-2009-90 and should be submitted on or before December 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-28196 Filed 11-23-09; 8:45 am]

BILLING CODE 8011-01-P

¹¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61010; File No. SR-ISE-2009-87]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to Foreign Currency Options

November 16, 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 October 27, 2009, the International Securities Exchange, LLC ("ISE" 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding Foreign Currency Options ("FX Options").³ The text of the proposed rule change is available on the Exchange's Web site <http://www.ise.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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.

³ ISE began trading FX options on April 17, 2007. See Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR-ISE-2006-59) (the "FX Options Filing").

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to amend its rules regarding FX Options. Specifically, the Exchange proposes to amend ISE Rule 2205 by adding a provision that permits the Exchange to list a single strike price of one cent (\$0.01) for each expiration month for FX Options opened for trading on the Exchange.⁴ The proposed one cent strike would be in addition to the strike prices listed by the Exchange pursuant to ISE Rule 2205.

Currently, pursuant to ISE Rule 2205, after a class of options contracts on any underlying currency pair has been approved for listing and trading, the Exchange may open for trading series of FX Options that expire in consecutive monthly intervals (ISE Rule 2205(a)(1)(A)), in three or "cycle" month intervals (ISE Rule 2205(a)(1)(B)), or that have up to 36 months to expiration (ISE Rule 2205(a)(1)(C)). For example, pursuant to ISE Rule 2205(a)(1)(A), with respect to each class of FX Options, the Exchange may open for trading series of options having up to four consecutive expiration months, with the shortest term series having no more than two months to expiration. The Exchange may also open additional consecutive month series of the same class for trading at or about the time a prior consecutive month series expires, and the expiration month of each such new series shall normally be the month immediately succeeding the expiration month of the then outstanding consecutive month series of the same class of options having the longest remaining time to expiration. Under this proposed rule change, for each such month opened for trading, the Exchange would list an additional strike price of one cent.

The Exchange notes that adding a one cent strike for FX Options will result in a single deep in the money call option to provide investors with exposure similar to that of spot. The Exchange believes creating such exposure provides an opportunity to attract a broader range of market participants by offering a product that, in particular,

⁴ The Commission notes that the proposed text for ISE Rule 2205 is as follows:

Rule 2205. Series of Foreign Currency Options Open for Trading

(a)-(b) No Change.

(c) For each expiration month opened for trading, in addition to the strike prices listed by the Exchange pursuant to this Rule 2205, the Exchange shall also list a single strike price of one cent (\$0.01).

accommodates retail spot foreign currency traders.

The Exchange also believes that a \$0.01 strike price would enable certain trading strategies that were previously unavailable to investors. Specifically, investors would be able to engage in strategies that offer similar exposure to a tied-to-spot trade, such as a buy-write trade. The proposed new strike would also appeal to securities brokers that do not currently offer spot foreign currency trading. Many online securities brokers have not offered spot foreign currency trading to their customers because it is not a listed and centrally-cleared product. ISE's proposed rule change offers such brokers an opportunity to expand their offering beyond equities and retain customer assets that may otherwise go to spot foreign currency trading venues that operate outside of U.S. regulatory jurisdiction.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.⁵ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act's⁶ requirements that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the proposed rule change will allow the Exchange to list a single one cent strike for each expiration month of FX Options opened for trading and thereby provide investors with the ability to engage in previously unavailable spot foreign currency trading strategies.

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 on this proposed rule change. The Exchange has not received any

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-ISE-2009-87 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2009-87. 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-2009-87 and should be submitted on or before December 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-28096 Filed 11-23-09; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61023; File No. SR-MSRB-2009-16]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of New Rule A-16, on Examination Fees

November 18, 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 November 5, 2009, the Municipal Securities Rulemaking Board (“MSRB” or “Board”), 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 MSRB. The MSRB has designated the proposed rule change as charging a fee applicable to brokers, dealers and municipal securities dealers pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing new Rule A-16, which provides for examination fee assessments on persons taking certain

qualification examinations as of January 4, 2010. Any person associated with a broker, dealer or municipal securities dealer (“dealer”) engaged in municipal securities activities who is a municipal securities representative, municipal securities principal, or municipal fund securities limited principal must take and pass a qualification examination to demonstrate competence in each area in which he or she intends to work. The Series 51 (Municipal Fund Securities Limited Principal Qualification Examination), Series 52 (Municipal Securities Representative Qualification Examination), and Series 53 (Municipal Securities Principal Qualification Examination) are developed, maintained, and owned by the MSRB. The new rule will assess a \$60 examination development fee on each individual taking the Series 51, 52, or 53 examinations. The text of the proposed rule change is available on the MSRB’s Web site at www.msrb.org/msrb1/sec.asp, at the MSRB’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change establishes examination fees that shall be assessed on persons taking certain qualification examinations as of January 4, 2010. Any person associated with a broker, dealer or municipal securities dealer (“dealer”) engaged in municipal securities activities who is a municipal securities representative, municipal securities principal, or municipal fund securities limited principal must take and pass a qualification examination to demonstrate competence in each area in which he or she intends to work. The Series 51 (Municipal Fund Securities Limited Principal Qualification Examination), Series 52 (Municipal Securities Representative Qualification

Examination), and Series 53 (Municipal Securities Principal Qualification Examination) are developed, maintained, and owned by the MSRB. These examinations are intended to safeguard the investing public by helping to ensure that certain persons associated with dealers meet minimum qualifications to perform their job. Given this purpose, the examinations seek to measure accurately and reliably the degree to which each candidate possesses the knowledge, skills and abilities necessary to perform his or her job. The Series 51 examination is 1½ hours and consists of 60 multiple-choice questions, and the Series 52 and 53 examinations are 3 hours each and consist of 100 multiple-choice questions per examination.

Currently, the fee assessed by the Financial Industry Regulatory Authority (“FINRA”), which administers the examination on behalf of the MSRB, is \$85 for the Series 51 examination, \$95 for the Series 52 examination, and \$95 for the Series 53 examination. At present, FINRA receives the entire amount of the fee for each of the examinations, which is intended to cover the cost to FINRA to schedule, administer the examinations, maintain records, and undertake systems changes. Pursuant to the proposed rule change, the MSRB will assess a development fee of \$60 per examination, which will be collected by FINRA along with FINRA’s administrative fee. With the addition of the MSRB development fee, the total fee will be \$145 for the Series 51 examination, \$155 for the Series 52 examination, and \$155 for the Series 53 examination. On a periodic basis, FINRA will remit the fees it collects on behalf of the MSRB for development of the examinations to the MSRB and will retain the administrative fees it collects for the delivery of the examinations.

The proposed MSRB development fee is intended to partially cover costs incurred to develop and implement the examinations, costs associated with monitoring the examinations for effectiveness, and costs associated with updating the examinations’ content and questions. The development fees will be effective as of January 4, 2010.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with the requirements of Section 15B(b)(2)(J) of the Act,⁵ which requires, in pertinent part, that the MSRB’s rules shall:

Provide that each municipal securities broker and each municipal securities dealer shall pay to the Board such reasonable fees

⁵ 15 U.S.C. 78o-4(b)(2)(J).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges.

The proposed rule change provides for reasonable fees to partially offset costs associated with the development of the Series 51, 52, and 53 examinations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all individuals who take the Series 51, 52, and 53 examinations.

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁶ and Rule 19b-4(f)(2) thereunder,⁷ in that new Rule A-16 charges fees applicable to brokers, dealers and municipal securities dealers. The proposed rule change applies to individuals taking the Series 51, 52, or 53 examinations on or after January 4, 2010. 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.⁸

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-MSRB-2009-16 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-MSRB-2009-16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/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 MSRB. 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-MSRB-2009-16 and should be submitted on or before December 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-28120 Filed 11-23-09; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2009-0375]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on an information collection under Office of Management and Budget (OMB) Control No. 2137-0604, titled "Pipeline Integrity Management in High Consequence Areas Operators with more than 500 Miles of Hazardous Liquid Pipeline." PHMSA will request approval from OMB for a renewal of the current information collection.

DATES: Interested persons are invited to submit comments on or before January 25, 2010.

ADDRESSES: Comments may be submitted in the following ways:

E-Gov Web Site: <http://www.regulations.gov>. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1-202-493-2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12-140, Washington, DC 20590-001.

Hand Delivery: 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 on Federal Holidays.

Instructions: Identify the docket number, PHMSA-2009-0375 at the beginning of your comments. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or view the Privacy Notice at <http://www.regulations.gov>.

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

⁹ 17 CFR 200.30-3(a)(12).

www.regulations.gov before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to <http://www.regulations.gov> at any time or to 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 on Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: "Comments on PHMSA-2009-0375". The Docket Clerk will date-stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (Internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

FOR FURTHER INFORMATION CONTACT:

Cameron Satterthwaite by telephone at 202-366-1319, by fax at 202-366-4566, or by mail at U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., PHP-30, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will be submitting to OMB for renewal and extension. This information collection is contained in the pipeline safety regulations at 49 CFR Parts 190-199. The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) Type of request; (4) Abstract of the information collection activity; (5) Description of affected public; (6) Estimate of total annual reporting and recordkeeping burden; and (7) Frequency of collection. PHMSA will request a three-year term of approval for each information collection activity.

PHMSA requests comments on the following information collection:

Title: Pipeline Integrity Management in High Consequence Areas Operators with more than 500 Miles of Hazardous Liquid Pipeline.

OMB Control Number: 2137-0604.

Type of Request: Renewal of a currently approved information collection.

Abstract: Hazardous liquid operators with pipelines in high consequence areas (*i.e.*, commercially navigable waterways, high population areas, other populated areas, and unusually sensitive areas as defined in 49 CFR 195.450) are subject to certain information collection requirements relative to the Integrity Management Program provisions of 49 CFR 195.452. This information collection (2137-0604) covers each operator that has more than 500 miles of hazardous liquid pipelines.

Affected Public: Operators of hazardous liquid pipelines located in high consequence areas that operate more than 500 miles of pipeline.

Estimated number of responses: 71.

Estimated annual burden hours: 57,510 hours.

Frequency of collection: Annually.

Issued in Washington, DC on November 17, 2009.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E9-28203 Filed 11-23-09; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA-2009-0180]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: This notice solicits public comments on continuation of the requirements for the collection of information on safety standards. Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes a collection of information on the advanced air bag phase-in requirements of the Federal motor vehicle safety standard on occupant protection for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before January 25, 2010.

ADDRESSES: You may submit comments (identified by the Docket ID Number above) by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online 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., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- **Fax:** 202-493-2251

Instructions: It is requested, but not required, that 2 copies of the comment be provided. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT:

Complete copies of each request for collection of information may be obtained at no charge from Ms. Lori Summers, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590. Ms. Summers' telephone number is (202) 366-1740. Please identify the relevant collection of information by referring to this Docket Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before a proposed collection of information is submitted to OMB for approval, Federal agencies must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing

what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How 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, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Part 585—Advanced Air Bag Phase-In Reporting Requirements.

OMB Control Number: 2127-0599.

Form Number: This collection of information uses no standard form.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: Extension of a currently approved collection.

Summary of the Collection of Information: 49 U.S.C. 30111 authorizes the issuance of Federal motor vehicle safety standards (FMVSS) and regulations. The agency, in prescribing a FMVSS or regulation, considers available relevant motor vehicle safety data, and consults with other agencies, as it deems appropriate. Further, the statute mandates that in issuing any FMVSS or regulation, the agency considers whether the standard or regulation is "reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed," and whether such a standard will contribute to carrying out the purpose of the Act. The Secretary is authorized to invoke such rules and regulations as deemed necessary to carry out these requirements. Using this authority, the agency issued FMVSS No. 208, "Occupant crash protection," to aid the agency in achieving many of its safety goals. This notice requests comments on the extension of the phase-in reporting requirements of this FMVSS related to the implementation of advanced air bags. Phase 1 of the

advanced air bag phase-in began September 1, 2003 with 100 percent compliance by September 1, 2005. Phase 2 of the advanced air bag phase-in began September 1, 2007 with 100 percent compliance by September 1, 2009. Phase 3 of the advanced air bag phase-in began September 1, 2009 with 100 percent compliance by September 1, 2011.

Description of the need for the information and proposed use of the information: NHTSA needs this information to ensure that vehicle manufacturers are certifying their applicable vehicles as meeting the advanced air bag requirements of FMVSS No. 208. NHTSA will use this information to determine whether a manufacturer has complied with the amended requirements during the phase-in period.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Response to the Collection of Information): NHTSA estimates that 22 vehicle manufacturers will submit the required information. For each report, the manufacturer will provide, in addition to its identity, several numerical items of information. The information includes, but is not limited to, the following items:

(a) Total number of vehicles manufactured for sale during the preceding production year,

(b) Total number of vehicles manufactured during the production year that meet the regulatory requirements, and

(c) Information identifying the vehicles (by make, model, and vehicle identification number (VIN)) that have been certified as complying with the requirements.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information: NHTSA estimates that it will annually take each of the 22 affected manufacturers an average of 61 hours to comply with these requirements. Using a cost estimate of \$35 per hour, this results in a total annual cost of \$46,970 (22 manufacturers x 61 hours per manufacturer x \$35 per hour).

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued on: November 19, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9-28201 Filed 11-23-09; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[U.S. DOT Docket Number NHTSA-2009-0179]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before January 25, 2010.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA-2009-0179] by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online 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., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1-800-647-5527.

- Fax: 202-493-2251.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may

review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketInfo.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Shirlene Ball, NHTSA, 1200 New Jersey Avenue, SE., W51-217, NPO 420, Washington, DC 20590. Mrs. Ball's telephone number is (202) 366-2245.

Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How 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, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Air Bag Deactivation.

OMB Control Number: 2127-0588.

Affected Public: Private individuals, fleet owners and lessees, motor vehicle dealers, repair businesses.

Abstract: If a private individual or lessee wants to install an air bag on-off switch to turn-off either or both frontal air bags, they must complete Form OMB 2127-0588 to certify certain statements regarding use of the switch. The dealer or business must, in turn, submit the completed forms to NHTSA within seven days. The submission of the completed forms by the dealers and repair business to NHTSA, as required, will serve the agency several purposes. They will aid the agency in monitoring the number of authorization requests submitted and the pattern in claims of risk group membership. The completed forms will enable the agency to determine whether the dealers and repair businesses are complying with the terms of the exemption, which include a requirement that the dealers and repair businesses accept only fully completed forms. Finally, submission of the completed forms to the agency will promote honesty and accuracy in the filling out of the forms by vehicle owners. The air bag on-off switches are installed only in vehicles in which the risk of harm needs to be minimized on a case-by-case basis.

Estimated Annual Burden: 7,500 hours.

Estimated Number of Respondents: 15,000.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on November 17, 2009.

Kevin Mahoney,

Director, Corporate Customer Services.

[FR Doc. E9-28007 Filed 11-23-09; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2009-0203]

Pipeline Safety: Meeting of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice announces a public meeting of the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). The committees will meet to discuss proposed rules on reporting requirements and standards publications and several future regulatory initiatives.

DATES: The committees will meet on Wednesday, December 9, 2009, from 1 p.m. to 5 p.m. EST and on Thursday, December 10, 2009, from 9 a.m. to 5 p.m. EST. Attendees should register in advance at <https://primis.phmsa.dot.gov/meetings/Mtg62.mtg>. On-site registration will be available starting at noon on Wednesday. The meeting will not be web cast; however, presentations will be available on the meeting Web site within 30 days following the meeting.

ADDRESSES: The meeting will be at The Westin Alexandria, 400 Courthouse Square, Alexandria, VA 22314. The phone number is 1-866-837-4210. PHMSA will post any new information or changes on the PHMSA/Office of Pipeline Safety Web page (<http://PHMSA.dot.gov>) about 15 days before the meeting takes place.

Comments on the meeting may be submitted to the docket in the following ways:

E-Gov Web Site: <http://www.regulations.gov>. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1-202-493-2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., West Building, Room W12-140, Washington, DC 20590-0001.

Hand Delivery: Room W12-140 on the ground level of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and

5 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number, PHMSA–2009–0203 at the beginning of your comments. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or view the Privacy Notice at <http://www.regulations.gov> before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to <http://www.regulations.gov> at any time or to Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: "Comments on PHMSA–2009–0203." The Docket Clerk will date-stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (Internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

Privacy Act Statement

Anyone may search the electronic form of comments received in response to any of our dockets by the name of the individual who submitted the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19477).

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to seek special assistance at the meeting, please contact Cheryl Whetsel at 202–366–4431 by November 30, 2009.

FOR FURTHER INFORMATION CONTACT: For information about the meeting, contact Cheryl Whetsel by phone at 202–366–4431 or by e-mail at cheryl.whetsel@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Meeting Details

Members of the public may attend and make a statement during the advisory committee meeting. If you intend to make a statement, please notify PHMSA in advance by forwarding an e-mail to cheryl.whetsel@dot.gov by November 30, 2009.

II. Committee Background

The TPSSC and THLPSSC are statutorily mandated advisory committees that advise PHMSA on proposed safety standards, risk assessments, and safety policies for natural gas pipelines and for hazardous liquid pipelines. Both committees were established under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) and the pipeline safety law (49 U.S.C. Chap. 601). Each committee consists of 15 members—with membership evenly divided among the Federal and State government, the regulated industry, and the public. The committees advise PHMSA on the technical feasibility, practicability, and cost-effectiveness of each proposed pipeline safety standard.

III. Agenda

The agenda will include committee discussions on two proposed rules: (1) "Pipeline Safety: Updates to Pipeline and Liquefied Natural Gas Reporting" published in the **Federal Register** on July 2, 2009 (74 FR 31675); and (2) "Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Edits" published in the **Federal Register** on July 22, 2009 (74 FR 36139). PHMSA staff will also brief the committees on several regulatory and policy initiatives.

Authority: 49 U.S.C. 60102, 60115; 60118.

Issued in Washington, DC, on November 17, 2009.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.
[FR Doc. E9–28114 Filed 11–23–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 17, 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 PRA Department Clearance Officer, Department of the Treasury, Room 11010, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 24, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0219.

Type of Review: Revision.

Title: Work Opportunity Credit.

Form: 5884.

Description: ICR Section 38(b)(2) allows a credit against income tax to employers hiring individuals from certain targeted groups such as welfare recipients, etc. The employer uses Form 5884 to figure the credit. IRS uses the information on the form to verify that the correct amount of credit was claimed.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 77,653 hours.

OMB Number: 1545–0142.

Type of Review: Revision.

Title: Underpayment of Estimated Tax by Corporations.

Form: 2220.

Description: Form 2220 is used by corporations to determine whether they are subject to the penalty for underpayment of estimated tax and, if so, the amount of the penalty. The IRS uses Form 2220 to determine if the penalty was correctly computed.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 24,206,448.

OMB Number: 1545–2145.

Type of Review: Extension.

Title: Notice 2009–52, Election of Investment Tax Credit in Lieu of Production Tax Credit; Coordination with Department of Treasury Grants for Specified Energy Property in Lieu of Tax Credit.

Description: This notice provides a description of the procedures that taxpayers will be required to follow to make an irrevocable election to take the investment tax credit for energy property under section 48 of the Internal Revenue Code in lieu of the production tax credit under section 45 of the Internal Revenue Code.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 100 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.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

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Federal Register

**Tuesday,
November 24, 2009**

Part II

Department of Energy

10 CFR Part 431

**Energy Conservation Program: Energy
Conservation Standards for Small Electric
Motors; Proposed Rule**

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE-2007-BT-STD-0007]

RIN 1904-AB70

Energy Conservation Program: Energy Conservation Standards for Small Electric Motors

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

ACTION: Notice of proposed rulemaking and public meeting.

SUMMARY: The Energy Policy and Conservation Act authorizes the U.S. Department of Energy (DOE) to establish energy conservation standards for various consumer products and commercial and industrial equipment. Such equipment includes those small electric motors for which DOE determines that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings. In this notice, DOE proposes energy conservation standards for certain small electric motors and is announcing a public meeting.

DATES: *Public meeting:* DOE will hold a public meeting on Thursday, December 17, 2009, from 9 a.m. to 5 p.m., in Washington, DC. DOE must receive requests to speak at the public meeting before 4 p.m., Thursday, December 3, 2009. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Thursday, December 10, 2009.

Comments: DOE will also accept written comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but received no later than January 25, 2010. See section VII, "Public Participation," of this NOPR for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E-089, 1000 Independence Avenue, SW., Washington, DC 20585. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures, requiring a 30-day advance notice. If you are a foreign national and wish to participate in the workshop, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586-2945 so that the necessary procedures can be completed.

Any comments submitted must identify the NOPR for Energy Conservation Standards for Small Electric Motors, and provide the docket number EERE-2007-BT-STD-0007 and/or regulatory information number (RIN) number 1904-AB70. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* small_electric_motors_std_rulemaking@hq.doe.gov. Include the docket number and/or RIN in the subject line of the message.

- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Please submit one signed original paper copy.

- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586-2945. Please submit one signed original paper copy.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII of this document (Public Participation).

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, (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. **Please note:** DOE's Freedom of Information Reading Room is no longer housing rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Mr. James Raba, 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, (202) 586-8654, e-mail: Jim.Raba@ee.doe.gov.

Mr. Michael Kido, U.S. Department of Energy, Office of General Counsel, GC-72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507, e-mail: Michael.Kido@hq.doe.gov.

For information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, 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) 586-2945. E-mail: Brenda.Edwards@ee.doe.gov.

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I. Summary of the Proposed Rule

Pursuant to the Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq.*), as amended, (EPCA or the Act), the Department of Energy (DOE) is proposing new energy conservation standards for capacitor-start and polyphase small electric motors. These standards would achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified for this equipment, and would result in significant conservation of energy. The proposed standards are shown in Table I.1, Table I.2, and Table I.3, and would apply to all equipment manufactured in, or imported into, the United States on and after 5 years following the publication of the final rule.

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Table I.1 Proposed Standard Levels for Polyphase Small Electric Motors (efficiency)

Motor Output Power	Six Poles	Four Poles	Two Poles
0.25 Hp/0.18 kW	77.4	72.7	69.8
0.33 Hp/0.25 kW	79.1	75.6	73.7
0.5 Hp/0.37 kW	81.1	80.1	76.0
0.75 Hp/0.55 kW	84.0	83.5	81.6
1 Hp/0.75 kW	84.2	85.2	83.6
1.5 Hp/1.1 kW	85.2	87.1	86.6
2 Hp/1.5 kW	89.2	88.0	88.2
≥3 Hp/2.2 kW	90.8	90.0	90.5

*Standard levels are expressed in terms of full-load efficiency.

**These efficiencies correspond to Trial Standard Level 5 for polyphase motors.

Table I.2 Proposed Standard Levels for Capacitor-Start Induction-Run Small Electric Motors (efficiency)

Motor Output Power	Six Poles	Four Poles	Two Poles
0.25 Hp/0.18 kW	65.4	69.8	71.4
0.33 Hp/0.25 kW	70.7	72.8	74.2
0.5 Hp/0.37 kW	77.0	77.0	76.3
0.75 Hp/0.55 kW	81.0	80.9	78.1
1 Hp/0.75 kW	84.1	82.8	80.0
1.5 Hp/1.1 kW	87.7	85.5	82.2
2 Hp/1.5 kW	89.8	86.5	85.0
≥3 Hp/2.2 kW	92.2	88.9	85.6

*Standard levels are expressed in terms of full-load efficiency.

**These efficiencies correspond to Trial Standard Level 7 for capacitor-start motors.

Table I.3 Proposed Standard Levels for Capacitor-Start Capacitor-Run Small Electric Motors (efficiency)

Motor Output Power	Six Poles	Four Poles	Two Poles
0.25 Hp/0.18 kW	63.9	68.3	70.0
0.33 Hp/0.25 kW	69.2	71.6	72.9
0.5 Hp/0.37 kW	75.8	76.0	75.1
0.75 Hp/0.55 kW	79.9	80.3	77.0
1 Hp/0.75 kW	83.2	82.0	79.0
1.5 Hp/1.1 kW	87.0	84.9	81.4
2 Hp/1.5 kW	89.1	86.1	84.2
≥3 Hp/2.2 kW	91.7	88.5	84.9

*Standard levels are expressed in terms of full-load efficiency.

**These efficiencies correspond to Trial Standard Level 7 for capacitor-start motors.

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DOE's analyses indicate that the proposed standards would save a significant amount of energy—an estimated 2.46 quads of cumulative energy over 30 years (2015–2045). Of this, 2.13 quads of savings result from standards on capacitor-start (single-phase) motors and 0.33 quads of savings result from standards on polyphase motors.¹ The energy savings results for single-phase motors represent the combined effect of standards on the

¹ A polyphase motor is an electric motor that uses three-phase electricity and the phase changes of the electrical supply to induce a rotational magnetic field, thereby supplying torque to the rotor.

capacitor-start, induction-run (CSIR)² and capacitor-start, capacitor-run (CSCR)³ motors markets, because general purpose CSIR and CSCR motors generally meet similar performance criteria and can often be used in the same applications.⁴ The amount of

² A capacitor-start induction-run motor is a single-phase motor with a main winding arranged for direct connection to a source of power and an auxiliary winding connected in series with a capacitor. The motor has a capacitor phase, which is in the circuit only during the starting period.

³ A capacitor-start capacitor-run motor is a single-phase motor which has different values of effective capacitance for the starting and running conditions.

⁴ Polyphase, CSIR, and CSCR motors can be found in a range of applications including, but not limited to the following: Pumps, blowers, fans,

projected energy savings is equivalent to the total energy 7.8 million U.S. citizens use in 1 year. The economic impacts on owners (hereafter “customers”) of equipment containing single-phase small electric motors—*i.e.*, the average life-cycle cost (LCC) savings—are positive. Polyphase small electric motor customers experience, on average, small LCC increases as a result of the standard.

The cumulative national net present value (NPV) of total customer costs and savings from the proposed standards from 2015 to 2065 in 2008\$ ranges from

compressors, conveyors and general industrial equipment.

\$1.53 billion (at a 7-percent discount rate) to \$14.15 billion (at a 3-percent discount rate). This is the estimated total value of future operating-cost savings minus the estimated increased equipment costs, discounted to 2009. If DOE were to adopt the proposed standards, it expects a -12.86 percent to 10.69 percent change in manufacturer INPV for polyphase motors, which is approximately -\$44.67 to \$40.70 million total. As a result, the NPV for customers (at the 7-percent discount rate) of \$1.53 billion would thus exceed industry losses by about 33 times. Additionally, based on DOE's interviews with the major manufacturers of small electric motors, DOE does not expect any plant closings or loss of employment. The major small electric motor manufacturers include: A.O. Smith Electrical Products Company, Baldor Electric Company, Emerson Motor Technologies, Regal-Beloit Corporation, and WEG. Except for WEG, all of these manufacturers are U.S.-based. WEG is based in Brazil.

The proposed standards would have significant environmental benefits. All of the energy saved would be in the form of electricity. DOE expects the energy savings to eliminate the need for approximately 2.49 gigawatts (GW) of generating capacity by 2030. The reduction in electricity generation would result in cumulative (undiscounted) greenhouse gas emission

reductions of 124.8 million tons (Mt) of carbon dioxide (CO₂) from 2015 to 2045. During this period, the standard would result in power plant emission reductions of 89.6 kilotons (kt) of nitrogen oxides (NO_x) and 0.561 tons of mercury (Hg). These reductions have a value of up to \$2,737 million for CO₂, \$67.7 million for NO_x, and \$5.31 million for Hg, at a discount rate of 7-percent.

The benefits and costs of today's proposed rule can also be expressed in terms of annualized (2008\$) values from 2015–2045. Estimates of annualized values are shown in Table I.4. The annualized monetary values are the sum of the annualized national economic value of operating savings benefits (energy, maintenance and repair), expressed in 2008\$, plus the monetary value of the benefits of CO₂ emission reductions, otherwise known as the Social Cost of Carbon (SCC), expressed as \$20 per metric ton of CO₂, in 2008\$. The \$20 value is a central interim value from a recent interagency process. The monetary benefits of cumulative emissions reductions are reported in 2008\$ so that they can be compared with the other costs and benefits in the same dollar units. The derivation of this value is discussed in section V.B.6. Although comparing the value of operating savings to the value of CO₂ reductions provides a valuable perspective, please note the following: (1) The national operating savings are domestic U.S. consumer monetary savings found in market transactions

while the CO₂ value of reductions is based on a central value from a range of estimates of imputed marginal SCC from \$5 to \$56 per metric ton (2008\$), which are meant to reflect the global benefits of CO₂ reductions; and (2) the assessments of operating savings and CO₂ savings are performed with different computer models, leading to different time frames for analysis. The national operating cost savings is measured for the lifetime of small electric motors shipped in the 31-year period 2015–2045. The value of CO₂, on the other hand, is meant to reflect the present value of all future climate related impacts, even those beyond 2065.

Using a 7-percent discount rate for the annualized cost analysis, the combined cost of the standards proposed in today's proposed rule for small electric motors is \$515.4 million per year in increased equipment and installation costs, while the annualized benefits are \$923.1 million per year in reduced equipment operating costs and \$97.8 million in CO₂ reductions, for a net benefit of \$505.5 million per year. Using a 3-percent discount rate, the cost of the standards proposed in today's proposed rule is \$514.0 million per year in increased equipment and installation costs, while the benefits of today's standards are \$1,071.5 million per year in reduced operating costs and \$131.8 million in CO₂ reductions, for a net benefit of \$689.3 million per year.

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Table I.4 Annualized Benefits and Costs for Small Electric Motors

Category	Primary Estimate (AEO Reference Case)	Low Estimate (Low Growth Case)	High Estimate (High Growth Case)	Units		
				Year Dollars	Disc. Rate	Period Covered
Benefits						
Annualized Monetized (millions\$/year)	923.1	897.8	941.9	2008	7%	31
	1071.5	1044.7	1088.4	2008	3%	31
Annualized Quantified	2.68 CO ₂ (Mt)	2.68 CO ₂ (Mt)	2.68 CO ₂ (Mt)	NA	7%	31
	1.83 NO _x (kt)	1.83 NO _x (kt)	1.83 NO _x (kt)	NA	7%	31
	0.019 Hg (t)	0.018 Hg (t)	0.018 Hg (t)	NA	7%	31
	3.61 CO ₂ (Mt)	3.61 CO ₂ (Mt)	3.61 CO ₂ (Mt)	NA	3%	31
	2.56 NO _x (kt)	2.56 NO _x (kt)	2.56 NO _x (kt)	NA	3%	31
	0.019 Hg (t)	0.019 Hg (t)	0.019 Hg (t)	NA	3%	31
CO ₂ Monetized Value (at \$20/Metric Ton, millions\$/year)	97.8	97.8	97.8	2008	7%	31
	131.8	131.8	131.8	2008	3%	31
Total Monetary Benefits (millions\$/year)	1020.9	995.6	1039.7	2008	7%	31
	1203.3	1176.4	1220.1	2008	3%	31
Qualitative						
Costs						
Annualized Monetized (millions\$/year)	515.4	515.4	515.4	2008	7%	31
	514.0	514.0	514.0	2008	3%	31
Qualitative						
Net Benefits/Costs						
Annualized Monetized, including CO ₂ Benefits (million\$/year)	505.5	480.2	524.3	2008	7%	31
	689.3	662.4	706.1	2008	3%	31
Qualitative						

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified and would result in significant conservation of energy. Based on the analyses culminating in this proposal, DOE found the benefits (energy savings, consumer LCC savings, national NPV increase, and emission reductions) outweigh the burdens (loss of INPV and LCC increases for some small electric motor users). For a discussion of the energy savings and NPV results, see TSD chapter 10. For LCC results, see TSD chapter 8. For emissions reductions, see TSD chapter 15. For INPV, see TSD chapter 12.

DOE considered higher efficiency levels as trial standard levels, and is still considering them in this rulemaking; however, DOE has tentatively concluded that the burdens of the higher efficiency levels would outweigh the benefits. Based on consideration of public comments DOE receives in response to this notice and related information, DOE may adopt either higher or lower efficiency levels than those presented in this proposal or some level(s) in between.

II. Introduction

A. Consumer Overview

Currently, no mandatory Federal energy conservation standards apply to small electric motors. DOE is proposing standards for the small motors shown in Table I.1, Table I.2, and Table I.3. The proposed standards would apply to equipment manufactured for sale in the United States, beginning 5 years after the final rule is published in the **Federal Register**. The final rule is expected to be published by February 28, 2010; therefore, the effective date would be February 28, 2015.

The proposed standards represent an overall reduction of approximately 40 percent in motor energy losses. The capacitor-start induction-run (CSIR) standards represent a 45-percent reduction in losses for a 0.5 hp CSIR motor, relative to the current market average. The capacitor-start capacitor-run (CSCR) standards represent a 37-percent reduction in losses for a 0.75 hp CSCR motor. The polyphase standards represent a 45-percent reduction in losses for a 1 hp polyphase motor.

DOE's analyses indicate that commercial and industrial customers would benefit from the proposed standards. Although DOE expects the installed cost of the higher-efficiency small motors to be greater (ranging from 9 percent for a 0.75 hp CSCR motor to

26 percent for a 1 hp polyphase motor than the average price of this equipment today, the energy efficiency gains will result in lower energy costs. A 0.5 hp CSIR customer will save an average of \$25 per year on energy costs compared with an annual cost of losses of a baseline CSIR motor of \$48 per year, while a 1 hp polyphase customer will save an average of \$10 per year compared to an operational cost of motor losses of \$34 per year for a baseline motor. A 0.75 hp CSCR customer will save \$36 per year on their energy bill compared with a baseline CSCR motor that costs \$57 per year in losses to operate on average. DOE estimates that the median payback period (PBP) for equipment meeting the proposed standards will be approximately 5 to 14 years. When these savings are summed over the lifetime of the higher efficiency equipment (and discounted to the present), a 0.5 hp CSIR consumer will save \$49, on average, compared to a baseline 0.5 hp CSIR motor. A 0.75 hp CSCR consumer will save \$28, on average, compared to a baseline CSCR motor, and \$121, on average, compared to a baseline 0.75 hp CSIR motor. A consumer who purchases a 1 hp polyphase motor will experience an average net increase of \$38 relative to the \$1,274 life-cycle cost of a baseline polyphase small electric motor.

DOE estimates that even though there will be a net national savings from the standard, a majority of motor customers may not receive net life-cycle cost benefits. This is because many small electric motors are installed in applications where the motor is running only a few hours per day. On the other hand, because a substantial minority of motors is running at nearly all hours of the day and are replaced more often than motors that run infrequently, these motors obtain relatively large savings from the standard and yield positive net benefits from the standard.

B. Authority

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. Part A–1 of Title III (42 U.S.C. 6311–6317) establishes a similar program for certain types of commercial and industrial equipment, which includes small electric motors.⁵ DOE publishes today's notice of proposed rulemaking (NOPR) pursuant to Part

A–1, which provides definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. The test procedures DOE recently adopted for small electric motors, 74 FR 32059 (July 7, 2009), appear at Title 10 Code of Federal Regulations (CFR) sections 431.343 and 431.344.

The Act defines "small electric motors" as follows:

The term "small electric motor" means a NEMA [National Electrical Manufacturers Association] general purpose alternating current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG1–1987.

(42 U.S.C. 6311(13)(F))

Moreover, pursuant to section 346(b)(3) of EPCA (42 U.S.C. 6317(b)(3)), no standard prescribed for small electric motors shall apply to any such motor that is a component of a covered product under section 322(a) of EPCA (42 U.S.C. 6292(a)) or of covered equipment under section 340 (42 U.S.C. 6311).

EPCA provides several criteria that govern adoption of new standards for small electric motors. After reviewing any comments received regarding today's notice, DOE will evaluate the information before it and decide whether today's proposed standards meet those criteria and are economically justified by determining whether the benefits of the standard exceed its burdens. DOE will make this determination by considering, to the greatest extent practicable, using the following seven factors set forth in 42 U.S.C. 6295(o)(2)(B)(i):

1. The economic impact of the standard on manufacturers and consumers of the equipment subject to the standard;

2. The savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered equipment that are likely to result from the imposition of the standard;

3. The total projected energy savings likely to result directly from the imposition of the standard;

4. Any lessening of the utility or the performance of the covered equipment 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;

⁵ These two parts were titled Parts B and C, but were redesignated as Parts A and A–1 by the United States Code for editorial reasons.

6. The need for national energy conservation; and

7. Other factors the Secretary considers relevant.

42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)

Additionally, pursuant to 42 U.S.C. 6317(c), DOE will consider the criteria outlined in 42 U.S.C. 6295(n)—whether the standards will result in a significant conservation of energy, are technologically feasible, and are cost effective as described in 42 U.S.C. 6295(o)(2)(B)(i)(II) (see criterion 2 listed above). These criteria are largely folded into the seven criteria that DOE routinely analyzes as part of its standards rulemaking analyses. Accordingly, DOE will continue to conduct its more comprehensive analyses under 42 U.S.C. 6295(o) as part of this rulemaking.

DOE also notes that today's notice concerns types of "covered equipment" as defined in EPCA (42 U.S.C. 6311(1)(A)), rather than "covered products" as defined in EPCA (42 U.S.C. 6291(2)). Under 42 U.S.C. 6316(a), the criteria for prescribing new standards for consumer products (42 U.S.C. 6295(o)) apply when promulgating standards for certain specified commercial and industrial equipment, including small electric motors. EPCA substitutes the term "equipment" for "product" when the latter term appears in consumer product-related provisions that EPCA also applies to commercial and industrial equipment. (See 42 U.S.C. 6316(a)(3).)

In developing energy conservation standards for small electric motors, DOE is also applying certain other provisions of 42 U.S.C. 6295. First, DOE will not prescribe a standard if interested parties have established by a preponderance of evidence that the standard is likely to result in the unavailability in the United States of any covered equipment type (or class) with performance characteristics, features, sizes, capacities, and volume that are substantially the same as those generally available in the United States. (See 42 U.S.C. 6295(o)(4))

Second, DOE is applying 42 U.S.C. 6295(o)(2)(B)(iii), which establishes a rebuttable presumption that a standard 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 * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. * * *" in place for that standard.

Third, in setting standards for a type or class of covered product that has two or more subcategories, DOE will specify a different standard level than that which applies generally to such type or class of equipment "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. (See 42 U.S.C. 6295(q)(1).) In determining whether a performance-related feature justifies a different standard for a group of products, DOE considers such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. Any rule prescribing such a standard will include an explanation of the basis on which DOE established such higher or lower level. (See 42 U.S.C. 6295(q)(2))

Federal energy efficiency requirements for equipment covered by 42 U.S.C. 6317 generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c) and 6316(a)) DOE can, however, grant waivers of preemption for particular State laws or regulations, in accordance with the procedures and other provisions of section 327(d) of the Act. (42 U.S.C. 6297(d) and 6316(a))

C. Background

1. Current Standards

As indicated above, there are no national energy conservation standards prescribed for small electric motors.

2. History of Standards Rulemaking for Small Electric Motors

Pursuant to the requirements of the Energy Policy Act of 1992 (Pub. L. 102–486), DOE began to gather and analyze information to determine whether standards for small electric motors would meet its criteria. DOE began its determination analysis, by examining what motors were covered and concluded that the EPCA definition of "small electric motor" covers only those motors that meet the definition's frame-size requirements and are either three-phase, non-servo motors (polyphase motors) or single-phase, capacitor-start motors, including both CSIR and CSCR motors. 71 FR 38799, 38800–01 (July 10, 2006). DOE reached this conclusion because only these motor categories can

meet the performance requirements set forth for general-purpose alternating-current motors by NEMA MG1–1987.

DOE then analyzed the likely range of energy savings and economic benefits that would result from energy conservation standards for these small motors, and prepared a report describing its analysis and provided its projected estimated energy savings from potential standards. In June 2006, DOE made the report, "Determination Analysis Technical Support Document: Analysis of Energy Conservation Standards for Small Electric Motors," available for public comment at http://www.eere.energy.gov/buildings/appliance_standards/commercial/small_electric_motors.html.

Pursuant to section 346(b)(3) of EPCA (42 U.S.C. 6317(b)(3)), the analysis did not include motors that are a component of a covered product or equipment. Also, the report made no recommendation as to what determination DOE should make. DOE received comments concerning this analysis from NEMA, the Small Motors and Motion Association (SMMA, now the Motors and Motion Association), and the American Council for an Energy-Efficient Economy (ACEEE).

Thereafter, DOE analyzed whether significant energy savings would result from energy conservation standards for the small electric motors considered in its previous analysis, and incorporated the results of this additional analysis into a technical support document (TSD). Based on these results, DOE issued the following determination on June 27, 2006:

Based on its analysis of the information now available, the Department [of Energy] has determined that energy conservation standards for certain small electric motors appear to be technologically feasible and economically justified, and are likely to result in significant energy savings. Consequently, DOE will initiate the development of energy efficiency test procedures and standards for certain small electric motors. 71 FR 38807.

DOE initiated this rulemaking to develop standards and another rulemaking to develop test procedures for small motors. DOE began this rulemaking by publishing "Energy Conservation Standards Rulemaking Framework Document for Small Electric Motors" on http://www.eere.energy.gov/buildings/appliance_standards/pdfs/small_motors_framework_073007.pdf.

DOE also published a notice announcing the availability of the framework document and a public meeting on the document, and requesting public comments on the

matters raised in the document. 72 FR 44990 (August 10, 2007).

On September 13, 2007, DOE held the public meeting at which it presented the contents of the framework document, described the analyses it planned to conduct during the rulemaking, sought comments from interested parties on these subjects, and sought to inform interested parties about, and facilitate their involvement in, the rulemaking. Interested parties that participated in the public meeting discussed eight major issues: the scope of covered small electric motors, definitions, test procedures, horsepower, and kilowatt equivalency, DOE's engineering analysis, life-cycle costs, efficiency levels, and energy savings. At the meeting and during the framework document comment period, DOE received many comments helping it identify and resolve issues involved in this rulemaking.

DOE gathered additional information and performed preliminary analyses to inform the development of energy conservation standards. This process culminated in DOE's announcement of an informal public meeting to discuss and receive comments on the following matters: the product classes DOE planned to analyze; the analytical framework, models, and tools that DOE was using to evaluate standards; the results of the preliminary analyses DOE performed; and potential standard levels that DOE might consider. 73 FR 79723 (December 30, 2008). DOE also invited written comments on these subjects and announced the availability on its Web site of a preliminary TSD. *Id.* A PDF of the preliminary TSD is available at http://www1.eere.energy.gov/buildings/appliance_standards/commercial/small_electric_motors_nopr_tsd.html.

Finally, DOE stated its interest in receiving comments on other issues that participants believe would affect energy conservation standards for small electric motors or that DOE should address in this NOPR. *Id.* at 79725.

The preliminary TSD provided an overview of the activities DOE undertook and discussed the comments DOE received in developing standards for small electric motors. It also described the analytical framework that DOE used and each analysis DOE performed up to that point. These analyses included:

- A market and technology assessment that addressed the scope of this rulemaking, identified the potential classes of this equipment, characterized the small electric motor market, and reviewed techniques and approaches for improving the efficiency of small electric motors;

- A screening analysis that reviewed technology options to improve small electric motor efficiency and weighed them against DOE's four prescribed screening criteria;

- An engineering analysis that estimated the manufacturer selling prices (MSPs) associated with more energy efficient small electric motors;

- An energy use and end-use load characterization that estimated the annual energy use of small electric motors;

- A markup methodology that converted average MSPs to consumer-installed prices;

- An LCC analysis that calculated, at the consumer level, the discounted savings in operating costs throughout the estimated average life of the small electric motor, compared to any increase in installed costs likely to result directly from the imposition of the standard;

- A PBP analysis that estimated the amount of time it takes consumers to recover the higher purchase expense of more energy efficient equipment through lower operating costs;

- A shipments analysis that estimated shipments of small electric motors over the time period examined in the analysis, which was used in performing the national impact analysis;

- A national impact analysis that assessed the aggregate impacts at the national level of potential energy conservation standards for small motors, as measured by the net present value of total consumer economic impacts and national energy savings; and

- A preliminary manufacturer impact analysis that took the initial steps in evaluating the effects on manufacturers of new efficiency standards.

The nature and function of the analyses in this rulemaking, including the engineering analysis, energy-use characterization, markups to determine installed prices, LCC and PBP analyses, and national impact analysis, are summarized in the December 2008 notice. *Id.* at 79725.

The public meeting announced in the December 2008 notice took place on January 30, 2009. At this meeting, DOE presented the methodologies and results of the analyses set forth in the preliminary TSD. The comments received since publication of the December 2008 notice have helped DOE resolve the issues in this rulemaking. The submitted comments include a joint comment from Adjuvant Consulting, on behalf of the Northwest Energy Efficiency Alliance (NEEA) and Northwest Power and Conservation Council (NPCC); a comment from Earthjustice; a second joint comment from Energy Solutions, Pacific Gas and

Electric Company (PG&E), Southern California Edison (SCE), Southern California Gas Company, and San Diego Gas and Electric (SDGE), a comment from NEMA; and a comment from Edison Electric Institute (EEI). This NOPR quotes and summarizes many of these comments and responds to the issues they raised. A parenthetical reference at the end of a quotation or paraphrase provides the location of the item in the public record.

III. General Discussion

A. Test Procedures

Final test procedures were published on July 7, 2009 (74 FR 32059). The test procedures incorporated by reference Institute of Electrical and Electronics Engineers, Inc. (IEEE) Standard 112–2004 (Test Method A and Test Method B), IEEE Standard 114–2001, and Canadian Standards Association (CAN/CSA) Standard C747–94.

In addition to incorporating by reference the above industry standard test procedures, the small electric motors test procedure final rule also codified the statutory definition for the term “small electric motor;” clarified the definition of the term “basic model” and the relationship of the term to certain product classes and compliance certification reporting requirements; and codified the ability of manufacturers to use an alternative efficiency determination method (AEDM) to reduce testing burden, while maintaining accuracy and ensuring compliance with potential future energy conservation standards. The test procedure notice also discussed matters of laboratory accreditation, compliance certification, and enforcement of energy conservation standards for small electric motors.

At the public meeting presenting the preliminary analyses for the energy conservation standards rulemaking, WEG and Emerson voiced their concern about enforcement of energy efficiency standards for small electric motors. WEG stated that they believe that enforcement will become especially problematic for those small electric motors that come into the country embedded in a piece of equipment and are therefore difficult to view the nameplate and to test. (WEG, Public Meeting Transcript, No. 8.5 at pp. 325–26) Additionally, Emerson requested that DOE provide further information on how it plans on enforcing standards on small electric motors. (Emerson, Public Meeting Transcript, No. 8.5 at p. 297) DOE notes certification and enforcement provisions for small electric motors have not yet been developed. DOE plans

on proposing such provisions in a separate test procedure supplementary NOPR, at which time DOE will welcome comment on how small electric motor efficiency standards can be effectively enforced.

B. Technological Feasibility

1. General

In each standards rulemaking, DOE conducts a screening analysis, which it bases on information it has gathered on all current technology options and prototype designs that could improve the efficiency of the product or equipment that is the subject of the rulemaking. In consultation with manufacturers, design engineers, and

other interested parties, DOE develops a list of design options for consideration. Consistent with its Process Rule, DOE then determines which of these means for improving efficiency are technologically feasible. “Technologies incorporated in commercially available products or in working prototypes will be considered technologically feasible.” 10 CFR 430, subpart C, appendix A, section 4(a)(4)(i).

DOE evaluates each of the acceptable design options in light of the following criteria: (1) Technological feasibility; (2) practicability to manufacture, install, or service; (3) adverse impacts on product utility or availability; and (4) adverse impacts on health or safety. Chapter 4 of the TSD contains a description of the

screening analysis. Also, section IV.B includes a discussion of the design options DOE considered, those it screened out, and those that are the basis for the trial standard levels (TSLs) in this rulemaking.

2. Maximum Technologically Feasible Levels

In the engineering analysis, DOE determined the maximum technologically (max-tech) feasible efficiency levels for small electric motors using the most efficient design parameters that lead to the highest equipment efficiencies. (See TSD chapter 5.) Table III.1 lists the max-tech levels that DOE determined for this rulemaking.

Table III.1 Max-Tech Efficiency Levels for Representative Product classes *

Phase	Motor Category	Poles	Horsepower	Efficiency %
Three	Polyphase	4	1	88.3
Single	CSIR	4	0.5	77.0
Single	CSCR	4	0.75	87.3

* These max-tech efficiency levels are only for the representative product classes described in section IV.C.2.. Max-tech efficiency levels for the remaining product classes are determined using the scaling methodology outlined in section IV.C.6.

DOE developed maximum technology efficiencies by creating motor designs for each product class analyzed that use all of DOE’s viable design options. The efficiency levels shown in Table III.1 correspond to designs that use a maximum increase in stack length, a copper rotor design, an exotic low-loss steel type, a maximum slot fill percentage, a change in run-capacitor rating (CSCR motors only), and an optimized end ring design. All of the design options used to create these max-tech motors remain in the analysis and are options that DOE considers technologically feasible.

C. Energy Savings

1. Determination of Savings

DOE used its national energy savings (NES) spreadsheet to estimate energy savings from new standards for the small electric motors that are the subject of this rulemaking. (The NES analysis is described in section IV.G and in chapter 10 of the TSD.) DOE forecasted energy savings beginning in 2015, the year that new standards would go into effect, and ending in 2045 for each TSL. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between the standards case and the base case. The base case represents the forecast of energy consumption in the

absence of new energy conservation standards. DOE’s base case assumes no change in the efficiency distribution of motors between 2008 and the end of the analysis period in 2045.

The NES spreadsheet model calculates the energy savings in site energy expressed in kilowatt-hours (kWh). Site energy is the energy directly consumed by small electric motors at the locations where they are used. DOE reports national energy savings in terms of the source energy savings, which is the savings in the energy that is used to generate and transmit the site energy. To convert site energy to source energy, DOE derived conversion factors, which change with time, from the American Recovery and Reinvestment Act scenario of the Energy Information Administration’s (EIA) *Annual Energy Outlook 2009 (AEO 2009)*, which is the latest forecast available.

2. Significance of Savings

Standards for small electric motors must result in “significant” energy savings. (42 U.S.C. 6317(b)) While the term “significant” is not defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council v. Herrington*, 768 F.2d 1355, 1373 (DC Cir. 1985), indicated that Congress intended “significant” energy savings to be savings that were not “genuinely

trivial.” The energy savings for all of the TSLs considered in this rulemaking are nontrivial, and therefore DOE considers them significant.

D. Economic Justification

1. Specific Criteria

As noted earlier, EPCA provides seven factors to be evaluated in determining whether an energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)) The following sections discuss how DOE has addressed each of those seven factors as part of its analysis. DOE invites comments on each of these elements.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts on manufacturers of a new or amended standard, DOE first determines the quantitative impacts using an annual cash-flow approach. This includes both a short-term assessment—based on the cost and capital requirements during the period between the announcement of a regulation and when the regulation comes into effect—and a long-term assessment. The impacts analyzed include INPV (which values the industry on the basis of expected future cash flows), cash flows by year, changes in revenue and income, and other measures, as appropriate. Second, DOE

analyzes and reports the impacts on different types of manufacturers, paying particular attention to impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment, manufacturing capacity, plant closures, and loss of capital investment. Finally, DOE takes into account the cumulative impact of different DOE regulations on manufacturers.

For small electric motor customers, measures of economic impact include the changes in LCC and the PBP for each TSL. The LCC, which is also separately specified as one of the seven factors to be considered in determining the economic justification for a new or amended standard, (42 U.S.C. 6295(o)(2)(B)(i)(II)) is discussed in the following section.

b. Life-Cycle Costs

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy and maintenance expenditures) discounted over the lifetime of the product. DOE determines these costs by considering (1) total installed price to the purchaser (including manufacturer selling price, distribution channel markups, sales taxes, and installation cost), (2) the operating expenses of the equipment (energy cost and maintenance and repair cost), (3) equipment lifetime, and (4) a discount rate that reflects the real cost of capital and puts the LCC in present value terms.

For each representative small electric motor product class, DOE calculated both LCC and LCC savings for various efficiency levels. The LCC analysis estimated the LCC for representative units used in various representative applications, and accounted for a mixture of space-constrained applications (20 percent) and non-space-constrained applications (80 percent) in the commercial, agricultural, industrial, and residential sectors.

To account for uncertainty and variability in specific inputs, such as equipment lifetime, annual hours of operation, and discount rate, DOE used a distribution of values with probabilities attached to each value. DOE sampled a nationally representative set of input values from the distributions to produce a range of LCC estimates. A distinct advantage of this approach is that DOE can identify the percentage of consumers achieving LCC savings or attaining certain payback values due to an energy conservation standard. Thus, DOE presents the LCC savings as a distribution, with a mean value and a range. DOE assumed in its

analysis that the consumer purchases the product in 2015.

c. Energy Savings

While significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, DOE considers the total projected energy savings that are expected to result directly from the standard in determining the economic justification of that standard. (See 42 U.S.C. 6295(o)(2)(B)(i)(III)) DOE used the NES spreadsheet results in its consideration of total projected savings.

d. Lessening of Utility or Performance of Products

In establishing classes of equipment, and in evaluating design options and the impact of potential standard levels, DOE sought to develop standards for small electric motors that would not lessen the utility or performance of this equipment. None of the TSLs DOE considered would reduce the utility or performance of the small electric motors under consideration in the rulemaking. (See 42 U.S.C. 6295(o)(2)(B)(i)(IV).) The efficiency levels DOE considered maintain motor performance and power factor (*i.e.*, approximately 75 percent for polyphase motors and greater than 60 percent for capacitor start motors) so that consumer utility is not adversely affected. DOE considered end-user size constraints by developing designs with size increase restrictions (limited to a 20-percent increase in stack length), as well as designs with less stringent constraints (100-percent increase in stack length). Those designs adhering to the 20-percent increase in stack length maintain all aspects of consumer utility and were created for all efficiency levels, but they may become very expensive at higher efficiency levels when compared with DOE's other designs.

e. Impact of Any Lessening of Competition

DOE considers any lessening of competition likely to result from standards. Accordingly, DOE has requested that the Attorney General transmit to the Secretary, not later than 60 days after the publication of this proposed rule, a written determination of the impact, if any, of any lessening of competition likely to result from today's proposed standards, together with an analysis of the nature and extent of such impact. (See 42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii).) Along with this request, DOE has transmitted a copy of today's proposed rule to the Attorney General. DOE will address the

Attorney General's determination in the final rule.

f. Need of the Nation To Conserve Energy

The non-monetary benefits of the proposed standards are likely to be reflected in reductions in the overall demand for electricity, which will result in reduced costs for maintaining reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's power generation capacity. This analysis captures the effects of efficiency improvements on electricity consumption by the covered equipment, including the reduction in electricity generation capacity by fuel type.

The proposed standards will also result in improvements to the environment. In quantifying these improvements, DOE has defined a range of primary energy conversion factors and associated emission reductions based on the estimated level of power generation displaced by energy conservation standards. DOE reports the environmental effects from each TSL in the environmental assessment in chapter 15 of the TSD. (See 42 U.S.C. 6295(o)(2)(B)(i)(VI).)

g. Other Factors

The Act 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)) Under this provision, DOE considered three factors: (1) Harmonization of the proposed standards with standards for similar products, (2) the need of some consumers to continue to have access to CSIR motors, and (3) the impacts of reactive power⁶ on electricity supply costs.

Medium-sized polyphase general-purpose motors in three-digit frame series with output power of 1 horsepower and above are currently regulated under the Energy Policy Act of 1992 (EPACT 1992). DOE proposes a standard for polyphase small motors with output power of 1 horsepower and above that is closely aligned with the

⁶In an alternating current power system, the reactive power is the root mean square (RMS) voltage multiplied by the RMS current, multiplied by the sine of the phase difference between the voltage and the current. Reactive power occurs when the inductance or capacitance of the load shifts the phase of the voltage relative to the phase of the current. While reactive power does not consume energy, it can increase losses and costs for the electricity distribution system. Motors tend to create reactive power because the windings in the motor coils have high inductance.

EPACT 1992 standard for medium motors.

Some of the highest TSLs for single-phase motors would lead to very high prices for CSIR motors while maintaining lower prices for CSCR motors, or vice versa. This shift in relative price may cause the effective disappearance of the more expensive category of motors from the market. In many applications, CSCR motors can replace CSIR motors. However, in some instances, the space required for a second capacitor is not available so that a CSCR motor may not be used to replace a CSIR motor in some specific applications. Under 42 U.S.C. 6295(o)(4), the Secretary may not prescribe a standard that is “likely to result in the unavailability in the United States in any covered product type (or class).” In today’s notice, DOE proposes standards that it believes will maintain a supply of both categories of motors in the single-phase motor market.

DOE also notes that induction motors produce reactive power that can result in increased electricity supply costs because reactive power creates extra electrical currents that can require increased electrical distribution capacity. Many individual customers are not charged directly for this cost, but DOE did consider the economic benefits of potential reactive power reductions when evaluating the national benefits of the proposed standards.

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 additional cost to the consumer that meets the standard level is less than three times the value of the first-year energy (and as applicable, water) savings resulting from the standard, as calculated under the applicable DOE test procedure. (42 U.S.C. 6295(o)(2)(B)(iii) and 42 U.S.C. 6316(e)(1)) DOE’s LCC and payback period (PBP) analyses generate values that calculate the PBP for customers of potential energy conservation standards, which includes, but is not limited to, the 3-year PBP 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 customer, manufacturer, Nation, and environment, as required under 42 U.S.C.

6295(o)(2)(B)(i) and 42 U.S.C. 6316(e)(1). The results of this analysis serve as the basis for DOE to evaluate definitively the economic justification for a potential standard level (thereby

supporting or rebutting the results of any preliminary determination of economic justification).

For comparison with the more detailed analysis results, DOE provides the results of a rebuttable presumption payback calculation in section V.B.1.d.

IV. Methodology and Discussion

DOE used three spreadsheet tools to estimate the impact of today’s proposed standards. The first spreadsheet calculates the LCCs and payback periods of potential new energy conservation standards. The second, the National Impact Analysis (NIA) spreadsheet, provides shipment forecasts and then calculates national energy savings and net present value impacts of potential new energy conservation standards. DOE assessed manufacturer impacts largely through use of the third spreadsheet, the Government Regulatory Impact Model (GRIM).

Additionally, DOE estimated the impacts of energy efficiency standards for small electric motors on utilities and the environment. DOE used a version of EIA’s National Energy Modeling System (NEMS) for the utility and environmental analyses. The NEMS model simulates the energy sector of the U.S. economy. EIA uses NEMS to prepare its *Annual Energy Outlook*, a widely known energy forecast for the United States. The version of NEMS used for appliance standards analysis is called NEMS-BT, and is based on the AEO 2009 version with minor modifications. The NEMS offers a sophisticated picture of the effect of standards because it accounts for the interactions between the various energy supply and demand sectors and the economy as a whole.

The EIA approves the use of the name “NEMS” to describe only an 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 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/FTP/ROOT/forecasting/058198.pdf>.

A. Market and Technology Assessment

When beginning an energy conservation standards rulemaking, DOE develops information that provides an overall picture of the market for the

equipment concerned, including the purpose of the equipment, the industry structure, and market characteristics. This activity includes both quantitative and qualitative assessments based primarily on publicly available information. The subjects addressed in the market and technology assessment for this rulemaking include product classes, manufacturers, quantities, and types of equipment sold and offered for sale; retail market trends; and regulatory and non-regulatory programs. See chapter 3 of the TSD for further discussion of the market and technology assessment.

1. Definition of Small Electric Motor

Except for small electric motors that are components of other products covered by EPCA (see 42 U.S.C. 6317(b)(3)), DOE analyzed all CSIR and CSCR single-phase motors and polyphase motors, including, for example, both open and enclosed motors. DOE determined that standards appear to be warranted for all of them. 71 FR 38807–08. However, DOE has tentatively concluded that EPCA does not cover certain small motors for which the determination concluded standards were warranted—the most significant group being enclosed motors.

a. Motor Categories

EPCA’s definition of “small electric motor” is tied to the terminology and performance requirements in NEMA Standards Publication MG1–1987 (MG1–1987). These requirements were established for (1) general-purpose alternating-current motors, (2) single-speed induction motors, and (3) the NEMA system for designating (two-digit) frames. Single-speed induction motors, as delineated and described in MG1–1987, fall into five categories: split-phase, shaded-pole, capacitor-start (both CSIR and CSCR), permanent-split capacitor (PSC), and polyphase. Therefore, only motors in these categories meet the single-speed induction motor element of EPCA’s definition of “small electric motor.”

In paragraph MG1–1.05, MG1–1987 defines “general-purpose alternating-current motor” as follows:

A general-purpose alternating-current motor is an induction motor, rated 200 horsepower and less, which incorporates all of the following: (1) Open construction, (2) rated continuous duty, (3) service factor in accordance with MG1–12.47, and (4) Class A insulation system with a temperature rise as specified in MG1–12.42 for small motors or Class B insulation system with a temperature rise as specified in MG1–12.43 for medium motors. It is

designed in standard ratings with standard operating characteristics and mechanical construction for use under usual service conditions without restriction to a particular application or type of application.

During the public meeting held on January 30, 2009, Emerson Motor Technologies commented that split-phase motors, shaded-pole motors, and PSC motors do not meet the torque requirements for NEMA general-purpose motors. Therefore, Emerson indicated that these motors should be excluded from the scope of coverage for this rulemaking. (Emerson, Public Meeting Transcript, No. 8.5 at p. 38)⁷

DOE has examined this issue and, consistent with its position in the preliminary analyses, agrees that split-phase, shaded-pole, or PSC motors do not qualify as general-purpose alternating-current motors. Because split-phase motors are usually designed for specific purposes and applications, they are not designed “for use under usual service conditions without restriction to a particular application or type of application.” Additionally, split-phase, shaded-pole, and PSC motors all fail to meet MG1–1987’s torque and current requirements for general-purpose motors, and hence are not “designed in standard ratings with standard operating characteristics.” The requirements that NEMA MG1–1987 defines for single-phase motors are locked-rotor torque at MG1–12.32.2, locked-rotor current at MG1–12.43, and breakdown torque at MG1–12.32. For small polyphase motors, NEMA MG1–1987 only defines breakdown torque in MG1–12.37. Because of these restrictions, none of the above motor categories are small electric motors as EPCA defines that term. DOE’s determination that standards are warranted for small electric motors excluded the above motor categories, and none are covered by today’s proposed standards.

As for CSIR, CSCR, and polyphase motors, these motor categories do meet

the performance requirements set forth by the MG1–1987 definition of “general-purpose alternating-current motor” and are therefore covered by the EPCA definition of a small electric motor.

During the public meeting, PG&E, Earthjustice, and ACEEE expressed concern that small electric motors not covered by the scope of coverage of this rulemaking would be preempted from coverage as a result of energy conservation for standards for the covered small electric motors. (PG&E, Earthjustice, ACEEE, Public Meeting Transcript, No. 8.5 at pp. 320–323) In their comment, Earthjustice also requested that DOE clarify this issue. (Earthjustice, No. 11 at pp. 3–5) DOE appreciates these concerns and would like to clarify the issue of preemption. The statutory definition of small electric motors only gives DOE the authority to cover, CSIR, CSCR, and polyphase motors. Therefore, state standards for other, non-covered motor categories, such as those discussed above, would not be preempted by the standards set by this rulemaking.

b. Motor Enclosures

The first criterion listed in NEMA MG1–1987’s definition of a “general-purpose alternating-current motor” is that the motor is of open construction. In the latest version of NEMA MG1, MG1–2006 with Revision 1 2007, NEMA modified this criterion and expanded it to include enclosed motors. At the preliminary analyses public meeting, Earthjustice commented that DOE could reinterpret the statutory definition of small electric motor such that NEMA MG1–1987 only applies to the definition of two-digit frame number series and later versions of MG1 could be used to expand coverage to include enclosed motors. Earthjustice reiterated this point in a comment submitted after the public meeting. (Earthjustice, Public Meeting Transcript, No. 8.5 at pp. 47–50; Earthjustice, No. 11 at p. 1) NEMA disagreed with this interpretation of the statutory definition, arguing that MG1–1987 was intended to apply to the entire definition of a small electric motor. Therefore, NEMA recommended that DOE only cover open motors. (NEMA, No. 13 at p. 17)

DOE agrees with NEMA that the reference MG1–1987 applies to all facets of the statutory definition of a small electric motor. The language of the statute specifies that the requirements of MG1–1987 apply in determining what constitutes a small electric motor. DOE’s application of that definition is consistent with that language. Similarly, because the statute specifically mentions MG1–1987 as the version of

MG1 on which DOE should rely, the 1987 version is the only applicable version of NEMA MG1. Accordingly, consistent with MG1–1987, only CSIR, CSCR, and polyphase motors with open construction meet the statutory definition.

c. Service Factors

Additional CSIR, CSCR, and polyphase motors may fail to meet the NEMA definition because, for example, they fail to meet the service factor requirements. Service factor is a measure of the overload capacity at which a motor can operate without damage, while operating normally within the correct voltage tolerances. The rated horsepower multiplied by the service factor determines that overload capacity. For example, a 1 horsepower motor with a 1.25 service factor can operate at 1.25 horsepower (1 horsepower × 1.25 service factor). DOE has concluded that motors that fail to meet service factor requirements in MG1–12.47 are not “small electric motors” as EPCA uses that term. Therefore, today’s proposed standards do not apply to them.

d. Insulation Class Systems

The statutory definition of a small electric motor is bound to the definition of a general-purpose alternating-current motor as defined in NEMA MG 1–1987. Part of that NEMA definition says that a general-purpose motor must incorporate a “Class A insulation system with a temperature rise as specified in MG 1–12.42 for small motors or Class B insulation system with a temperature rise as specified in MG 1–12.43 for medium motors.”

The issue of insulation classes and how it pertains to DOE’s scope of coverage was discussed at the preliminary analysis public meeting. Advanced Energy spoke about insulation classes and recommended that DOE’s coverage should include Class F insulation systems. (Advanced Energy, Public Meeting Transcript, No. 8.5 at pp. 45–46) Advanced Energy noted that insulation class systems used in small electric motors have improved since this definition of general purpose was first standardized in NEMA MG1–1987. Further, as new insulation technologies have improved and material costs have decreased, it has become increasingly common for manufacturers to use insulation classes higher than A. Advanced Energy requested in written comments that DOE consider all insulation classes as covered (Advanced Energy, No. 16 at p. 4).

⁷ A notation in the form “Emerson, Public Meeting Transcript, No. 8.5 at p. 38” refers to (1) a statement that was submitted by Emerson Motor Technologies and is recorded in the docket “Energy Efficiency Program for Certain Commercial and Industrial Equipment: Public Meeting and Availability of the Framework Document for Small Electric Motors,” Docket Number EERE–2008–BT–STD–0007, as comment number 8.5; and (2) a passage that appears on page 38 of the transcript, “Small Electric Motors Energy Conservation Standards Preliminary Analyses Public Meeting,” dated January 30, 2009. Likewise, a notation in the form “NEMA, No. 13 at p. 5” refers to (1) a statement by the National Electrical Manufacturers Association and is recorded in the docket as comment number 13; and (2) a passage that appears on page 5 of that document.

Upon further examination of the market, DOE agrees with Advanced Energy. The vast majority of the motors manufactured, and otherwise covered by this rulemaking, satisfy the requirements for Class B or Class F insulation systems. DOE also found that according to MG1–1.66 and paragraph MG1–12.42, NEMA MG 1–1987 defines four insulation class systems. They are divided into classes based on the thermal endurance of the system for temperature rating purposes. A Class A insulation system must have suitable thermal endurance at a temperature rise. Class A insulation is a minimum level of thermal endurance. A Class B insulation system has a greater thermal endurance rating than Class A. Similarly, Class F thermal endurance exceeds Class B and Class H insulation has the highest level of endurance among all four classes. Therefore, the insulation class systems are defined in a way that permits a Class H system to satisfy Classes A, B, and F. DOE believes that this approach satisfies the statute and avoids creating a loophole through which all small electric motors equipped with non-Class A insulation would be eliminated from coverage. Commenters did not suggest that these insulation classes should be exempt from coverage and DOE is proposing to consider covering insulation Classes A or higher as covered under this rule. Therefore, DOE interprets the NEMA MG1–1987 definition of a “general-purpose, alternating-current motor” as being applicable to insulation class systems rated A or higher.

e. Metric Equivalents

EPCA defines a small electric motor based on the construction and rating system in MG1–1987. (42 U.S.C. 6311(13)(G)) This system uses English units of measurement and power output ratings in horsepower. In contrast, general-purpose electric motors manufactured outside the United States and Canada are defined and described with reference to the International Electrotechnical Commission (IEC) Standard 60034–1 series, “Rotating electrical machines,” which employs terminology and criteria different from those in EPCA. The performance attributes of these IEC motors are rated pursuant to IEC Standard 60034–1 Part 1: “Rating and performance,” which uses metric units of measurement and construction standards different from MG1–1987, and a rating system based on power output in kilowatts instead of power output in horsepower. The Institute of Electrical and Electronics Engineers (IEEE) Standard 112 recognizes this difference in the market

and defines the relationship between horsepower and kilowatts. Furthermore, in 10 CFR 431.12, DOE defined “electric motor” in terms of both NEMA and IEC equivalents even though EPCA’s corresponding definition and standards were articulated in terms of MG1–1987 criteria and English units of measurement. 64 FR 54114 (October 5, 1999)

DOE received two comments on IEC-equivalent motors following the January 30, 2009, public meeting. NEMA commented that IEC-equivalent motors should be considered covered products to prevent the import of virtually identical products that are not compliant with energy efficiency standards. (NEMA, No. 13 at p. 17) A joint comment submitted by PG&E, SCE, SCGC, and SDGE also stated that IEC-equivalent motors should be covered to prevent a potential loophole in the standard. (Joint Comment, No. 12 at p. 2)

Although the statutory definition of “small electric motor” does not address metric or kilowatt-rated motors, DOE agrees with the submitted comments. In general, IEC metric or kilowatt-equivalent motors can perform the identical functions of covered small electric motors and provide comparable rotational mechanical power to the same machines or equipment. Moreover, IEC metric or kilowatt-equivalent motors can be interchangeable with covered small electric motors. Therefore, DOE interprets EPCA to apply the definition of a “small electric motor” to any motor that is identical or equivalent to a motor constructed and rated in accordance with NEMA MG1.

Additionally, as to motors with a standard kilowatt rating, DOE prescribed energy conservation standards for medium electric motors (*i.e.*, NEMA three-digit frame series motors) in section 431.25(a). In this section of the CFR DOE establishes equivalencies of standard horsepower and kilowatt ratings. As demonstrated by examination of these specified equivalencies in section 431.25(a) and the exact conversions of standard kilowatt ratings to horsepower ratings laid out in 431.25(b)(3)—no standard kilowatt rating exactly equals a standard horsepower rating—and therefore an IEC motor with a standard kilowatt rating must sometimes meet the efficiency standard for the next higher horsepower or the next lower depending on what converted horsepower value is relative to the surrounding standard horsepower ratings. In all cases the standard it must meet is prescribed for a horsepower that is very close to an exact conversion from its kilowatt

rating. Second, as to electric motors with non-standard kilowatt or horsepower ratings, section 431.25(b)(3) provides that kilowatt rating would be arithmetically converted to its equivalent horsepower rating, and then, based on whether the motor falls above or below the midpoint between consecutive horsepower ratings, would be required to meet the corresponding higher or lower energy efficiency level, respectively. DOE proposes to adopt similar interpretations for small electric motors.

f. Frame Sizes

As to the frame sizes of motors that would be covered by DOE standards for small electric motors, EPCA defines small electric motor, in part, as a motor “built in a two-digit frame number series in accordance with MG1–1987.” (42 U.S.C. 6311(13)(G)) MG1–1987 establishes a system for designating frames of motors, which consists of a series of numbers in combination with letters. The 1987 version of MG1 only explicitly defines three two-digit frame series: 42, 48, and 56. These frame series have standard dimensions and tolerances necessary for mounting and interchangeability that are specified in sections MG1–11.31 and MG1–11.34.

DOE understands that manufacturers produce other two-digit frame sizes, namely a 66 frame size. The 66 frame size is used for definite-purpose or special-purpose motors and not used in general-purpose applications and therefore not covered under the EPCA definition of “small electric motor.” DOE is unaware of any other motors with frame sizes that are built in accordance with NEMA MG1–1987. Should such frame sizes appear, DOE will evaluate whether or not they are included equipment at that time.

g. Horsepower Ratings

The definition of a small electric motor does not explicitly limit the scope of coverage to certain horsepower ratings. However, DOE notes that the small electric motor industry generally considers 3 hp as the upper limit for rated capacity of such motors. Nonetheless, some manufacturers produce motors that meet the EPCA definition of small electric motor but have higher horsepower ratings. DOE has tentatively concluded that such motors are still covered by and subject to standards adopted under EPCA.

Chapter 3 of the TSD provides additional detail on the nature of the motors covered by the standards proposed in this NOPR.

2. Product Classes

When evaluating and establishing energy conservation standards, DOE generally divides covered equipment into classes by the type of energy used, capacity, or other performance-related features that affect efficiency. (42 U.S.C. 6295(q)) DOE routinely establishes different energy conservation standards for different product classes based on these criteria.

At the preliminary analyses public meeting, DOE presented its rationale for creating 72 product classes. The 72 product classes are based on the combinations of three different ratings or characteristics of a motor based on motor category, number of poles, and horsepower. As these motor characteristics change, so does the utility and efficiency of the small electric motor.

The motor category divides the small electric motors market into three major motor categories: CSIR, CSCR, and polyphase. For each motor category, DOE broke down the product classes by all combinations of the eight different horsepower ratings (*i.e.*, $\frac{1}{4}$ to ≥ 3) and three different pole configurations (*i.e.*, 2, 4, and 6). A number of reasons support this approach.

First, the motor category depends on the type of energy used and its starting and running electrical characteristics. While all small electric motors use electricity, some motors operate on single phase electricity (which requires certain additional electronics for creating rotational torque) while others operate on polyphase electricity. Polyphase motors do not need additional circuitry to create rotational torque because they use the existing phase difference in the multiple phases of electricity applied to the motor. This difference impacts efficiency, and therefore becomes a factor around which DOE establishes a separate product class for polyphase motors.

Within single phase small electric motors, there are characteristics which are important because they can affect the motor's utility and potential for improving efficiency. The design feature

of incorporating a run capacitor into the small electric motor affects motor efficiency, making it more efficient than an induction run motor that does not incorporate a run capacitor.⁸ This design constitutes a performance-related feature that affects efficiency. Furthermore, DOE notes that it is not always possible to replace a CSIR motor with a CSCR motor due to the run capacitor, which is often mounted in an external housing on the motor. In certain applications, the run capacitor mounted on the motor will physically prohibit it from replacing a CSIR motor. This is a design feature that affects utility. For all of these reasons, DOE treats CSIR and CSCR motors as separate product classes.

Second, the number of poles in an electric motor determines the synchronous speed (*i.e.*, revolutions per minute). There is an inverse relationship between the number of poles and the maximum speed a motor can run at, meaning that an increase in the number of poles equates to a decrease in the speed of the motor (*e.g.*, going from two to four to six poles, the synchronous speed drops from 3,600 to 1,800 to 1,200 revolutions per minute). Since the full range of motor applications requires a variety of motor speeds, DOE considers motor speed and, therefore, the number of poles to have a distinct impact on the utility of small electric motors. Therefore, DOE uses the number of poles in a motor as a means of differentiating product classes because it is this design change that creates a change in motor speed capabilities.

Third, in general, efficiency scales with horsepower, a capacity-related metric of small electric motors. In other words, a 3 horsepower motor is usually more efficient than a $\frac{1}{4}$ horsepower motor. Horsepower is a critical performance attribute of an electric motor, and since there is a correlation

⁸The run-capacitor and auxiliary windings in a CSCR motor help simulate a balanced two phase motor at full load, which helps minimize the current required to run the motor, thereby reducing the I²R losses (which are losses related to current flow).

with efficiency, DOE uses this as a criterion for distinguishing among product classes.

At the public meeting, Emerson and Baldor commented that frame size should be considered as an additional motor characteristic when establishing product classes. They both stated that motors of different frame sizes should not be subjected to the same standards because motors in the smaller frames will not be able to achieve as high an energy efficiency rating as the larger frame size. (Baldor, Public Meeting Transcript, No. 8.5 at pp. 70–71; Emerson, Public Meeting Transcript, No. 8.5 at pp. 75–76)

DOE agrees that motors in a smaller frame size, and therefore made with a potentially smaller diameter, will not be able to achieve the same efficiency rating as a larger frame. The smaller diameter limits the amount of active material that is used to reduce motor losses and therefore limits the maximum efficiency rating possible as well. However, DOE believes that frame size does not adequately account for efficiency limits based on the physical size of the motor. The frame size only dictates what the "D" dimension (*i.e.*, the dimension comprising the length from the bottom of the feet of a motor to the center of its shaft). For example, a 56 frame motor could have a stator outside diameter ranging from 5.5 inches to 6.15 inches. Therefore, DOE accounts for how changes in diameter can affect product utility and efficiency in the engineering analysis.

Additionally, if DOE were to add frame size to the class-setting criterion the number of product classes would increase from 72 to 216, which is a change by a factor of three for the frame sizes covered: 42, 48, and 56. Such a large number of product classes would result in a large number of basic models, which would be too burdensome on manufacturers when seeking certification of compliance. The three tables below lay out the 72 product classes, including a description of kilowatt and horsepower equivalents.

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Table IV.1 Proposed Product classes for Polyphase Motors

Motor Horsepower/Standard Kilowatt Equivalent	Six Poles	Four Poles	Two Poles
1/4 hp/0.18 kW	PC #1	PC #2	PC #3
1/3 hp/0.25 kW	PC #4	PC #5	PC #6
1/2 hp/0.37 kW	PC #7	PC #8	PC #9
3/4 hp/0.55 kW	PC #10	PC #11	PC #12
1 hp/0.75 kW	PC #13	PC #14	PC #15
1½ hp/1.1 kW	PC #16	PC #17	PC #18
2 hp/1.5 kW	PC #19	PC #20	PC #21
≥ 3 hp/2.2 kW	PC #22	PC #23	PC #24

Table IV.2 Proposed Product classes for Capacitor-Start Induction-Run Motors

Motor Horsepower/Standard Kilowatt Equivalent	Six Poles	Four Poles	Two Poles
1/4 hp/0.18 kW	PC #25	PC #26	PC #27
1/3 hp/0.25 kW	PC #28	PC #29	PC #30
1/2 hp/0.37 kW	PC #31	PC #32	PC #33
3/4 hp/0.55 kW	PC #34	PC #35	PC #36
1 hp/0.75 kW	PC #37	PC #38	PC #39
1½ hp/1.1 kW	PC #40	PC #41	PC #42
2 hp/1.5 kW	PC #43	PC #44	PC #45
≥ 3 hp/2.2 kW	PC #46	PC #47	PC #48

Table IV.3 Proposed Product classes for Capacitor-Start Capacitor-Run Motors

Motor Horsepower/Standard Kilowatt Equivalent	Six Poles	Four Poles	Two Poles
1/4 hp/0.18 kW	PC #49	PC #50	PC #51
1/3 hp/0.25 kW	PC #52	PC #53	PC #54
1/2 hp/0.37 kW	PC #55	PC #56	PC #57
3/4 hp/0.55 kW	PC #58	PC #59	PC #60
1 hp/0.75 kW	PC #61	PC #62	PC #63
1½ hp/1.1 kW	PC #64	PC #65	PC #66
2 hp/1.5 kW	PC #67	PC #68	PC #69
≥ 3 hp/2.2 kW	PC #70	PC #71	PC #72

Chapter 3 of the TSD accompanying this notice provides additional detail on the product classes defined for the standards proposed in this NOPR.

B. Screening Analysis

DOE uses the following four screening criteria to determine which design options are suitable for further consideration in a standards rulemaking:

1. *Technological feasibility.* DOE considers technologies incorporated in commercial products or in working prototypes to be technologically feasible.

2. *Practicability to manufacture, install, and service.* If mass production and reliable installation and servicing of a technology in commercial products could be achieved on the scale necessary to serve the relevant market at the time the standard comes into effect, then DOE considers that technology practicable to manufacture, install, and service.

3. *Adverse impacts on product utility or product availability.* If DOE determines a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers, or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not consider this technology further.

4. *Adverse impacts on health or safety.* If DOE determines that a technology will have significant adverse impacts on health or safety, it will not consider this technology further. See 10 CFR part 430, subpart C, appendix A, (4)(a)(4) and (5)(b).

DOE identified the following technology options that could improve the efficiency of small electric motors: utilizing a copper die-cast rotor, reducing skew on stack (*i.e.*, straightening the rotor conductor bars), increasing the cross-sectional area of rotor conductor bars, increasing the end ring size, changing the copper wire gauge used in the stator, manipulating the stator slot size, changing capacitor ratings, decreasing the air gap between the rotor and stator, improving the grades of electrical steel, using thinner steel laminations, annealing steel laminations, adding stack height, using high efficiency lamination materials, using plastic bonded iron powder (PBIP), installing better ball bearings and lubricant, and installing a more efficient cooling system. For a description of how each of these technology options improves small electric motor efficiency please see TSD chapter 3. For the NOPR, DOE screened out two of these technology options: PBIP and decreasing the air gap below .0125".

PBIP is based on an iron powder alloy that is suspended in plastic, and is used in certain motor applications such as fans, pumps, and household appliances. The compound is then shaped into motor components using a centrifugal mold, reducing the number of manufacturing steps. Researchers claim that this technology option could cut

losses by as much as 50 percent.⁹ The Lund University team already produces inductors, transformers, and induction heating coils using PBIP, but has not yet produced a small electric motor. In addition, it appears that PBIP technology is aimed at torus, claw-pole, and transversal flux motors, none of which fit EPCA's definition of small motors.

Considering the four screening criteria for this technology option, DOE screened out PBIP as a means of improving efficiency. Although PBIP has the potential to improve efficiency while reducing manufacturing costs, DOE does not consider this technology option technologically feasible, because it has not been incorporated into a working prototype of a small electric motor. Also, DOE is uncertain whether the material has the structural integrity to form into the necessary shape of a small electric motor steel frame. Furthermore, DOE is uncertain whether PBIP is practicable to manufacture, install, and service, because a prototype PBIP small electric motor has not been made and little information is available on the ability to manufacture this technology. However, DOE is not aware of any adverse impacts on product utility, product availability, health, or safety that may arise from the use of PBIP in small electric motors.

Reducing the air gap between the rotor and stator can improve motor efficiency as well by reducing the magnetomotive force drop (*i.e.*, the force producing the magnetic flux needed to operate the motor), which occurs across the air gap. Reducing this drop means that the motor will require less current to operate. For small electric motors, the air gap is commonly set at 15 thousandths of an inch. Although reducing this air gap can improve efficiency, there is some point at which the air gap is too tight and becomes impracticable to manufacture. For the preliminary analyses DOE set an air gap reduction limit at 10 thousandths of an inch.

During the public meeting and the comment period following it, DOE received comments on this technology option. At the public meeting, Baldor stated that reducing the air gap between the stator and rotor will not improve motor efficiency, but could potentially worsen it instead. (Baldor, Public Meeting Transcript, No. 8.5 at p. 119) Alternatively, in the comment submitted on behalf of Baldor and other

manufacturers by NEMA, they stated that reducing the air gap could have a positive effect on efficiency for some motor designs, but not necessarily all. (NEMA, No. 13 at p. 5) NEMA also stated that a more practical limit on the air gap for small electric motors is 12.5 thousandths of an inch. (NEMA, No. 13 at p. 3)

DOE agrees with NEMA's comments and screened out decreasing the radial air gap below 12.5 thousandths of an inch as a means of improving efficiency. DOE believes air gaps of 10 thousandths of an inch are possible; however, they are more practical in non-continuous, stepper motors (motors whose full rotation is completed in discrete movements) where potential contact is not as much of a concern. DOE considers air gap reduction below 12.5 thousandths of an inch technologically feasible, because smaller air gaps do not present any technological barrier. Also, DOE is not aware of any adverse impacts on health or safety associated with reducing the radial air gap below 12.5 thousandths of an inch. However, DOE believes that this technology option fails the screening criterion of being practicable to manufacture, install, and service because such a tight air gap may cause the rotor to come into contact with the stator and cause manufacturing and service problems. This technology option fails the screening criterion of adverse impacts on consumer utility and reliability, because the motor may experience higher failure rates in service when the manufactured air gaps are less than 12.5 thousandths of an inch.

DOE received comments on two other technology options as well—increasing stack length and the use of different run capacitors. Baldor suggested that DOE screen out changing the stack length of the motor because it will force some original equipment manufacturers (OEMs) that use small electric motors to invest in redesigning their equipment to fit the potentially larger motor. (Baldor, Public Meeting Transcript, No. 8.5 at pp. 121–22) DOE cannot screen out a technology option because of cost, so DOE believes adding stack height and lengthening a motor is a viable technology option that passes all four screening criterion. Accordingly, these technology options will be included in the engineering analysis. See the engineering analysis, section IV.C.

NEMA recommended that DOE consider varying the rating of capacitors used in small electric motors as a technology option. (NEMA, No. 13 at p. 18) In response, DOE notes that though varying capacitor ratings was not explicitly listed as a technology option,

⁹ Horrdin, H., and E. Olsson. Technology Shifts in Power Electronics and Electric Motors for Hybrid Electric Vehicles: A Study of Silicon Carbide and Iron Powder Materials. 2007. Chalmers University of Technology. Göteborg, Sweden.

it was utilized in the preliminary engineering analysis. DOE agrees that changing the capacitor rating, specifically the run-capacitor rating used in CSCR motors, can provide increases in motor efficiency with minimal redesign effort. DOE believes that changing the capacitor rating meets all four screening criterion and is being included in the engineering analysis of this NOPR.

DOE believes that all of the efficiency levels discussed in today's notice are technologically feasible. The evaluated technologies all have been used (or are being used) in commercially available products or working prototypes. These technologies all incorporate materials and components that are commercially available in today's supply markets for the motors that are the subject of this NOPR. Therefore, DOE believes all of the efficiency levels evaluated in this notice are technologically feasible.

C. Engineering Analysis

The engineering analysis develops cost-efficiency relationships to show the manufacturing costs of achieving increased efficiency. DOE has identified the following three methodologies to generate the manufacturing costs needed for the engineering analysis: (1) The design-option approach, which provides the incremental costs of adding to a baseline model design options that will improve its efficiency; (2) the efficiency-level approach, which provides the relative costs of achieving increases in energy efficiency levels, without regard to the particular design options used to achieve such increases; and (3) the cost-assessment (or reverse engineering) approach, which provides "bottom-up" manufacturing cost assessments for achieving various levels of increased efficiency, based on detailed data as to costs for parts and material, labor, shipping/package, and investment for models that operate at particular efficiency levels.

1. Approach

In this rulemaking, DOE conducted the engineering analysis using a

modified design-option approach where DOE employed a technical expert with motor design software to develop motor designs at several efficiency levels for each analyzed product class. Based on these simulated designs and manufacturer and component supplier data, DOE calculated manufacturing costs and selling prices associated with each efficiency level. DOE decided on this approach after receiving insufficient response to its request for the manufacturer data needed to execute an efficiency-level approach for the preliminary analyses. The design-option approach allows DOE to make its engineering analysis methodologies, assumptions, and results publicly available, thereby permitting all interested parties the opportunity to review and comment on this information. The design options considered in the engineering analysis include: copper die-cast rotor, reduce skew on stack, increase cross-sectional area of rotor conductor bars, increase end-ring size, change gauge of copper wire in stator, manipulate stator slot size, decrease air gap between rotor and stator to 12.5 thousandths of an inch, improve grades of electrical steel, use thinner steel laminations, anneal steel laminations, add stack height, use high efficiency lamination materials, change capacitor ratings, install better ball bearings and lubricant, and install a more efficient cooling system. Chapter 5 of the TSD contains a detailed description of the product classes analyzed and the analytical models DOE used to conduct the small electric motors engineering analysis and chapter 3 of the TSD contains a detailed description of how all the design options increase motor efficiency.

2. Product Classes Analyzed

As discussed in section IV.A.2 of this notice, DOE proposes establishing a total of 72 product classes for small electric motors, based on the motor category (polyphase, CSIR, or CSCR), horsepower, and pole configuration. However, due to scheduling and resource constraints, DOE was not able

to conduct a separate engineering analysis for each and every product class. Instead, DOE carefully 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. Further discussion of this issue is presented in section IV.C.6.

For the engineering analysis conducted during the preliminary analysis, DOE analyzed three representative product classes, all with the most popular, 4-pole configuration. In response to that analysis, Baldor commented that two and six-pole motors may have significant design differences (such as the rotor outer diameter) from 4-pole motors. (Baldor, Public Meeting Transcript, No. 8.5 at pp. 196-99) Although DOE recognizes that these design differences exist and may affect efficiency, DOE has continued to directly model only 4-pole motors in its engineering analysis because it is the most popular configuration within each motor category and therefore the best basis for scaling. As discussed in section IV.C.3, DOE has revised its scaling relationships between product classes to account for efficiency-related differences between pole configurations.

For the NOPR, similar to its approach in the preliminary analyses, DOE analyzed the three representative product classes depicted in Table IV.4. By choosing these three product classes, DOE ensures that each motor category (polyphase, CSIR, and CSCR) is represented. In addition, DOE has chosen horsepower ratings for each motor category that are commonly available across most manufacturers, thus increasing the quantity of available data on which to base the analysis. Finally, DOE chose four-pole motors for each motor category, consistent with NEMA-provided shipments data (see TSD chapter 9), which indicated that these motors have the highest shipment volume for 2007. See TSD chapter 5 for additional detail on the product classes analyzed.

Table IV.4 Product classes Analyzed for NOPR Analyses

Motor Category	Horsepower	Number of Poles
Polyphase	1	4
CSIR	1/2	4
CSCR	3/4	4

3. Cost Model

For the preliminary analyses and this NOPR, DOE developed a cost model to

estimate the manufacturing production cost (MPC) of small electric motors. The model uses outputs of the design

software to generate a complete bill of materials, specifying quantities and dimensions of parts associated with the

manufacturing of each design. The bill of materials is multiplied by markups for scrap, overhead¹⁰ (which includes depreciation) and associated non-production costs such as interest payments, research and development, and sales and general administration. The software output also includes an estimate of labor time associated with each step of motor construction. DOE multiplied these estimates by a fully burdened labor rate to obtain an estimate of labor costs.

During the public meeting, DOE received two comments regarding inputs to the cost model. Edison Electric Institute expressed concern with how DOE would handle material pricing for input commodity prices since the past several years have seen drastic fluctuations in these prices. (EEL, Public Meeting Transcript, No. 8.5 at pp. 161–62) NEEA reiterated these concerns and suggested that DOE use a distribution of commodity prices and generate various pricing scenarios. (NEEA, Public Meeting Transcript, No. 8.5 at p. 164)

DOE decided to estimate input costs by using an inflation-adjusted 5-year average of prices for each of the input commodities: steel laminations, copper wiring, and aluminum and copper for rotor die-casting. This method for calculating costs is consistent with past rulemakings where material costs were a significant part of manufacturers' costs. In calculating the 5-year average prices for these commodities, DOE adjusted historical prices to 2008 terms using the historical Producer Price Index (PPI) for that commodity's industry. DOE also performed a cost sensitivity analysis in which it examined both a high and low cost scenario for commodities. For all commodity prices, DOE used the PPI to determine the high and low cost points and then input those costs into the cost model. This allowed DOE to generate a high commodities cost case and a low commodities cost case for the engineering analysis results. Please refer

to TSD chapter 5 for additional details on DOE's commodities cost scenario.

DOE applied a manufacturer markup to the MPC estimates to arrive at the MSP. MSP is the price of equipment sold at which the manufacturer can recover both production and non-production costs and earn a profit. DOE developed a market-share-weighted average industry markup by examining gross margin information from the annual reports of several major small electric motor manufacturers and Securities and Exchange Commission (SEC) 10-K reports.¹¹ Because the SEC 10-K reports do not provide gross margin information for different product line offerings, the estimated markups represent the average markups that the company applies over its entire range of motor offerings.

Markups were evaluated for 2003 to 2008. The manufacturer markup is calculated as $100/(100 - \text{average gross margin})$, where average gross margin is calculated as $\text{revenue} - \text{cost of goods sold (COGS)}$. To validate the information, DOE reviewed its assumptions with motor manufacturers. During interviews (see Chapter 12 of the TSD), motor manufacturers stated that many manufacturers generate different levels of revenue and profit for different product classes, but generally agreed with the end markup that was generated. For the NOPR engineering analysis, DOE used an industry-wide manufacturer markup of 1.45 based on the information described above.

4. Baseline Models

As mentioned above, the engineering analysis calculates the incremental costs for equipment with efficiency levels above the baseline in each product class analyzed. During the preliminary analyses, NEMA provided DOE with baseline efficiency levels for the four motors DOE analyzed. The baseline efficiencies reported by NEMA were from a set of compiled data submitted by its members. The reported baseline

efficiency levels also corresponded to the lowest efficiencies of motors manufactured and sold in the market by their members at that time.

For the preliminary analyses, DOE used the expertise of its subcontractor to develop baseline design parameters that included dimensions, steel grades, copper wire gauges, operating temperatures, and other features necessary to calculate the motor's performance. The subcontractor used a software program to create a baseline design that had an efficiency rating equivalent to that provided by NEMA and torque and current restrictions compliant with NEMA MG1–1987.

After the public meeting, a few commenters raised issues related to baseline models. NEMA stated that DOE should use the baseline efficiencies that had been provided for the preliminary analyses to select efficiencies for the baseline models in the NOPR. (NEMA, No. 13 at p. 5)

For the NOPR analysis, DOE reexamined the baseline units selected. To establish the baseline motor for the three representative product classes DOE examined all available catalog data to find motors with the lowest efficiency on the market. The rated efficiencies for the polyphase and CSIR motors that DOE chose corresponded to the baseline efficiency levels that NEMA had recommended. However, for the CSCR motor DOE was unable to find a motor with as low an efficiency as that recommended by NEMA. Therefore, DOE selected the lowest efficiency level it could find in the market, which was 72 percent instead of the 66 percent recommended by NEMA. After purchasing the small electric motors, DOE had its design subcontractor, as well as an accredited laboratory, test the motors according to the appropriate IEEE test procedure. See Table IV.5 for the NEMA recommended efficiencies, the catalog rated efficiencies, and the tested efficiencies of the three baseline models.

Table IV.5 Efficiency Values of Baseline Models

	Polyphase 1 hp, 4 pole, 56 frame	CSIR ½ hp, 4 pole, 48 frame	CSCR ¾ hp, 4 pole 56 frame
NEMA Recommendation	74.0%	59.0%	66.0%
Catalog Rated	74.0%	59.0%	72.0%
Tested Efficiency	77.0%	57.7%	71.0%

¹⁰DOE used a markup of 17.5% for overhead when the motor design used an aluminum rotor and 18.0% when the motor design used a copper rotor.

The difference in markup is to account for increased depreciation of the manufacturing equipment associated with using a copper rotor.

¹¹ Available at: <http://www.sec.gov/edgar.shtml>.

DOE also received comment on removing a motor that was analyzed for the preliminary analysis from further analysis. In the preliminary analysis, DOE analyzed two CSIR motors of the same horsepower and pole configuration, but with different frame sizes. After the engineering analysis showed little difference in the cost-efficiency relationship, DOE decided not to include the motor with the larger frame size in the subsequent NIA and LCC analyses. Adjuvant Consulting stated that they agreed with this decision (Adjuvant Consulting, No. 9 at p. 4) However, NEMA disagreed with the implication that frame size makes little difference on the cost-efficiency relationship in their comment and stated that they believed the little differences shown between the motors analyzed was due to the differences in other design characteristics of the baseline motor. (NEMA, No. 12 at p. 19)

DOE considered both of these comments when choosing appropriate product classes to analyze. DOE agrees with Adjuvant Consulting and believes that an analysis of two motors with different frame sizes, but in the same product class is not necessary. DOE also agrees with NEMA's assessment that the reason there was little difference between the two CSIR motors was due to the difference in the baseline design and not that there are little differences in cost-efficiency relationships for motors with the same ratings, but in different frame sizes. However, in the NOPR, DOE chose not to analyze two motors in the same product class with different frame sizes. Instead, DOE selected motors with the most restricted frame size seen in the respective product classes. DOE believes this is the best way to assess the efficiency capabilities of motors in the representative product classes.

Emerson stated that the software program used by DOE in developing its baseline models should be validated by actual motor designs that are produced. (Emerson, Public Meeting Transcript, No. 8.5 at pp. 148–49)

DOE established dimensional and performance specifications other than efficiency for the baseline models by examining all outputs of the IEEE test procedures and performing teardowns of the purchased motors. The IEEE test procedures provide several motor performance characteristics including speed, power factor, torque, and line current at various load points. After compiling these test data, DOE's subcontractor tore down each motor purchased to obtain internal dimensions, copper wire gauges, steel grade, and any other pertinent design

information. Finally, the purchased motors were created in the designer's software and used as the baseline models in each analyzed product class for the engineering analysis. Again, the three product classes that were analyzed were: CSIR, 1/2 horsepower, 4-pole; CSCR 3/4 horsepower, 4-pole; and polyphase, 1 horsepower, 4-pole motors. The specifications of the baseline models can be found in detail in TSD chapter 5.

5. Design Options and Limitations

In the market and technology assessment for the preliminary analyses, DOE defined an initial list of technologies that could increase the energy efficiency of small electric motors. In the screening analysis for the preliminary analyses, DOE screened out two of these technologies (PBIP and an air gap less than 12.5 thousandths of an inch) based on four screening criteria: technological feasibility; practicability to manufacture, install, and service; impacts on equipment utility or availability; and impacts on health or safety. The remaining technologies became inputs to the preliminary analyses engineering analysis as design options.

In addition to the comments DOE received about the list of design options considered in the screening analysis, DOE also received several comments about design limitations that should be considered. Among these design limitations are limits on how much to apply certain design options and motor performance characteristics that should be monitored and maintained. The comments addressed all of the following issues: manufacturability, motor size, service factor, skew, the air gap between the rotor and stator, power factor, speed, service factor, slot fill, locked-rotor conditions, no-load conditions, breakdown torque, and thermal characteristics of the motor.

a. Manufacturability

Baldor commented during the public meeting that manufacturability was its primary concern and urged DOE to consider this factor. (Baldor, Public Meeting Transcript, No. 8.5 at p. 108) NEMA and the NEEA and the Northwest Power and Conservation Council reiterated this view in their respective comments submitted after the public meeting. (NEMA, No. 13 at p. 6; NEEA and NPCC, No. 9 at p. 4) DOE agrees with these comments and believes that through the application of the design limitations that follow in this section, DOE has maintained manufacturability in all motor designs it presents.

b. Motor Size

Motor size was a topic repeatedly addressed by interested parties. WEG and Emerson both commented that a result of energy conservation standards and increasing the efficiency of small electric motors could be that the motor length, diameter, or both will increase. (WEG, Public Meeting Transcript, No. 8.5 at p. 79; Emerson, Public Meeting Transcript, No. 8.5 at pp. 80–81) This concerned manufacturers because larger motors that result from higher efficiency standards may no longer fit into applications and OEMs would be forced to redesign their equipment. DOE recognizes that lower cost high efficiency motor designs can be produced either with larger diameters or a longer stack length. DOE constrained the motor diameter in its engineering analysis and simplified its analysis of space constrained applications by addressing space constraint issues in only the stack length dimension. DOE assumes that motor users whose applications are not space constrained in terms of diameter, would purchase a motor with the next higher frame size.

At the public meeting, WEG stated that there is no set amount of additional stack height that can be added to a design without affecting end-use application because manufacturers often push those limits (WEG, Public Meeting Transcript, No. 8.5 at p. 129) NEMA suggested that DOE use a maximum stack length increase of less than 20 percent to account for the size restrictions that certain motor applications will have. (NEMA, No. 13 at p. 4)

When establishing design limitations for the motor designs produced, DOE considered these comments. DOE decided that increasing the stack height of a motor can result in the motor no longer fitting into certain applications. Taking the concerns raised during the comment period into account, DOE utilized a maximum increase of stack height of no more than 20 percent from the baseline motor. However, DOE also believes that not all applications would be held to this 20 percent limitation. Because this design limitation has a drastic effect on the cost-efficiency relationship for small electric motors, and not all applications would be bound to that restriction, DOE provides a second set of engineering results for each product class analyzed. This second set of results has a much less stringent limit of increasing the stack height, of 100 percent. That is, DOE has two designs for each motor analyzed, at each efficiency level; one for the motor designs adhering to a maximum stack

height increase of 20 percent and one adhering to 100 percent. However, for some of the lower efficiency levels, where a change in steel grade or an increase of stack height above 20 percent is not needed, both sets of designs are the same. DOE uses a weighted average of the MSPs from the 20 percent constrained designs and the 100 percent constrained designs based on the distribution of size-constrained applications that use small electric motors.

c. Service Factor

As discussed in section IV.A.1 service factor is a performance characteristic motor manufacturers must observe when designing their motors. In its comment, NEMA suggested that service factor be considered so that subsequent more efficient designs are still proper replacements of the baseline motor design. (NEMA, No. 13 at p. 7) DOE agrees with this comment and therefore, will maintain the service factor of the baseline motor design for each subsequent, more efficient design produced.

d. Skew and Stay-Load Loss

Another design limitation that was discussed at the public meeting was decreasing the degree of rotor skew. At the preliminary analyses public meeting, Emerson commented that if rotor skew is removed in a single-phase motor, the motor will not start. (Emerson, Public Meeting Transcript, No. 8.5 at p. 134) Regal-Beloit also had concerns about this design option and stated that reducing motor skew could cause the rotor to be noisy when running. (Regal-Beloit, Public Meeting Transcript, No. 8.5 at p. 135–36)

DOE agrees that removing all of the skew from a single-phase motor will prevent it from starting. DOE also agrees that too much reduction of skew could cause the motor to become noisy. However, DOE does believe that reducing the degree of skew could provide efficiency gains depending upon the characteristics of the baseline model. DOE understands that this design option is subjective and relies heavily on the baseline motor design and experience of the motor design engineer. DOE did not use this design option for the motors analyzed in the engineering analysis because the skew of the baseline model was optimized. However DOE did not eliminate it as a design option prior to purchasing and tearing down its baseline motors.

Additionally, Baldor said that changing skew will affect the stray-load losses in a motor. As mentioned DOE did not implement this design option,

but did assume 1.0 percent for the value of stray-load loss. Baldor recommended that instead of assuming 1.0 percent, DOE should assume 1.8 percent because that is recommended in the IEEE standard. (Baldor, Public Meeting Transcript, No. 8.5 at p. 176) After examining the IEEE standard, DOE agrees with Baldor and has assumed 1.8 percent for the amount of stray-load loss in its motor designs.

e. Air Gap

The air gap between the rotor and stator was another topic discussed at the preliminary analyses public meeting and DOE received two pertinent comments. As discussed in the screening analysis, Baldor stated that reducing the air gap between the rotor and stator could have negative effects on efficiency. (Baldor, Public Meeting Transcript, No. 8.5 at p. 119) NEMA added that although reducing the air gap could improve small electric motor efficiency, it recommended that DOE not decrease the air gap in its designs to less than 12.5 thousandths of an inch because smaller air gaps could be problematic causing rotor and stator contact, especially as the motors get longer. (NEMA, No. 13, pp. 3, 5)

After careful consideration of these comments, DOE agrees that decreasing the air gap between the stator and rotor down to 12.5 thousandths of an inch is a viable design option. Reducing the gap below that amount would increase the risk of creating potential performance and reliability issues that could arise with contact between the rotor and stator as well introduce manufacturability concerns regarding the ability of manufacturers to build motors with these significantly tighter tolerances. Therefore, DOE set one of its design limitations as maintaining at least 12.5 thousandths of inch for an air gap.

f. Power Factor

The rated power factor of a motor was an issue that was raised at the preliminary analyses public meeting. Baldor commented that the power factors of some designs in the preliminary analyses engineering analysis were extremely low and that such power factors would result in line losses that can negate gains in motor efficiency. (Baldor, Public Meeting Transcript, No. 8.5 at p. 174) NEMA followed up this comment suggesting that a minimum power factor needs to be established as a design limitation. (NEMA, No. 13 at p. 6) PG&E, SCE, SCGC, and SDGE reiterated these sentiments and suggested that a power factor of 75 percent should be

maintained for all designs. (Joint Comment, No. 12 at p. 3)

DOE understands that sacrificing power factor to obtain gains in efficiency is counterproductive because of the negative effects on line efficiency. Therefore DOE agrees that power factor must be considered when designing more efficient small electric motors. However, DOE does not believe that it is necessary to maintain a power factor of 75 percent for all designs. Instead, DOE has opted to maintain or increase the power factor of the baseline motor for each more efficient design and therefore does not negate any gains in efficiency.

g. Speed

DOE also received comment about the rated speed of its designs during the preliminary analyses public meeting. Baldor commented that DOE should monitor the trend of full-load speed as motor designs become more efficient and DOE should try to maintain the speed of the baseline as much as possible. (Baldor, Public Meeting Transcript, No. 8.5 at pp. 177–78) NEMA reaffirmed this position and stated that to maintain utility for some applications, for example a fan or pump, as efficiency is increased from design to design, full-load speed must be maintained (NEMA, No. 13 at pp. 6–7)

DOE consulted with its own technical expert when setting a design limitation for full-load speed. DOE found that a decrease in full-load speed could have a negative impact on the utility of the motor design considered a replacement of the baseline. Additionally, DOE understands that speed is directly related to the I²R losses¹² found in a motor and by maintaining it, those losses are kept reasonable.

Subsequently, by not increasing I²R losses, it is easier to increase the overall efficiency of the motor. Therefore, DOE agreed with the comments and decided that each design created by its subcontractor should maintain or increase the full-load speed of the baseline motor that was tested and modeled.

h. Thermal Performance

After the preliminary analyses public meeting, NEMA suggested that DOE complete a thermal analysis and urged DOE to examine rotor temperature during operation. (NEMA, No. 13 at p. 8)

¹² I²R losses stem from the current flow through the copper windings in the stator and conductor bars in the rotor. These losses are manifested as waste heat, which can shorten the service life of a motor.

DOE carefully considered this comment for the NOPR phase of this rulemaking. DOE decided to create a baseline design modeled after a small electric motor manufactured and sold on the market today. DOE purchased a baseline motor for each of the product classes analyzed in the engineering analysis. This motor was tested according to the corresponding IEEE test procedure and the rotor squirrel-cage temperature was monitored using thermocouples. DOE believes that by maintaining speed and increasing efficiency, the thermal integrity of the baseline motor will be maintained for each subsequent design of increased efficiency. By maintaining the baseline speed the rotor resistance is not increased and by increasing efficiency there is less heat that must be dissipated in the motor. DOE believes the thermal integrity of each motor design produced for this rulemaking's analysis is preserved as a result these factors.

i. Slot Fill

DOE received comments on the percentages of slot fill used in the designs presented for the preliminary analyses public meeting. The maximum level of slot fill DOE allowed in the preliminary engineering analysis was 75 percent. NEMA stated that a more typical limit of slot fill is 65 percent. (NEMA, No. 13 at p. 3) Emerson stated that manufacturers could surpass current limits on slot fill, but this would require a hand winding technique by individual workers instead of using automated winding machinery. (Emerson, Public Meeting Transcript, No. 8.5 at p. 130) Lastly, NEMA also recommended that DOE use a minimum slot fill. (NEMA, No. 13 at p. 8)

DOE agrees that the level of slot fill is bound by a minimum and a maximum. DOE understands that a minimum slot fill is necessary in order for a motor to work. After consultation with technical experts DOE decided that a minimum slot fill of 50 percent should be maintained for all designs. DOE also agrees with the comments that a maximum level of slot fill is necessary and that that level should be 65 percent. Although it is possible to exceed this slot fill percentage and get closer to 75 percent, DOE found that this would take uncommon techniques that could inhibit mass production.

j. Current and Torque Characteristics

NEMA discussed in its written comments the performance characteristics that should be met for all motor designs produced by DOE for its analysis. These performance specifications include a minimum

locked-rotor torque, a maximum locked-rotor current, a minimum breakdown torque, and a maximum no-load current. NEMA pointed out that MG1-1987 does not establish locked-rotor torque standards for polyphase motors, but it made no suggestion of what alternative should be used. NEMA also pointed out that MG1-1987 does not require a maximum locked-rotor current for small polyphase motors, but suggested that DOE use the standards for medium motors of corresponding horsepower, which are shown in MG 1-12.35. (NEMA, No. 13 at p. 6) Breakdown torque was another motor performance characteristic for which NEMA directed DOE to specific sections of MG1-1987 for both single and polyphase motors. (NEMA, No. 13 at p. 6) Finally, NEMA discussed no-load characteristics in their comment. While they made no suggestions for single-phase motors, NEMA believed that an average no-load current for polyphase small electric motors should be 25-35 percent of the rated-load current. (NEMA, No. 13 at p. 7)

DOE appreciates NEMA's comments clarifying the performance specifications set forth by NEMA MG1-1987 for general-purpose small electric motors. DOE agrees with NEMA that any motor design produced should meet the specifications shown in MG1-1987. That is, for single-phase motors all designs should meet the locked-rotor torque shown in MG1-12.32.2, the locked-rotor current shown in MG1-12.33.2, and the breakdown torque shown in MG1-12.32.1. For polyphase motors, the breakdown torque should be in the range shown in MG1-12.37. DOE agrees that the locked-rotor current specifications for medium polyphase motors are a fair gauge, and therefore design limitation for small polyphase motors of corresponding horsepower ratings because of the similarities in design and performance. For the performance requirements not specified in NEMA MG1-1987, DOE believes that the best design limitation is to meet or exceed the performance of the baseline motor used for each product class analyzed because this prevents over-restricting the design.

6. Scaling Methodology

As has been discussed in sections IV.C.2 and IV.C.4, DOE only analyzed three of the 72 product classes defined for small electric motors. Therefore, DOE needed to scale the results for these three product classes to the other 69. DOE presented an approach for scaling at the preliminary analyses public meeting. The first step in the previous scaling methodology was

translating efficiency standards for medium motors into motor losses. DOE used two equations to obtain motor losses. DOE then examined these data sets to find a mathematical relationship explaining the change of motor losses relative to changes in horsepower and number of poles for medium motors. Finally, DOE assumed the relationships found in medium motors could be extrapolated to describe how losses, and thus efficiency, would scale for small electric motors.

DOE received comments on the scaling methodology that was presented at the preliminary analyses public meeting. Baldor stated that using medium motor efficiency standards may not be accurate because medium motors are manufactured in three-digit frame sizes, and thus, the relationships found in medium motors may not be accurate for small electric motors with two-digit frames. (Baldor, Public Meeting Transcript, No. 8.5 at p. 191) Additionally, NEMA noted that for medium motor efficiency standards, frame size changes with each change in horsepower. This is not the case for small electric motors where frame sizes are used for a range of horsepower ratings, and in some instances overlap. Therefore, NEMA said medium motors data are not applicable to small electric motors and should not be used. (NEMA, No. 13 at p. 10)

DOE appreciates these comments and considered them when reevaluating scaling relationships for small electric motors in the NOPR. Because there are no current standards for small electric motors, efficiency data are not as widely accessible for them. However, DOE did examine catalog efficiency data for small electric motors to determine if the relationships gleaned from medium motors may be an appropriate approximation for small electric motors. After examining publicly available catalog data, DOE agrees with the conjectures made by Baldor and NEMA that the relationships found in medium motors are not an accurate representation of the relationships found in small electric motors. Therefore, DOE has foregone the use of medium motors efficiency data and has used publicly available catalog data, as well as test data, to scale the results of the three analyzed product classes to the remaining 69.

Baldor made another comment about the two equations DOE used to describe motor losses. Baldor stated that it was inaccurate to use the first equation DOE presented, $100 - \text{efficiency}$, to describe motor losses. Instead, DOE should only use the second equation they presented, which is also the accepted industry

equation, $100 \times [(100/\text{efficiency}) - 1]$. Baldor, along with NEMA, recommended that DOE only use the latter equation when describing motor losses. (Baldor, Public Meeting Transcript, No. 8.5 at pp. 188–90; NEMA, No. 13 at p. 9)

DOE agrees with Baldor's and NEMA's comments about motor losses and has only used the industry accepted equation to calculate them for the NOPR. DOE hopes that by using the one equation it will promote good, industry-accepted equations and also simplify the methodology used to scale efficiencies to all product classes.

As discussed in section IV.A.2. Baldor and Emerson commented at the public meeting that frame size should be a criterion for distinguishing product classes. (Baldor, Public Meeting Transcript, No. 8.5 at pp. 70–71; Emerson, Public Meeting Transcript, No. 8.5 at pp. 75–76) DOE addressed this comment again when developing scaling relationships for small electric motors.

For the NOPR analyses, DOE's scaling approach leveraged a combination of publicly available catalog data and test data. First, DOE developed a database of over 3,000 motors built in a NEMA two-digit frame size. The database was then filtered to create a comprehensive list of motors that meet the statutory definition of a small electric motor. Through this database, DOE could address the issue of frame size and how it pertains to product classes. DOE used the database to find the most restricted frame size seen at each product class. Having these data, DOE filtered the database again to remove all efficiency data points for motors with an unrestricted frame size. For example, for a polyphase $\frac{3}{4}$ hp 4-pole motor, manufacturers use 48 and 56 frames. Therefore, DOE removed all efficiency points for motors with a 56 frame size because its achievable efficiency is not as restricted as the 48 frame size motor.

DOE filtered the database again to ensure an accurate assessment of market efficiency levels. DOE sorted the database by manufacturer and examined individual product lines. If manufacturers produce two lines of motors based on differences in efficiency, DOE examined that data separately. Product lines for each manufacturer included efficiency data for two, four, and six pole motors where available. This approach allowed DOE to examine how efficiency changes with respect to horsepower and number of poles.

DOE supplemented the catalog data with actual test data to validate conclusions drawn from that catalog

data. An accredited lab performed IEEE standard 112, test methods A and B, and IEEE standard 114 to find efficiency data for 19 small electric motors. The motors selected for testing were pulled from the same product line for a given manufacturer. All three motor categories, pole configurations, and a full range of horsepower ratings were represented.

Once these data sets were prepared, DOE then converted the efficiency into motor losses using the industry-accepted equation mentioned above. This allowed DOE to use the most accurate line of best fit to fill in any gaps of data, which then enabled DOE to obtain an aggregated picture of motor losses (and thus efficiency) for the market based on both catalog data and laboratory accredited test data. Finally, the motor loss levels seen for each product class were shifted by a percentage increase corresponding to the difference in efficiency level for the three analyzed motors.

However, because information on CSCR motors was not as widely attainable, DOE relied on the relationships that it ascertained for CSIR motors to scale the results for CSCR motors. From the available catalog data, DOE found that efficiency tracked with horsepower the same way for both motor categories, but CSCR motors were more efficient.

7. Nominal Efficiency

With regard to the efficiency levels analyzed for small electric motors, NEMA recommended that DOE select efficiency values that coincide with "nominal" efficiencies listed in Table 12–10 of NEMA MG1–2006, currently being used for polyphase medium motors. NEMA also stated that DOE should not reference the column of "minimum" efficiencies seen in that table because those values are based on tolerances in the determination of total losses or efficiency through testing polyphase medium motors in accordance with IEEE standard 112 test method B. (NEMA, No. 13 at pp. 10–11)

Polyphase medium electric motors (those motors manufactured in three-digit frame series) are currently regulated by DOE as a result of EPACT 1992 and EISA 2007. The efficiency levels established by these Acts correspond to "nominal" efficiencies selected from a table in NEMA MG1 (Table 12–6A for NEMA MG1–1987 and table 12–10 for NEMA MG1–2006). Each "nominal" efficiency level shown in the table contains a corresponding "minimum" efficiency. By calculating both an average efficiency and a minimum efficiency from a population

of motors tested, and by utilizing the look-up tables referenced, medium electric motor manufacturers report a "nominal" efficiency from these tables for compliance and labeling purposes. As the industry standard states, "nominal efficiency" represents a value that characterizes the energy consumption of a group of motors, accounting for variations in materials, manufacturing processes, and tests that result in motor-to-motor efficiency variations.

As "nominal efficiency" is a widely used and appropriate metric to characterize the efficiency of electric motors, if an equivalent table for small electric polyphase and single phase motors exists, DOE would support its use for the calculation of small electric motor efficiency. However, to DOE's knowledge, and corroborated by NEMA's comment, no such table exists. In addition, DOE agrees with NEMA that the "minimum efficiency" values associated with the "nominal efficiency" values in the referenced tables are not necessarily appropriate for small electric motors. Additionally, the increments of the "nominal efficiency" values in Table 12–10 of NEMA MG1–2006 range from 0.1 percent to 2.0 percent. Since these increments in efficiency do not follow a regular pattern and can, at the larger intervals, constitute significant changes in efficiency, particularly for small electric motors, DOE feels that they cannot simply replicate a similar table without a significant amount of test data that would need to be provided by manufacturers and verified by technical experts. In consideration of the inapplicability of the referenced medium motor tables and the lack of data to produce a similar table for small electric motors, DOE does not feel that it is appropriate to set efficiency standards for small electric motors based on the values in Table 12–10 of NEMA MG1–2006.

DOE also notes that the test procedure for small electric motors requires manufacturers to report a "nominal full-load efficiency." This term, when discussed within the context of electric motors generally, is defined by EPCA as the average efficiency of a population of motors of duplicate design as determined in accordance with MG1–1987. 42 U.S.C. 6311(13)(I). As this term is not defined for small electric motors, to ensure consistency with the statute, DOE proposes to apply this definition for "nominal full-load efficiency" to small electric motors and to adopt a definition consistent with such an application into its regulations. Because MG1–1987 (or any later edition

of the industry standard) does not contain provisions for nominal full-load efficiency for small electric motors, DOE proposes to adopt a definition for “nominal full-load efficiency” of small electric motors that is equivalent to the average full-load efficiency of a population of small electric motors. While DOE considered amending the definition of “nominal full-load efficiency” for small electric motors to create a parallel definition as the one used for electric motors (which utilizes tables of minimum and nominal efficiencies), this would require a significant amount of testing and industry collaboration that has not yet occurred. Therefore, to ensure a complete test procedure and fully-defined energy conservation standards, DOE proposes to adopt a definition for

“nominal full-load efficiency” of small electric motors that is equivalent to the average full-load efficiency of a population of small electric motors. If, in the future, a table for small electric motors similar to Table 12–10 of NEMA MG1–2006 is developed, DOE may conduct a separate rulemaking to consider amending the definition of “nominal full-load efficiency” to make it consistent with the approach taken for medium motors, which makes reference to a specific table of efficiencies for “nominal full-load efficiency.”

8. Cost-Efficiency Results

The results of the engineering analysis are reported as cost-efficiency data (or “curves”) in the form of MSP (in dollars) versus full-load efficiency (in percentage). These data form the basis

for subsequent analyses in the NOPR. DOE developed two curves for each product class analyzed, one for the set of designs restricted by a 20 percent increase and one for those restricted by a 100 percent increase in stack height from the baseline. The methodology for developing the curves started with determining the energy efficiency for baseline models and MPCs for each product class analyzed. Above the baseline, DOE implemented various combinations of design options. Design options were implemented until all available technologies were employed (*i.e.*, at a max-tech level). See TSD chapter 5 for additional detail on the engineering analysis and the complete set of cost-efficiency results.

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Table IV.6 Efficiency and Manufacturer Selling Price Data for Polyphase Motor

Efficiency Level	Efficiency % (Design 1/Design 2)*	Manufacturer Selling Price \$ (Design 1/Design 2)*
Baseline	77.2	97.74
EL 1	78.7	103.81
EL 2	80.0	107.01
EL 3	81.6	112.88
EL 4	82.5	117.01
EL 5	85.2/85.2	229.84/150.86
EL 6	86.7/86.4	236.20/184.73
EL 7 (Max-tech)	88.3/88.4	1,770.27/324.66

*Design 1 denotes the space-constrained design, and Design 2 denotes the non-space-constrained design. If only one value is listed, then the space-constrained design is the same as the non-space-constrained design.

Table IV.7 Efficiency and Manufacturer Selling Price Data for Capacitor-Start, Induction-Run, 48-Frame Motor

Efficiency Level	Efficiency % (Design 1/Design 2)*	Manufacturer Selling Price \$ (Design 1/Design 2)*
Baseline	57.7	91.04
EL 1	59.5	95.62
EL 2	62.0	98.54
EL 3	64.2	99.78
EL 4	68.5/68.6	114.57/107.19
EL 5	71.2/71.2	118.98/120.53
EL 6	73.0/73.1	182.28/132.16
EL 7 (Max-tech)	77.0/77.2	1,204.30/150.70

*Design 1 denotes the space-constrained design, and Design 2 denotes the non-space-constrained design. If only one value is listed, then the space-constrained design is the same as the non-space-constrained design.

Table IV.8 Efficiency and Manufacturer Selling Price Data for Capacitor-Start, Capacitor-Run Motor

Efficiency Level	Efficiency % (Design 1/Design 2)*	Manufacturer Selling Price \$ (Design 1/Design 2)*
Baseline	71.0	110.82
EL 1	74.3	116.06
EL 2	78.3/78.4	136.22/128.60
EL 3	80.3/80.5	141.49/133.71
EL 4	81.6/81.8	145.27/141.10
EL 5	82.7/82.9	152.88/149.23
EL 6	83.7/83.5	237.53/156.85
EL 7	85.4/85.6	245.36/172.75
EL 8 (Max-tech)	87.3/87.3	1,778.48/353.50

*Design 1 denotes the space-constrained design, and design 2 denotes the non-space-constrained design. If only one value is listed, then the space-constrained design is the same as the non-space-constrained design.

D. Markups To Determine Equipment Price

The markups analysis develops supply-chain markups and sales taxes that DOE uses to convert MSPs to customer or consumer equipment prices for small electric motors.

1. Distribution Channels

Before it could develop markups, DOE needed to identify distribution channels (*i.e.*, how the equipment is distributed from the manufacturer to the end user) for each category of motor addressed in this rulemaking. Because most of the small electric motors are used as components in larger pieces of equipment, most of the market passes through OEMs that design, assemble, and brand products that contain small electric motors. OEMs obtain their motors either directly from the motor manufacturers or from distributors.

For small electric motors, DOE defined three distribution channels and estimated their respective shares of shipments in its determination analysis: (1) From manufacturers to OEMs and then to end users through OEM distribution; (2) from manufacturers to wholesale distributors to OEMs and then to end users through OEM equipment distribution; and (3) from manufacturers to end users through distributors and retailers. Contractors also play a role in installing motors in equipment. DOE used the same distribution channel types and market shares in the preliminary analysis as it used in the determination analysis.

NEMA and Emerson commented that the proportion of shipments through the three channels as specified in the determination analysis was incorrect, and the correct market shares for each distribution channel are: 65 Percent for direct shipments to OEMs, 30 percent for shipments to OEMs through distributors, and 5 percent for shipments directly to users (Emerson, Public Meeting Transcript, No. 8.5 at pp. 218–19; NEMA, No. 13 at p. 19). The NEEA and the Northwest Power Planning Council recommended that DOE should corroborate distribution channel market shares with industry input (NEEA and NPCC, No. 9 at p. 5). DOE used the distribution market shares recommended by NEMA and Emerson in the NOPR analysis.

2. Estimation of Markups

DOE based its markups on financial data from the U.S. Census Business Expenses Survey (BES). DOE assumed that the sales revenues reported by firms reflect the prices that they charge for products, while the expenses that they

reported to the BES reflect costs. DOE organized the financial data into balance sheets that break down cost components incurred by firms that sell the products and related these cost components to revenues to estimate the markups that determine sales price.

DOE's markup analysis developed both baseline and incremental markups to transform the manufacturer sales price into an end-user equipment price. DOE used the baseline markups to determine the price of baseline models. Incremental markups are coefficients that relate the change in the manufacturer sales price of higher-efficiency models to the change in the OEM, retailer, or distributor sales price. These markups refer to higher-efficiency models sold under market conditions with new energy conservation standards.

DOE used financial data from the BES for the "Electrical Goods Merchant Wholesalers" category to calculate markups used by distributors of motors for direct distribution; for the "Machinery, Equipment, and Supplies Merchant Wholesalers" category to calculate markups used by distributors of equipment containing small electric motors; and for the "Building materials, hardware, garden supply and mobile home dealers" category to calculate markups used by OEMs that apply to products containing motors.

DOE based the OEM markups and distributor markups on data from the "2002 Economic Census Manufacturing Industry Series," which reports on the payroll (production and total), cost of materials, capital expenditures, and total value of shipments for manufacturers of various types of machinery. Six years of data are reported for each manufacturer type. DOE collected data for 11 types of OEMs.

DOE calculated baseline markups for each Census industry category. The resulting markups range between 1.20 (industrial machinery, machine tools) and 1.56 (heating equipment), with an average of 1.37. DOE estimated incremental markups using a least squares regression of the value of shipments on payroll and cost of materials. Because there is a large range in the size of OEM types, companies with sales values greater than \$10 billion were separated from those with sales values less than \$10 billion. The incremental markup for larger companies was 1.28; the incremental markup for smaller companies was 1.33.

WEG and Emerson commented that DOE should include recertification and retesting costs that OEMs may incur due to a change in the motor that is used in

OEM equipment (Public Meeting Transcript, No. 8.5 at pp. 244–48). The markup factors that DOE derived for OEMs include average administrative and regulatory overhead costs such as might occur with certification and testing of products for safety. Therefore, when the manufacturer selling price of a more efficient motor is marked up by an OEM, DOE's analysis provides some accounting of increased regulatory overhead costs. In addition, DOE uses the OEM markups to estimate product prices and regulation cost impacts for an analysis period that spans 2015 through 2045, so initial regulatory costs can be averaged over several years. DOE believes that over this forecast period, recertification and testing costs are included in the OEM markups that it estimated.

During the presentation of the preliminary analysis, WEG noted that shipping costs to the customer should be explicitly included in the distribution costs (WEG, Public Meeting Transcript, No. 8.5 at p. 223). DOE agrees with this comment. To estimate shipping costs, DOE surveyed shipping and freight costs quotes available on the Internet and found a median value of \$0.5 per pound. In the LCC analysis DOE added shipping costs to the installed cost of the motor based on specific motor weight estimates for each efficiency level from the engineering analysis. The engineering analysis designs provided motor weights for both space-constrained and non-space-constrained motors.

Emerson also commented during the preliminary analysis presentation that more efficient, larger motors with increased stack length could create large costs for OEMs that use small motors in space-constrained equipment designs and that this should be included in distribution costs (Emerson, Public Meeting Transcript, No. 8.5 at p. 241). DOE addressed this issue in the engineering and life-cycle cost analyses by estimating cost and performance characteristics for motors at all efficiency levels for both space-constrained and less-constrained designs. DOE assumed that OEMs addressed their space requirements by purchasing a more expensive space-constrained design for their space-constrained application. DOE then modeled the increased cost of the space constraint by using the higher, space-constrained manufacturer selling price and by applying the same markup factors to these higher incremental costs to estimate the incremental cost to the consumer.

For installation costs, DOE used information from RS Means Electrical

Cost Data¹³ to estimate markups used by contractors who install motors and OEM equipment. RS Means estimates material expense markups for electrical contractors as 10 percent, leading to a markup factor of 1.10.

The sales tax represents state and local sales taxes that are applied to the end-user equipment price. DOE derived state and local taxes from data provided by the Sales Tax Clearinghouse. These data represent weighted averages that

include county and city rates. DOE then derived population-weighted average tax values for each Census division and large state, and then derived U.S. average tax values using a population-weighted average of the Census division and large State values. This approach provides a national average tax rate of 6.84 percent.

3. Summary of Markups

Table IV.9 summarizes the markups at each stage in the distribution channel and the overall baseline and incremental markups, and sales taxes, for each of the three identified channels. Weighting the markups in each channel by its share of shipments yields an average overall baseline markup of 2.49 and an average overall incremental markup of 1.83. DOE used these markups for each product class.

Table IV.9 Summary of Small Electric Motor Distribution Channel Markups

	Direct to OEMs 65%		Via Distributors to OEMs 30%		Via Distributors to End-Users 5%	
	Baseline	Incremental	Baseline	Incremental	Baseline	Incremental
Wholesale Distributor	-	-	1.28	1.10	1.28	1.10
OEM	1.37	1.27	1.37	1.33	-	-
Retail and Post-OEM Distributor	1.43	1.18	1.43	1.18	1.44	1.18
Contractor or Installer	1.10	1.10	1.10	1.10	1.10	1.10
Sales Tax	1.0684		1.0684		1.0684	
Overall	2.30	1.76	2.95	2.03	2.17	1.53

Using these markups, DOE generated motor end-user prices for each efficiency level it considered, assuming that each level represents a new minimum efficiency standard. Because it generated a range of price estimates, DOE describes prices within a range of uncertainty.

Chapter 7 of the TSD provides additional detail on the markups analysis.

E. Energy Use Characterization

DOE's characterization of the energy use for small electric motors estimated the annual energy use and end-use load of small electric motors in the field. The energy use by small electric motors derives from three components: energy converted to useful mechanical shaft power, motor losses, and reactive

power.¹⁴ Motor losses consist of I²R losses, core losses, stray losses and friction and windage losses. Core losses and friction and windage losses are relatively constant with variations in motor loading, while I²R losses increase with the square of the motor loading. Stray losses are also dependent upon loading. To estimate motor losses, DOE used the empirical estimates of losses as a function of loading for the specific motor designs that were developed in the engineering analysis.

In practice, reactive power may result in significant increases in energy consumption before capacitors in the electrical system compensate (*i.e.*, mitigate) the reactive power that is generated by end-user loads. DOE estimated reactive power costs in the LCC analysis that may arise from

reactive power charges and also estimated losses from reactive power that may occur in the electrical system.

In the preliminary analysis public meeting, DOE presented an analysis of energy use that separated motor losses into a constant component and a component that depends on motor loading. Both Baldor and NEMA commented that the approach that DOE used was non-standard and the equations proposed for estimating motor losses were imprecise (Public Meeting Transcript, No. 8.5 at pp. 228–33; NEMA, No. 13 at pp. 12–14). Responding to this comment, DOE modified its approach for the NOPR analysis. Rather than model motor losses with a potentially imprecise simplified equation, DOE used the direct loss estimates provided by the

¹³ RS Means Construction Publishers & Consultants, "Electrical Cost Data, 31st Annual Edition." 2008. J.H. Chiang, ed. Kingston, MA.

¹⁴ In an alternating current power system, the reactive power is created when voltage and current are shifted in phase and is calculated from the root mean square (RMS) voltage multiplied by the RMS

current multiplied by the sine of the phase difference between the voltage and the current. Reactive power occurs when the inductance or capacitance of the load shifts the phase of the voltage relative to the phase of the current. While reactive power does not consume energy, it can increase losses and costs for the electricity

distribution system. Motors tend to create reactive power because the windings in the motor coils have high inductance which shifts the phase of the voltage relative to the current.

engineering analysis which are available as an empirical function of motor loading. DOE provides motor losses as a function of loading for each design in motor loading increments of 25 percent for all designs evaluated in the analysis. A more detailed description and accompanying motor loss tables are contained in chapter 6 of the TSD.

The final step in estimating annual energy use from motor losses is estimating the annual hours of motor operation. DOE estimated the annual energy consumed by motor losses as the loss (in watts) times the annual hours of operation. The annual hours of operation of small electric motors is dependent mostly on the particular application to which the motor is being applied.

In its preliminary analysis, DOE modeled each motor in a given application as operating for a fixed number of hours, equal to the average hours of operation determined for that application. As part of updating its motor application and operation analysis, DOE examined published data regarding the distribution of hours of operation for motors. DOE concluded that the available data regarding the distribution of hours of operation of general-purpose motors could be well characterized as the superposition of an exponential distribution and a fraction of motors run nearly continuously (8760 hours per year). DOE used this information to develop distributions for each motor application as a function of the average annual hours of operation.

In written comments submitted following the January 30, 2009, public meeting, NEMA provided estimates for typical hours of operation for motors in compressor, small pumping, and "general industry" applications (NEMA, No. 13 at p. 19). DOE developed a model for the national distribution of annual hours of operation within each motor application that maintained as much consistency as possible with all available sources of data including NEMA's comment, estimates developed earlier in the rulemaking, and operating hour distributions available in the technical literature. The operating hour distributions developed by DOE take the form of the superposition of an exponential distribution (in which the number of motors decreases with

increasing hours of operation) with a small population of motors that run 100% of the time. DOE found in its analysis that the typical hours of operation as provided by NEMA are substantially lower than average hours of operation as estimated by DOE, but are consistent with DOE's median estimates of annual operating hours for four out of five application categories. Details regarding DOE's estimates of hours of operation are available in chapter 6 of the TSD.

F. Life-Cycle Cost and Payback Period Analysis

The LCC analysis calculates, at the consumer level, the discounted savings in operating costs throughout the estimated average life of the small electric motor, compared to any increase in installed costs likely to result directly from the imposition of the standard. The payback period analysis estimates the amount of time it takes consumers to recover the higher purchase expense of more energy efficient equipment through lower operating costs.

The LCC is the total consumer expense over the life of the equipment, including purchase expense and operating costs (including energy expenditures). To compute LCCs for equipment users, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the equipment. The payback period is the change in purchase expense due to an increased efficiency standard, divided by the change in annual operating cost that results from the standard. That is, the payback period is the time period it takes to recoup the increased purchase cost (including installation) of a more efficient product through energy savings.

Inputs to the calculation of total installed cost include the cost of the product—which includes manufacturer costs and markups, retailer or distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, discount rates, and the year that proposed standards take effect. DOE created distributions of values for some inputs to account for their uncertainty

and variability. For example, DOE created a probability distribution of annual energy consumption based in part on a range of annual operating hours. This range of annual operating hours is based on a derived sample of end-use applications for small electric motors. According to this range, the majority of these motors operates only a few hours per day, while a substantial minority of motors run nearly all hours of the day. LCC values reflect the aggregate effect of inputs weighted according to a combination of point values and probability distributions. DOE also used probability distributions to characterize variability in markups, discount rates and product lifetime. Details of all the inputs to the LCC and PBP analysis are contained in chapter 8 of the TSD.

As described above, DOE used samples of a population of motors and motor applications to characterize the variability in energy consumption and energy prices for this equipment. DOE also used a simple partitioning of motor applications to space-constrained and unconstrained applications.

The computer model DOE uses to calculate LCC and PBP, which incorporates Crystal Ball (a commercially available software program), relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and equipment user samples. The model calculated the LCC and PBP for equipment at each efficiency level for 10,000 motor units per simulation run. Details of the spreadsheet model DOE used for analyzing the economic impacts of possible standards on individual consumers, and of all the inputs to the LCC and PBP analysis, are contained in chapter 8 of the TSD.

Table IV.10 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The table provides the data and approach used for the preliminary TSD and the changes made for today's NOPR. The following subsections discuss the initial inputs and the changes made to them.

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Table IV.10 Summary of Inputs and Key Assumptions in the Life-Cycle Cost and Payback Period Analyses

Inputs	Preliminary TSD Description	Changes for the Proposed Rule
Baseline and Standard Efficiency Levels	Interpolated engineering design characteristics to estimate motor characteristics at baseline market efficiency and a range of potential standard levels	Used engineering performance and cost data for specific designs. Baseline engineering design adjusted to closely match market baseline in engineering analysis
Product Cost	Derived by multiplying manufacturer cost by manufacturer, retailer and distributor markups shipping costs and sales tax, as appropriate.	Shipping costs added
Installation Cost	Based on data from RS Means	No change
Motor Applications	Used applications and operating characteristics derived in the determination analysis	Adjusted applications based on comments and Internet-based market evaluation of OEM products.
Space Constraints	Designs constrained to maximum of 100 percent increase in stack length	Applications partitioned into 20 percent space-constrained and 80 percent unconstrained. Space-constrained designs limited to maximum of 20 percent increase in stack length
Annual Energy Use	Used simplified loss equation. Point value of hours of operation estimated as a function of motor application.	Motor loss vs. loading curves taken directly from motor designs derived in the engineering analysis. Distribution of motor hours of operation developed for each type of motor application.
Power Factor	Not included in consumer costs	Reactive power included. Reactive power charges derived from data provided in EEI comment. Reactive power costs assumed for 25% of motors
Energy Prices	Electricity: Based on EIA's 2006 Form 861 data.	Electricity: Updated using data from EIA's 2007 Form 861 data
Energy Price Trends	Forecasted using EIA's AEO 2008.	Forecasts updated using EIA's AEO 2009. Scenario added for electricity prices with potential future carbon regulation
Repair and Maintenance Costs	Not impacted by change in efficiency	No change
Product Lifetime	Average lifetime of 7 years for single-phase motors and 9 years for polyphase motors. Variability and uncertainty characterized using Weibull probability distributions.	Added correlation between hours of operation and motor lifetime. No change in average motor lifetime
Discount Rates	Approach based on the firm cost of capital. Distribution of discount rates adapted from distribution transformers rulemaking	No change
Effective Date of New Standard	2015.	No change.

1. Baseline and Standard Level Efficiencies

For the preliminary analysis, DOE used mathematical interpolation of specific engineering designs to estimate the costs and losses of motors at baseline efficiencies and a set of candidate standard levels that had performance characteristics different from the initial engineering designs. NEMA commented that it is important for the efficiency levels used in the consumer economic analysis to match the efficiency levels in the engineering analysis so that interested parties can have confidence that concrete designs exist that can satisfy the proposed standard levels (NEMA, No. 13 at p. 16). DOE agrees with this comment and for this NOPR it analyzed efficiency levels for which it developed specific engineering designs.

In response to DOE's preliminary analysis, EEI commented that since medium motors are already regulated by DOE under Section 313(b) of the Energy Independence and Security Act of 2007, Pub. L. 110-140 (Dec. 19, 2007) (EISA 2007), and since polyphase general purpose small electric motors are very similar to polyphase general purpose medium electric motors, it is important for DOE to consider standard levels for small electric motors that are closely aligned with the standard for medium electric motors (EEI, No. 14 at p. 2). DOE agrees with this comment and designed TSL 5 for polyphase small electric motors to be closely aligned with the efficiency level for medium motors regulated under EISA 2007.

2. Installed Equipment Cost

DOE determined the baseline MSP and the MSP increases associated with increases in product efficiency for each small electric motor product class in the engineering analysis (section IV.C.7 of this NOPR and chapter 5 of the TSD). MSPs are the prices of the equipment at the factory door. They do not include distribution markups, but do include manufacturer markups.

DOE determined the installed cost of small electric motors by adding distribution markups and installation costs to the MSPs determined in the engineering analysis. DOE determined the baseline and incremental markups for each point in the small electric motor supply chain, as well as shipping costs and sales taxes, in the markups analysis (section II.E of this ANOPR and chapter 7 of the TSD). The overall baseline (2.35) and incremental (1.70) markups, which include sales tax, are weighted averages based on the share of shipments in each of the three identified

distribution channels. DOE applied the same markups for each product class.

DOE derived installation costs for small electric motors from data in the "RS Means Electrical Cost Data, 2008,"¹⁵ which provides estimates on the labor required to install electric motors. DOE estimated that the average installation cost is \$253. Since it found no information to indicate differences in installation costs among motor applications, DOE used the same installation cost for each product class. DOE determined that installation costs would not be affected with increased energy efficiency levels.

In response to the preliminary analysis, DOE received several comments from interested parties regarding factors that can affect product prices. The comments, along with DOE's responses, are described in the appropriate sections of this notice that address the particular cost component: Costs associated with satisfying motor space and size constraints are addressed in the engineering analysis in IV.C above; costs incurred by OEMs within the motor distribution chain are addressed in the markup analysis in section IV.D; and costs associated with retooling and investments needed to manufacture more efficient motors are addressed in the manufacturer impact analysis described in section IV.I.

3. Motor Applications

For electric motors, the hours of operation and loading characteristics of motor use depend on the particular application to which the motor is applied. In its preliminary analysis, DOE used the same distribution of motor applications that it used in the determination analysis. This distribution included a wide range of applications, including food processing, woodworking tools, and farm machinery. Comments received at the January 30, 2009, public meeting from Emerson, WEG, and Regal-Beloit, (Public Meeting Transcript, No. 8.5 at pp. 270-76) and from NEMA (NEMA, No. 13 at p. 19) indicated that many of these applications utilize enclosed motors (as opposed to those that have an "open construction" design), and such motors are not covered under this rulemaking. DOE agrees with these comments, and has removed these applications from its analysis. To the extent that some motors in the applications no longer analyzed in detail may be open construction, and covered by this rule, DOE assumed that

they are incorporated in the "general industry" category described below.

To improve the classification of motor applications, DOE studied motor manufacturer and OEM catalogs that are publicly available on the Internet to adjust the categories and the proportion of small electric motors covered by this rule used in each application category. DOE consolidated and narrowed the applications of covered small electric motors to four major categories: (1) Commercial and industrial fans and blowers; (2) conveyors, packaging, and material handling; (3) air and gas compressors (outside of HVAC); and (4) pumps. In addition, covered motors are used in a wide and various array of other applications, which DOE characterized under the heading "general industry."

4. Annual Operating Hours and Energy Use

To estimate annual energy use, DOE multiplied motor losses by the annual hours of operation. DOE obtained motor losses as a function of motor loading from the performance data for specific designs developed and analyzed in the engineering analysis. DOE estimated motor loading as a function of the motor application. DOE modeled variability in both motor loading and annual operating hours by using distributions for both operational characteristics.

In response to the preliminary analysis, NEMA commented that motors in small compressors have estimated annual hours of operation of 200 to 400 hours per year, motors used in small pumps have annual operating hours of 1,500 to 2,000 hours per year, while small motors used in general machinery in clean environments such as medical equipment will have estimated annual hours of operation of 500 to 1,000 hours per year (NEMA, No. 13 at p. 19). DOE agrees that these figures represent approximate median hours of operation for small compressors, small pumps and medical equipment with small electric motors. DOE included medical equipment in a category of "general industry and miscellaneous," which it estimates has a significant fraction of applications in the range of 500 to 1,000 hours per year, but which also includes a large variety of miscellaneous equipment that DOE estimates has typical operating hours in the range of 1,000 to 2,000 hours per year. This latter estimate is consistent with the average hours of operation estimates developed during the determination analysis phase and is consistent with equipment that runs four to eight hours a day during normal working hours.

¹⁵ RS Means Construction Publishers & Consultants, "Electrical Cost Data, 31st Annual Edition." 2008. J.H. Chiang, ed. Kingston, MA.

5. Space Constraints

In response to DOE's preliminary analysis, several interested parties commented on the possibility that energy conservation standards may affect motors used in space-constrained applications. Baldor commented that DOE needs to correct the statement that a "majority of small motor applications are not constrained by motor length" and that the LCC analysis needs to take into account what it will cost to redesign OEM equipment to fit larger motors (Baldor, Public Meeting Transcript, No. 8.5 at pp. 119–21). WEG commented that changes in stack length can force OEMs to redesign their product (WEG, Public Meeting Transcript, No. 8.5 at p. 244). A joint comment by PG&E, SCE, SCGC, and SDGE stated that users with space-constrained applications may be able to resolve the space constraint by changing the motor type (Joint Comment, No. 12 at p. 3).

In the NOPR analysis, DOE addressed the issue of space constraints by calculating the cost and performance characteristics for both tightly constrained and less-constrained engineering designs for motors at each efficiency level. DOE then reviewed the range of applications and OEM equipment that uses the motors covered by the rulemaking and estimated that approximately 20 percent of covered motors are likely to be used in constrained applications. In the LCC analysis, DOE assigned 20 percent of motors to such constrained applications and used the engineering costs and performance associated with the constrained design when calculating consumer economic impacts. At low efficiency levels there is no difference between more and less constrained motors, but at the highest efficiency levels, the space-constrained applications can only be served by the most expensive motor designs because the less expensive motors are too large to fit within constrained spaces. In addition, DOE provides the LCC results for space-constrained applications as one of the consumer subgroups in the LCC subgroup analysis.

6. Power Factor

In its preliminary analysis, DOE presented real power losses and requested comment on power factor effects and the importance of including reactive power in its engineering, economic and national impact analyses. EEI commented that utilities like to see facility-wide power factor above 90 percent and that power factor penalties may affect the economics of small

electric motor efficiency. EEI provided DOE with the results of a 2003 survey of power factor charges and costs taken of its members (EEI, No. 14 at p. 6). NEMA noted inaccuracies in the reactive power equations proposed by DOE in the preliminary analysis and urged DOE to carefully estimate and consider power factor effects and constraints (NEMA, No. 13 at pp. 14–15).

DOE appreciates the comments and data provided on this issue and agrees with the interested parties that this information can contribute to a more complete and precise analysis of the consumer and utility impacts of power factor changes that may result from energy conservation standards. DOE addressed power factor and reactive power by first estimating power factor as a function of motor loading for each of the motor designs analyzed in the engineering analysis. DOE then included these data in the LCC analysis tools so that the analysis included estimates of power factor as a function of both motor loading and efficiency level. In the LCC spreadsheet, DOE estimated reactive power for each motor analyzed. DOE then used the data provided by EEI to estimate a reactive power cost associated with the reactive power. It included this cost in both the LCC analysis and in the national impact analysis.

7. Energy Prices

DOE developed nationally representative distributions of electricity prices for different customer categories (industrial, commercial, and residential) from 2007 EIA form 861 data. DOE estimates that marginal energy prices for electric motors are close to average prices, which vary by customer type and utility. The average prices (in 2008\$) for each sector are 6.4 cents for the industrial and agricultural sectors, 8.8 cents for the commercial sector, and 10.1 cents for the residential sector. DOE also estimated an average reactive power charge of \$0.47 per kilovolt-amps reactive (kVAr) per month using data provided by EEI for those customers that are subject to a reactive power charge.

8. Energy Price Trend

DOE used recent price forecasts by EIA to estimate future trends in electricity prices in each sector. To arrive at prices in future years through 2030, DOE multiplied the average prices described in the preceding section by the forecast of annual average price changes in EIA's AEO 2009. To estimate the trend after 2030, DOE followed past guidelines provided to the Federal

Energy Management Program (FEMP) by EIA and used the average rate of change from 2020 to 2030 for electricity prices.

DOE calculated LCC and PBP using three separate projections from AEO 2009: Reference, Low Price Case, and High Price Case. These three cases reflect the uncertainty of energy prices in the forecast period. For the LCC results presented in this NOPR, DOE used only the energy price forecasts from the Reference case.

DOE received several comments from interested parties regarding its electricity price projection. At the preliminary analysis public meeting, Earthjustice and NEEA commented that DOE should monetize greenhouse gas emissions reductions benefits, possibly by including the cost of carbon regulation in its forecasted price of electricity. Interested parties also noted that DOE should avoid double counting and need only account for the monetary value of emissions reductions or the potential impact on electricity prices and should not count both impacts at the same time. Earthjustice commented that the Energy Information Administration (EIA) had performed an analysis of Lieberman-Warner cap and trade legislation and that DOE could use this forecast to describe electricity prices with carbon caps (Earthjustice, Public Meeting Transcript, No. 8.5 at pp. 249–54).

DOE responds to these comments primarily in the environmental analysis where DOE provides estimates of the potential monetary value of greenhouse gas emissions reductions. DOE also provides a sensitivity analysis in both the LCC and the national impact analysis that includes an electricity price trend estimated by EIA for the case of cap and trade emissions control regulation. Details on the sensitivity analyses performed by DOE for the LCC are provided in chapter 8 of the TSD, while the sensitivity analyses for the national impact analysis are detailed in TSD chapter 10.

9. Maintenance and Repair Costs

Small electric motors are not usually repaired, because they often outlast the equipment wherein they are a component. DOE found no evidence that repair or maintenance costs would increase with higher motor energy efficiency. In response to the preliminary analysis, no interested parties provided any comments or data indicating that maintenance or repair costs are likely to change with motor efficiency. Thus, DOE did not include changes in repair and maintenance costs for motors that are more efficient than baseline products.

10. Equipment Lifetime

In the preliminary analysis, DOE used the information it gathered for the determination analysis to estimate the motor lifetime, which DOE defined as the age when the equipment containing the motor is retired from service. Based on this information, DOE used lifetime distributions with a mean lifetime of 7 years for capacitor-start motors and 9 years for polyphase motors.

In response to the preliminary analysis, DOE received comments indicating that motor lifetimes should be dependent on the annual hours of operation. The NEEA and Northwest Power and Conservation Council requested that DOE further justify the relatively short motor lifetimes used in its analysis and take into account the inverse relationship between operating hours and lifetime (NEEA and NPCC, No. 9 at p. 5). In response to the rulemaking framework meeting, NEMA stated that motor lifetimes depend on the annual hours of use in addition to the variances of motor loading for various applications (NEMA, No. 5.1 at p. 7). DOE agrees that motor lifetime and annual hours of operation should be inversely related and the NOPR analysis has modified the lifetime distribution to account for the effect of annual hours of operation. DOE did not account for the impact of motor loading variance on motor lifetimes because doing so would likely result in an overly complicated consumer economic analysis model without changing the overall analytical results. The details of how DOE estimated the dependence of motor lifetime on annual operating hours are provided in chapter 8 of the TSD.

11. Discount Rate

The discount rate is the rate at which future expenditures are discounted to estimate their present value. DOE used the classic economic definition that discount rates are equal to the cost of capital. The cost of capital is a combination of debt interest rates and the cost of equity capital to the affected firms and industries. For each end-use sector, DOE developed a distribution of discount rates from which the Monte Carlo simulations sample.

For the industrial and commercial sectors, DOE assembled data on debt interest rates and the cost of equity capital for representative firms that use small electric motors. DOE determined a distribution of the weighted-average cost of capital for each class of potential owners using data from the Damodaran online investment survey.¹⁶ The

discount rate distribution for each product class DOE analyzed in the LCC analysis is a weighted sample that combines estimated ownership percentages with their respective discount rates. DOE used the same distribution of discount rates for the industrial and agricultural sectors. The average discount rates in DOE's analysis, weighted by the shares of each rate value in the sectoral distributions, are 5.86 percent for commercial end users and 5.92 percent for industrial and agricultural end users.

For the residential sector, DOE assembled a distribution of interest or return rates on various equity investments and debt types from a variety of financial sources, including the Federal Reserve Board's "Survey of Consumer Finances" (SCF) in 1989, 1992, 1995, 1998, 2001, and 2004. DOE assigned weights in the distribution based on the shares of each financial instrument in household financial holdings according to SCF data. The weighted-average discount rate for residential product owners is 5.5 percent.

In response to the preliminary analysis, DOE did not receive any comments regarding consumer discount rates.

12. Standard Effective Date

The effective date is the future date when a new standard becomes operative. Under both the report to Congress and the November 6, 2006 Consent Decree entered for the consolidated cases of *New York v. Bodman*, No. 05 Civ. 7807 (S.D.N.Y. filed Sept. 7, 2005) and *Natural Resources Defense Council v. Bodman*, No. 05 Civ. 7808 (S.D.N.Y. filed Sept. 7, 2005), DOE is required to publish a final rule addressing energy conservation standards for small electric motors no later than February 28, 2010. According to 42 U.S.C. 6317(b)(3), "(3) Any standard prescribed under paragraph (2) shall apply to small electric motors manufactured 60 months after the date such rule is published * * *". Therefore, the effective date of any new energy conservation standards for these products will be February 2015. DOE calculated the LCC for all end users as if each one would purchase a new piece of equipment in the year the standard takes effect.

G. 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 efficiency levels.

To make the analysis more accessible and transparent to all interested parties, DOE used an MS Excel spreadsheet model to calculate the NES and NPV from new standards. MS Excel is the most widely used spreadsheet calculation tool in the United States and there is general familiarity with its basic features. Thus, DOE's use of MS Excel as the basis for the spreadsheet models provides interested parties with access to the models within a familiar context. In addition, the TSD and other documentation that DOE provides during the rulemaking help explain the models and how to use them, and interested parties can review DOE's analyses by changing various input quantities within the spreadsheet.

DOE uses the NIA spreadsheets to calculate NES and NPV based on the annual energy consumption and total installed cost data employed in the LCC analysis. DOE forecasts the energy savings, energy cost savings, equipment costs, and NPV for each product class from 2015 through 2045. The forecasts provide annual and cumulative values for all four output parameters. DOE also examines impact sensitivities by analyzing various scenarios.

DOE develops a base-case forecast for each small electric motor product class that characterizes energy use and customer costs (purchase and operation) in the absence of new energy conservation standards. To evaluate the impacts of such standards, DOE compares the base-case projection with projections characterizing the market if DOE promulgated new standards at specific efficiency levels (*i.e.*, the standards case). In characterizing the base and standards cases, DOE considers the mix of efficiencies sold in the absence of any new standards, and how that mix might change over time.

DOE did not find evidence of historical trends toward increasing market share for more efficient motors within the realm of covered products in this rulemaking. DOE therefore assumed that, in the base case, the market share of different levels of efficiency would remain fixed at current values over the analysis period. For its forecast of standards-case efficiencies, DOE used a "roll-up" scenario. In this approach, product energy efficiencies in the base case that do not meet the standard level under consideration would "roll up" to meet the new standard level. The market share of energy efficiencies that exceed the standard level under consideration would be the same in the standards case as in the base case.

¹⁶ The survey is available at <http://pages.stern.nyu.edu/adamodar>.

DOE analyzed the relationship between cost and efficiency for three representative product classes (1 hp polyphase, $\frac{3}{4}$ hp CSCR, and $\frac{1}{2}$ hp CSIR). In order to calculate the national energy savings and NPV of each TSL, DOE scaled both the energy consumption and equipment price to all other product classes. The national energy savings and NPV are developed from shipment-weighted sums of the energy use and equipment price for each product class. See section IV.C.6 for a discussion of the scaling of energy consumption. In order to scale prices, DOE examined motor catalog data from 10 motor manufacturers, available on the Internet. DOE developed an average price for motors in each product class, examined the price trend within each motor category (polyphase, CSCR, or CSIR) and number of poles, and developed a scaling relation to enable forecasts of price changes related to increasing efficiency. The price scaling model is discussed in chapter 8 of the accompanying TSD.

In the preliminary analysis, DOE used data submitted by NEMA for the determination analysis to develop shipments in each product class. It also determined the national impacts of each motor category by multiplying the results for a single product class by the shipments of the category as a whole. For the analysis presented in this NOPR, DOE modified these shipment estimates based on the distribution of currently available motor models to develop updated estimates for shipments in each product class. DOE then used these estimated 2008 shipments for each product class to develop NES and NPV estimates that better reflect the distribution of motor shipments among motor categories, output powers and speeds. NEMA criticized DOE's scaling approach in the preliminary analysis as confusing energy savings and net present value results from a particular product class with the results for the full distribution of motor sizes and speeds (NEMA, No. 13 at p. 20). DOE agrees with this comment, and replaced its preliminary analysis with a more comprehensive accounting.

During the preliminary analysis, DOE received requests from interested parties to provide an estimate of size of the potential savings from the standard relative to the amount of energy used by all small electric motors, including those not covered under the present rulemaking (ACEEE, Public Meeting Transcript, No. 8.5 at p. 234; Joint Comment, No. 12 at p. 2). While such detailed estimates are beyond the scope of this rulemaking, DOE provides a rough estimate of the energy use of

small electric motors not covered in this rulemaking in chapter 10 of the TSD.

1. Shipments

Product shipment forecasts are an important component of any estimate of the future impact of a standard. DOE determined forecasts of small motor shipments for the base case and standards cases using the NES spreadsheet. The shipments portion of the spreadsheet forecasts polyphase and capacitor-start motor shipments from 2015 to 2045. DOE developed shipments forecasts by accounting for (1) the combined effects of equipment price, operating cost, and business income level; and (2) different market segments. Additional details on the shipments forecasts are in chapter 9 of the TSD.

DOE developed four shipment scenarios, modeling a range of possible growth for the market of covered small motors. For three of these scenarios, DOE assumed that shipments of covered small electric motors would be driven by growth in the sectors into which the motors are sold (industrial, commercial, and residential). DOE's reference case is based on the American Recovery and Reinvestment Act scenario released as a supplement to AEO 2009. DOE also modeled shipments driven by the High Growth and Low Growth scenarios in the AEO 2009 release. These three AEO scenarios are updated versions of the scenarios analyzed in the preliminary analysis. For the NOPR analysis, DOE also analyzed a "falling market share" scenario. At the January 30, 2009, public meeting (Public Meeting Transcript, No. 8.5 at pp 268–70) and during manufacturer interviews (see section IV.I), manufacturers predicted that the market share for motors covered by this rule will fall over time as customers increase their use of other motor technologies. The "falling market share" scenario reflects this assessment by modeling a scenario in which motor shipments are fixed at their 2008 levels, regardless of economic growth between 2008 and 2015 or during the analysis period. DOE's examination of equipment product catalogues and economic census data did not support a conclusion of falling market shares for general purpose motors in the application categories in DOE's analysis. DOE therefore provided the "falling market share" scenario as a sensitivity analysis rather than incorporating it into the reference case analysis. DOE seeks further information regarding alternative small motor technologies and how they could potentially affect the projected shipments. Chapters 9 and 10 of the TSD, along with the appendices to chapter 10, discuss the scenarios in

greater detail and provide NES and NPV results calculated within each scenario to illustrate the effect of this scenario choice.

2. Elasticity Scenarios

DOE modeled three elasticity scenarios that estimate the change in motor shipments in response to increasing customer equipment prices: a scenario with no elasticity, a scenario with an elasticity of -0.25 , and a scenario with an elasticity of -0.50 . In the preliminary analysis, DOE chose the inelastic scenario as its reference case. At the January 30, 2009, public meeting, DOE asked for input regarding the likelihood of customers moving from covered motors to other motor categories if standards cause prices of the former to increase. In particular, in its preliminary analysis DOE stated that if the price of a baseline motor were to increase by more than 18 percent, some consumers may switch to enclosed motors. DOE believed the 18 percent increase was representative of the difference in price seen between an open motor and an enclosed motor with the same ratings. However, NEMA stated that 18 percent, which was derived from the difference in catalog prices, may not include the additional installation costs if the enclosed motor is a different size. NEMA also stated that the difference in cooling requirements would need to be considered. Finally, NEMA said that they were unaware of a study of the costs of replacing an open motor with an enclosed motor. (NEMA, No. 13 at p. 20) During manufacturer interviews, manufacturers commented that an increased purchase cost of covered motors would increase the rate of consumers switching to other motor technologies, for example, electronically commutated motors (ECMs). However, interested parties did not provide quantitative data which DOE could use to estimate the elasticity of small motor shipments. DOE's reference case for the NOPR analysis retains the "no elasticity" scenario. Although there is the potential for consumers to switch to other products, DOE believes that consumers are not likely to do so, even as prices for covered motors increase. Motor technologies such as ECMs are of a different physical size and require the use of an electronic controller to convert AC power into DC power. Whereas the ECM motor is itself typically larger than a capacitor start motor, the AC to DC control must also be physically attached to the motor or remotely located. Thus, consumers wishing to replace a motor covered by this rulemaking with an ECM motor will have additional costs associated with redesigning their

application due to the physical size and/or electrical compatibility. Given these complexities, replacing a motor covered by this rule with an ECM motor would require significant installer knowledge and higher installation costs. Furthermore, potential substitution motor technologies such as ECMs are not currently available in distribution in the full range of speeds, service factors, and frame sizes to adequately service the replacement market. DOE seeks input and data regarding how the small motor market will respond to the proposed standards, particularly regarding elasticity between covered motors and other motor technologies, such as ECMs.

DOE notes that capacitor-start motors form a single market in which customers may choose a CSIR or CSCR motor to best meet their requirements. DOE developed a cross-elasticity model to incorporate the market dynamics of CSIR and CSCR motors within this single market. This CSIR/CSCR market share cross-elasticity is independent of the elasticity of the market as a whole, discussed above, which could change the size of the capacitor-start market. DOE calibrated its reference CSIR/CSCR market share model using its estimates of the current market share for CSCR and CSIR motors within each matched pair of product classes sharing a motor power and number of poles. DOE recognizes that there are significant uncertainties in its cross-elasticity model. The model utilizes DOE's shipments estimates in each capacitor-start product class, which are based in part on the number of models currently available, in the absence of direct shipments data from motor manufacturers. In addition, the model relies on DOE's scaling relations for motor losses and motor prices described earlier in this NOPR and detailed in the TSD. DOE provides two alternate model scenarios ("High CSCR" and "Low CSCR" scenarios), described by sets of cross-elasticity model parameters, which it believes bracket the range of possible market share responses to standards. DOE modeled two cases for the timescale of market share response to standards. One case assumed that the market would take 10 years to adjust to the market shares predicted, following the implementation of standards in 2015, while the other assumed that the market shares would adjust prior to the effective date of the standards in 2015. DOE treats these two cases as its reference cases. DOE analyzed several alternate scenarios as sensitivities, including the "High CSCR" and "Low CSCR" model parameters and a case

which treats the market share shift in space-constrained and non-space-constrained applications separately. Further details regarding this model and sensitivities are in TSD chapter 10. DOE recognizes that there are significant uncertainties in the inputs to its cross-elasticity model, and the resulting parameters of the model, and welcomes comments on each of these inputs as well as on the model itself. DOE also welcomes comments regarding the resulting forecast of the impact of standards on motor shipments and product class market shares.

H. Consumer Sub-Group Analysis

In analyzing the potential impact of new or amended standards on customers, DOE evaluates the impact on identifiable groups of customers (*i.e.*, subgroups), such as small businesses, that may not be equally affected by a national standard level. In this rulemaking, this analysis examined the economic impacts on different groups of customers by estimating the average change in LCC and by calculating the fraction of customers that would benefit. DOE analyzed the potential effect of standards for small businesses and customers with space-constrained applications, two consumer sub-groups of interest identified by DOE. Interested parties also supported these selections. For small businesses, DOE analyzed the potential impacts of standards by conducting the analysis with different discount rates, as small businesses do not have the same access to capital as larger businesses. DOE estimated that for businesses purchasing small motors, small companies have an average discount rate which is 4.2 percent higher than the industry average. DOE assumed that customers with space-constrained applications constitute 20 percent of all customers, and are distributed across all applications.

More details on the subgroup analysis and the results can be found in Chapter 11 of the TSD accompanying this notice.

I. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impact of energy conservation standards on small electric motor manufacturers, and to calculate the impact of such standards on domestic manufacturing employment and capacity. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the GRIM, an industry-cash-flow model customized for this rulemaking. The GRIM inputs are data on the industry cost structure,

shipments, and revenues. The key output is the INPV. For this rulemaking, the impact on INPV is reported separately for polyphase and single-phase motors. Due to the market interaction between CSIR and CSCR, all single-phase motor results are presented together. Different sets of assumptions (scenarios) will produce different results. The qualitative part of the MIA addresses factors such as motor characteristics, characteristics of particular firms, market trends, and an assessment of the impacts of standards on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the TSD.

DOE conducted the MIA in three phases. Phase 1, Industry Profile, consisted of preparing an industry characterization. Phase 2, Industry Cash Flow, focused on the industry as a whole. In this phase, DOE used the GRIM to prepare an industry cash-flow analysis. DOE used publicly available information developed in Phase 1 to adapt the GRIM structure to analyze small electric motors energy conservation standards. In Phase 3, Subgroup Impact Analysis, DOE interviewed manufacturers representing the majority of domestic small electric motors sales. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics specific to each company, and also obtained each manufacturer's view of the industry as a whole. The interviews provided valuable information DOE used to help evaluate the impacts of a new standard on manufacturer cash flows, manufacturing capacities, and employment levels.

2. Phase 1, Industry Profile

For phase 1 of the MIA, DOE prepared a profile of the small electric motors industry based on the market and technology assessment prepared for this rulemaking. Before initiating the detailed impact studies, DOE collected information on the market characteristics of the small electric motors industry. This industry profile includes further detail on the overall market, motor characteristics, estimated manufacturer market shares, and the trends in the number of firms in the small electric motors industry.

The industry profile included a top-down cost analysis of the small electric motors manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.*, revenues; material, labor, overhead, depreciation costs; selling, general, and administration expenses (SG&A); and research and development (R&D) expenses). DOE also

used public information to further calibrate its initial characterization of the industry, including U.S. Securities and Exchange Commission (SEC) 10-K reports, Hoovers company financial reports, and U.S. Census data.

3. Phase 2, Industry Cash-Flow Analysis

Phase 2 of the MIA focused on the financial impacts of potential energy conservation standards on the industry as a whole. In Phase 2, DOE used the GRIM to perform a preliminary industry cash-flow analysis to calculate the financial impacts of energy conservation standards on manufacturers. In performing this analysis, DOE used the financial values determined in Phase 1 and the shipment scenarios used in the NIA analysis.

4. Phase 3, Sub-Group Impact Analysis

In Phase 3, DOE conducts interviews with manufacturers, refines its preliminary cash flow analysis, and uses its initial market characterization to evaluate the how groups of manufacturers could be differentially impacted. During the course of the MIA, DOE interviewed manufacturers representing the majority of domestic small electric motors sales. Many of these same companies also participated in interviews for the engineering analysis. The MIA interviews broadened the discussion from primarily technology-related issues to include business-related topics. One key objective for DOE was to obtain feedback from the industry on the assumptions used in the GRIM and to isolate key issues and concerns. See section IV.1.6 for a description of the key issues raised by manufacturers during interviews.

Using average cost assumptions to develop an industry cash-flow estimate does not adequately assess differential impacts among manufacturer subgroups. For example, small manufacturers, niche players, or manufacturers exhibiting a cost structure that greatly differs from the industry average could be more negatively affected by new energy conservation standards than larger manufacturers. DOE established two subgroups for the MIA corresponding to large and small business manufacturers of small electric motors. Small electric motor manufacturing is classified under the North American Industry Classification System (NAICS) code 335312 (Motor and Generator Manufacturing). In order to be considered a small business under NAICS 335312, small businesses are defined by the Small Business Administration (SBA) as manufacturing enterprises with 1,000 or fewer

employees. DOE attempted to interview companies from each subgroup, including subsidiaries, independent firms, and public and private corporations to develop an understanding of how manufacturer impacts vary by TSL.

5. Government Regulatory Impact Model Analysis

The GRIM analysis is a standard annual cash-flow analysis that incorporates MSPs, manufacturing production costs, shipments, and industry financial information as inputs. The analysis models changes in costs, distribution of shipments, investments, and associated margins that would result from new energy conservation standards. The GRIM spreadsheet uses a number of inputs to arrive at a series of annual cash flows, beginning with the base year of the analysis (2010) and continuing to 2044. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period.

DOE used the GRIM to calculate cash flows using standard accounting principles and to compare changes in INPV between a base case and various TSLs (the standards case). The difference in INPV between the base case and a standards case represents the financial impact of energy conservation standards on manufacturers. DOE collected this information from a number of sources, including publicly available data and interviews with manufacturers. The GRIM results are shown in Table V.18 through Table V.21. Additional details about the GRIM can be found in chapter 12 of the TSD.

6. Manufacturer Interviews

During interviews with manufacturers, manufacturers discussed several key issues of concern if new regulations were imposed. The most significant of these issues are outlined below.

Maintaining Product Availability and Features—Manufacturers expressed concern about the impact on typical motor characteristics that may result after the adoption of new energy conservation standards. Specifically, manufacturers were concerned that standards-compliant small electric motors might require larger housing diameters and shaft lengths. Manufacturers were also greatly concerned that larger dimensions could eliminate the ability to retrofit newer, potentially larger motors into existing applications. However, manufacturers are concerned that their sales could be impacted if larger motors required end-users to modify their existing

applications. If existing motor sizes were increased, end users could choose to use other horsepower motors or a different motor category that is not covered by today's rulemaking rather than modify the application to allow installation of the standards-compliant small electric motor. Manufacturers were also concerned that energy conservation standards could consolidate horsepower ratings by eliminating some of today's standard ratings from the market.

Significant Capital Conversion Costs—Manufacturers expressed concern over the potentially large conversion costs required to manufacturer standards-compliant small electric motors. Large manufacturers that produce the vast majority of motors covered by this rulemaking typically also manufacturer many other categories of motors. The majority of manufacturers interviewed indicated that the proportion of covered small electric motors represents a small share of the manufacturer's overall business. The increased stringency at each standard level will require manufacturers to increase the amount of capital conversion costs, potentially necessitating an investment in new lamination dies, winding tooling, testing equipment, and even re-allotting factory floor space. According to the majority of manufacturers, if the standard forces a substantial increase in motor dimensions or redesign costs, manufacturers could simply exit the small electric motors market rather than develop standards-compliant motors. Manufacturers indicated that the resources for manufacturing standard-compliant motors would be taken away from other motor technologies that could potentially provide greater energy savings, such as variable speed motors.

Substitutes—Manufacturers expressed concerns that standard-compliant motor prices would be greater due to more costly components and to compensate the company for the required capital investment. Manufacturers stated that because the small electric motor market is highly price sensitive, higher selling prices could push customers towards other technologies (e.g., ECMs). Manufacturers believed that the economics for customers with equipment that use motors sparingly could not justify using the more-efficient, standards-compliant motors covered by this rulemaking because the energy savings would not compensate for the higher first costs of these motors.

Narrow Focus of the Rulemaking—Manufacturers were concerned that the rulemaking only applies to a small number of motors. Some manufacturers

indicated they or some of their competitors could exit the small electric motor market if energy conservation standards were too stringent because this rulemaking applies to a small percentage of their total sales.

Uses of Alternative Metals—All interviewed manufacturers expressed concern about the use of copper and exotic steels in redesigning their motors. According to manufacturers, copper rotor designs would require new specialized tooling that manufacturers currently do not employ. Some manufacturers reported the need for significant changes to their plants if copper rotors are required to meet standards, including the use of special smelting and casting operations. Also, manufacturers indicated that the use of copper in rotors would require a significant R&D effort because of their lack of experience with the materials and determining how to optimize manufacturing these types of rotors in high volumes. Manufacturers

specifically referenced the lack of availability and unproven nature of exotic steels like Hiperco as variables that could reduce energy use. Finally, all interviewed manufacturers were concerned that the extremely higher prices of motors that use these metals could force significant conversion costs that would not be recouped if higher price points led to a decline in sales. Manufacturers reported that most likely they would exit the market if exotic steels were required to meet the energy conservation standard.

Enforcement of Standards—Manufacturers expressed concern about the feasibility of enforcing an energy conservation standard, particularly for motors embedded in other equipment. This concern was a particular concern for domestic manufacturers that indicated foreign companies could potentially import non-compliant motors as a component in other non-regulated equipment and put U.S.

manufacturers at a competitive disadvantage.

7. Government Regulatory Impact Model Key Inputs and Scenarios

a. Base-Case Shipments Forecast

The GRIM estimates manufacturer revenues based on shipment forecasts and the distribution by product class and efficiency. Changes in the efficiency mix at each standard level are a key driver of manufacturer finances. For this analysis, the GRIM used the NIA shipments forecasts from 2010 to 2044. The NIA shipments forecast contains several scenarios that account for various economic conditions, motor price elasticity, and shipment interaction between single-phase motors. For all scenarios, the NIA shipments forecast maintains total industry-wide shipments. Total shipments forecasted by the NIA for the base case in 2015 are shown in Table IV.11.

Table IV.11 Base Case Total Industry Shipments by Motor Category for 2015

Motor Category	Estimated Total Industry Shipments by Product class in 2015
Polyphase	815,475
CSIR	3,362,362
CSCR	176,966

Additional shipment scenarios analyzed in the NIA include any combination of the scenarios listed in Table IV.12. While the GRIM is able to model any of the possible combinations, to calculate the likely INPV impacts in

the MIA DOE used the reference scenario for the MIA. This scenario uses baseline economic growth, no shipment elasticity, and baseline market share between CSIR and CSCR motors. To see a complete set of results for all

scenarios, see Chapter 12 of the TSD. For more information on the different possible shipment scenarios analyzed in the NIA, see chapter 10 of the TSD.

Table IV.12 Shipment Scenarios Modeled in the Government Regulatory Impact Model

Economic Growth Scenarios	Elasticity Scenarios	CSIR/CSCR Market Share Scenarios
Baseline	No Elasticity	Baseline
High	-0.50 Elasticity	Low CSCR
Low	-0.25 Elasticity	High CSCR
No Growth		

In the shipments analysis, DOE also estimated the distribution of efficiencies in the base case for small electric motors

(chapter 9 of the TSD). Table IV.13 through Table IV.15 show the distribution of efficiencies in the base

case for the polyphase, CSIR, and CSCR representative units, respectively.

Table IV.13 Government Regulatory Model Distribution of Shipments in the Base Case for Polyphase One-Horsepower, Four-Pole Small Electric Motors

TSL Efficiency	Baseline	EL 1	EL 2	EL 3	EL 4	EL 5	EL 6	EL 7
	77.15	78.7	80.0	81.6	82.5	85.2	86.4	88.3
Distribution of Shipments %	82.0	4.0	4.0	4.0	6.0	0.0	0.0	0.0

Table IV.14 Government Regulatory Model Distribution of Shipments in the Base Case for Capacitor-Start, Induction-Run One-Half-Horsepower, Four-Pole Small Electric Motors

TSL Efficiency	Baseline	EL 1	EL 2	EL 3	EL 4	EL 5	EL 6	EL 7
	57.7	59.5	62.0	64.2	68.5	71.2	73.0	77.0
Distribution of Shipments %	40.0	7.0	20.0	30.0	2.0	1.0	0.0	0.0

Table IV.15 Government Regulatory Model Distribution of Shipments in the Base Case for Capacitor-Start, Capacitor-Run Three-Quarter-Horsepower, Four-Pole Small Electric Motors

TSL Efficiency	Baseline	EL 1	EL 2	EL 3	EL 4	EL 5	EL 6	EL 7
	71.0	74.3	78.3	80.3	81.6	82.7	83.5	85.4
Distribution of Shipments %	67.0	10.0	2.0	2.0	5.0	11.0	0.0	0.0

*The remaining capacitor-run, capacitor-start distribution is at an efficiency level not selected as part of any TSL.

b. Standards-Case Shipments Forecast

For each standards case, DOE assumed that shipments at efficiencies below the projected standard levels would roll up to those efficiency levels in response to an energy conservation standard. This scenario assumes that demand for high-efficiency motors is a function of its price without regard to the standard level. In the standards-case scenarios used to calculate INPV, shipments for polyphase and single-phase motors are independent of each other. However, for single-phase motors, the NIA shipments forecast modeled an interaction between shipments of CSIR and CSCR motors at each TSL. This interaction is also captured in the MIA in the standards-case shipments. For further information on the interaction of CSIR and CSCR motors shipments, see chapter 10 of the TSD.

c. Manufacturing Production Costs

Manufacturer production costs include all direct manufacturing costs (*i.e.*, labor, material and overhead). DOE derived manufacturing production costs by using the MSPs found in the engineering analysis. In the MIA, DOE used the weighted average MSPs that combined prices for space constrained and non-spaced constrained motor designs. Further discussion of how DOE

calculated projected MSPs is found in chapter 5 of the TSD. To determine manufacturer production costs from MSP, DOE divided MSPs by the manufacturer markup. The manufacturer markup is a multiplier that converts the manufacturer production costs to MSPs. The manufacturer markup covers all non-production costs (*i.e.*, selling, general, and administrative expenses, shipping, and research and development) and profit. The manufacturer markup was calculated using the revenues and cost of goods sold from the annual reports of publicly-traded companies. For additional information on DOE's scaling of MSPs, see section IV.G of today's notice.

d. Manufacturing Markup Scenarios

To understand how baseline and more efficient motors are differentiated, DOE reviewed manufacturer catalogs and information gathered by manufacturers. In the base case, DOE used the MSPs from the engineering analysis. For the MIA, DOE considered different manufacturer markup scenarios for small electric motors. Markup scenarios were used to provide bounds to the range of expected small electric motor prices following new energy conservation standards. DOE learned from interviews that manufacturers

typically only offer one line for each product class and that the efficiency levels offered fall near the baseline efficiency level. DOE also learned that manufacturers maintain a constant markup among different product classes. In the base case, DOE applied the same standard manufacturer markup of 1.45 for all product classes.

For the standards case, DOE considered two markup scenarios: (1) The preservation of return on invested capital scenario, and (2) the preservation of operating profit scenario.

Return on invested capital is defined as net operating profit after taxes (NOPAT) divided by the total invested capital. The total invested capital includes fixed assets and working capital, or net plant, property, and equipment plus working capital. In the preservation of return on invested capital scenario, the markups are set so that the return on invested capital the year after the effective date of the energy conservation standards is the same as in the base case. This scenario models the situation in which manufacturers maintain a similar level of profitability from the investments required by amended energy conservation standards as they do from their current business operations. Under this scenario, after standards, manufacturers have higher

net operating profits but also greater working capital and investment requirements. This scenario represents the high bound to profitability following standards.

The implicit assumption behind the "preservation-of-operating profit" scenario is that the industry can only maintain its base-case operating profit (earnings before interest and taxes) in the year after implementation of the standard. The industry impacts occur in this scenario when manufacturers make the required capital and equipment conversion costs in order to manufacture more expensive motors, but the operating profit does not change from current conditions. DOE implemented this markup scenario in the GRIM by setting the manufacturer markups at each TSL to yield approximately the same operating profit in both the base case and the standards case in the year after standards take effect.

e. Equipment and Capital Conversion Costs

Energy conservation standards typically cause manufacturers to incur one-time conversion costs to bring their production facilities and designs into compliance with the energy conservation standard. For the purpose of the MIA, DOE classified these conversion costs into two major groups: (1) Equipment conversion costs, and (2) capital conversion costs. Equipment conversion costs are one-time investments in research, development, testing, and marketing, focused on making motor designs comply with the new energy conservation standard. Capital conversion costs are one-time investments in property, plant, and equipment to adapt or change existing production facilities so that new motor designs can be fabricated and assembled.

DOE assessed the equipment conversion costs manufacturers would be required to make at each TSL. DOE considered a number of manufacturer responses for small electric motors at each TSL. In order to estimate the required equipment conversion costs, DOE used the technology options in its engineering analysis to estimate the engineering and product development resources needed at each TSL. Specifically, DOE estimated the equipment conversion costs by the effort required to redesign existing motors as the stack length increases and changes in material to copper for rotors and exotic steels for laminations are required. Additionally, DOE maintained the engineering analysis assumption that a portion of manufactured motors

would have space constraints, requiring higher product conversion costs in comparison to non-space constrained motors. To take space constrained designs into account in the equipment conversion costs, at each TSL DOE used a weighted average of its estimate of the product development costs to develop both space constrained and non-space constrained motors. DOE also used the information provided by manufacturers and industry experts to validate its estimates. However, because DOE received limited feedback from manufacturers about the required capital and equipment conversion costs, DOE seeks additional comment from interested parties on the estimated equipment conversion costs.

DOE also evaluated the level of capital conversion costs manufacturers would incur to comply with energy conservation standards. DOE used the manufacturer interviews to gather data on the level of capital investment required at each TSL. Manufacturers explained how different TSLs affected their ability to use existing plants, tooling, and equipment. DOE estimated the tooling and capital that would be necessary to achieve subsequent efficiency levels given the majority of current shipments are at the baseline efficiency. Additionally, DOE maintained the assumption from the engineering analysis that a portion of manufactured motors would have space constraints. At each TSL, DOE estimated the total capital conversion costs that would be required to manufacture exclusively space constrained and non-space constrained motors. DOE weighted these two estimates by the percentage of motors that would be space constrained and non-spaced constrained to calculate the estimate of the industry-wide capital conversion costs at each TSL. DOE gathered information from industry experts to validate its assumptions for capital conversion costs. However, DOE received limited input from manufacturers regarding the required capital conversion costs to reach the max-tech efficiency levels that require alternative steel such as Hiperco. Consequently, DOE seeks additional comment from interested parties on its assumptions and estimates for the capital conversion costs.

The investment figures used in the GRIM can be found in section V.B.2.a of today's notice. For additional information on the estimated equipment conversion and capital conversion costs and assumptions, see chapter 12 of the TSD.

J. Employment Impact Analysis

Employment impacts are among the factors DOE considers in selecting a proposed standard. Employment impacts are the total impact on employment in the national economy, including the sector that manufactures the equipment being regulated. Thus, DOE estimated both the direct impact of standards on employment (*i.e.*, any changes in the number of employees for small motors manufacturers, their suppliers, and related service firms), and the indirect employment impact of standards (*i.e.*, changes in employment by energy suppliers and by other sectors of the economy). The MIA addresses only the employment impacts on manufacturers of the product being regulated.

Indirect employment impacts from standards are the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, as a consequence of (1) reduced spending by end users on energy, (2) reduced spending on new energy supply by the utility industry, (3) increased spending on the purchase price of new small motors, 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, but there is no standard method for estimating these effects.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sectoral employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS). BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy. (See Bureau of Economic Analysis, "Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II)," Washington, DC., U.S. Department of Commerce, 1992). Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.*, the utility sector) to more labor-intensive sectors (*e.g.*, the

retail and manufacturing sectors). Thus, based on BLS data alone, DOE believes net national employment will increase due to shifts in economic activity resulting from the proposed small motors standard.

To investigate the indirect employment impacts, DOE used the Pacific Northwest National Laboratory (PNNL)'s Impact of Sector Energy Technologies (ImSET) model. PNNL developed ImSET, a spreadsheet model of the U.S. economy that focuses on 188 sectors most relevant to industrial, commercial, and residential building energy use, for DOE's Office of Energy Efficiency and Renewable Energy. ImSET is a special-purpose version of the U.S. Benchmark National Input-Output (I-O) model, which has been designed to estimate the national employment and income effects of energy saving technologies that are deployed by DOE's Office of Energy Efficiency and Renewable Energy. The ImSET software includes a computer-based I-O model with structural coefficients to characterize economic flows among 188 sectors. ImSET's national economic I-O structure is based on the 1997 Benchmark Input-Output Data, which have been specially aggregated to cover 188 sectors.

In response to the preliminary analysis, DOE received two comments regarding the employment analysis. NEEA and NPCC recommended that DOE consider a "2008 study" on the employment impacts of energy efficiency in California and attempt to extrapolate them to the national scale (NEEA and NPCC, No. 9 at p. 6). DOE examined the study referred to in the comment: "Energy Efficiency, Innovation, and Job Creation in California" by David Roland-Holst. DOE concluded that one component of the study that addresses indirect employment impacts due to decreased energy expenditures is similar to DOE's current approach. The second component of the study hypothesizes that "innovation" will create additional employment impact and estimated that this impact is approximately the same size as the indirect impacts due to decreased energy expenditures. But the report notes that its forecast is highly uncertain: "The overall process of technological change is notoriously difficult to forecast, and individual innovation events virtually impossible," (David Roland-Holst, "Energy Efficiency, Innovation, and Job Creation in California" at p. 81). Given the acknowledged exploratory and potentially speculative nature of employment impacts due to innovation, DOE does not include an estimate of

innovation-induced employment impacts in its analysis at this time.

Baldor and NEMA commented that DOE needs to make sure that the ImSET model properly includes pertinent industries that use small electric motors—*i.e.*, OEM manufacturers (Baldor, Public Meeting Transcript, No. 8.5 at 312–13; NEMA, No. 13 at p. 16). DOE has confirmed that ImSET includes the various OEM manufacturing sectors in its analysis. Although commenters expected OEM employment to be adversely impacted, ImSET forecasts increased employment by OEMs. ImSET forecasts employment impacts based on changes in expenditures made in a particular sector. With the implementation of energy conservation standards, small electric motors become more expensive and as the equipment is marked up during OEM product manufacture, the total revenues going to OEMs increases. Because DOE assumes that OEMs are able to pass the increased cost of the motors to their customers, these increased revenues going to the OEM sector result in a forecast of increased employment for OEMs.

For more details on the employment impact analysis, see TSD chapter 14.

K. Utility Impact Analysis

The utility impact analysis estimates the effects of reduced energy consumption due to improved appliance efficiency on the utility industry. This utility analysis compares forecast results for a case comparable to the *AEO2009* Reference Case and forecasts for policy cases incorporating each of the small motors trial standard levels.

The utility impact analysis reports the changes in installed capacity and generation by plant type that result for each trial standard level, as well as changes in electricity sales to the residential, commercial and industrial sectors. The estimated impacts of the standard are the difference between the value forecasted by NEMS–BT and the AEO 2009 Reference Case.

DOE also received a comment from EEI noting that low motor power factors can have adverse impacts on the utility power distribution system (EEI, No. 14 at p. 2). DOE responded to this comment by including an estimate of utility costs as a function of changes in power factor and motor losses with changing standard level. These impacts include costs and energy losses. The national impact analysis estimates costs and benefits of changing power factor and reactive power. DOE's model estimates that the utility system losses due to power factor effects are generally in the range of 10 to 20 percent of total source

energy consumption. The estimates of the losses (or savings) from power factor and reactive power effects are included in the inputs to the utility impact analysis.

Chapter 13 of the TSD accompanying this notice presents details on the utility impact analysis.

L. Environmental Analysis

DOE has prepared a draft environmental assessment (EA) pursuant to the National Environmental Policy Act and the requirements of 42 U.S.C. 6295(o)(2)(B)(i)(VI) and 6316(a) to determine the environmental impacts of the proposed standards. DOE estimated the reduction in power sector emissions of CO₂, NO_x, and Hg using the NEMS–BT model.

1. Power Sector Emissions

NEMS–BT is run similarly to the AEO NEMS, except that small electric motor energy use is reduced by the amount of energy saved due to each TSL. The inputs of national energy savings come from the NIA spreadsheet model; the output is the forecasted physical emissions at each TSL. The net benefit of the standard is the difference between emissions estimated by NEMS–BT at each TSL and the AEO Reference Case. NEMS–BT tracks CO₂ emissions using a detailed module that provides results with broad coverage of all sectors and inclusion of interactive effects. For the preliminary NOPR analysis, DOE used *AEO2008*. For today's NOPR, DOE used the *AEO2009* NEMS (stimulus version). For the final rule, DOE intends to revise the emissions analysis using the most current AEO.

DOE has preliminarily determined that SO₂ emissions from affected Electric Generating Units (EGUs) are subject to nationwide and regional emissions cap and trading programs that create uncertainty about standard's impact on SO₂ emissions. Title IV of the Clean Air Act sets an annual emissions cap on SO₂ for all affected EGUs. SO₂ emissions from 28 eastern States and the District of Columbia (D.C.) are also limited under the Clean Air Interstate Rule (CAIR, published in the **Federal Register** on May 12, 2005. 70 FR 25162 (May 12, 2005)), which creates an allowance-based trading program that will gradually replace the Title IV program in those States and D.C. (The recent legal history surrounding CAIR is discussed below.) The attainment of the emissions caps is flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. The standard could lead EGUs to trade allowances and increase SO₂ emissions that offset some or all SO₂

emissions reductions attributable to the standard. DOE is not certain that there will be reduced overall SO₂ emissions from the standards. The NEMS–BT modeling system that DOE plans to use to forecast emissions reductions currently indicates that no physical reductions in power sector emissions would occur for SO₂. However, remaining uncertainty prevents DOE from estimating SO₂ reductions from the standard at this time.

Even though DOE is not certain that there will be reduced overall emissions from the standard, there may be an economic benefit from reduced demand for SO₂ emission allowances. Electricity savings decrease the generation of SO₂ emissions from power production, which can lessen the need to purchase SO₂ emissions allowance credits, and thereby decrease the costs of complying with regulatory caps on emissions.

Much like SO₂, NO_x emissions from 28 eastern States and the District of Columbia (D.C.) are limited under the CAIR. 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 July 11, 2008, opinion in *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008); see also *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008). 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.

The proposed standard would reduce NO_x emissions in those 22 States not affected by the CAIR. As a result, DOE used the NEMS–BT to forecast emission reductions from the standard that are considered in today's NOPR.

In contrast, in the 28 eastern States and D.C. where CAIR is in effect, DOE's forecasts indicate that no NO_x emissions reductions will occur: This is because of the permanent cap. Energy conservation standards have the potential to produce environmentally related economic impact in the form of lower prices for emissions allowance credits, if they were large enough. However, DOE has preliminarily concluded that the SEM standard would not have such an effect 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.

Similar to emissions of SO₂ and NO_x, future emissions of Hg would have been subject to emissions caps. The Clean Air Mercury Rule (CAMR) would have permanently capped emissions of

mercury from new and existing coal-fired plants in all States beginning in 2010 (70 FR 28606). However, the CAMR was vacated by the D.C. Circuit in its decision in *New Jersey v. Environmental Protection Agency*, 517 F.3d 574 (D.C. Cir. 2008). Thus, DOE was able to use the NEMS–BT model to estimate the changes in Hg emissions resulting from the proposed rule.

EI stated that DOE's analysis should take into consideration trends in emissions reduction for CO₂, NO_x, SO₂ and Hg (EEL, No. 14 at p. 3). DOE's emissions forecasts are based on estimates produced by the *AEO2009* version of NEMS which include the future impacts of current regulation both in the reference and the standard case, but which do not include the impact of future regulations. With existing regulations, the model estimates a steady decline in NO_x and Hg emissions from the power sector based on the future impacts of current regulation. But because of the speculative nature of forecasting future regulations, DOE does not in general include the impact of possible future regulations in its reference case forecasts. However, DOE may examine the impact of specific possible future regulations in a sensitivity analysis.

DOE's projections of CO₂ emissions from electric power generation are based on the *AEO2009* version of NEMS. The emissions projections reflect market factors and policies that affect utility choice of power plants for electricity generation, including existing renewable portfolio standards. In conducting the AEO, EIA generally includes only those policies that are already enacted. As enactment and the features of a national CO₂ cap and trade program are uncertain at this point, DOE believes it would be inappropriate to speculate on the nature and timing of such a policy at this stage of this rulemaking.

2. Valuation of CO₂ Emissions

DOE received comments on the desirability of valuing the CO₂ emissions reductions that result from standards. Both NEEA and Earthjustice urged DOE to value CO₂ emissions reductions and recommended potential models that DOE could use to do so (NEEA, Public Meeting Transcript, No. 8.5 at pp. 251–254; Earthjustice, No. 11 at pp. 2–3). AHRI commented that DOE needs to be careful to examine the uncertainty in potential CO₂ emissions reductions values and how costs may be allocated to different sectors (AHRI, Public Meeting Transcript, No. 8.5 at pp. 255–256).

For today's proposed rule, DOE is relying on a set of values recently developed by an interagency process that conducted a more thorough review of existing estimates of the social cost of carbon (SCC).

The SCC is intended to be a monetary measure of the incremental damage resulting from greenhouse gas (GHG) emissions, including, but not limited to, net agricultural productivity loss, human health effects, property damage from sea level rise, and changes in ecosystem services. Any effort to quantify and to monetize the harms associated with climate change will raise serious questions of science, economics, and ethics. But with full regard for the limits of both quantification and monetization, the SCC can be used to provide estimates of the social benefits of reductions in GHG emissions.

For at least three reasons, any single estimate of the SCC will be contestable. First, scientific and economic knowledge about the impacts of climate change continues to grow. With new and better information about relevant questions, including the cost, burdens, and possibility of adaptation, current estimates will inevitably change over time. Second, some of the likely and potential damages from climate change—for example, the value society places on adverse impacts on endangered species—are not included in all of the existing economic analyses. These omissions may turn out to be significant, in the sense that they may mean that the best current estimates are too low. Third, controversial ethical judgments, including those involving the treatment of future generations, play a role in judgments about the SCC (see in particular the discussion of the discount rate, below).

To date, regulations have used a range of values for the SCC. For example, a regulation proposed by the U.S. Department of Transportation (DOT) in 2008 assumed a value of \$7 per ton CO₂ (2006\$) for 2011 emission reductions (with a range of \$0–14 for sensitivity analysis). Regulation finalized by DOE used a range of \$0–\$20 (2007\$). Both of these ranges were designed to reflect the value of damages to the United States resulting from carbon emissions, or the “domestic” SCC. In the final Model Year 2011 Corporate Average Fuel Economy rule, DOT used both a domestic SCC value of \$2/tCO₂ and a global SCC value of \$33/tCO₂ (with sensitivity analysis at \$80/tCO₂), increasing at 2.4 percent per year thereafter.

In recent months, a variety of agencies have worked to develop an objective

methodology for selecting a range of interim SCC estimates to use in regulatory analyses until improved SCC estimates are developed. The following summary reflects the initial results of these efforts and proposes ranges and values for interim social costs of carbon used in this rule. It should be emphasized that the analysis described below is preliminary. These complex issues are of course undergoing a process of continuing review. Relevant agencies will be evaluating and seeking comment on all of the scientific, economic, and ethical issues before establishing final estimates for use in future rulemakings.

The interim judgments resulting from the recent interagency review process can be summarized as follows: (a) DOE and other Federal agencies should consider the global benefits associated with the reductions of CO₂ emissions resulting from efficiency standards and other similar rulemakings, rather than continuing the previous focus on domestic benefits; (b) these global benefits should be based on SCC estimates (in 2007\$) of \$55, \$33, \$19, \$10, and \$5 per ton of CO₂ equivalent emitted (or avoided) in 2007; (c) the SCC value of emissions that occur (or are avoided) in future years should be escalated using an annual growth rate of 3-percent from the current values; and (d) domestic benefits are estimated to be approximately 6 percent of the global values. DOE has escalated the 2007\$ values to 2008\$ for consistency with other dollar values presented in this notice, resulting in SCC estimates (in 2008\$) of approximately \$5, \$10, \$20, \$34, and \$56. These interim judgments are based on the following:

1. *Global and domestic estimates of SCC.* Because of the distinctive nature of the climate change problem, estimates of both global and domestic SCC values should be considered, but the global measure should be “primary.” This approach represents a departure from past practices, which relied, for the most part, on measures of only domestic impacts. As a matter of law, both global and domestic values are permissible; the relevant statutory provisions are ambiguous and allow the agency to choose either measure. (It is true that Federal statutes are presumed not to have extraterritorial effect, in part to ensure that the laws of the United States respect the interests of foreign sovereigns. But use of a global measure for the SCC does not give extraterritorial effect to Federal law and hence does not intrude on such interests.)

It is true that under OMB guidance, analysis from the domestic perspective is required, while analysis from the

international perspective is optional. The domestic decisions of one nation are not typically based on a judgment about the effects of those decisions on other nations. But the climate change problem is highly unusual in the sense that it involves (a) a global public good in which (b) the emissions of one nation may inflict significant damages on other nations and (c) the United States is actively engaged in promoting an international agreement to reduce worldwide emissions.

In these circumstances, the global measure is preferred. Use of a global measure reflects the reality of the problem and is expected to contribute to the continuing efforts of the United States to ensure that emission reductions occur in many nations.

Domestic SCC values are also presented. The development of a domestic SCC is greatly complicated by the relatively few region- or country-specific estimates of the SCC in the literature. One potential estimate comes from the DICE (Dynamic Integrated Climate Economy, William Nordhaus) model. In an unpublished paper, Nordhaus (2007) produced disaggregated SCC estimates using a regional version of the DICE model. He reported a U.S. estimate of \$1/tCO₂ (2007 value, 2007\$), which is roughly 11 percent of the global value.

An alternative source of estimates comes from a recent EPA modeling effort using the FUND (Climate Framework for Uncertainty, Negotiation and Distribution, Center for Integrated Study of the Human Dimensions of Global Change) model. The resulting estimates suggest that the ratio of domestic to global benefits varies with key parameter assumptions. With a 3-percent discount rate, for example, the US benefit is about 6 percent of the global benefit for the “central” (mean) FUND results, while, for the corresponding “high” estimates associated with a higher climate sensitivity and lower global economic growth, the US benefit is less than 4 percent of the global benefit. With a 2 percent discount rate, the U.S. share is about 2 to 5 percent of the global estimate.

Based on this available evidence, a domestic SCC value equal to 6 percent of the global damages is used in this rulemaking. This figure is in the middle of the range of available estimates from the literature. It is recognized that the 6 percent figure is approximate and highly speculative and alternative approaches will be explored before establishing final values for future rulemakings.

2. *Filtering existing analyses.* There are numerous SCC estimates in the existing literature, and it is legitimate to make use of those estimates to produce a figure for current use. A reasonable starting point is provided by the meta-analysis in Richard Tol, “The Social Cost of Carbon: Trends, Outliers, and Catastrophes, Economics: The Open-Access, Open-Assessment E-Journal,” Vol. 2, 2008–25. <http://www.economics-ejournal.org/economics/journalarticles/2008-25> (2008). With that starting point, it is proposed to “filter” existing SCC estimates by using those that (1) are derived from peer-reviewed studies; (2) do not weight the monetized damages to one country more than those in other countries; (3) use a “business as usual” climate scenario; and (4) are based on the most recent published version of each of the three major integrated assessment models (IAMs): FUND, DICE and PAGE (Policy Analysis of the Greenhouse Effect) Policy.

Proposal (1) is based on the view that those studies that have been subject to peer review are more likely to be reliable than those that have not been. Proposal (2) is based on a principle of neutrality and simplicity; it does not treat the citizens of one nation differently on the basis of speculative or controversial considerations. Proposal (3) stems from the judgment that as a general rule, the proper way to assess a policy decision is by comparing the implementation of the policy against a counterfactual state where the policy is not implemented. A departure from this approach would be to consider a more dynamic setting in which other countries might implement policies to reduce GHG emissions at an unknown future date, and the United States could choose to implement such a policy now or in the future.

Proposal (4) is based on three complementary judgments. First, the FUND, PAGE, and DICE models now stand as the most comprehensive and reliable efforts to measure the damages from climate change. Second, the latest versions of the three IAMs are likely to reflect the most recent evidence and learning, and hence they are presumed to be superior to those that preceded them. It is acknowledged that earlier versions may contain information that is missing from the latest versions. Third, any effort to choose among them, or to reject one in favor of the others, would be difficult to defend at this time. In the absence of a clear reason to choose among them, it is reasonable to base the SCC on all of them.

The agency is keenly aware that the current IAMs fail to include all relevant information about the likely impacts

from greenhouse gas emissions. For example, ecosystem impacts, including species loss, do not appear to be included in at least two of the models. Some human health impacts, including increases in food-borne illnesses and in the quantity and toxicity of airborne allergens, also appear to be excluded. In addition, there has been considerable recent discussion of the risk of catastrophe and of how best to account for worst-case scenarios. It is not clear whether the three IAMs take adequate account of these potential effects.

3. *Use a model-weighted average of the estimates at each discount rate.* At this time, there appears to be no scientifically valid reason to prefer any of the three major IAMs (FUND, PAGE, and DICE). Consequently, the estimates are based on an equal weighting of estimates from each of the models. Among estimates that remain after applying the filter, the average of all estimates within a model is derived. The estimated SCC is then calculated as the average of the three model-specific averages. This approach ensures that the interim estimate is not biased towards specific models or more prolific authors.

4. *Apply a 3-percent annual growth rate to the chosen SCC values.* SCC is assumed to increase over time, because future emissions are expected to produce larger incremental damages as physical and economic systems become more stressed as the magnitude of climate change increases. Indeed, an implied growth rate in the SCC is produced by most studies that estimate economic damages caused by increased GHG emissions in future years. But neither the rate itself nor the information necessary to derive its implied value is commonly reported. In light of the limited amount of debate thus far about the appropriate growth rate of the SCC, applying a rate of 3-percent per year seems appropriate at this stage. This value is consistent with the range recommended by IPCC (2007) and close to the latest published estimate (Hope, 2008).

For climate change, one of the most complex issues involves the appropriate discount rate. OMB's current guidance offers a detailed discussion of the relevant issues and calls for discount rates of 3-percent and 7-percent. It also permits a sensitivity analysis with low rates for intergenerational problems. ("If your rule will have important intergenerational benefits or costs you might consider a further sensitivity analysis using a lower but positive discount rate in addition to calculating net benefits using discount rates of 3 and 7-percent.") The SCC is being

developed within the general context of the current guidance.

The choice of a discount rate, especially over long periods of time, raises highly contested and exceedingly difficult questions of science, economics, philosophy, and law. See, e.g., William Nordhaus, "The Challenge of Global Warming (2008); Nicholas Stern, *The Economics of Climate Change*" (2007); "Discounting and Intergenerational Equity" (Paul Portney and John Weyant, eds., 1999). Under imaginable assumptions, decisions based on cost-benefit analysis with high discount rates might harm future generations—at least if investments are not made for the benefit of those generations. See Robert Lind, "Analysis for Intergenerational Discounting," *id.* at 173, 176–177. At the same time, use of low discount rates for particular projects might itself harm future generations, by ensuring that resources are not used in a way that would greatly benefit them. In the context of climate change, questions of intergenerational equity are especially important.

Reasonable arguments support the use of a 3-percent discount rate. First, that rate is among the two figures suggested by OMB guidance, and hence it fits with existing National policy. Second, it is standard to base the discount rate on the compensation that people receive for delaying consumption, and the 3-percent rate is close to the risk-free rate of return, proxied by the return on long term inflation-adjusted US Treasury Bonds. (In the context of climate change, it is possible to object to this standard method for deriving the discount rate.) Although these rates are currently closer to 2.5 percent, the use of 3-percent provides an adjustment for the liquidity premium that is reflected in these bonds' returns.

At the same time, other arguments support use of a 5 percent discount rate. First, that rate can also be justified by reference to the level of compensation for delaying consumption, because it fits with market behavior with respect to individuals' willingness to trade off consumption across periods as measured by the estimated post-tax average real returns to private investment (e.g., the S&P 500). In the climate setting, the 5 percent discount rate may be preferable to the riskless rate because it is based on risky investments and the return to projects to mitigate climate change is also risky. In contrast, the 3-percent riskless rate may be a more appropriate discount rate for projects where the return is known with a high degree of confidence (e.g., highway guardrails).

Second, 5 percent, and not 3-percent, is roughly consistent with estimates implied by reasonable inputs to the theoretically derived Ramsey equation, which specifies the optimal time path for consumption. That equation specifies the optimal discount rate as the sum of two components. The first reflects the fact that consumption in the future is likely to be higher than consumption today (even accounting for climate impacts), so diminishing marginal utility implies that the same monetary damage will cause a smaller reduction of utility in the future. Standard estimates of this term from the economics literature are in the range of 3 to 5 percent. The second component reflects the possibility that a lower weight should be placed on utility in the future, to account for social impatience or extinction risk, which is specified by a pure rate of time preference (PRTP). A conventional estimate of the PRTP is 2 percent. (Some observers believe that a principle of intergenerational equity suggests that the PRTP should be close to zero.) It follows that discount rate of 5 percent is within the range of values which are able to be derived from the Ramsey equation, albeit at the low end of the range of estimates usually associated with Ramsey discounting.

It is recognized that the arguments above—for use of market behavior and the Ramsey equation—face objections in the context of climate change, and of course there are alternative approaches. In light of climate change, it is possible that consumption in the future will not be higher than consumption today, and if so, the Ramsey equation will suggest a lower figure. Some people have suggested that a very low discount rate, below 3-percent, is justified in light of the ethical considerations calling for a principle of intergenerational neutrality. See Nicholas Stern, "The Economics of Climate Change" (2007); for contrary views, see William Nordhaus, *The A Question of Balance* (2008); Martin Weitzman, "Review of the *Stern Review* on the Economics of Climate Change." *Journal of Economic Literature*, 45(3): 703–724 (2007). Additionally, some analyses attempt to deal with uncertainty with respect to interest rates over time; a possible approach enabling the consideration of such uncertainties is discussed below. Richard Newell and William Pizer, "Discounting the Distant Future: How Much do Uncertain Rates Increase Valuations?" *J. Environ. Econ. Manage.* 46 (2003) 52–71.

The application of the methodology outlined above yields estimates of the SCC that are reported in Table IV.16. These estimates are reported separately

using 3-percent and 5 percent discount rates. The cells are empty in rows 10 and 11, because these studies did not

report estimates of the SCC at a 3-percent discount rate. The model-weighted means are reported in the final

or summary row; they are \$33 per tCO₂ at a 3% discount rate and \$5 per tCO₂ with a 5% discount rate.

Table IV.16 Global Social Cost of Carbon (SCC) Estimates (\$/tCO₂ in 2007 (2007\$)), Based on 3% and 5% Discount Rates*

	Model	Study	Climate Scenario	3%	5%
1	FUND	Anthoff et al. 2009	FUND default	6	-1
2	FUND	Anthoff et al. 2009	SRES A1b	1	-1
3	FUND	Anthoff et al. 2009	SRES A2	9	-1
4	FUND	Link and Tol 2004	No THC	12	3
5	FUND	Link and Tol 2004	THC continues	12	2
6	FUND	Guo et al. 2006	Constant PRTP	5	-1
7	FUND	Guo et al. 2006	Gollier discount 1	14	0
8	FUND	Guo et al. 2006	Gollier discount 2	7	-1
			FUND Mean	8.25	0
9	PAGE	Wahba & Hope 2006	A2-scen	57	7
10	PAGE	Hope 2006			7
11	DICE	Nordhaus 2008			8
Summary			Model-weighted Mean	33	5

*The sample includes all peer reviewed, non-equity-weighted estimates included in Tol (2008), Nordhaus (2008), Hope (2008), and Anthoff et al. (2009), that are based on the most recent published version of FUND, PAGE, or DICE and use business-as-usual climate scenarios. All values are based on the best available information from the underlying studies about the base year and year dollars, rather than the Tol (2008) assumption that all estimates included in his review are 1995 values in 1995\$. All values were updated to 2007 using a 3-percent annual growth rate in the SCC, and adjusted for inflation using GDP deflator.

Analyses have been conducted at \$34 and \$5 (in 2008\$, escalated from 2007\$) as these represent the estimates associated with the 3-percent and 5 percent discount rates, respectively. The 3-percent and 5 percent estimates have independent appeal and at this time a clear preference for one over the other is not warranted. Thus, DOE has also included—and centered its current attention on—the average of the estimates associated with these discount rates, which is approximately \$20. (Based on the \$20 global value, the domestic value would be approximately \$1 per ton of CO₂ equivalent.)

It is true that there is uncertainty about interest rates over long time

horizons. Recognizing that point, Newell and Pizer have made a careful effort to adjust for that uncertainty. See Newell and Pizer, *supra*. This is a relatively recent contribution to the literature.

There are several concerns with using this approach in this context. First, it would be a departure from current OMB guidance. Second, an approach that would average what emerges from discount rates of 3-percent and 5 percent reflects uncertainty about the discount rate, but based on a different model of uncertainty. The Newell-Pizer approach models discount rate uncertainty as something that evolves over time; in contrast, one alternative

approach would assume that there is a single discount rate with equal probability of 3-percent and 5 percent.

Table IV.17 reports on the application of the Newell-Pizer adjustments. The precise numbers depend on the assumptions about the data generating process that governs interest rates. Columns (1a) and (1b) assume that “random walk” model best describes the data and uses 3-percent and 5 percent discount rates, respectively. Columns (2a) and (2b) repeat this, except that it assumes a “mean-reverting” process. As Newell and Pizer report, there is stronger empirical support for the random walk model.

Table IV.17 Global Social Cost of Carbon (SCC) Estimates (\$/tCO₂ in 2007 (2007\$)),* Using Newell & Pizer (2003) Adjustment for Future Discount Rate Uncertainty**

	Model	Study	Climate Scenario	Random-walk model		Mean-reverting model	
				3%	5%	3%	5%
				(1a)	(1b)	(2a)	(2b)
1	FUND	Anthoff et al. 2009	FUND default	10	0	7	-1
2	FUND	Anthoff et al. 2009	SRES A1b	2	0	1	-1
3	FUND	Anthoff et al. 2009	SRES A2	15	0	10	-1
4	FUND	Link and Tol 2004	No THC	20	6	13	4
5	FUND	Link and Tol 2004	THC continues	20	4	13	2
6	FUND	Guo et al. 2006	Constant PRTP	9	0	6	-1
7	FUND	Guo et al. 2006	Gollier discount 1	14	0	14	0
8	FUND	Guo et al. 2006	Gollier discount 2	7	-1	7	-1
			FUND Mean	12	1	9	0
9	PAGE	Wahba & Hope 2006	A2-scen	97	13	63	8
10	PAGE	Hope 2006			13		8
11	DICE	Nordhaus 2008			15		9
		Summary	Model-weighted Mean	55	10	36	6

*The sample includes all peer reviewed, non-equity-weighted estimates included in Tol (2008), Nordhaus (2008), Hope (2008), and Anthoff et al. (2009), that are based on the most recent published version of FUND, PAGE, or DICE and use business-as-usual climate scenarios. All values are based on the best available information from the underlying studies about the base year and year dollars, rather than the Tol (2008) assumption that all estimates included in his review are 1995 values in 1995\$. All values were updated to 2007 using a 3-percent annual growth rate in the SCC, and adjusted for inflation using GDP deflator.

**Assumes a starting discount rate of 3-percent. Newell and Pizer (2003) based adjustment factors are not applied to estimates from Guo et al. (2006) that use a different approach to account for discount rate uncertainty (rows 7-8).

The resulting estimates of the social cost of carbon are necessarily greater. When the adjustments from the random walk model are applied, the estimates of the social cost of carbon are \$10 and \$56 (2008\$), with the 5 percent and 3 percent discount rates, respectively. The application of the mean-reverting adjustment yields estimates of \$6 and \$37 (in 2008\$).

Since the random walk model has greater support from the data, analyses are also conducted with the value of the SCC set at \$10 and \$56 (2008\$).

In summary, DOE considered in its decision process for this notice of proposed rulemaking the potential global benefits resulting from reduced CO₂ emissions valued at \$5, \$10, \$20, \$34 and \$56 per metric ton, and has also presented the domestic benefits derived using a value of approximately \$1 per metric ton. All of these unit values represent emissions that are valued in 2008\$ and final net present values for cumulative emissions are also reported in 2008\$ so that they can be compared with other rulemaking analyses in the same dollar units.

DOE recognizes that scientific and economic knowledge about the contribution of CO₂ and other 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 CO₂ emissions is subject to change.

DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO₂ and other greenhouse gas emissions. This ongoing 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. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this proposed rule the most recent values and analyses resulting from the ongoing interagency review process.

3. Valuation of Other Emissions

DOE also investigated the potential monetary benefit of reduced SO₂, 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 SO₂ and caps on NO_x emissions in the 28 States covered by the CAIR. In the presence of these caps, the NEMS-BT modeling system that DOE used to forecast emissions reduction indicated that no physical reductions in power sector emissions would occur for SO₂, but that the standards could put slight downward pressure on the prices of

emissions allowances in cap-and-trade markets. Estimating this effect is very difficult because such factors as credit banking can change the trajectory of prices. From its modeling to date, DOE is unable to estimate a benefit from SO₂ emissions reductions at this time. See chapter 15 of the TSD 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. The update to the AEO2009-based version of NEMS-BT includes the representation of CAIR. 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 the CAIR. For the area of the United States not covered by the CAIR, DOE estimated the monetized value of NO_x emissions reductions resulting from each of the TSLs considered for today's proposed 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 \$442 to \$4,540 per ton in 2008\$). Refer to the OMB, 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, for additional information.

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 proposed 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 intelligence quotient (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 \$33.3 million per ton emitted per year (2008\$). Refer to L. Trasande et al., "Applying Cost Analyses to Drive Policy that Protects Children," 1076 Ann. N.Y. Acad. Sci. 911 (2006) for additional information. The low-end

estimate is \$0.66 million per ton emitted (in 2004\$) or \$0.745 million per ton in 2008\$. 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. See 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.

Earthjustice stated that DOE must also calculate and monetize the value of the reductions in emissions of particulate matter (PM) that will result from standards; even if DOE cannot consider secondary PM emissions, it must consider primary emissions. (Earthjustice, No. 11 at pp. 5-6).

DOE agrees that PM impacts are of concern due to human exposures that can impact health. But impacts of PM emissions reduction are much more difficult to estimate than other emissions reductions due to the complex interactions between PM, other power plant emissions, meteorology and atmospheric chemistry that impact human exposure to particulates. Human

exposure to PM usually occurs at a significant distance from the power plants that are emitting particulates and particulate precursors. When power plant emissions travel this distance they undergo highly complex atmospheric chemical reactions. While the Environmental Protection Agency (EPA) does keep inventories of direct PM emissions of power plants, in its source attribution reviews the EPA does not separate direct PM emissions from power plants from the particulates indirectly produced through complex atmospheric chemical reactions. This is in part because SO₂ emissions react with direct PM emissions particles to produce combined sulfate particulates. Thus it is not useful to examine how the standard impacts direct PM emissions independent of indirect PM production and atmospheric dynamics. DOE is not currently able to run a model that can make these estimates reliably at the national level. See chapter 15 of the TSD for a more detailed discussion.

V. Analytical Results

A. Trial Standard Levels

DOE analyzed the benefits and burdens of a number of TSLs for the small electric motors that are the subject of today's proposed rule. Table V.1 and Table V.2 present the trial standard levels and the corresponding efficiencies for the three representative product classes.

Table V.1 Trial Standard Levels for Polyphase Small Electric Motors*

	Polyphase 4-pole 1 Hp %
TSL 1	78.7
TSL 2	80.0
TSL 3	81.6
TSL 4	82.5
TSL 5	85.2
TSL 6	86.4
TSL 7	88.3

*Standard levels are expressed in terms of full-load efficiency.

DOE's polyphase TSLs represent the increasing efficiency of the range of motors DOE modeled in its engineering analysis. TSLs 1, 2, and 3 represent incremental improvements in efficiency as a result of increasing the stack height and the slot fill percentage. TSL 4 is comparable to the efficiency of a three-digit frame series medium electric motor that meets the efficiency requirements of EPACT. TSL 5 is comparable to the efficiency standard of a three-digit frame

series medium electric motor that meets the NEMA Premium level, which will become an energy conservation standard for medium motors as prescribed by Section 313(b) of EISA 2007. TSL 6 represents a level at which DOE has reached the 20 percent limit of increased stack height, increased grades of steel and included a copper die-cast rotor. At TSL 7, the "max-tech" level, for the restricted designs DOE has reached the design limitation maximum

increase in stack height of 20 percent and increased grades of steel. At this level, DOE has also implemented an exotic steel type (Hiperco 50), a copper die-cast rotor, a max slot fill percentage of nearly 65 percent. For the lesser space constrained design, DOE has decreased the stack height from that seen for the design at TSL 6, however, and has moved to a copper rotor, while also reaching the design limitation maximum slot fill percentage.

Table V.2 Trial Standard Levels for Capacitor-Start Small Electric Motors*

	CSIR	CSCR
	4-pole 0.50 Hp	4-pole 0.75 Hp
	%	%
TSL 1	68.5	78.3
TSL 2	68.5	80.3
TSL 3	71.2	80.3
TSL 4	73.0	81.6
TSL 5	73.0	80.3
TSL 6	77.0	87.3
TSL 7	77.0	80.3
TSL 8	77.0	85.4

*Standard Levels are expressed in terms of full-load efficiency.

Each TSL for capacitor-start small motors consists of a combination of efficiency levels for induction-run motors and capacitor-run motors. CSIR and CSCR motors are used in similar applications and generally can be used interchangeably provided the applications are not bound by strict space constraints and will allow the presence of a second capacitor shell on the motor. Standards may impact the relative market share of CSIR and CSCR motors for general-purpose single-phase applications by changing the upfront cost of motors as well as their estimated losses. Section IV.G of this NOPR and chapter 10 of the TSD describe DOE's model of this market dynamic.

DOE developed seven possible efficiency levels for CSIR motors and eight possible efficiency levels for CSCR motors. Rather than present all possible combinations of these efficiency levels, DOE chose a representative set of 8 TSLs that span the range from low energy savings to the maximum national energy savings. Because of the interaction between the combined CSIR and CSCR market share, there is not a simple relationship between the combination of efficiency levels and the resulting energy savings. DOE's capacitor-start cross-elasticity model was used to evaluate the impacts of each TSL on motor shipments in each product class. The model predicts that TSLs 1 through 5 result in relatively minor changes in product class market shares, while TSLs 6, 7, and 8 result in more significant changes. Uncertainties in the cross-elasticity model, and in the timescale of market share response to standards, lead to greater uncertainty in the national impacts of TSLs 6, 7, and 8, than of TSLs 1 through 5. A summary of results for all combinations of CSIR and CSCR efficiency levels is presented in chapter 10 of the TSD.

TSL 1 is a combination consists of the fourth efficiency level analyzed for CSIR motors and the second efficiency level for CSCR motors. This TSL uses similar

engineering design options for both CSIR and CSCR motors, and the efficiency levels correspond to what manufacturers would consider an EPACT 1992 equivalent efficiency standard. TSL 2 increases the efficiency level of the CSCR motor to the third efficiency level, which corresponds to the minimum life-cycle cost. The efficiency level for the CSIR motor remains the same as in TSL 1. TSL 3 raises the CSIR efficiency level, which DOE meets by implementing a copper die-cast rotor, increasing slot fill, and reaching the 20 percent limit on increased stack height, or by doubling the original stack height and increasing slot fill. However, the CSCR efficiency level remains at the minimum LCC.

TSLs 4, and 5, both show the same efficiency level for CSIR motors, but different efficiency levels for CSCR motors. To obtain the efficiency level for CSIR motors, DOE had to use either a copper rotor in combination with a thinner and higher grade of steel and a stack increase of 20 percent, or only a higher grade of steel with a stack exceeding a 20 percent increase. The 80.3 percent efficiency level for CSCR motors in TSL 5 corresponds again to the same design and efficiency level for TSL 2 and 3. To achieve the 81.6 percent efficiency level for CSCR motors, DOE created designs with a 20 percent increase in stack height and a higher grade of steel or used a copper rotor with a stack height above a 20 percent increase. TSL 4 represents the combination of the highest CSIR and CSCR levels which have more customers who benefit than customers who are harmed according to DOE's LCC analysis. TSL 5 increases energy savings relative to TSL 4 because DOE estimates greater CSCR market share, and the CSCR efficiency level again corresponds with the minimum LCC. At this TSL, the efficiency levels for both CSIR and CSCR motors equate to what manufacturers would consider a NEMA Premium level.

TSL 6 represents "max-tech" levels for CSIR and CSCR motors, as determined by DOE's engineering analysis; at this level CSCR motors are very expensive relative to CSIR motors, and DOE forecasts almost complete market shift to CSIR motors. TSLs 7 and 8 represent cases in which CSIR motors are, on average, very expensive relative to CSCR motors as a result of standards, and DOE forecasts almost complete market shifts to CSCR motors in both of its reference scenarios. Because CSCR motors are more efficient at these levels, national energy savings are increased beyond that of the "max-tech" level, TSL 6. TSL 7 pairs the "max-tech" requirements for CSIR motors with the minimum LCC efficiency level for CSCR motors, while TSL 8 level pairs max-tech CSIR requirements with the second-highest CSCR motor efficiency level that DOE analyzed. The ordering of TSLs 5, 6, 7, and 8, with respect to energy savings is robust in the face of uncertainties in the inputs to, and the parameters of, DOE's cross-elasticity model.

B. Economic Justification and Energy Savings

In examining the potential for energy savings for small electric motors, DOE analyzed whether standards would be economically justified. As part of this examination, a variety of elements were examined. These elements are based on the various criteria specified in EPCA. See generally, 42 U.S.C. 6295.

1. Economic Impacts on Customers

DOE analyzed the economic impacts on small electric motor customers by looking at the effects standards would have on the LCC, PBP, and various subgroups. DOE also examined the effects of the rebuttable presumption payback period set out in 42 U.S.C. 6295. All of these analyses are discussed below.

a. Life-Cycle Cost and Payback Period

To evaluate the net economic impact of the trial standard levels on customers, DOE conducted LCC and PBP analyses for each of these levels. Higher-efficiency small electric motors would affect customers in two ways: annual operating expense would decrease and purchase price would increase. DOE analyzed the net effect by calculating the LCC. Section IV.F discusses the inputs used for calculating the LCC and PBP. Inputs used for calculating the LCC include total installed costs (equipment price plus installation costs), annual energy savings, electricity rates, electricity price trends, repair costs, maintenance costs, equipment lifetime, and discount rates.

The key outputs of the LCC analysis are average LCC savings for each product class for each considered efficiency level, relative to the base case, as well as a probability distribution of LCC reduction or increase. The LCC analysis also estimates, for each product class, the fraction of customers for which the LCC will either decrease (net benefit), or increase (net cost), or exhibit no change (no impact) relative to the base case forecast. No impacts occur when the equipment efficiencies of the base case forecast already equal or exceed the considered efficiency level. Small electric motors are used in applications that can have a wide range of operating hours. Motors that are running at all hours will tend to have a large net LCC benefit because of the large operating cost savings, while for

some types of applications (e.g. portable compressors) a majority of motors may run only a few hours per day. Because of the large benefits seen by a minority of motors that run at all times, a majority of motors may see a net LCC cost even when on average for all motors there is a net LCC benefit.

Other key outputs of the LCC analysis are the mean and median payback periods at each efficiency level. Table V.3, Table V.4, and Table V.5 show the results for the three representative product classes: 1 hp, four-pole, polyphase; 0.5 hp, four-pole, CSIR; and 0.75 hp, four-pole, CSCR motors. Frequency plots of the distributions of life-cycle costs and payback periods for all three motor categories are available in chapter 8 of the TSD.

Table V.3 Polyphase Small Electric Motors: Life-Cycle Cost and Payback Period Results for a One Horsepower Motor

Energy Efficiency Level	Efficiency %	Life-Cycle Cost				Life-Cycle Cost Savings			Payback Period years	
		Average Installed Price \$	Average Energy Use kWh/yr	Average Annual Operating Cost \$	Average Life-Cycle Cost \$	Average Savings \$	Customers with		Average	Median
							Net Cost %	Net Benefit %		
Baseline	77.2	512	1763	132.7	1,274					
1	78.7	524	1734	130.5	1,274	0	62.0	38.0	33.7	10.6
2	80.0	531	1698	127.8	1,265	9	48.9	51.1	23.1	7.2
3	81.6	542	1645	123.8	1,253	21	45.1	55.0	20.4	6.3
4	82.5	550	1629	122.6	1,255	19	48.0	52.0	22.7	7.0
5	85.2	643	1549	116.6	1,312	-38	70.5	29.5	48.2	13.8
6	86.7	697	1529	115.1	1,358	-85	82.0	18.0	62.4	18.9
7	88.3	1,446	1494	112.4	2,089	-818	98.1	1.9	263.1	55.1

For polyphase small electric motors, customers experience net LCC savings, on average, through efficiency level 4. Efficiency level 3 has the minimum

average life-cycle cost. The long average payback periods are due to the significant fraction of customers with relatively few annual operating hours.

DOE feels that the median payback period better characterizes the distribution.

Table V.4 Capacitor-Start Induction-Run Motors: Life-Cycle Cost and Payback Period Results for a One-Half Horsepower Motor

Energy Efficiency Level	Efficiency %	Life-Cycle Cost				Life-Cycle Cost Savings			Payback Period years	
		Average Installed Price \$	Average Energy Use kWh/yr	Average Annual Operating Cost	Average Life-Cycle Cost	Average Savings	Customers with		Average	Median
							Net Cost %	Net Benefit %		
Baseline	57.7	490	1277	96.2	941					
1	59.5	499	1226	92.3	932	9	39.6	60.4	13.9	4.3
2	62.0	505	1164	87.7	916	25	32.7	67.3	10.4	3.2
3	64.2	507	1110	83.6	899	41	27.7	72.3	8.3	2.6
4	68.5	525	1020	76.9	885	55	33.7	66.3	11.0	3.3
5	71.2	543	971	73.2	886	54	39.7	60.3	13.8	4.3
6	73.0	587	942	70.9	919	21	52.8	47.2	23.1	6.7
7	77.0	977	877	66.0	1,284	-346	64.0	36.0	95.5	11.2

For CSIR small electric motors, customers experience net LCC savings, on average, through efficiency level 6. CSIR efficiency level 4 has the minimum average life-cycle cost.

For CSCR small electric motors, customers experience net LCC savings, on average, through efficiency level 5.

CSCR efficiency level 3 has the greatest average life-cycle cost savings. Table V.5 also includes the life-cycle cost of a baseline 0.75 horsepower CSIR motor. This motor has an installed cost similar to the baseline-efficient CSCR motor, but significantly higher annual operating costs and life-cycle cost.

DOE's national energy savings calculations, described in sections IV.G and V.B.3, model the market share of CSIR and CSCR motors in each product class in order to account for customers selecting CSIR or CSCR motors to reduce their life-cycle costs.

Table V.5 Capacitor-Start Capacitor-Run Motors: Life-Cycle Cost and Payback Period Results for a Three-Quarter Horsepower Motor

Energy Efficiency Level	Efficiency %	Life-Cycle Cost				Life-Cycle Cost Savings			Payback Period years	
		Average Installed Price	Average Energy Use kWh/yr	Average Annual Operating Cost	Average Life-Cycle Cost	Average Savings	Customers with		Average	Median
							Net Cost %	Net Benefit %		
CSIR Baseline	63.4	543	1713	129.1	1,148					
Baseline	71.0	542	1451	109.3	1,054					
1	74.3	552	1389	104.7	1,042	12	38.2	61.8	12.7	4.1
2	78.3	580	1278	96.3	1,031	23	45.8	54.2	17.1	5.3
3	80.3	591	1233	92.9	1,025	28	46.3	53.7	17.4	5.4
4	81.6	606	1239	93.3	1,043	10	55.6	44.4	23.2	7.4
5	82.7	620	1226	92.4	1,052	2	59.9	40.1	26.3	8.4
6	83.7	668	1219	91.8	1,098	-44	73.0	27.0	41.6	12.3
7	85.4	686	1175	88.6	1,101	-47	72.6	27.5	40.3	12.1
8	87.3	1,496	1144	86.2	1,897	-846	99.1	0.9	228.9	50.3

b. Life-Cycle Cost Sensitivity Calculations

In addition to the reference case results reported in the tables above, DOE performed extensive sensitivity analyses of the LCC estimates. These sensitivity analyses examined the magnitude by which the estimates varied depending on analysis inputs such as the cost of electricity, the

purchase year of the motor, the motor capacity, the number of poles and other inputs and assumptions of the analysis. DOE reports the details of the sensitivity calculations in chapter 8 of the TSD and the accompanying appendices.

For polyphase motors, DOE performed a sensitivity calculation using a full distribution of motor sizes and poles, the full cost of reactive power, and a purchase year of 2030 (the

middle of the forecast period). This sensitivity calculation also examines the proportion of motors with <2% life-cycle cost impact as a measure of the fraction of motors that may have relatively small impacts from a standard. Table V.6 provides the results of this sensitivity calculation. Under this analytical scenario, life-cycle cost savings increase slightly.

Table V.6 Polyphase Small Electric Motors: Life-Cycle Cost and Payback Period Sensitivity Results for a Shipments-weighted Distribution of Motor Capacities and Poles for Purchase Year 2030 and with 100% Power Factor Costs Included

Energy Efficiency Level	Efficiency %	Life-Cycle Cost			Life-Cycle Cost Savings				Payback Period years	
		Average Installed Price \$	Average Energy Use kWh/yr	Average Life-Cycle Cost \$	Average Savings \$	Customers with			Average	Median
						>2% Net Cost %	<2% Net Impact %	>2% Net Benefit %		
Baseline	77.2	510	1875	1,483						
1	78.7	522	1844	1,479	3	2.6	97.3	0.1	28.2	8.7
2	80.0	529	1806	1,466	17	12.6	68.5	18.9	19.3	6.0
3	81.6	540	1750	1,445	38	17.5	36.6	45.8	16.9	5.2
4	82.5	548	1733	1,445	38	24.2	31.6	44.3	18.9	5.8
5	85.2	640	1649	1,493	-10	54.4	16.5	29.2	40.0	11.5
6	86.7	694	1628	1,537	-54	67.0	13.9	19.1	51.8	15.7
7	88.3	1,436	1591	2,261	-778	93.5	4.1	2.4	219.2	44.8

For comparison purposes, DOE calculated the same sensitivity for

single-phase motors including CSIR and CSCR motors. The results of these

sensitivity calculations are provided in Table V.7 and Table V.8.

Table V.7 Capacitor-Start Induction-Run Small Electric Motors: Life-Cycle Cost and Payback Period Sensitivity Results for a Shipments-Weighted Distribution of Motor Capacities and Poles for Purchase Year 2030 and with 100% Power Factor Costs Included

Energy Efficiency Level	Efficiency %	Life-Cycle Cost			Life-Cycle Cost Savings				Payback Period years	
		Average Installed Price \$	Average Energy Use kWh/yr	Average Life-Cycle Cost \$	Average Savings \$	Customers with			Average	Median
						>2% Net Cost %	<2% Net Impact %	>2% Net Benefit %		
Baseline	57.7	494	1274	1,044						
1	59.5	503	1222	1,031	13	0.2	78.2	21.6	11.8	3.6
2	62.0	509	1159	1,010	34	4.3	41.8	53.9	8.9	2.7
3	64.2	512	1104	987	57	4.1	29.6	66.3	7.1	2.1
4	68.5	530	1013	964	80	14.1	19.0	66.9	9.3	2.8
5	71.2	548	963	965	79	25.5	14.3	60.3	11.8	3.6
6	73.0	593	933	995	49	39.7	11.3	49.0	19.7	5.7
7	77.0	988	867	1,360	-315	53.0	7.8	39.2	82.8	9.3

Table V.8 Capacitor-Start Capacitor-Run Small Electric Motors: Life-Cycle Cost and Payback Period Sensitivity Results for a Shipments-weighted Distribution of Motor Capacities and Poles for Purchase Year 2030 and with 100% Power Factor Costs Included

Energy Efficiency Level	Efficiency %	Life-Cycle Cost			Life-Cycle Cost Savings				Payback Period years	
		Average Installed Price \$	Average Energy Use kWh/yr	Average Life-Cycle Cost \$	Average Savings \$	Customers with			Average	Median
						>2% Net Cost %	<2% Net Impact %	>2% Net Benefit %		
Baseline	71.0	576	2259	1,540						
1	74.3	588	2173	1,505	36	0.2	50.4	49.4	9.5	3.0
2	78.3	619	2018	1,466	75	14.8	23.7	61.5	13.0	3.9
3	80.3	631	1956	1,451	89	18.7	19.7	61.7	13.2	4.0
4	81.6	649	1964	1,457	83	21.9	19.1	59.0	17.4	5.4
5	82.7	663	1947	1,465	76	27.7	18.3	54.0	19.9	6.1
6	83.7	717	1937	1,507	33	42.2	16.3	41.5	31.9	9.0
7	85.4	738	1877	1,507	34	46.1	13.7	40.2	30.8	8.8
8	87.3	1,641	1833	2,391	-851	91.5	4.0	4.5	179.7	36.6

DOE also made sensitivity calculations for the case where CSIR motor owners switch to CSCR motors. DOE reports the details of the sensitivity calculations in chapter 8 of the TSD and the accompanying appendices. Section

V.A above describes the relationship between efficiency levels for the two categories of capacitor-start motors and the TSLs. For TSLs where there is a large increase in first cost for CSIR motors and only a moderate increase in

price for CSCR motors, DOE forecasts that a large fraction of CSIR motor customers will switch to CSCR motors. Table V.7 shows the shipments-weighted average of the LCC for CSIR motors including those users that switch

to CSCR. The table shows a negative average LCC is forecast for only TSL 6

which is that level where both CSIR and CSCR motors are at the maximum

technologically feasible efficiency for space-constrained designs.

Table V.9 Capacitor-Start Induction-Run Motors: Shipment-Weighted Life-Cycle Cost and Payback Period Results for a One-Half Horsepower Motor with Switching to CSCR

Trial Standard Level	Life-Cycle Cost				Life-Cycle Cost Savings		
	Average Installed Price \$	Average Energy Use kWh/yr	Average Annual Operating Cost	Average Life-Cycle Cost	Average Savings	Customers with	
						Net Cost %	Net Benefit %
Baseline	490	1277	96.2	941			
1	525	1020	76.9	885	56	33.5	66.5
2	525	1020	76.9	885	56	33.5	66.5
3	543	971	73.2	886	55	39.8	60.3
4	586	941	70.9	918	23	52.3	47.7
5	586	941	70.9	918	23	52.3	47.7
6	975	877	66.0	1,284	-343	63.1	37.0
7	580	884	66.6	892	49	50.6	49.4
8	613	873	65.7	921	20	58.0	42.0

c. Customer Sub-Group Analysis

Using the LCC spreadsheet model, DOE determined the impact of the trial standard levels on the following customer sub-groups: small businesses and customers with space-constrained applications.

Small Businesses

For small business owners, the LCC impacts and payback periods are different than for the general population. Table V.10, Table V.11, and Table V.12 show the LCC impacts and

payback periods for small businesses purchasing polyphase, CSIR, and CSCR motors, respectively. For polyphase motors, LCC savings are positive for efficiency levels 1, 2, 3, and 4 for motor customers as a whole, but level 1 has negative savings for small businesses. Efficiency level 3 shows the greatest savings for all customers as well as for small businesses. For CSIR motors, LCC savings are somewhat smaller for small businesses, but the results are generally similar between small businesses and motor customers as a whole. For CSCR

motors, LCC savings are positive for efficiency levels 1 through 5 for motor customers as a whole, but level 5 has negative savings for small businesses. Efficiency level 3 shows the greatest savings for all customers as well as for small businesses. Small businesses do not have as attractive consumer benefits as the general population because they do not have the same access to capital as larger businesses, resulting in higher average discount rates than the industry average.

Table V.10 Polyphase Motors: Small Business Customer Subgroup

Energy Efficiency Level	Efficiency %	Life-Cycle Cost				Life-Cycle Cost Savings			Payback Period <u>years</u>	
		Average Installed Price	Average Annual Energy Use (KWh)	Average Annual Operating Cost	Average Life-Cycle Cost	Average Life-Cycle Cost Savings	Consumers with		Average	Median
							Net Cost %	Net Benefit %		
Baseline	77.2	512	1743	131.2	1,157					
1	78.7	524	1714	129.0	1,158	-2	68.0	32.0	33.7	10.6
2	80.0	531	1678	126.3	1,152	5	54.7	45.3	23.1	7.2
3	81.6	542	1626	122.3	1,144	13	50.2	49.8	20.4	6.3
4	82.5	550	1610	121.2	1,146	11	53.8	46.2	22.7	7.0
5	85.2	643	1531	115.2	1,209	-52	75.9	24.1	48.2	13.8
6	86.7	697	1512	113.8	1,257	-99	86.7	13.3	62.4	18.9
7	88.3	1,446	1477	111.1	1,991	-835	99.0	1.0	263.1	55.1

Table V.11 Capacitor-Start Induction Run Motors: Small Business Customer Subgroup

Energy Efficiency Level	Efficiency %	Life-Cycle Cost				Life-Cycle Cost Savings			Payback Period <u>years</u>	
		Average Installed Price	Average Annual Energy Use (KWh)	Average Annual Operating Cost	Average Life-Cycle Cost	Average Life-Cycle Cost Savings	Consumers with		Average	Median
							Net Cost %	Net Benefit %		
Baseline	57.7	490	1291	97.6	886					
1	59.5	499	1239	93.7	879	7	44.1	55.9	13.9	4.3
2	62.0	505	1177	89.0	866	20	36.5	63.5	10.4	3.2
3	64.2	507	1122	84.9	852	34	31.1	68.9	8.3	2.6
4	68.5	525	1031	78.0	842	44	37.8	62.2	11.0	3.3
5	71.2	543	982	74.3	845	41	44.2	55.8	13.8	4.3
6	73.0	587	952	72.0	879	6	57.8	42.2	23.1	6.7
7	77.0	977	886	67.0	1,248	-364	67.8	32.2	95.5	11.2

Table V.12 Capacitor-Start Capacitor Run Motors: Small Business Customer Subgroup

Energy Efficiency Level	Efficiency %	Life-Cycle Cost				Life-Cycle Cost Savings			Payback Period years	
		Average Installed Price	Average Annual Energy Use (KWh)	Average Annual Operating Cost	Average Life-Cycle Cost	Average Life-Cycle Cost Savings	Consumers with		Average	Median
							Net Cost %	Net Benefit %		
CSIR Baseline	63.4	543	1732	131.0	1,075					
CSCR Baseline	71.0	542	1467	110.9	992	-	-	-	-	-
1	74.3	552	1404	106.2	983	9	42.4	57.6	12.7	4.1
2	78.3	580	1291	97.7	976	15	50.2	49.8	17.1	5.3
3	80.3	591	1246	94.3	973	18	50.6	49.4	17.4	5.4
4	81.6	606	1252	94.7	990	1	60.5	39.5	23.2	7.4
5	82.7	620	1239	93.7	1,000	-8	65.0	35.1	26.3	8.4
6	83.7	668	1232	93.2	1,046	-54	77.2	22.8	41.6	12.3
7	85.4	686	1188	89.9	1,050	-59	76.8	23.2	40.3	12.1
8	87.3	1,496	1156	87.5	1,849	-859	99.5	0.5	228.9	50.3

Customers With Space-Constrained Applications

One of the design options DOE considered in developing more efficient motors was to increase the motor stack length. Increasing stack length can increase motor efficiency by lowering core losses.¹⁷ Customers with space-constrained applications (defined as those customers whose motor stack length can increase no more than 20 percent), cannot use this design option as effectively as those without constraints. In order to meet efficiency targets without increasing stack length,

other, more costly, design options are used. Customers with these constraints, therefore, have less attractive economic benefits to efficiency, particularly for motors at the higher efficiency levels considered by DOE. The LCC results presented in section IV.F assume that 20 percent of customers face space constraints, while 80 percent of customers may use any stack length (up to the 100 percent increase considered by DOE). Customers without space constraints have customer economic benefits which are more attractive than the overall results, particularly at higher levels of efficiency.

Table V.13, Table V.14, and Table V.15 show the results of the LCC analysis for the space-constrained subgroup. Polyphase levels 1 through 4, CSIR levels 1 through 3 and 5, and CSCR level 1 are unchanged for space-constrained consumers because motor designs meeting these efficiency levels have stack length increases of less than or equal to 20 percent. CSIR efficiency level 6 and CSCR efficiency level 5 are the only levels which change from positive LCC average savings for all customers to negative LCC savings for space-constrained customers.

¹⁷ Core losses are generated in the steel components of the motor by two electromagnetic phenomena: hysteresis losses and eddy currents.

Hysteresis losses are caused by magnetic domains resisting reorientation to the alternating magnetic field (*i.e.*, 60 times per second, or 60 hertz). Eddy

currents are physical currents that are induced in the steel laminations by the magnetic flux of the windings.

Table V.13 Polyphase Motors: Space-Constrained Customer Subgroup

Energy Efficiency Level	Efficiency %	Life-Cycle Cost				Life-Cycle Cost Savings			Payback Period <u>years</u>	
		Average Installed Price	Average Annual Energy Use (KWh)	Average Annual Operating Cost	Average Life-Cycle Cost	Average Life-Cycle Cost Savings	Consumers with		Average	Median
							Net Cost %	Net Benefit %		
Baseline	77.2	512	1728	130.5	1,266					
1	78.7	524	1699	128.3	1,266	0	62.0	38.0	33.7	10.6
2	80.0	531	1664	125.6	1,257	9	48.9	51.1	23.1	7.2
3	81.6	542	1611	121.7	1,246	21	45.1	55.0	20.4	6.3
4	82.5	550	1596	120.5	1,247	19	48.0	52.0	22.7	7.0
5	85.2	757	1511	114.1	1,417	-150	92.2	7.8	88.3	26.9
6	86.7	769	1487	112.3	1,418	-151	91.0	9.0	82.9	25.3
7	88.3	3,573	1445	109.1	4,205	-2,937	100.0	0.0	843.1	258.1

Table V.14 Capacitor-Start Induction Run Motors: Space-Constrained Customer Subgroup

Energy Efficiency Level	Efficiency %	Life-Cycle Cost				Life-Cycle Cost Savings			Payback Period years	
		Average Installed Price	Average Annual Energy Use (KWh)	Average Annual Operating Cost	Average Life-Cycle Cost	Average Life-Cycle Cost Savings	Consumers with		Average	Median
							Net Cost %	Net Benefit %		
Baseline	57.7	490	1308	99.6	943					
1	59.5	499	1256	95.6	933	9	39.6	60.4	13.9	4.3
2	62.0	505	1193	90.9	917	25	32.7	67.3	10.4	3.2
3	64.2	507	1138	86.7	901	41	27.7	72.3	8.3	2.6
4	68.5	535	1037	79.0	893	49	38.9	61.1	13.5	4.1
5	71.2	543	997	75.9	888	54	39.7	60.3	13.8	4.3
6	73.0	659	957	73.0	990	-48	72.3	27.8	39.3	12.0
7	77.0	2,527	884	67.4	2,833	-1,891	100.0	0.0	392.6	119.9

Table V.15 Capacitor-Start Capacitor Run Motors: Space-Constrained Customer Subgroup

Energy Efficiency Level	Efficiency %	Life-Cycle Cost				Life-Cycle Cost Savings			Payback Period years	
		Average Installed Price	Average Annual Energy Use (KWh)	Average Annual Operating Cost	Average Life-Cycle Cost	Average Life-Cycle Cost Savings	Consumers with		Average	Median
							Net Cost %	Net Benefit %		
CSIR Baseline	63.4	543	1756	133.7	1,151					
CSCR Baseline	71.0	542	1490	113.5	1,057	-	-	-	-	-
1	74.3	552	1426	108.7	1,045	12	38.2	61.8	12.7	4.1
2	78.3	589	1328	101.2	1,048	8	55.2	44.8	23.0	7.3
3	80.3	600	1291	98.4	1,046	11	55.0	45.0	22.7	7.2
4	81.6	607	1280	97.5	1,049	7	57.2	42.8	24.2	7.8
5	82.7	622	1271	96.9	1,061	-5	62.9	37.1	28.5	9.1
6	83.7	776	1263	96.2	1,212	-156	95.0	5.0	80.5	25.8
7	85.4	791	1225	93.3	1,214	-157	93.6	6.4	73.2	23.4
8	87.3	3,593	1159	88.3	3,994	-2,937	100.0	0.0	722.4	229.3

d. Rebuttable Presumption Payback

As discussed in section II.C, EPCA provides a rebuttable presumption that, in essence, an energy conservation standard is economically justified if the increased purchase 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. However, DOE routinely

conducts a full economic analysis that considers the full range of impacts, including those to the customer, manufacturer, Nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i) and 42 U.S.C. 6316(e)(1). The results of this analysis serve as the basis for DOE to evaluate definitively the economic justification for a potential standard level (thereby

supporting or rebutting the results of any preliminary determination of economic justification).

For comparison with the more detailed analysis results, DOE calculated a rebuttable presumption payback period for each TSL. Table V.16 and Table V.17 show the rebuttable presumption payback periods for the representative product classes.

Table V.16 Rebuttable-Presumption Payback Periods for Representative Polyphase Small Electric Motors (1 hp, 4 poles)

TSL	Payback Period years
1	3.6
2	3.1
3	3.2
4	3.5
5	7.9
6	9.9
7	40.4

Table V.17 Rebuttable-Presumption Payback Periods for Representative Capacitor-Start Small Electric Motors

TSL	Induction-Run (1/2 hp, 4 poles)		Capacitor-Run (3/4 hp 4 poles)	
	CSIR Level	Payback Period years	CSCR Level	Payback Period years
1	4	1.9	2	2.8
2	4	1.9	3	2.9
3	5	2.4	3	2.9
4	6	3.9	4	3.5
5	6	3.9	3	2.9
6	7	19.6	8	36.2
7	7	19.6	3	2.9
8	7	19.6	7	6.0

No polyphase TSL has a rebuttable presumption payback period of less than 3 years. For CSIR and CSCR motors, TSLs 1 through 3 have rebuttable presumption payback periods of less than 3 years.

2. Economic Impacts on Manufacturers

DOE used the INPV in the MIA to compare the financial impacts of different TSLs on small electric motor manufacturers. The INPV is the sum of all net cash flows discounted by the industry's cost of capital (discount rate). DOE used the GRIM to compare the INPV in the base case (*i.e.*, no new energy conservation standards) with the INPV for each TSL in the standards case. To evaluate the range of cash-flow impacts on the small electric motors industry, DOE modeled two different scenarios using different assumptions for markups and shipments that correspond to the range of anticipated market responses. Each scenario results

in a unique set of cash flows and corresponding industry value at each TSL. The difference in INPV between the base case and a standards case is an estimate of the economic impacts that implementing that standard level would have on the entire industry.

a. Industry Cash-Flow Analysis Results

To assess the potential impacts on manufacturers, DOE used the two markup scenarios described in section IV.I. For both markup scenarios, DOE considered the shipment scenario that uses a reference level of economic growth, no elasticity, and a baseline market share between CSCR and CSIR motors. To assess the lower end of the range of potential impacts on the small electric motors industry, DOE considered the preservation of return on invested capital markup scenario. This scenario assumes that manufacturers would be able to maintain the ratio of net operating profit (after taxes) to

invested capital after new energy conservation standards. To assess the higher end of the range of potential impacts on the small electric motors industry, DOE considered the preservation of operating profit markup scenario. This scenario assumes that the industry can only maintain its operating profit (*i.e.*, earnings before interest and taxes) after the effective date of the standard. The industry would do so by not passing through all of the higher costs to customers. Table V.18 through Table V.21 show the low end and high end of the range of MIA results, respectively, for each TSL using the scenarios described above. The results present the impacts of energy conservation standards for polyphase small electric motors separately and combine the impacts for CSIR and CSCR small electric motors.

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**Table V.18 Manufacturer Impact Analysis for Polyphase Small Electric Motors
(Preservation of Return on Invested Capital Markup Scenario)**

	Units	Base Case	Trial Standard Level						
			1	2	3	4	5	6	7
INPV	2008\$ millions	64	65	65	66	67	75	80	149
Change in INPV	2008\$ millions	-	0.52	1.11	1.83	2.41	10.85	15.94	85.23
	%	-	0.80	1.74	2.86	3.76	16.91	24.84	132.87
Equipment Conversion Costs	2008\$ millions	-	0.9	0.9	0.9	0.9	1.9	2.8	3.8
Capital Conversion Costs	2008\$ millions	-	0.4	0.7	0.8	0.9	4.0	6.3	27.1
Total Investment Required	2008\$ millions	-	1.4	1.6	1.7	1.9	5.9	9.2	30.9

**Table V.19 Manufacturer Impact Analysis for Polyphase Small Electric Motors
(Preservation of Operating Profit Markup Scenario)**

	Units	Base Case	Trial Standard Level						
			1	2	3	4	5	6	7
INPV	2008\$ millions	64	63	63	62	62	55	51	4
Change in INPV	2008\$ millions	-	(1.14)	(1.56)	(2.01)	(2.39)	(8.83)	(13.09)	(59.74)
	%	-	(1.78)	(2.42)	(3.14)	(3.73)	(13.76)	(20.41)	(93.14)
Equipment Conversion Costs	2008\$ millions	-	0.9	0.9	0.9	0.9	1.9	2.8	3.8
Capital Conversion Costs	2008\$ millions	-	0.4	0.7	0.8	0.9	4.0	6.3	27.1
Total Investment Required	2008\$ millions	-	1.4	1.6	1.7	1.9	5.9	9.2	30.9

**Table V.20 Manufacturer Impact Analysis for CSIR and CSCR Small Electric Motors
(Preservation of Return on Invested Capital Markup Scenario)**

	Units	Base Case	Trial Standard Level							
			1	2	3	4	5	6	7	8
INPV	2008\$ millions	279	290	291	297	310	307	467	309	336
Change in INPV	2008\$ millions	-	11.21	12.22	18.03	31.21	27.96	187.88	29.80	56.70
	%	-	4.02	4.38	6.47	11.19	10.03	67.39	10.69	20.34
Equipment Conversion Costs	2008\$ millions	-	8.2	8.2	12.2	12.4	12.2	16.5	16.0	16.3
Capital Conversion Costs	2008\$ millions	-	8.7	9.8	12.4	14.9	12.4	54.4	29.7	34.1
Total Investment Required	2008\$ millions	-	16.9	17.9	24.5	27.3	24.5	70.8	45.7	50.4

**Table V.21 Manufacturer Impact Analysis for CSIR and CSCR Small Electric Motors
(Preservation of Operating Profit Markup Scenario)**

	Units	Base Case	Trial Standard Level							
			1	2	3	4	5	6	7	8
INPV	2008\$ millions	279	264	263	256	247	250	141	243	226
Change in INPV	2008\$ millions	-	(14.87)	(15.64)	(22.87)	(31.57)	(29.01)	(137.53)	(35.84)	(53.30)
	%	-	(5.33)	(5.61)	(8.20)	(11.32)	(10.41)	(49.33)	(12.86)	(19.12)
Equipment Conversion Costs	2008\$ millions	-	8.2	8.2	12.2	12.4	12.2	16.5	16.0	16.3
Capital Conversion Costs	2008\$ millions	-	8.7	9.8	12.4	14.9	12.4	54.4	29.7	34.1
Total Investment Required	2008\$ millions	-	16.9	17.9	24.5	27.3	24.5	70.8	45.7	50.4

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Polyphase Small Electric Motors

DOE estimated the impacts on INPV at TSL 1 to range from \$0.52 million to -\$1.14 million, or a change in INPV of 0.80 percent to -1.78 percent. At this level industry cash flow decreases by approximately 9.1 percent, to \$4.68 million, compared to the base-case value of \$5.15 million in the year leading up to the energy conservation standards. TSL 1 represents an efficiency increase of 2 percent over the baseline for polyphase motors. The majority of manufacturers have motors that meet this efficiency. All manufacturers that were interviewed stated that their existing motor designs allow for simple modifications that would require minor capital and equipment conversion costs to reach TSL 1. A possible modification analyzed in the engineering analysis is a roughly 7 percent increase in number of laminations within both space constrained and non-space constrained motors. Manufacturers indicated that modifications like an increase in laminations could be made within existing baseline motor designs without significantly altering their size. In addition, these minor design changes will not raise the production costs beyond the cost of most motors sold today, resulting in minimal impacts on industry value.

DOE estimated the impacts in INPV at TSL 2 to range from \$1.11 million to -\$1.56 million, or a change in INPV of 1.74 percent to -2.42 percent. At this level industry cash flow decreases by approximately 11.53 percent, to \$4.55 million, compared to the base-case value of \$5.15 million in the year leading up to the energy conservation

standards. TSL 2 represents an efficiency increase of 4 percent over the baseline for polyphase motors. Similar to TSL 1, at TSL 2 manufacturers stated that their existing motor designs allows for simple modifications that would entail only minor capital and equipment conversion costs. A possible modification analyzed in the engineering analysis increases the number of laminations by approximately 15-percent from the baseline within both space constrained and non-spaced constrained motors. Manufacturers indicated that these modifications could be made within baseline motor designs without significantly changing their size. At TSL 2, the production costs of standards compliant motors do not increase enough to significantly affect INPV.

At TSL 3, DOE estimated the impacts in INPV to range from \$1.83 million to -\$2.01 million, or a change in INPV of 2.86 percent to -3.14 percent. At this level industry cash flow decreases by approximately 12.35 percent, to \$4.51 million, compared to the base-case value of \$5.15 million in the year leading up to the energy conservation standards. TSL 3 represents an efficiency increase of 6-percent over the baseline for polyphase motors. Similar to TSL 1 and TSL 2, at TSL 3 manufacturers stated that their existing motor designs would still allow for simple modifications that would not require significant capital and equipment conversion costs. In the engineering analysis, standards compliant motors that meet the efficiency requirements at TSL 3 have 17-percent more laminations than the baseline design within both space constrained and non-spaced constrained

motors. These changes do not result in significant impacts on INPV.

At TSL 4, DOE estimated the impacts in INPV to range from \$2.41 million to -\$2.39 million, or a change in INPV of 3.76 percent to -3.73 percent. At this level industry cash flow decreases by approximately 13.44 percent, to \$4.46 million, compared to the base-case value of \$5.15 million in the year leading up to the energy conservation standards. TSL 4 represents an efficiency increase of 7-percent over the baseline for polyphase motors. Most manufacturers that were interviewed are able to reach this level without significant redesigns. At TSL 4, a possible design pathway for manufacturers could be to increase the number of laminations by approximately 20 percent over the baseline designs within space constrained and non-space constrained motors. However, manufacturers reported that TSL 4 would be the highest efficiency level achievable before required efficiencies could significantly change motor designs and production equipment. However, past TSL 4 the size of the motors may need to be significantly modified.

At TSL 5, DOE estimated the impacts in INPV to range from \$10.85 million to -\$8.83 million, or a change in INPV of 16.91 percent to -13.76 percent. At this level industry cash flow decreases by approximately 46.20 percent, to \$2.77 million, compared to the base-case value of \$5.15 million in the year leading up to the energy conservation standards. TSL 5 represents an efficiency increase of 10-percent over the baseline for polyphase motors. TSL 5 is equivalent to the current NEMA premium level that manufacturers produce for medium-sized electric

motors. Although some manufacturers reported having existing small electric motors that reach TSL 5, the designs necessary are more complex than their cost optimized designs at lower TSLs. A possible redesign for non-space constrained motors would include adding up to 49 percent more laminations relative to the baseline motor design and improving the grade of steel. For space constrained motors, redesigns could require up to 114 percent more laminations of a thinner and higher grade of steel. Manufacturers are concerned that redesigns at TSL 5 could possibly increase the size of the motors if they do not currently have motors that reach the NEMA premium efficiency levels. A shift to larger motors could be detrimental to sales due to the inability of OEMs to use standards-compliant motors as direct replacements in some applications. According to manufacturers, at TSL 5 the industry would incur significantly higher capital and equipment conversion costs in comparison to the lower efficiency levels analyzed. DOE estimates that the capital and equipment conversion costs required to make the redesigns at TSL 5 would be approximately four times the amount required to meet TSL 1. At TSL 5 manufacturers would also be required to shift their entire production of baseline motors to higher priced and higher efficiency motors, making their current cost-optimized designs obsolete. These higher production costs could have a greater impact on the industry value if operating profit does not increase. Manufacturers indicated that setting energy conservation standards at TSL 5 could cause some manufacturers to consider exiting the small electric motor market because of the lack of resources, potentially unjustifiable investments for a small segment of their business, and the possibility of lower revenues if OEMs will not accept large motors.

At TSL 6, DOE estimated the impacts in INPV to range from \$15.94 million to -\$13.09 million, or a change in INPV of 24.84 percent to -20.41 percent. At this level industry cash flow decreases by approximately 71.78 percent, to \$1.45 million, compared to the base-case value of \$5.15 million in the year leading up to the energy conservation standards. TSL 6 represents an efficiency increase of 12-percent over the baseline for polyphase motors. Currently, no small electric motors are rated above the equivalent to the NEMA premium standard (TSL 5). Possible redesigns for space constrained motors at TSL 6 include the use of copper rotors and a 114-percent increase in the

number of laminations of a thinner and higher grade of steel. These changes would cause manufacturers to incur significant capital and equipment conversion costs to redesign their space constrained motors due to the lack of experience in using copper. According to manufacturers, copper tooling is significantly costlier and not currently used by any manufacturers for the production of small electric motors. If copper rotor designs are required, manufacturers with in-house die-casting capabilities will need completely new machinery to process copper. Manufacturers that outsource rotor production would pay higher prices for their rotor designs. In both cases, TSL 6 results in significant equipment conversion costs to modify current manufacturing processes in addition to redesigning motors to use copper in the applications of general purpose small electric motors. Largely due to the significant changes to space constrained motors, at TSL 6 DOE estimates that manufacturers would incur close to six times the total conversion costs required at TSL 1 (a total of approximately \$9.2 million). However, for non-space constrained motors, manufacturers are able to redesign their existing motors without the use of copper rotors by using twice the number of laminations that are contained in the baseline design. Therefore, for non-space constrained motors the impacts at TSL 6 are significantly less because manufacturers can maintain existing manufacturing processes without the potentially significant changes associated with copper rotors. At TSL 6 the impacts for non-space constrained motors are mainly due to higher motor costs and the possible decrease in profitability if manufacturers are unable to fully pass through their higher production costs.

At TSL 7, DOE estimated the impacts in INPV to range from \$85.23 million to -\$59.74 million, or a change in INPV of 132.87 percent to -93.14 percent. At this level industry cash flow decreases by approximately 258.82 percent, to -\$8.18 million, compared to the base-case value of \$5.15 million in the year leading up to the energy conservation standards. TSL 7 represents an efficiency increase of 14-percent over the baseline for polyphase motors. Currently, the market does not have any motors that reach TSL 7. In addition to possibly using copper rotors, at TSL 7 space constrained motor designs could also require exotic steels. There is some uncertainty about the magnitude of the impacts on the industry of using Hipercor steel. Manufacturers were

unsure about the required conversion costs to reach TSL 7 because of the unproven properties and applicability of the technology in the general purpose motors covered by this rulemaking. Significant R&D for both manufacturing processes and motor redesigns would be necessary to understand the applications of exotic steels to general purpose small electric motors. According to manufacturers, requiring this technology could possibly cause some competitors to exit the small electric motor market. If manufacturers' concerns of having to use both copper rotors and new steels materialize, manufacturers could be significantly impacted. For non-space constrained motors, DOE estimates that manufacturers would require the use of copper rotors but not exotic steels. If manufacturers are required to redesign non-spaced constrained motors with copper, the total conversion for the industry increases greatly because all motors require substantially different production equipment. Finally, the production costs of motors that meet TSL 7 could be up to 18 times higher than the production costs of baseline motors. The cost to manufacture standards-compliant motors could have a significant impact on the industry if operating profit does not increase with production costs.

Capacitor-Start, Induction Run and Capacitor-Start, Capacitor-Run Small Electric Motors

At TSL 1, DOE estimated the impacts in INPV to range from \$11.21 million to -\$14.87 million, or a change in INPV of 4.02 percent to -5.33 percent. At this level, industry cash flow decreases by approximately 28.51 percent, to \$15.99 million, compared to the base-case value of \$22.34 million in the year leading up to the energy conservation standards. TSL 1 represents an efficiency increase of 19-percent over the baseline for CSIR motors and 10-percent over the baseline for CSCR motors. At TSL 1 for CSIR motors, DOE estimates manufacturers would need to increase the number of laminations for space constrained motors by approximately 33-percent and use a thinner and higher grade of steel. For non-space constrained CSIR motors, manufacturers could increase laminations by approximately 61-percent with the use of a thinner grade steel. For space constrained CSCR motors, manufacturers could increase laminations by ten percent and use a higher grade of steel. For non-space constrained CSCR motors, manufacturers could increase laminations by approximately 37 percent. For both

CSIR and CSCR motors, the additional stack length needed to reach TSL 1 is still within the tolerances of many manufacturers existing motors. DOE estimates that these changes would cause the industry to incur capital and equipment conversion costs of approximately \$17 million to reach TSL 1. TSL 1 would increase production costs, but the cost increases are not enough to severely affect INPV under the scenarios analyzed.

At TSL 2, DOE estimated the impacts in INPV to range from \$12.22 million to -\$15.64 million, or a change in INPV of 4.38 percent to -5.61 percent. At this level industry cash flow decreases by approximately 30.58 percent, to \$15.53 million, compared to the base-case value of \$22.34 million in the year leading up to the energy conservation standards. TSL 2 represents an efficiency increase of 19-percent over the baseline for CSIR motors and 13-percent over the baseline for CSCR motors. For CSIR motors, the same changes to meet TSL 1 are necessary for TSL 2. For CSCR motors, TSL 2 represents what manufacturers would consider a NEMA Premium equivalent efficiency level. The changes required for CSCR motors could cause manufacturers to incur additional capital conversion costs to accommodate the required increase in laminations. Imposing standards would increase production costs for both CSIR and CSCR motors, but the cost increases for both types of motors are not enough to severely affect INPV.

At TSL 3, DOE estimated the impacts in INPV to range from \$18.03 million to -\$22.87 million, or a change in INPV of 6.47 percent to -8.20 percent. At this level, industry cash flow decreases by approximately 41.16 percent, to \$13.17 million, compared to the base-case value of \$22.34 million in the year leading up to the energy conservation standards. TSL 3 represents an efficiency increase of 23-percent over the baseline for CSIR motors and 13-percent over the baseline for CSCR motors. At TSL 3, space constrained CSIR motors could require redesigns that use copper rotors. Using copper rotors for space constrained CSIR motors could cause manufacturers to incur approximately \$25 million in capital and equipment conversion costs, largely to purchase the equipment necessary to produce these redesigned motors. As with polyphase motors, manufacturers reported that copper rotor tooling is significantly costlier than traditional aluminum rotor tooling and not currently used by the industry for the production of small electric motors. Similarly, in-house die-casting

capabilities would need completely new machinery to process copper and the alternative of outsourcing rotor production would greatly increase material costs. For non-space constrained CSIR motors, manufacturers could redesign motors by increasing the number of laminations without the use of copper rotors, resulting in significantly smaller impacts. At TSL 3, the impacts for non-space constrained motors are mainly due to higher motor material costs and a possible decline in profit margins. TSL 3 represents what manufacturers would consider a NEMA Premium equivalent efficiency level for CSCR motors. The required efficiencies for space constrained CSCR motors could possibly be met by manufacturers by increasing the number of laminations by 15-percent and using higher steel grades. The required efficiencies for non-spaced constrained CSCR motors could be met by increasing the number of laminations by 53-percent. Because the redesigns for CSCR motors are less substantial, the impacts at TSL 3 are driven largely by the required CSIR efficiencies.

At TSL 4, DOE estimated the impacts in INPV to range from \$31.21 million to -\$31.57 million, or a change in INPV of 11.19 percent to -11.32 percent. At this level industry cash flow decreases by approximately 46.63 percent, to \$11.94 million, compared to the base-case value of \$22.34 million in the year leading up to the energy conservation standards. TSL 4 represents an efficiency increase of 27-percent over the baseline for CSIR motors and 15-percent over the baseline for CSCR motors. TSL 4 currently represents a NEMA premium equivalent level for CSIR motors. Possible redesigns for both CSIR and CSCR motors to meet TSL 4 involve both increasing the number of laminations as well as using higher grades of steel. For space constrained CSIR motors, redesigns could require the use of copper rotors. Because of these redesigns, standards-compliant motors at TSL 4 have significantly higher costs than manufacturers' baseline motors. These changes increase the engineering and capital resources that must be employed, especially for CSCR motors. The negative impacts at TSL 4 are driven by the conversion costs that potentially require some single-phase motors to use copper rotors, and the higher production costs of standards-compliant motors.

At TSL 5, DOE estimated the impacts in INPV to range from \$27.96 million to -\$29.01 million, or a change in INPV of 10.03 percent to -10.41 percent. At this level industry cash flow decreases by approximately 41.16 percent, to

\$13.17 million, compared to the base-case value of \$22.34 million in the year leading up to the energy conservation standards. TSL 5 represents an efficiency increase of 27-percent over the baseline for CSIR motors and 13-percent over the baseline for CSCR motors. TSL 5 represents NEMA premium equivalent efficiency levels for both CSIR and CSCR motors. At TSL 5, space constrained CSIR motors could require the use of copper rotors. The required efficiencies for non-space constrained CSIR motors could be met by manufacturers by increasing the number of laminations by 82-percent and using a higher grade of steel. The required efficiencies for space constrained CSCR motors could be met by manufacturers by increasing the number of laminations by 15-percent and using higher steel grades. The required efficiencies for non-spaced constrained CSCR motors could be met by increasing the number of laminations by 53-percent. Although manufacturers reported that meeting TSL 5 is feasible, the production costs of motors at TSL 5 increase substantially and require approximately \$25 million in total capital and equipment conversion costs. The negative impacts at TSL 5 are driven by these conversion costs that potentially require some CSIR motors to use copper rotors, and the impacts on profitability if the higher production costs of standards-compliant motors cannot be fully passed through to customers.

At TSL 6, DOE estimated the impacts in INPV to range from \$187.88 million to -\$137.53 million, or a change in INPV of 67.39 percent to -49.33 percent. At this level, industry cash flow decreases by approximately 131.38 percent, to -\$7.02 million, compared to the base-case value of \$22.34 million in the year leading up to the energy conservation standards. TSL 6 represents an efficiency increase of 33-percent over the baseline for CSIR motors and 23-percent over the baseline for CSCR motors. Currently, the market does not have any CSIR and CSCR motors that reach TSL 6. TSL 6 represents the max-tech level for both CSIR and CSCR motors. In addition to the possibility of using copper rotors for both CSIR and CSCR motors, at TSL 6 space constrained motor designs could require exotic steels. There is a great deal of uncertainty about the impact of Hiperco steel on the industry, primarily due to uncertainty about capital conversion costs required to use a new, exotic steel. Significant R&D in manufacturing processes would be necessary to understand the

applications of exotic steels in general purpose small electric motors. Because all space constrained motors could require copper rotors and exotic steel and all non-spaced constrained motors could require copper rotors, the capital conversion costs are a significant driver of INPV at TSL 6. Finally, the production costs of motors that meet TSL 6 can be as high as 13 times the production cost of baseline motors, which impact profitability if the higher production costs cannot be fully passed through to OEMs. Manufacturers indicated that the potentially large impacts on the industry at TSL 6 could force some manufacturers to exit the small electric motor market because of the lack of resources and unjustifiable investment for a small segment of their total business.

At TSL 7, DOE estimated the impacts in INPV to range from \$29.80 million to -\$35.84 million, or a change in INPV of 10.69 percent to -12.86 percent. At this level, industry cash flow decreases by approximately 81.21 percent, to \$4.20 million, compared to the base-case value of \$22.34 million in the year leading up to the energy conservation standards. TSL 7 represents an efficiency increase of 33-percent over the baseline for CSIR motors and 13-percent over the baseline for CSCR motors. TSL 7 corresponds to the NEMA premium equivalent efficiency for CSCR motors. The required efficiencies for space constrained CSCR motors could be met by manufacturers by increasing the number of laminations by 15-percent and using higher steel grades. The required efficiencies for non-spaced constrained CSCR motors could be met by increasing the number of laminations by 53-percent. Consequently, the industry is not severely impacted by the CSCR efficiency requirements at TSL 7 because these design changes could be met with relatively minor changes to baseline designs. However, there are no CSIR motors currently on the market that reach TSL 7 (the max-tech level for CSIR). At TSL 7 space constrained CSIR redesigns could require the use of both copper rotors and exotic steels while non-space constrained CSIR motors could require only copper rotors. Manufacturers continue to have the same concerns about copper rotors and exotic steels for CSIR motors as with other efficiency levels that may require these technologies. The impacts on INPV for non-spaced constrained CSIR motors are significantly less because of the exclusion of exotic steels in motor redesigns. The INPV impacts for all single-phase motors at TSL 7 are less

severe than at TSL 6 due to a change in balance of shipments between CSIR and CSCR motors. At TSL 7, the high cost of CSIR motors would likely cause customers to migrate to CSCR motors. For the analysis, DOE assumes that manufacturers would invest in the alternative technologies for CSIR motors regardless of the modeled migration to CSCR motors because of the variability in that migration. The industry is impacted by the high conversion costs for CSIR motors even though these are a small portion of total shipments after standards. However, because the total volume of single-phase motors does not decline with the shift from CSIR to CSCR motors, the higher revenues from standards-compliant CSCR mitigate the significant redesign costs for CSIR motors.

At TSL 8, DOE estimated the impacts in INPV to range from \$56.70 million to -\$53.30 million, or a change in INPV of 20.34 percent to -19.12 percent. At this level, industry cash flow decreases by approximately 90.42 percent, to \$2.14 million, compared to the base-case value of \$22.34 million in the year leading up to the energy conservation standards. TSL 8 represents an efficiency increase of 33-percent over the baseline for CSIR motors and 20-percent over the baseline for CSCR motors. As with TSL 7, CSIR motors are at the max-tech level at TSL 8. However, the impacts on INPV are worse at TSL 7 because the efficiency requirements for CSCR motors increase. At TSL 8, both space constrained and non-space constrained CSCR motors could require the use of copper, which increases the total conversion costs for the industry. Manufacturers continue to share the same concerns about the copper and exotic steel investments for CSCR and CSIR motors as at TSL 6 and TSL 7. Like TSL 7, TSL 8 causes a migration of CSIR motors to CSCR motors. DOE assumed that manufacturers would incur the required conversion costs for both CSCR and CSIR motors, despite the low market share of CSIR motors after the effective date of the energy conservation standards. After standards, the shift to CSCR motors increases total industry revenue and helps to mitigate the significant capital conversion costs necessary for CSIR motors to use both copper and exotic metals.

b. Impacts on Direct Employment

To assess the impacts of energy conservation standards on small electric motors direct manufacturing employment, DOE used the GRIM to estimate domestic labor expenditures and employment levels. DOE used the latest available statistical data from the

U.S. Census Bureau's 2006 Annual Survey of Manufacturers (2006 ASM), results from other analyses, and interviews with manufacturers to estimate the inputs necessary to calculate industry-wide domestic labor expenditures and employment levels. In the GRIM, total labor expenditures are a function of the labor content, the sales volume, and the wage rate which remains fixed in real terms over time. The total employment figures presented for the small electric motor industry includes both production and non-production workers.

DOE estimates that there are approximately 1,800 U.S. production and non-production workers in the small electric motors industry.

DOE does not believe that standards would materially alter the domestic employment levels of the small electric motors industry. Most manufacturers indicated that employment levels would stay constant regardless of any changes in regulations. However, some manufacturers stated that if efficiency levels were raised significantly enough for the company to exit the small electric motor market, a small number of jobs could be eliminated. Even in the event that some manufacturers exit the market, the direct employment impact will likely be minimal. Most covered small motors are manufactured on shared production lines and in factories that also produce a substantial number of other products. If a manufacturer decided to exit the market, these employees would likely be used in some other capacity, reducing the number of headcount reductions. These manufacturers estimated that no production jobs would be lost due to energy conservation standards, but rather the engineering departments could be reduced by up to one engineer per dropped product line.

The employment impacts calculated by DOE are independent of the employment impacts from the broader U.S. economy, which are documented in chapter 15 of the TSD accompanying this notice. For further information and results on direct employment see chapter 12 of the TSD.

c. Impacts on Manufacturing Capacity

New energy conservation standards would not significantly affect the production capacity of small electric motor manufacturers. For small electric motor manufacturers, any necessary redesign will not change the fundamental assembly of the products and there will likely be no long-term capacity constraints. Manufacturers indicated that producing more efficient small electric motors would not be

technically difficult and that they would not need to build new facilities to accommodate the manufacturing of a more efficient motor. Additionally, manufacturers indicated that the industry is currently experiencing over capacity. As a result, manufacturers have scaled back manufacturing to cut costs and inventory. Accordingly, DOE believes manufacturers can use any available excess capacity to mitigate any possible capacity constraint as a result of energy conservation standards. The real risk is that some motors would be discontinued due to lower demand after standard rather than constrained capacity. For further explanation of the impacts on manufacturing capacity for small electric motors, see chapter 12 of the TSD.

d. Impacts on Manufacturer Subgroups

As discussed above, using average cost assumptions to develop an industry cash-flow estimate is inadequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche players, and manufacturers exhibiting a cost structure that differs largely from the industry average could be affected differently. DOE used the results of the industry characterization to group manufacturers exhibiting similar characteristics, which reduced the need to analyze manufacturer subgroups to only investigating small businesses. However, during interviews DOE did not identify any small manufacturers of covered motors. After conducting further research, including the examination of catalogs and contacting manufacturers to discuss their product lines, DOE still did not identify any small manufacturers in the small electric motor industry.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, DOE understands the combined effects of several existing and impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this

cumulative regulatory burden. For this reason, DOE conducts an analysis of cumulative regulatory burden as part of its appliance efficiency rulemakings.

In addition to the energy conservation standards for small electric motors, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can quickly strain profits and possibly cause it to exit the market. DOE has identified other regulations these manufacturers are facing for other products and equipment they manufacture within 3 years prior to and 3 years after the effective date of the new energy conservation standards for small electric motors.

Small electric motor manufacturers described some of the current regulations affecting their business during manufacturer interviews. Manufacturers mentioned the European Union's Restriction of Hazardous Substances (RoHS) and the Registration, Evaluation, Authorization and Restriction of Chemical Substances (REACH). Also, manufacturers indicated both the International Electrotechnical Commission (IEC) and the National Electric Manufacturers Association (NEMA) have implemented voluntary standards for small electric motors. Some manufacturers also indicated that the Canadian Standards Association (CSA) would likely to apply the same standards set by DOE in the final rule. In addition to the energy conservation standards on small electric motor products, several other DOE regulations and pending regulations apply to other products produced by the same manufacturers. DOE recognizes that each regulation has the potential to impact manufacturers' financial operations. For a detail explanation and results for the cumulative regulatory burden, see chapter 12 of the TSD.

3. National Impact Analysis

Examining the national impact of small electric motor standards required DOE to assess a variety of factors. DOE needed to assess the significance of the projected amount of energy savings flowing from an energy conservation standard for small electric motors. It

also had to ascertain the cumulative benefits and costs that a standard would be likely to bring. Finally, DOE analyzed the projected employment impacts resulting from a standard.

a. Significance of Energy Savings

To estimate the energy savings due to revised and new energy efficiency standards, DOE compared the energy consumption of small electric motors under the base case to energy consumption of these products under the trial standard levels. As described in section IV.G, DOE used scaling relations for energy use and equipment price to extend its average energy use and price for representative product classes (analyzed in the LCC analysis) to all product classes, and then developed shipment-weighted sums to estimate the national energy savings. As described in section IV.G, DOE conducted separate national impact analyses for polyphase and capacitor-start (single-phase) motors. Standards for CSIR and CSCR motors are reflected in the capacitor-start energy savings and NPV results, which account for the interchangeability of CSIR and CSCR motors in many applications.

Table V.22 through Table V.23 show the forecasted national energy savings through 2045 at each of the TSLs. The tables also show the magnitude of the energy savings if the savings are discounted at rates of 7 and 3-percent. Discounted energy savings represent a policy perspective where energy savings farther in the future are less significant than energy savings closer to the present. The energy savings (undiscounted) due to possible standards for polyphase small electric motors range from 0.04 to 0.41 quads, and the savings for capacitor-start small electric motors range from 1.08 to 2.51 quads. Capacitor-start results are presented as a range of values between DOE's two reference scenarios, which correspond to 1) market share shifts in response to standards complete by 2015 and 2) market shares in 2015 equal to DOE's estimated market shares in 2009, and a shift over 10 years to the shares forecast by DOE's cross-elasticity model.

Table V.22 Summary of Cumulative National Energy Savings for Polyphase Small Electric Motors (Energy Savings between 2015 and 2045)

Trial Standard Level	National Energy Savings (quads)		
	Not Discounted	Discounted at 3%	Discounted at 7%
1	0.04	0.02	0.01
2	0.09	0.05	0.02
3	0.18	0.09	0.04
4	0.20	0.10	0.05
5	0.33	0.17	0.08
6	0.36	0.19	0.09
7	0.41	0.21	0.10

Table V.23 Summary of Cumulative National Energy Savings for Capacitor-Start Small Electric Motors (Energy Savings between 2015 and 2045)

Trial Standard Level	National Energy Savings quads		
	Not Discounted	Discounted at 3%	Discounted at 7%
1	1.08	0.56 – 0.57	0.26 – 0.27
2	1.10	0.57	0.27
3	1.28 – 1.29	0.67	0.32
4	1.53	0.80	0.37
5	1.53	0.80	0.37 – 0.38
6	1.91 – 1.92	1.00	0.47
7	2.10 – 2.13	1.09 – 1.11	0.51 – 0.52
8	2.51 – 2.61	1.29 – 1.37	0.59 – 0.64

DOE conducted a wide range of sensitivity analyses, including scenarios demonstrating the effects of variation in shipments, response of customers to higher motor prices, the cost of electricity due to a carbon cap and trade regime, reactive power costs, and (for capacitor-start motors) the dynamics of CSIR/CSCR consumer choice. These scenarios show a range of possible outcomes from projected energy conservation standards, and illustrate the sensitivity of these results to different input and modeling

assumptions. In general, however, they do not dramatically change the relationship between results at one TSL with those at another TSL with the relative economic savings and energy savings of different TSLs remaining roughly the same. The estimated overall magnitude of savings, however, can change substantially, which can be due to a change in the estimated total number of small electric motors in use. Details of each scenario are available in chapter 10 of the TSD and its appendices, along with the national

energy savings estimated for each scenario.

For the shipments sensitivity analysis, DOE analyzed the total energy savings from capacitor-start motors in “low CSCR” and “high CSCR” scenarios, which model different market barriers to adoption of CSCR motors. These scenarios can have a significant impact on the relative energy savings in different TSLs. Table V.24 shows the results for the national energy savings (through 2045) in these scenarios.

Table V.24 Undiscounted Cumulative National Energy Savings for Capacitor-Start Small Electric Motors Under Different CSIR/CSCR Market Share Scenarios (Energy Savings between 2015 and 2045)

Trial Standard Level	National Energy Savings quads		
	Low CSCR Scenario	Reference Scenario	High CSCR Scenario
1	1.05 – 1.06	1.08	1.30 – 1.33
2	1.05 – 1.06	1.10	1.40 – 1.45
3	1.25 – 1.26	1.28 – 1.29	1.51 – 1.54
4	1.47 – 1.48	1.53	1.77 – 1.82
5	1.47 – 1.48	1.53	1.76 – 1.80
6	1.91 – 1.92	1.91 – 1.92	1.91 – 1.92
7	2.09 – 2.12	2.10 – 2.13	2.10 – 2.13
8	2.45 – 2.53	2.51 – 2.61	2.51 – 2.61

b. Net Present Value

The NPV analysis provides a measure of the cumulative benefit or cost to the Nation from customer costs and savings from the proposed standards. In accordance with the Office of Management and Budget (OMB)'s guidelines on regulatory analysis (OMB Circular A-4, section E, September 17, 2003), 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, since recent OMB analysis has found the average rate of return to capital to be near this rate. DOE used the 3-percent rate to capture the potential effects of standards on private consumption (*e.g.*, through higher prices for products and purchase of reduced amounts of energy). This rate represents the rate at which "society" discounts future consumption flows to their present value. This rate can be approximated by the real rate of return on long-term government debt (*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 NPV was calculated using DOE's reference shipments forecast, which is based on the American Recovery and Reinvestment Act scenario of the AEO 2009 forecast. In this scenario, shipments are inelastic with respect to motor price, and DOE used its calibrated reference model for the market dynamics of CSIR and CSCR motors. DOE's reference scenario also includes 100 percent of the cost or benefit from changes in reactive power charges, which are faced either by electricity customers or by utilities (which then include them in electricity rates). Table V.25 and Table V.26 show the estimated NPV at each of the TSLs for polyphase and capacitor-start small electric motors. For polyphase motors, the NPV is positive at TSLs 1 through 5. For capacitor-start motors, NPV is positive at all TSLs except TSL 6. The latter TSL corresponds with max-tech for both CSIR and CSCR motors, which have high installed costs and negative lifecycle cost savings.

DOE notes that across motors, for certain for TSLs, DOE estimates there will be a net national savings or positive NPV from the standard, even though a majority of motor customers may face life-cycle cost increases. Life-cycle cost increases result from the large number of small electric motors installed in applications with very low operating hours. The consumers of these motors cannot recuperate the increased equipment costs through decreased electricity costs, thus experiencing life-

cycle cost increases. On the other hand, a substantial minority of motors run at nearly all hours of the day and thus obtain relatively large savings from the standard.

DOE's National Impacts Analysis (NIA) estimates positive NPV based on several assumptions. First, DOE assumes a higher replacement rate for the substantial minority of high operating hour motors installed in certain applications. Second, based on EIA's AEO forecast, DOE assumes that electricity prices in the year 2015 will be significantly lower than those later in the analysis period. Because the NIA takes into account purchases beyond the year 2015 (in which consumers obtain larger electricity cost savings), the overall national savings from the standard exceed the life-cycle cost increases calculated. Third, DOE accounts for reactive power differently in the customer life-cycle cost and NIA models. In life-cycle cost, 25 percent of customers were assumed to face a direct cost due to reactive power (a percentage consistent with national data for commercial and industrial customers). By contrast, the NIA analysis includes 100 percent of the cost of reactive power in order to reflect costs to utilities as well as motor users. DOE seeks comment on its use of these assumptions in reaching a positive NPV where the majority of consumers for certain TSLs face life-cycle cost increases.

Table V.25 Cumulative Net Present Value for Polyphase Small Electric Motors (Impact for Equipment Sold from 2015 to 2045)

Trial Standard Level	Net Present Value billion 2008\$	
	7% Discount Rate	3% Discount Rate
1	0.05	0.15
2	0.18	0.48
3	0.39	1.01
4	0.40	1.07
5	0.06	0.56
6	-0.29	-0.09
7	-6.38	-12.21

Table V.26 Cumulative Net Present Value for Capacitor-Start Small Electric Motors (Impact for Equipment Sold from 2015 to 2045)

Trial Standard Level	Net Present Value billion 2008\$	
	7% Discount Rate	3% Discount Rate
1	2.66 – 2.69	6.47 – 6.52
2	2.72 – 2.75	6.62 – 6.66
3	2.90 – 2.93	7.24 – 7.28
4	2.15 – 2.18	6.00 – 6.05
5	2.27 – 2.34	6.28 – 6.38
6	-12.40 – -12.28	-22.62 – -22.47
7	1.47 – 5.67	7.75 – 13.59
8	0.29 – 4.09	5.51 – 10.84

As discussed above, DOE conducted a wide range of sensitivity analyses, which can have a significant impact on the relative net present value of different trial standard levels. For the

shipments sensitivity analysis, DOE analyzed the NPV from capacitor-start motor standards in the “low CSCR” and “high CSCR” scenarios, which model different market barriers to adoption of

CSCR motors. Table V.27 and Table V.28 show the NPV results in these scenarios.

Table V.27 Cumulative Net Present Value for Capacitor-Start Small Electric Motors, Low Capacitor-Start, Capacitor-Run Scenario (Impact for Equipment Sold from 2015 to 2045)

Trial Standard Level	Net Present Value billion 2008\$	
	7% Discount Rate	3% Discount Rate
1	2.53 – 2.59	6.18 – 6.28
2	2.55 – 2.61	6.23 – 6.33
3	2.75 – 2.82	6.91 – 7.01
4	1.76 – 1.83	5.15 – 5.26
5	1.79 – 1.86	5.23 – 5.32
6	-12.40 – -12.12	-22.62 – -22.47
7	0.88 – 4.88	6.44 – 12.00
8	-0.86 – 2.56	2.93 – 7.73

Table V.28 Cumulative Net Present Value for Capacitor-Start Small Electric Motors, High Capacitor-Start, Capacitor-Run Scenario (Impact for Equipment Sold from 2015 to 2045)

Trial Standard Level	Net Present Value billion 2008\$	
	7% Discount Rate	3% Discount Rate
1	3.42 – 3.62	8.35 – 8.66
2	3.67 – 3.93	8.99 – 9.40
3	3.73 – 3.96	9.27 – 9.61
4	3.28 – 3.68	8.69 – 9.28
5	3.56 – 4.05	9.33 – 10.04
6	-12.40 – -12.28	-22.62 – -22.46
7	1.51 – 5.73	7.85 – 13.71
8	0.43 – 4.28	5.82 – 11.22

Future regulation of greenhouse gas emissions would have a significant impact on electricity prices and on the annual operating cost of small electric motors. DOE analyzed the NPV of trial standard levels in such a carbon cap and

trade scenario. Table V.29 and Table V.30 show the NPV results in this scenario. These results show that the significantly higher electricity prices (particularly late in the analysis period) modeled under this scenario would

significantly increase the NPV of each TSL compared with the reference cases. Chapter 10 of the NOPR TSD, along with its appendices, presents NPV results for the other sensitivity analyses that DOE conducted.

Table V.29 Cumulative Net Present Value for Polyphase Small Electric Motors in a Carbon Cap and Trade Scenario (Impact for Equipment Sold from 2015 to 2045)

Trial Standard Level	Net Present Value billion 2008\$	
	7% Discount Rate	3% Discount Rate
1	0.08	0.24
2	0.25	0.70
3	0.54	1.44
4	0.57	1.56
5	0.34	1.36
6	0.02	0.79
7	-6.03	-11.20

Table V.30 Cumulative Net Present Value for Capacitor-Start Small Electric Motors in a Carbon Cap and Trade Scenario (Impact for Equipment Sold from 2015 to 2045)

Trial Standard Level	Net Present Value billion 2008\$	
	7% Discount Rate	3% Discount Rate
1	3.52 – 3.56	8.86 – 8.91
2	3.60 – 3.63	9.05 – 9.09
3	3.97 – 4.01	10.21 – 10.26
4	3.41 – 3.44	9.47 – 9.51
5	3.54 – 3.61	9.76 – 9.87
6	-10.82 – -10.71	-18.28 – -18.14
7	3.13 – 7.35	12.34 – 18.20
8	2.23 – 6.08	10.92 – 16.33

c. Impacts on Employment

In accordance with the Process Rule, section 4(d)(7)(vi), DOE estimated the employment impacts of proposed standards on the economy in general. See 10 CFR part 430, subpart C, appendix A. As discussed above, DOE expects energy conservation standards for small electric motors to reduce energy bills for customers, with the resulting net savings redirected to other

forms of economic activity. These shifts in spending and economic activity could affect the demand for labor. To estimate these effects, DOE used an input/output model of the U.S. economy (as described in section, IV.J). As shown in Table V.31 and Table V.32, both of which are detailed in chapter 14 of the TSD, DOE estimates that net indirect employment impacts from the proposed standards are positive.

Neither the BLS data set nor the input/output model DOE uses includes the quality or wage level of the jobs. Taking into consideration these concerns about employment impacts, DOE concludes that the proposed small electric motors standards are likely to result in no appreciable job losses to the Nation because direct employment impacts are expected to be small, while indirect employment impacts are positive.

Table V.31 Net Increase in National Indirect Employment Under Polyphase Small Electric Motor Trial Standards Levels

Trial Standard Level	2015 thousands	2020 thousands	2030 thousands	2045 thousands
1	0.056	0.138	0.224	0.289
2	0.102	0.291	0.494	0.638
3	0.180	0.551	0.946	1.221
4	0.221	0.642	1.091	1.407
5	0.651	1.373	2.149	2.742
6	0.888	1.697	2.573	3.264
7	3.870	5.093	6.497	7.984

Table V.32 Net Increase in National Indirect Employment Under Capacitor-Start Small Electric Motor Trial Standards Levels

Trial Standard Level	2015 thousands	2020 thousands	2030 thousands	2045 thousands
1	0.99	3.49	5.13 – 5.21	6.63 – 6.74
2	1.00	3.54	5.20 – 5.29	6.73 – 6.85
3	1.41 – 1.42	4.51 – 4.53	6.59 – 6.68	8.50 – 8.64
4	2.24 – 2.27	5.88 – 5.94	8.41 – 8.55	10.80 – 10.97
5	2.18 – 2.25	5.83 – 5.89	8.37 – 8.50	10.75 – 10.92
6	10.02 – 10.05	15.25 – 15.38	19.20 – 19.64	23.87 – 24.42
7	1.66 – 8.41	6.48 – 9.48	9.52 – 9.78	12.36 – 12.69
8	3.27 – 8.66	9.16 – 10.92	12.98 – 13.28	16.74 – 17.07

4. Impact on Utility or Performance of Products

As presented in section III.D.1.d of this notice, DOE concluded that none of the efficiency levels considered in this notice reduces the utility or performance of the small electric motors under consideration in this rulemaking. Furthermore, manufacturers of these products currently offer small electric motors that meet or exceed the proposed standards or are capable of manufacturing motors that meet or exceed the proposed standards. (See 42 U.S.C. 6295(o)(2)(B)(i)(IV))

5. Impact of Any Lessening of Competition

DOE considers any lessening of competition likely to result from standards. The Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits

such determination to the Secretary, together with an analysis of the nature and extent of such impact. (See 42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii))

To assist the Attorney General in making such a determination, DOE has provided the U.S. Department of Justice (DOJ) with copies of this notice and the TSD for review. DOE will consider DOJ's comments on the proposed rule in preparing the final rule.

6. Need of the Nation To Conserve Energy

An improvement in the energy efficiency of small electric motors is likely to improve the security of the Nation's energy system by reducing overall demand for energy. Reduced electricity demand also may improve the reliability of the electricity system. As a measure of this reduced demand, DOE expects the proposed standard to eliminate the need for the construction of approximately 2.45 GW of generating

capacity and, in 2030, to save an amount of electricity greater than that generated by nine 250 megawatt power plants.

Enhanced energy efficiency also produces environmental benefits. The expected energy savings from the proposed small electric motors standards will reduce the emissions of air pollutants and greenhouse gases associated with electricity production. Table V.33 and Table V.34 show the cumulative CO₂, NO_x, and Hg emissions reductions over the analysis period at each TSL. The cumulative CO₂, NO_x, and Hg emissions reductions from polyphase motors range up to 23.8 Mt, 17.1 kt, and 0.13 tons, respectively, and up to 127.0 Mt, 91.2 kt, and 0.53 tons, respectively, from single-phase motors. DOE reports annual CO₂, NO_x, and Hg emissions reductions for each trial standard level in the environmental assessment, chapter 15 of the TSD.

Table V.33 Polyphase Small Electric Motors: Cumulative CO₂ and Other Emissions Reductions (Cumulative Reductions for Products Sold from 2015 to 2045)

Trial Standard Level	Emissions Reductions		
	CO ₂ Mt	NO _x kt	Hg tons
1	2.2	1.6	0.012
2	5.2	3.7	0.028
3	9.7	6.9	0.053
4	11.1	8.0	0.061
5	18.6	13.3	0.102
6	20.5	14.7	0.112
7	23.8	17.1	0.130

Table V.34 Capacitor-Start Small Electric Motors: Cumulative CO₂ and Other Emissions Reductions (Cumulative Reductions for Products Sold from 2015 to 2045)

Trial Standard Level	Emissions Reductions		
	CO ₂ Mt	NO _x kt	Hg tons
1	57.0 – 58.1	40.9 – 41.7	0.237 – 0.242
2	57.9 – 59.1	41.6 – 42.5	0.241 – 0.247
3	73.8 – 75.2	53.0 – 54.0	0.307 – 0.314
4	84.6 – 86.4	60.8 – 62.0	0.352 – 0.360
5	85.3 – 87.1	61.2 – 62.6	0.355 – 0.363
6	105.8 – 107.5	76.0 – 77.2	0.438 – 0.448
7	106.2 – 110.0	76.3 – 79.0	0.448 – 0.459
8	122.6 – 127.0	88.2 – 91.2	0.518 – 0.529

DOE estimated the cumulative NPV of the monetized benefits associated with CO₂, NO_x, and Hg emissions reductions resulting from amended standards on small electric motors. As discussed in section IV.L, DOE estimated the potential global benefits resulting from

reduced CO₂ emissions valued at approximately \$5, \$10, \$20, \$34, and \$56 (2008\$), and has also presented the domestic benefits derived using a value of approximately \$1 per metric ton. DOE calculated the present value for each TSL using both a 7-percent and 3-

percent discount rate for each emission type so that they can be compared directly to other economic quantities that DOE calculated for this proposed rule (Table V.35 through Table V.42).

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Table V.35 Estimates of Value of Savings from CO₂ Emissions Reductions at All TSLs and CO₂ Prices at a 7-percent Discount Rate for Polyphase Small Electric Motors

TSL	Estimated Cumulative CO ₂ (MMt) Emission Reductions	Value of Estimated CO ₂ Emission Reductions (million 2008\$)**					
		Domestic Value of \$1/metric ton CO ₂ * \$	Global Value of \$5/metric ton CO ₂ \$	Global Value of \$10/metric ton CO ₂ \$	Global Value of \$20/metric ton CO ₂ \$	Global Value of \$34/metric ton CO ₂ \$	Global Value of \$56/metric ton CO ₂ \$
1	2.2	1.0	4	8	16	28	47
2	5.2	2.2	10	19	37	64	107
3	9.7	4.2	18	36	69	120	201
4	11.1	4.8	21	42	79	138	230
5	18.6	8.0	35	70	133	231	385
6	20.5	8.8	39	77	146	254	424
7	23.8	10.2	45	90	170	296	493

* This value per ton represents the domestic negative externalities of CO₂ only

** Unit values are approximate and based on escalating 2007\$ to 2008\$ for consistency with other values presented in this notice.

Table V.36 Estimates of Value of Savings from CO₂ Emissions Reductions at All TSLs and CO₂ Prices at a 3-percent Discount Rate for Polyphase Small Electric Motors

TSL	Estimated Cumulative CO ₂ (MMt) Emission Reductions	Value of Estimated CO ₂ Emission Reductions (million 2008\$)**					
		Domestic Value of \$1/metric ton CO ₂ * \$	Global Value of \$5/metric ton CO ₂ \$	Global Value of \$10/metric ton CO ₂ \$	Global Value of \$20/metric ton CO ₂ \$	Global Value of \$34/metric ton CO ₂ \$	Global Value of \$56/metric ton CO ₂ \$
1	2.2	2.7	12	24	45	78	131
2	5.2	6.2	27	54	104	180	300
3	9.7	11.6	51	102	194	337	561
4	11.1	13.3	59	117	222	386	644
5	18.6	22.4	98	196	373	647	1079
6	20.5	24.6	108	216	410	712	1186
7	23.8	28.6	125	251	477	828	1380

* This value per ton represents the domestic negative externalities of CO₂ only

** Unit values are approximate and based on escalating 2007\$ to 2008\$ for consistency with other values presented in this notice.

Table V.37 Estimates of Value of Savings from CO₂ Emissions Reductions at All TSLs and CO₂ Prices at a 7-percent Discount Rate for Capacitor-Start Small Electric Motors

TSL	Estimated Cumulative CO ₂ (MMt) Emission Reductions	Value of Estimated CO ₂ Emission Reductions (million 2008\$)**					
		Domestic Value of \$1/metric ton CO ₂ * \$	Global Value of \$5/metric ton CO ₂ \$	Global Value of \$10/metric ton CO ₂ \$	Global Value of \$20/metric ton CO ₂ \$	Global Value of \$34/metric ton CO ₂ \$	Global Value of \$56/metric ton CO ₂ \$
1	57.0 – 58.1	25.2 – 25.7	111 – 113	221 – 226	421 – 429	731 – 745	1218 – 1242
2	57.9 – 59.1	25.6 – 26.2	112 – 115	225 – 230	427 – 437	742 – 759	1237 – 1264
3	73.8 – 75.2	32.7 – 33.3	143 – 146	287 – 292	545 – 556	947 – 965	1578 – 1608
4	84.6 – 86.4	37.5 – 38.3	164 – 168	329 – 336	625 – 638	1086 – 1108	1809 – 1847
5	85.3 – 87.1	37.8 – 38.6	166 – 169	332 – 339	630 – 643	1094 – 1117	1824 – 1862
6	105.8 – 107.5	46.8 – 47.6	205 – 209	411 – 418	781 – 794	1356 – 1379	2260 – 2299
7	106.2 – 110.0	47.1 – 48.7	207 – 214	413 – 428	785 – 812	1363 – 1411	2272 – 2352
8	122.6 – 127.0	54.6 – 56.3	239 – 247	479 – 494	910 – 938	1580 – 1629	2633 – 2715

* This value per ton represents the domestic negative externalities of CO₂ only

** Unit values are approximate and based on escalating 2007\$ to 2008\$ for consistency with other values presented in this notice.

Table V.38 Estimates of Value of Savings from CO₂ Emissions Reductions at All TSLs and CO₂ Prices at a 3-percent Discount Rate for Capacitor-Start Small Electric Motors

TSL	Estimated Cumulative CO ₂ (MMt) Emission Reductions	Value of Estimated CO ₂ Emission Reductions (million 2008\$)**					
		Domestic Value of \$1/metric ton CO ₂ * \$	Global Value of \$5/metric ton CO ₂ \$	Global Value of \$10/metric ton CO ₂ \$	Global Value of \$20/metric ton CO ₂ \$	Global Value of \$34/metric ton CO ₂ \$	Global Value of \$56/metric ton CO ₂ \$
1	57.0 – 58.1	68.5 – 69.7	300 – 306	600 – 612	1,141 – 1,162	1,982 – 2,019	3,303 – 3,365
2	57.9 – 59.1	69.5 – 71.0	305 – 311	610 – 623	1,159 – 1,183	2,013 – 2,054	3,355 – 3,424
3	73.8 – 75.2	88.6 – 90.3	389 – 396	778 – 792	1,477 – 1,505	2,566 – 2,614	4,277 – 4,356
4	84.6 – 86.4	101.6 – 103.7	446 – 455	891 – 909	1,693 – 1,728	2,941 – 3,001	4,901 – 5,001
5	85.3 – 87.1	102.3 – 104.6	449 – 459	898 – 917	1,706 – 1,743	2,963 – 3,027	4,938 – 5,044
6	105.8 – 107.5	127.0 – 129.0	557 – 566	1,114 – 1,132	2,116 – 2,151	3,676 – 3,735	6,126 – 6,226
7	106.2 – 110.0	127.5 – 132.0	559 – 579	1,119 – 1,158	2,126 – 2,200	3,692 – 3,822	6,154 – 6,370
8	122.6 – 127.0	147.1 – 152.4	645 – 669	1,291 – 1,337	2,452 – 2,540	4,259 – 4,412	7,098 – 7,354

* This value per ton represents the domestic negative externalities of CO₂ only

** Unit values are approximate and based on escalating 2007\$ to 2008\$ for consistency with other values presented in this notice.

Table V.39 Estimates of Savings from Reducing NO_x and Hg Emissions at All Trial Standard Levels at a 7-percent Discount Rate for Polyphase Small Electric Motors

TSL	Estimated Cumulative NO _x Emission Reductions kt	Value of Estimated NO _x Emission Reductions million 2008\$	Estimated Cumulative Hg Emission Reductions tons	Value of Estimated Hg Emission Reductions million 2008\$
1	1.6	0.11 – 1.10	0.012	0.00 – 0.10
2	3.7	0.25 – 2.53	0.028	0.01 – 0.24
3	6.9	0.46 – 4.73	0.053	0.01 – 0.45
4	8.0	0.53 – 5.43	0.061	0.01 – 0.51
5	13.3	0.89 – 9.10	0.102	0.02 – 0.86
6	14.7	0.97 – 10.00	0.112	0.02 – 0.95
7	17.1	1.13 – 11.64	0.130	0.03 – 1.10

Table V.40 Estimates of Savings from Reducing NO_x and Hg Emissions at All Trial Standard Levels at a 3-percent Discount Rate for Polyphase Small Electric Motors

TSL	Estimated Cumulative NO _x Emission Reductions <u>kt</u>	Value of Estimated NO _x Emission Reductions <u>million 2008\$</u>	Estimated Cumulative Hg Emission Reductions <u>tons</u>	Value of Estimated Hg Emission Reductions <u>million 2008\$</u>
1	1.6	0.32 – 3.26	0.012	0.01 – 0.22
2	3.7	0.73 – 7.49	0.028	0.01 – 0.50
3	6.9	1.37 – 14.03	0.053	0.02 – 0.94
4	8.0	1.56 – 16.08	0.061	0.03 – 1.08
5	13.3	2.62 – 26.96	0.102	0.04 – 1.80
6	14.7	2.88 – 29.65	0.112	0.05 – 1.98
7	17.1	3.36 – 34.50	0.130	0.05 – 2.31

Table V.41 Estimates of Savings from Reducing NO_x and Hg Emissions at All Trial Standard Levels at a 7-percent Discount Rate for Capacitor-Start Small Electric Motors

TSL	Estimated Cumulative NO _x Emission Reductions <u>kt</u>	Value of Estimated NO _x Emission Reductions <u>million 2008\$</u>	Estimated Cumulative Hg Emission Reductions <u>tons</u>	Value of Estimated Hg Emission Reductions <u>million 2008\$</u>
1	40.9 – 41.7	2.9 – 31.0	0.237 – 0.242	0.085 – 2.35
2	41.6 – 42.5	3.0 – 31.5	0.241 – 0.247	0.087 – 2.39
3	53.0 – 54.0	3.8 – 40.1	0.307 – 0.314	0.110 – 3.04
4	60.8 – 62.0	4.4 – 46.0	0.352 – 0.360	0.126 – 3.49
5	61.2 – 62.6	4.4 – 46.4	0.355 – 0.363	0.128 – 3.52
6	76.0 – 77.2	5.5 – 57.3	0.438 – 0.448	0.157 – 4.35
7	76.3 – 79.0	5.5 – 58.6	0.448 – 0.459	0.161 – 4.45
8	88.2 – 91.2	6.5 – 67.7	0.518 – 0.529	0.186 – 5.14

Table V.42 Estimates of Savings from Reducing NO_x and Hg Emissions at All Trial Standard Levels at a 3-percent Discount Rate for Capacitor-Start Small Electric Motors

TSL	Estimated Cumulative NO _x Emission Reductions <u>kt</u>	Value of Estimated NO _x Emission Reductions <u>million 2008\$</u>	Estimated Cumulative Hg Emission Reductions <u>tons</u>	Value of Estimated Hg Emission Reductions <u>million 2008\$</u>
1	40.9 – 41.7	8.2 – 86.4	0.237 – 0.242	0.101 – 4.58
2	41.6 – 42.5	8.4 – 87.9	0.241 – 0.247	0.103 – 4.66
3	53.0 – 54.0	10.7 – 111.9	0.307 – 0.314	0.131 – 5.92
4	60.8 – 62.0	12.2 – 128.4	0.352 – 0.360	0.151 – 6.80
5	61.2 – 62.6	12.3 – 129.5	0.355 – 0.363	0.152 – 6.86
6	76.0 – 77.2	15.3 – 159.9	0.438 – 0.448	0.188 – 8.47
7	76.3 – 79.0	15.4 – 163.6	0.448 – 0.459	0.192 – 8.66
8	88.2 – 91.2	17.8 – 188.9	0.518 – 0.529	0.222 – 10.0

Table V.43 Estimates of Adding NPV of Customer Savings to NPV of Low- and High-End Global Monetized Benefits from CO₂, NO_x, and Hg Emissions Reductions at All TSLs for Polyphase Small Electric Motors at 3- and 7-Percent Discount Rates

TSL	CO ₂ Value of \$5/metric ton CO ₂ * and Low Values for NO _x and Hg** <u>billion 2008\$</u>		CO ₂ Value of \$56/metric ton CO ₂ * and High Values for NO _x and Hg*** <u>billion 2008\$</u>	
	7-percent discount rate	3-percent discount rate	7-percent discount rate	3-percent discount rate
1	0.05	0.16	0.10	0.28
2	0.19	0.50	0.29	0.78
3	0.41	1.06	0.59	1.59
4	0.42	1.13	0.64	1.73
5	0.10	0.66	0.46	1.67
6	(0.25)	0.02	0.15	1.13
7	(6.34)	(12.08)	(5.88)	(10.79)

* These values per ton represent the global negative externalities of CO₂. The unit values are approximate and based on escalating 2007\$ to 2008\$ for consistency with other values presented in this notice.

** Low Value corresponds to a value of \$442 per ton of NO_x emissions and \$0.745 million per ton of Hg emissions.

*** High Value corresponds to a value of \$4,540 per ton of NO_x emissions and \$33.3 million per ton of Hg emissions.

Table V.44 Estimates of Adding NPV of Customer Savings to NPV of Low- and High-End Global Monetized Benefits from CO₂, NO_x, and Hg Emissions Reductions at All TSLs for Capacitor-Start Small Electric Motors at 3- and 7-Percent Discount Rates

TSL	CO ₂ Value of \$5/metric ton CO ₂ * and Low Values for NO _x and Hg** <u>billion 2008\$</u>		CO ₂ Value of \$56/metric ton CO ₂ * and High Values for NO _x and Hg*** <u>billion 2008\$</u>	
	7-percent discount rate	3-percent discount rate	7-percent discount rate	3-percent discount rate
1	2.77-2.81	6.79-6.84	3.93-3.97	9.93-9.98
2	2.84-2.86	6.94-6.98	4.02-4.04	10.14-10.18
3	3.05-3.08	7.64-7.69	4.55-4.58	11.71-11.76
4	2.32-2.35	6.47-6.51	4.04-4.08	11.14-11.18
5	2.45-2.52	6.75-6.85	4.18-4.25	11.46-11.56
6	(12.18)-(12.07)	(22.04)-(21.88)	(10.4)-(9.92)	(16.22)-(16.07)
7	1.68-5.89	8.34-14.18	3.88-8.09	14.29-20.13
8	0.54-4.35	6.19-11.53	3.07-6.88	13.06-18.40

* These values per ton represent the global negative externalities of CO₂. The unit values are approximate and based on escalating 2007\$ to 2008\$ for consistency with other values presented in this notice.

** Low Value corresponds to a value of \$442 per ton of NO_x emissions and \$0.745 million per ton of Hg emissions.

*** High Value corresponds to a value of \$4,540 per ton of NO_x emissions and \$33.3 million per ton of Hg emissions.

Table V.45 Estimates of Adding NPV of Customer Savings to NPV of Low- and High-End Monetized Benefits from CO₂ Emissions Reductions at All TSLs for Polyphase Small Electric Motors at 3- and 7-Percent Discount Rates

TSL	CO ₂ Value of \$5/metric ton CO ₂ * billion 2008\$		CO ₂ Value of \$56/metric ton CO ₂ * billion 2008\$	
	7-percent discount rate	3-percent discount rate	7-percent discount rate	3-percent discount rate
1	0.05	0.16	0.10	0.28
2	0.19	0.50	0.28	0.78
3	0.41	1.06	0.59	1.57
4	0.42	1.13	0.63	1.72
5	0.09	0.66	0.45	1.64
6	(0.25)	0.02	0.14	1.10
7	(6.34)	(12.09)	(5.89)	(10.83)

* These values per ton represent the global negative externalities of CO₂.

Table V.46 Estimates of Adding NPV of Customer Savings to NPV of Low- and High-End Monetized Benefits from CO₂ Emissions Reductions at All TSLs for Capacitor-Start Small Electric Motors at 3- and 7-Percent Discount Rates

TSL	CO ₂ Value of \$5/metric ton CO ₂ * billion 2008\$		CO ₂ Value of \$56/metric ton CO ₂ * billion 2008\$	
	7-percent discount rate	3-percent discount rate	7-percent discount rate	3-percent discount rate
1	2.77-2.80	6.78-6.83	3.90-3.93	9.84-9.89
2	2.84-2.86	6.93-6.97	3.99-4.01	10.05-10.08
3	3.04-3.07	7.63-7.68	4.51-4.54	11.59-11.64
4	2.32-2.35	6.45-6.50	4.00-4.03	11.00-11.05
5	2.44-2.51	6.74-6.84	4.13-4.20	11.32-11.42
6	(12.19)-(12.07)	(22.05)-(21.90)	(10.10)-(9.98)	(16.39)-(16.24)
7	1.68-5.89	8.32-14.17	3.82-8.02	14.11-19.96
8	0.53-4.34	6.18-11.51	3.00-6.81	12.86-18.20

* These values per ton represent the global negative externalities of CO₂.

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V.43 presents the NPV values for polyphase small electric motors that would result if DOE were to apply the low- and high-end estimates of the potential benefits resulting from reduced CO₂, NO_x and Hg emissions to the NPV of consumer savings calculated for each TSL considered in this rulemaking, at both a 7- and 3-percent discount rate. Table V.44 presents the same NPV values for capacitor-start small electric motors. Table V.45 presents the NPV values for polyphase small electric motors that would result if DOE were to apply the low- and high-end estimates of the potential global benefits resulting from reduced CO₂ emissions to the NPV of consumer savings calculated for each TSL considered in this rulemaking, at both a 7- and 3-percent discount rate. Table V.46 presents the same NPV values for capacitor-start small electric motors. For CO₂, only the range of global benefit values are used, \$5 and \$56 in 2008\$.

Although comparing the value of consumer savings to the values of emission reductions provides a valuable perspective, please note the following: (1) The national consumer savings are domestic U.S. consumer monetary savings found in market transactions while the values of emission reductions are based on ranges of estimates of imputed marginal social costs, which, in the case of CO₂, are meant to reflect global benefits; and (2) the assessments of consumer savings and emission-related benefits are performed with different computer models, leading to different time frames for the analyses. The present value of national consumer savings is measured for the period 2015–2065 (31 years from 2015 to 2045 inclusive, plus the longest lifetime of the equipment shipped in the 31st year). However, the timeframes of the benefits associated with the emission reductions differ. For example, the value of CO₂ emission reductions is meant to reflect the present value of all future climate related impacts, even those beyond 2065.

DOE seeks comment on the above presentation of NPV values and on the consideration of GHG emissions in future energy efficiency standards rulemakings, including alternative methodological approaches to including GHG emissions in its analysis. More specifically, DOE seeks comment on both how it integrates monetized GHG emissions or Social Cost of Carbon values, as well as other monetized

benefits or costs, into its analysis and models, and also on suggested alternatives to the current approach.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (See 42 U.S.C. 6295(o)(2)(B)(i)(VI)) The Secretary has decided that harmonization with medium motors was another relevant factor to consider.

California utilities expressed concern in their joint comments over the possible differences in energy efficiency standards between medium electric motors and small electric motors. They believe that if a significantly lower efficiency standard is set for those small electric motors that share overlapping horsepower ratings with medium motors, the medium motor standard would be rendered meaningless, since there would be a risk that demand would shift toward using less efficient (and presumably cheaper) small electric motors instead. The utilities recommended that the new energy efficiency standards for small electric motors be comparable to the medium motor standards in order to avoid “gaming of the regulatory system.” (Joint Comment, No. 12 at p. 3)

DOE appreciates this comment and considered it when proposing new standards for small electric motors in this notice. Although harmonization is not a specifically enumerated factor that DOE must consider under EPCA, it was an additional factor considered as permitted by the statute. DOE agrees with the California utilities and recognizes that the harmonization of polyphase small electric motors with medium electric motors is an added benefit of the proposed standard level.

C. Proposed Standard

EPCA 42 U.S.C. 6295(o)(2)(A), specifies that any new or amended energy conservation standard for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also “result in significant conservation of energy.” (42 U.S.C. 6295(o)(3)(B))

DOE developed TSLs independently for polyphase and capacitor-start small

electric motors. For the capacitor-start motor categories, DOE developed TSLs as a combination of CSIR and CSCR efficiency levels. DOE combined CSCR and CSIR motors into a single set of TSLs because motors in these categories may be used interchangeably in most applications. As a result of this interchangeability, the standard level for CSIR motors affects the demand for CSCR motors, and vice versa. DOE considered 7 TSLs for polyphase motors and 8 TSLs for capacitor start motors.

In selecting the proposed energy conservation standards for both classes of small electric motors for consideration in today’s notice of proposed rulemaking, DOE started by examining the standard levels with the highest energy savings, and determined whether those levels were economically justified. If DOE found those levels not to be justified, DOE considered TSLs sequentially lower in energy savings until it reached the level with the greatest energy savings that was both technologically feasible and economically justified. For polyphase small electric motors, the standard level with the highest energy savings corresponded to the max-tech level. However, due to the interaction of the CSIR and CSCR markets and the efficiency differences between the two products, the highest energy savings level for capacitor-start motors does not necessarily correspond to the “max-tech” level. With certain combinations of efficiency levels (or TSLs) for the two motor categories it becomes economically beneficial to purchase a CSCR motor instead of a CSIR motor. This migration can cause the energy savings for these TSLs to be higher than the TSLs corresponding to “max-tech” for both motor categories.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, Table V.47, Table V.48 and Table V.49, collectively, present summaries of quantitative analysis results for each TSL for polyphase and capacitor-start small electric motors, based on the assumptions and methodology discussed above. These tables present the results or, in some cases, a range of results, for each TSL. The range of values reported in these tables for industry impacts represents the results for the different markup scenarios that DOE used to estimate manufacturer impacts as shown in section IV.I. Additional quantitative results, including the expected migration of shipments between CSIR and CSCR motors, are provided in section IV.G.

In addition to the quantitative results, DOE also considers other burdens and benefits that affect economic

justification. These include pending standards for medium motors as a result of EISA 2007.

1. Polyphase Small Electric Motors

Table V.47 presents a summary of the quantitative analysis results for each TSL for polyphase small electric motors.

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Table V.47 Summary of Polyphase Small Electric Motors Analytical Results*

Criteria	Trial Standard Level						
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
Primary Energy Savings (quads)	0.04	0.09	0.18	0.20	0.33	0.36	0.41
@ 7% Discount Rate	0.01	0.02	0.04	0.05	0.08	0.09	0.10
@ 3% Discount Rate	0.02	0.05	0.09	0.10	0.17	0.19	0.21
Generation Capacity Reduction (GW)	0.04	0.10	0.19	0.22	0.37	0.41	0.48
NPV (2008\$ billions)							
@ 7% discount	0.05	0.18	0.39	0.40	0.06	(0.29)	(6.38)
@ 3% discount	0.15	0.48	1.01	1.07	0.56	(0.09)	(12.21)
Industry Impacts	(1.14)-	(1.56)-	(2.01)-	(2.39)-	(8.83)-	(13.1)-	(59.7)-
Change in INPV (2008\$ millions)	0.52	1.11	1.83	2.41	10.9	15.9	149
Change in INPV (%)	(1.78)-	(2.42)-	(3.14)-	(3.73)-	(13.8)-	(20.4)-	(93.1)-
	0.80	1.74	2.86	3.76	16.9	24.8	133
Cumulative Emission Reduction							
CO ₂ (Mt)	2.2	5.2	9.7	11.1	18.6	20.5	23.8
Value of CO ₂ reductions at 7% discount rate (2008\$ millions)**	4-47	10-107	18-201	21-230	35-385	39-424	45-493
Value of CO ₂ reductions at 3% discount rate (2008\$ millions)**	12-131	27-300	51-561	59-644	98-1079	108-1186	125-1380
NO _x (kt)	1.6	3.7	6.9	8.0	13.3	14.7	17.1
Value of NO _x reductions at 7% discount rate (2008\$ millions)	0.11 -	0.25 -	0.46 -	0.53 -	0.89 -	0.97 -	1.13 -
Value of NO _x reductions at 3% discount rate (2008\$ millions)	1.10	2.53	4.73	5.43	9.10	10.00	11.64
Hg (t)	0.012	0.028	0.053	0.061	0.102	0.112	0.130
Value of Hg reductions at 7% discount rate (2008\$ millions)	0 - 0.10	0 - 0.24	0 - 0.45	0 - 0.51	0 - 0.86	0 - 0.95	0 - 1.10
Value of Hg reductions at 3% discount rate (2008\$ millions)	0 - 0.22	0 - 0.50	0 - 0.94	0 - 1.08	0 - 1.80	0 - 1.98	0 - 2.31
Life-cycle Cost of Rep. Product Class							
Customers with increase in LCC (%)	62.0	48.9	45.1	48.0	70.5	82.0	98.1
Customers with savings in LCC (%)	38.0	51.1	54.9	52.0	29.5	18.0	1.9
Mean LCC (2008\$)	1,274	1,265	1,253	1,255	1,312	1,358	2,089
Mean LCC Savings (2008\$)	0	9	21	19	(38)	(85)	(818)
Life-cycle Cost of all Product Classes in 2030 Weighted by Shipments							
Customers with > 2% LCC increase (%)	2.6	12.6	17.5	24.2	54.5	67.0	93.5
Customers with < 2% LCC change (%)	97.3	68.5	36.6	31.6	16.5	13.9	4.1
Customers with > 2% LCC savings (%)	0.1	18.9	45.8	44.3	29.2	19.1	2.4
Mean LCC	1,479	1,466	1,445	1,445	1,493	1,537	2,261
Mean LCC Savings (2008\$)	3	17	38	38	(10)	(54)	(778)
Payback Period (years)							
Average	33.7	23.1	20.4	22.4	48.2	62.4	263.1
Median	10.6	7.2	6.3	7.0	13.8	18.9	55.1
Employment Impact							
Indirect Impacts (2045) (jobs, '000)	0.29	0.64	1.22	1.41	2.74	3.26	7.98

* Parentheses indicate negative (-) values. For LCCs, a negative value means an increase in LCC by the amount indicated.

** Global values based on SCC estimates (in 2008\$) of \$5 to \$56 per ton of CO₂ equivalent emitted (or avoided) in 2007.

First, DOE considered TSL 7, the most efficient level for polyphase small electric motors. TSL 7 would save an estimated 0.41 quads of energy through 2045, an amount DOE considers significant. Discounted at 7-percent, the projected energy savings through 2045 would be 0.10 quads. For the Nation as a whole, DOE projects that TSL 7 would result in a net decrease of \$6.38 billion in NPV, using a discount rate of 7-percent. The emissions reductions at TSL 7 are 23.8 Mt of CO₂, up to 17.1 kt of NO_x, and up to 0.130 tons of Hg. These reductions have a value of up to \$493 million for CO₂, \$11.6 million for NO_x, and \$1.102 million for Hg, at a discount rate of 7-percent. At a \$20 per ton value for the social cost of carbon, the estimated monetized benefit of CO₂ emissions reductions is \$170 million at a discount rate of 7-percent. DOE also estimates that at TSL 7, total electric generating capacity in 2030 will decrease compared to the base case by 0.48 GW.

At TSL 7, DOE projects that the average polyphase small electric motor customer purchasing equipment in 2015 will experience an increase in LCC of \$818 compared to the baseline. DOE estimates the fraction of customers experiencing LCC increases will be 98.1 percent. The median PBP for the average polyphase small electric motor customer at TSL 7, 55.1 years, is projected to be substantially longer than the mean lifetime of the equipment. When all polyphase product classes are considered and weighted by shipments, DOE estimates that small electric motor customers experience slightly lower increases in LCC of \$778.

The projected change in industry value ranges from a decrease of \$59.7 million to an increase of \$149 million. The impacts are driven primarily by the assumptions regarding the ability to pass on larger increases in MPCs to the customer. At TSL 7, DOE recognizes the risk of very large negative impacts if manufacturers' expectations about reduced profit margins are realized. In particular, if the high end of the range of impacts is reached as DOE expects, TSL 7 could result in a net loss of 93.1 percent in INPV to the polyphase small motor industry. DOE believes manufacturers would likely have a more difficult time maintaining current gross margin levels with larger increases in manufacturing production costs, as standards increase the need for capital conversion costs, equipment retooling, and increased research and development spending. Specifically, at this TSL, the majority of manufacturers would need to significantly redesign all of their polyphase small electric motors.

After carefully considering the analysis and weighing the benefits and burdens of TSL 7, the Secretary has reached the following initial conclusion: At TSL 7, the benefits of energy savings, emissions reductions (both in physical reductions and the monetized value of those reductions), would be outweighed by the economic burden of a net cost to the Nation (over 30 years), the economic burden to customers (as indicated by the large increase in life-cycle cost) and the potentially large reduction in INPV for manufacturers resulting from large conversion costs and reduced gross margins. Consequently, the Secretary has tentatively concluded that trial standard level 7 is not economically justified.

DOE then considered TSL 6, which would likely save an estimated 0.36 quads of energy through 2045, an amount DOE considers significant. Discounted at 7-percent, the projected energy savings through 2045 would be 0.09 quads. For the Nation as a whole, DOE projects that TSL 6 would result in a net decrease of \$290 million in NPV, using a discount rate of 7-percent. The estimated emissions reductions at TSL 6 are 20.5 Mt of CO₂, up to 14.7 kt of NO_x, and up to 0.112 tons of Hg. These reductions have a value of up to \$424 million for CO₂, \$10.0 million for NO_x, and \$0.947 for Hg, at a discount rate of 7-percent. At a \$20 per ton value for the social cost of carbon, the estimated monetized benefit of CO₂ emissions reductions is \$146 million at a discount rate of 7-percent. Total electric generating capacity in 2030 is estimated to decrease compared to the base case by 0.41 GW under TSL 6.

At TSL 6, DOE projects that the average polyphase small electric motor customer purchasing equipment in 2015 will experience an increase in LCC of \$85 compared to the baseline. DOE estimates the fraction of customers experiencing LCC increases will be 82 percent. The median PBP for the average polyphase small electric motor customer at TSL 6, 18.9 years, is projected to be substantially longer than the mean lifetime of the equipment. When all polyphase product classes are considered and weighted by shipments, DOE estimates that small electric motor customers experience slightly lower increases in LCC of \$54.

The projected change in industry value ranges from a decrease of \$13.1 million to an increase of \$15.9 million. The impacts are driven primarily by the assumptions regarding the ability to pass on larger increases in MPCs to the customer. At TSL 6, DOE recognizes the risk of very large negative impacts if manufacturers' expectations about

reduced profit margins are realized. In particular, if the high end of the range of impacts is reached as DOE expects, TSL 6 could result in a net loss of 20.4 percent in INPV to the polyphase small motor industry. DOE believes manufacturers would likely have a more difficult time maintaining current gross margin levels with larger increases in manufacturing production costs, as standards increase the need for capital conversion costs, equipment retooling, and increased research and development spending. Specifically, at this TSL, the majority of manufacturers would need to significantly redesign all of their polyphase small electric motors.

After carefully considering the analysis and weighing the benefits and burdens of TSL 6, the Secretary has reached the following initial conclusion: At TSL 6, the benefits of energy savings, emissions reductions (both in physical reductions and the monetized value of those reductions), would be outweighed by the economic burden of a net cost to the Nation (over 30 years), the economic burden to consumers (as indicated by the increased life-cycle cost), and the potential reduction in INPV for manufacturers resulting from large conversion costs and reduced gross margins. Consequently, the Secretary has tentatively concluded that trial standard level 6 is not economically justified.

DOE then considered TSL 5, which provides for polyphase small electric motors the maximum efficiency level that the analysis showed to have positive NPV for the Nation. TSL 5 would likely save an estimated 0.33 quads of energy through 2045, an amount DOE considers significant. Discounted at 7-percent, the projected energy savings through 2045 would be 0.08 quads. For the Nation as a whole, DOE projects that TSL 5 would result in a net increase of \$60 million in NPV, using a discount rate of 7-percent. The estimated emissions reductions at TSL 5 are 18.6 Mt of CO₂, up to 13.3 kt of NO_x, and up to 0.102 tons of Hg. These reductions have a value of up to \$385 million for CO₂, \$9.1 million for NO_x, and \$0.861 million for Hg, at a discount rate of 7-percent. At a \$20 per ton value for the social cost of carbon, the estimated benefits of CO₂ emissions reductions is \$133 million at a discount rate of 7-percent. Total electric generating capacity in 2030 is estimated to decrease compared to the base case by 0.37 GW under TSL 5.

At TSL 5, DOE projects that the average polyphase small electric motor customer purchasing the equipment in 2015 will experience an increase in LCC of \$38 compared to the baseline

representative unit for analysis (1 hp, 4 pole polyphase motor). This corresponds to approximately a 2.9 percent increase in average LCC. Based on this analysis, DOE estimates that approximately 71 percent of customers would experience LCC increases and that the median PBP would be 13.8 years, which is longer than the mean lifetime of the equipment. However, in consideration of the relatively small percentage increase in LCC at TSL 5, DOE examined sensitivity analyses to assess the likelihood of consumers in fact experiencing significant LCC increases. These included calculating a shipment-weighted LCC savings and examining the impacts on consumers who purchase motors after the year 2015.

At TSL 5, when accounting for the full-range of horsepower and pole configurations of polyphase motors, the average LCC increase is reduced to \$10. This corresponds to approximately 54.5 percent of customers experiencing greater than 2-percent increases. The remaining 44 percent of customers, those with greater operating hours, experience either very small losses (less than 2-percent) or net savings.

The projected change in industry value ranges from a decrease of \$8.83 million to an increase of \$10.9 million.

The impacts are driven primarily by the assumptions regarding the ability to pass on larger increases in MPCs to the customer. At TSL 5, DOE recognizes the risk of negative impacts if manufacturers' expectations about reduced profit margins are realized. If the high end of the range of impacts is reached, TSL 5 could result in a net loss of 13.8 percent in INPV to the polyphase small motor industry.

Trial standard level 5 has other advantages that are not directly economic. This level is approximately harmonized with the efficiency level for medium motors to be implemented in 2010 which requires four-pole, 1 hp polyphase motors to be at least 85.5% efficient. Since many—but not all—three digit frame size polyphase motors of this size can also be used in two-digit frames with minimal adjustment, DOE believes that there is a benefit to harmonizing small polyphase and medium polyphase motor efficiency standards in this size range. In particular, DOE does not believe the design changes necessary for TSL 5 would force all manufacturers to significantly redesign all of their polyphase small electric motors or their production processes. Therefore, DOE believes manufacturers are not at a

significant risk to experience highly negative impacts.

After considering the analysis and the benefits and burdens of trial standard level 5, the Secretary has reached the following tentative conclusion: Trial standard level 5 offers the maximum improvement in energy efficiency that is technologically feasible and economically justified, and will result in significant conservation of energy. The Secretary has reached the initial conclusion that the benefits of energy savings, emissions reductions (both in physical reductions and the monetized value of those reductions), the positive net economic savings and benefits of harmonization with the existing medium polyphase electric motor standards outweigh the potential reduction in INPV for manufacturers and the economic burden on consumers, which is relatively small on average. Therefore, DOE today proposes to adopt the energy conservation standards for polyphase small electric motors at trial standard level 5.

2. Capacitor-Start Small Electric Motors

Table V.48 and Table V.49 present a summary of the quantitative analysis results for each TSL for capacitor-start small electric motors.

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Table V.48 Summary of Capacitor-Start Small Electric Motors Analytical Results, Trial Standards Levels 1 through 3*

Criteria	Trial Standard Level		
	TSL 1	TSL 2	TSL 3
Primary Energy Savings (quads)	1.08	1.10	1.28 – 1.29
@ 7% Discount Rate	0.26 – 0.27	0.27	0.32
@ 3% Discount Rate	0.56 – 0.57	0.57	0.67
Generation Capacity Reduction (GW)	1.10 – 1.12	1.11 – 1.14	1.42 – 1.45
NPV (2008\$ billions)			
@ 7% discount	2.66 – 2.69	2.72 – 2.75	2.90 – 2.93
@ 3% discount	6.47 – 6.52	6.62 – 6.66	7.24 – 7.28
Industry Impacts			
Change in INPV (2008\$ millions)	(14.87) – 11.21	(15.64) – 12.22	(22.87) – 18.03
Change in INPV (%)	(5.33) – 4.02	(5.61) – 4.38	(8.20) – 6.47
Cumulative Emission Reduction			
CO ₂ (Mt)	57.0 – 58.1	57.9 – 59.1	73.8 – 75.2
Value of CO ₂ reductions at 7% discount rate (2008\$ millions)**	111 – 1,242	112 – 1,264	143 – 1,608
Value of CO ₂ reductions at 3% discount rate (2008\$ millions)**	300 – 3,365	305 – 3,424	389 – 4,356
NO _x (kt)	40.9 – 41.7	41.6 – 42.5	53.0 – 54.0
Value of NO _x reductions at 7% discount rate (2008\$ millions)	2.9 – 31.0	3.0 – 31.5	3.8 – 40.1
Value of NO _x reductions at 3% discount rate (2008\$ millions)	8.2 – 86.4	8.4 – 87.9	10.7 – 111.9
Hg (t)	0.242	0.247	0.314
Value of Hg reductions at 7% discount rate (2008\$ millions)	0 – 2.35	0 – 2.39	0 – 3.04
Value of Hg reductions at 3% discount rate (2008\$ millions)	0 – 4.58	0 – 4.66	0 – 5.92
Life-cycle Cost			
CSIR			
Customers with increase in LCC (%)	33.7	33.7	39.7
Customers with savings in LCC (%)	66.3	66.3	60.3
Mean LCC Savings (2008\$)	55	55	54
CSCR			
Customers with increase in LCC (%)	45.8	46.3	46.3
Customers with savings in LCC (%)	54.2	53.7	53.7
Mean LCC Savings (2008\$)	23	28	28
Life-cycle Cost of All Product classes in 2030 Weighted by Shipments			
CSIR			
Customers with > 2% LCC increase (%)	0.2	4.3	4.1
Customers with < 2% LCC change (%)	78.2	41.8	29.6
Customers with > 2% LCC savings (%)	21.6	53.9	66.3
Mean LCC	1,031	1,010	987
Mean LCC Savings (2008\$)	13	34	57
CSCR			
Customers with > 2% LCC increase (%)	0.2	14.8	18.7
Customers with < 2% LCC change (%)	50.4	23.7	19.7
Customers with > 2% LCC savings (%)	49.4	61.5	61.7
Mean LCC	1,505	1,466	1,451
Mean LCC Savings (2008\$)	36	75	89
Market Share*** – CSIR (%)	98	97	97 – 98

Payback Period (years)			
CSIR			
Average	11.0	11.0	13.8
Median	3.3	3.3	4.3
CSCR			
Average	17.1	17.4	17.4
Median	5.3	5.4	5.4
Employment Impact			
Indirect Impacts (2045) (jobs, '000)	6.63 – 6.74	6.73 – 6.85	8.50 – 8.64

* Parentheses indicate negative (-) values. For LCCs, a negative value means an increase in LCC by the amount indicated.

** Global values based on SCC estimates (in 2008\$) of \$5 to \$56 per ton of CO₂ equivalent emitted (or avoided) in 2007.

*** Base case market share is 95 percent CSIR and 5 percent CSCR

Table V.49 Summary of Capacitor-Start Small Electric Motors Analytical Results, Trial Standards Levels 4 through 8*

Criteria	Trial Standard Level				
	TSL 4	TSL 5	TSL 6	TSL 7	TSL 8
Primary Energy Savings (quads)	1.53	1.53	1.91 – 1.92	2.10 – 2.13	2.51 – 2.61
@ 7% Discount Rate	0.37	0.37 – 0.38	0.47	0.51 – 0.52	0.59 – 0.64
@ 3% Discount Rate	0.80	0.80	1.00	1.09 – 1.11	1.29 – 1.37
Generation Capacity Reduction (GW)	1.63 – 1.66	1.64 – 1.68	2.04 – 2.07	2.05 – 2.12	2.37 – 2.44
NPV (2008\$ billions)			(12.40) –		
@ 7% discount	2.15 – 2.18	2.27 – 2.34	(12.28)	1.47 – 5.67	0.29 – 4.09
@ 3% discount	6.00 – 6.05	6.28 – 6.38	(22.62) –	7.75 – 13.59	5.51 – 10.84
			(22.47)		
Industry Impacts					
Change in INPV (2008\$ millions)	(31.57)– 31.21	(29.01)– 27.96	(137.5)–187.9	(35.84)–29.80	(53.30)–56.70
Change in INPV (%)	(11.32)– 11.19	(10.41)– 10.03	(49.33)–67.39	(12.86)–10.69	(19.12)–20.34
Cumulative Emission Reduction					
CO ₂ (Mt)	84.6 – 86.4	85.3 – 87.1	105.8 – 107.5	106.2 – 110.0	122.6 – 127.0
Value of CO ₂ reductions at 7% discount rate (2008\$ millions)**	164 – 1,847	166 – 1,862	205 – 2,299	207 – 2,352	239 – 2,715
Value of CO ₂ reductions at 3% discount rate (2008\$ millions)**	446 – 5,001	449 – 5,044	557 – 6,226	559 – 6,370	645 – 7,354
NO _x (kt)	60.8 – 62.0	61.2 – 62.6	76.0 – 77.2	76.3 – 79.0	88.2 – 91.2
Value of NO _x reductions at 7% discount rate	4.4 – 46.0	4.4 – 46.4	5.5 – 57.3	5.5 – 58.6	6.5 – 67.7
Value of NO _x reductions at 3% discount rate (2008\$ millions)	12.2 – 128.4	12.3 – 129.5	15.3 – 159.9	15.4 – 163.6	17.8 – 188.9
Hg (t)	0.360	0.363	0.448	0.459	0.529
Value of Hg reductions at 7% discount rate (2008\$ millions)	0 – 3.49	0 – 3.52	0 – 4.35	0 – 4.45	0 – 5.14
Value of Hg reductions at 3% discount rate (2008\$ millions)	0 – 6.80	0 – 6.86	0 – 8.47	0 – 8.66	0 – 10.0

Life-cycle Cost					
CSIR					
Customers with increase in LCC (%)	52.8	52.8	64.0	64.0	64.0
Customers with savings in LCC (%)	47.2	47.2	36.0	36.0	36.0
Mean LCC (2008\$)	919	919	1,287	1,287	1,287
Mean LCC Savings (2008\$)	21	21	(346)	(346)	(346)
CSCR					
Customers with increase in LCC (%)	55.6	46.3	99.1	46.3	72.6
Customers with savings in LCC (%)	44.4	53.7	0.9	53.7	27.5
Mean LCC (2008\$)	1,043	1,025	1,897	1,025	1,101
Mean LCC Savings (2008\$)	10	28	(846)	28	(47)
CSIR migrating to CSCR weighted results***					
Customers with increase in LCC (%)	52.3	52.3	63.1	50.6	58.0
Customers with savings in LCC (%)	47.7	47.7	37.0	49.4	42.0
Mean LCC (2008\$)	918	918	1,287	892	921
Mean LCC Savings (2008\$)	23	23	(343)	49	20
Life-cycle Cost of All Product classes in 2030 Weighted by Shipments					
CSIR					
Customers with > 2% LCC increase (%)	39.7	39.7	53.0	53.0	53.0
Customers with < 2% LCC change (%)	11.3	11.3	7.8	7.8	7.8
Customers with > 2% LCC savings (%)	49.0	49.0	39.2	39.2	39.2
Mean LCC	995	995	1,360	1,360	1,360
Mean LCC Savings (2008\$)	49	49	(315)	(315)	(315)
CSCR					
Customers with > 2% LCC increase (%)	21.9	18.7	91.5	18.7	46.1
Customers with < 2% LCC change (%)	19.1	19.7	4.0	19.7	13.7
Customers with > 2% LCC savings (%)	59.0	61.7	4.5	61.7	40.2
Mean LCC	1,457	1,451	2,391	1,451	1,507
Mean LCC Savings (2008\$)	83	89	(851)	89	34
Market Share**** – CSIR (%)	94	92	99-100	1-20	2-20
Payback Period (years)					
CSIR					
Average	23.1	23.1	95.5	95.5	95.5
Median	6.7	6.7	11.2	11.2	11.2
CSCR					
Average	23.2	17.4	228.9	17.4	40.3
Median	7.4	5.4	50.3	5.4	12.1

Employment Impact					
Indirect Impacts (2045) (jobs, '000)	10.80 – 10.97	10.75 – 10.92	23.87 – 24.42	12.36 – 12.69	16.74 – 17.07

* Parentheses indicate negative (-) values. For LCCs, a negative value means an increase in LCC by the amount indicated.

** Global values based on SCC estimates (in 2008\$) of \$5 to \$56 per ton of CO₂ equivalent emitted (or avoided) in 2007.

*** Shipments-weighted based on market share product switching model.

**** Base case market share is 95 percent CSIR and 5 percent CSCR.

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First, DOE considered TSL 8, the combination of CSIR and CSCR efficiency levels generating the greatest national energy savings. TSL 8 would likely save an estimated 2.51 to 2.61 quads of energy through 2045, an amount DOE considers significant. Discounted at 7-percent, the projected energy savings through 2045 would be 0.59 to 0.64 quads. For the Nation as a whole, DOE projects that TSL 8 would result in a net benefit of \$290 million to \$4.09 billion in NPV, using a discount rate of 7-percent. The estimated emissions reductions at TSL 8 are up to 127.0 Mt of CO₂, up to 91.2 kt of NO_x, and up to 0.529 tons of Hg. These reductions have a value of up to \$2,715 million for CO₂, \$67.7 million for NO_x, and \$5.14 million for Hg, at a discount rate of 7-percent. At a \$20 per ton (2008\$) value for the social cost of carbon, the estimated benefits of CO₂ emissions reductions is \$910 to \$938 million at a discount rate of 7-percent. DOE also estimates that at TSL 8, total electric generating capacity in 2030 will decrease compared to the base case by 2.37 to 2.44 GW.

At TSL 8, DOE projects that for the average customer, compared to the baseline, the LCC of a CSIR and CSCR motor will increase by \$346 and \$47, respectively. At TSL 8, DOE estimates the fraction of customers experiencing LCC increases will be 64 percent for CSIR motors and 72.6 percent for CSCR motors. The median PBP for the average capacitor-start small electric motor customers at TSL 8, 11.2 years for CSIR motors and 12.1 years for CSCR motors, is projected to be substantially longer than the mean lifetime of the equipment. DOE also considered market migration between CSIR and CSCR users and how that would affect the LCC of CSIR users at TSL 8. When considering that some CSIR consumers will choose to purchase CSCR motors, the CSIR customers still experience on average LCC savings of approximately \$20. This corresponds to 58 percent of CSIR consumers experiencing LCC increases.

DOE also examined LCC savings for a sensitivity case where the calculation was performed in the middle of the

forecast period (*i.e.*, the year 2030), with a full distribution of motor sizes and speeds and where the full cost of reactive power was included. Under these conditions, for the average customer, the LCC of a CSIR and CSCR motor will increase by \$315 and decrease by \$34, respectively, compared to the baseline. DOE also examined what fraction of motors would have changes in LCC that are greater than 2-percent. At TSL 8, DOE estimates the fraction of customers experiencing LCC increases of greater than 2-percent will be 53.0 percent for CSIR motors and 46.1 percent for CSCR motors.

The projected change in industry value ranges from a decrease of \$53.3 million to an increase of \$56.7 million. The impacts are driven primarily by the assumptions regarding the ability to pass on larger increases in MPCs to the customer. At TSL 8, DOE recognizes the risk of negative impacts if manufacturers' expectations about reduced profit margins are realized. In particular, if the high end of the range of impacts is reached as DOE expects, TSL 8 could result in a net loss of 19.1 percent in INPV to the capacitor-start small motor industry. DOE believes manufacturers would likely have a more difficult time maintaining current gross margin levels with larger increases in manufacturing production costs, as standards increase the need for capital conversion costs, equipment retooling, and increased research and development spending. Specifically, at this TSL, the majority of manufacturers would need to significantly redesign all of their capacitor-start small electric motors.

After carefully considering the analysis and weighing the benefits and burdens of TSL 8, the Secretary has reached the following initial conclusion: At TSL 8, the benefits of energy savings, emissions reductions (both in physical reductions and the monetized value of those reductions), and the positive net economic savings (over 30 years) would be outweighed by the economic burden on existing CSCR customers and CSIR customers who do not migrate from CSIR to CSCR motors (as indicated by

the large increase in LCC) and the potentially large reduction in INPV for manufacturers resulting from large conversion costs and reduced gross margins. Consequently, the Secretary has tentatively concluded that trial standard level 8 is not economically justified.

DOE then considered TSL 7, which would likely save an estimated 2.10 to 2.13 quads of energy through 2045, an amount DOE considers significant. Discounted at 7-percent, the projected energy savings through 2045 would be 0.51 to 0.52 quads. For the Nation as a whole, DOE projects that TSL 7 would result in a net benefit of \$1.47 to \$5.67 billion in NPV, using a discount rate of 7-percent. The estimated emissions reductions at TSL 7 are up to 110.0 Mt of CO₂, up to 79.0 kt of NO_x, and up to 0.459 tons of Hg. These reductions have a value of up to \$2,352 million for CO₂, \$58.6 million for NO_x, and \$4.45 million for Hg, at a discount rate of 7-percent. At a \$20 per ton value for the social cost of carbon, the estimated benefits of CO₂ emissions reductions is \$785 to \$812 million at a discount rate of 7-percent. Total electric generating capacity in 2030 is estimated to decrease compared to the base case by 2.05 to 2.12 GW under TSL 7.

At TSL 7, DOE projects that for the average customer, the LCC of capacitor-start small electric motors will increase by \$346 for CSIR motors and decrease by \$28 for CSCR motors compared to the baseline. At TSL 7, DOE estimates the fraction of CSIR customers experiencing LCC increases will be 64 percent, but only 46.3 percent for CSCR motor customers. However, DOE believes that at this TSL, which is the "max-tech" level for CSIR motors, the relative difference in cost between a CSIR motor and a CSCR motor becomes substantial and will have large effects on customers. Rather than buy an expensive CSIR motor, those customers whose applications permit them to, will purchase a CSCR motor with the same number of poles and horsepower ratings. DOE is unsure of the magnitude of the migration of CSIR users to CSCR users, but believes that the market share

of CSCR motors could grow from 5 percent to 80 to 99 percent once standards are effective. This would mean that the high LCC increases that CSIR motor users would experience would be mitigated and many of those users would switch to CSCR motors with a decrease in LCC on average. When taking into account this potential migration, the average CSIR customer experiences net LCC savings of \$49. Even though CSIR motors with switching may result in a net LCC savings, DOE estimates that approximately 51 percent of CSIR customers would still experience an LCC increase.

DOE also examined LCC savings for a sensitivity case where the calculation was performed in the middle of the forecast period (*i.e.*, the year 2030), with a full distribution of motor sizes and speeds and where the full cost of reactive power was included. Under these conditions, for the average customer, compared to the baseline, the LCC of a CSIR and CSCR motor will increase by \$315 and decrease by \$89, respectively. DOE also examined what fraction of motors would have changes in LCC that are greater than 2-percent. At TSL 8, DOE estimates the fraction of customers experiencing LCC increases of greater than 2-percent will be 53.0 percent for CSIR motors and 18.7 percent for CSCR motors.

The economics literature provides a wide-ranging discussion of how consumers trade-off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. This undervaluation suggests that regulation that promotes energy efficiency can produce significant net private gains (as well as producing social gains by, for example, reducing pollution). There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information, (2) a lack of sufficient savings to warrant delaying or altering purchases (*e.g.*, an inefficient ventilation fan in a new building or the delayed replacement of a water pump), (3) inconsistent (*e.g.*, excessive short-term) weighting of future energy cost savings relative to available returns on other investments, (4) computational or other difficulties associated with the evaluation of relevant tradeoffs, and (5) a divergence in incentives (*e.g.*, renter versus owner; builder *v.* purchaser). Other literature indicates that with less than perfect foresight and a high degree of uncertainty about the future, consumers may tradeoff these types of investments at a higher than expected

rate between current consumption and uncertain future energy cost savings. While DOE is not prepared at present to provide a fuller quantifiable framework for this discussion, DOE seeks comments on how to assess these possibilities.

The projected change in industry value ranges from a decrease of \$35.8 million to an increase of \$29.8 million. The impacts are driven primarily by the assumptions regarding the ability to pass on larger increases in MPCs to the customer. At TSL 7, DOE recognizes the risk of negative impacts if manufacturers' expectations about reduced profit margins are realized. In particular, if the high end of the range of impacts is reached as DOE expects, TSL 7 could result in a net loss of 12.9 percent in INPV to the capacitor-start small motor industry. At this TSL, the combination of efficiency levels could cause a migration from CSIR motors to CSCR motors; however, DOE believes that the capital conversion costs, equipment retooling and R&D spending associated with this migration would not be severe.

After carefully considering the analysis and weighing the benefits and burdens of TSL 7, the Secretary has reached the following initial conclusion: Trial standard level 7 offers the maximum improvement in energy efficiency that is technologically feasible and economically justified and will result in significant conservation of energy. The Secretary has reached the initial conclusion that the benefits of energy savings, emissions reductions (both in physical reductions and the monetized value of those reductions), the positive net economic savings to the Nation (over 30 years) and the harmonization of efficiency requirements between CSIR and CSCR motors would outweigh the potential reduction in INPV for manufacturers and the economic burden on those CSIR customers who are unable to switch to CSCR motors. Further, benefits from carbon dioxide reductions (at a central value of \$20) would increase NPV by between \$785 million and \$812 million (2008\$) at a 7% discount rate and between \$2.12 billion and \$2.20 billion at a 3% discount rate. These benefits from carbon dioxide emission reductions, when considered in conjunction with the consumer savings NPV and other factors described above support DOE's tentative conclusion that trial standard level 7 is economically justified. Therefore, DOE today proposes to adopt the energy conservation standards for capacitor-start small electric motors at trial standard level 7.

However, DOE recognizes that this conclusion assumes that CSIR customers can and will migrate to CSCR motors at this level. This shift in motor usage and the magnitude of its impacts are based on several assumptions made throughout the analyses, including: the costs associated with purchasing motors for space-constrained applications, the portion of space-constrained applications in the market, shipments in each product class, the scaling of motor losses and prices between product classes, and the mathematical form of DOE's cross-elasticity model. DOE requests comment on these assumptions and the combined effect that they may have on the uncertainties in DOE's forecasts. DOE also invites comment on what migration levels would be expected at TSL 7, and whether it should adopt a different TSL for capacitor-start small electric motors given the range of uncertainty in its forecasts.

VI. 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 (October 4, 1993), requires each agency to identify the problem the agency intends to address that warrants new agency action (including, where applicable, the failures of private markets or public institutions), as well as assess the significance of that problem, to enable assessment of whether any new regulation is warranted. EPCA requires DOE to establish standards for the small motors covered in today's rulemaking. In addition, today's proposed standards also address the following:

(1) Misplaced incentives, which separate responsibility for selecting equipment and for paying their operating costs; and (2) Lack of consumer information and/or information processing capability about energy efficiency opportunities. The market for small electric motors is dominated by the presence and actions of OEMs, who sell small electric motors to end-users as a component of a larger piece of equipment. There is a very large diversity of equipment types that use small electric motors and the market for any particular type of equipment may be very small. Consumers lack information and choice regarding the motor component. OEMs and consumers may be more concerned with other aspects of the application system than with selecting the most cost effective motor for the end user. Space constraints may also restrict the ability of the consumer

to replace the motor with a more efficient model.

In addition, DOE has determined that today's regulatory action is a "significant regulatory action" under section 3(f)(1) of Executive Order 12866. Accordingly, section 6(a)(3) of the Executive Order required that DOE prepare a regulatory impact analysis (RIA) on today's proposed rule and that the Office of Information and Regulatory Affairs (OIRA) in the OMB review this proposed rule. DOE presented to OIRA for review the draft proposed rule and other documents prepared for this rulemaking, including the RIA, and has included these documents in the rulemaking record. They are available for public review in the Resource Room of DOE's Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024, (202) 586-2945, between 9 a.m. and 4 p.m.,

Monday through Friday, except Federal holidays.

The RIA is contained in the TSD prepared for the rulemaking. The RIA consists of (1) A statement of the problem addressed by this regulation and the mandate for government action, (2) a description and analysis of the feasible policy alternatives to this regulation, (3) a quantitative comparison of the impacts of the alternatives, and (4) the national economic impacts of the proposed standards.

The RIA calculates the effects of feasible policy alternatives to small electric motors standards, and provides a quantitative comparison of the impacts of the alternatives. DOE evaluated each alternative in terms of its ability to achieve significant energy savings at reasonable costs, and compared it to the effectiveness of the proposed rule. DOE analyzed these

alternatives using a series of regulatory scenarios as inputs to the NES/shipments model for small electric motors, which it modified to allow inputs for these measures.

DOE identified the following major policy alternatives for achieving increased energy efficiency in small electric motors:

- No new regulatory action
- Financial incentives
 - ▶ Tax credits
 - ▶ Rebates
- Voluntary energy efficiency targets
- Bulk government purchases
- The proposed approach (performance standards)

DOE evaluated each alternative in terms of its ability to achieve significant energy savings at reasonable costs (see Table IV.1), and compared it to the effectiveness of the proposed rule.

Table VI.1 Non-Regulatory Alternatives for Small Electric Motors

Policy Alternatives	Energy Savings quads*	Net Present Value† billion \$	
		7% Discount Rate	3% Discount Rate
No New Regulatory Action	0.00	0.00	0.00
Consumer Rebates at TSL 5 (Polyphase) and TSL 5 (Single-Phase)	0.07	0.25	0.57
Consumer Rebates at TSL 5 (Polyphase) and TSL 2 (Single-Phase)	0.19	0.52	1.24
Consumer Rebates at TSL 5 (Polyphase) and TSL 5 (Capacitor-Start Capacitor-Run Only)	0.13	0.43	1.00
Consumer Tax Credits	0.06	0.21	0.47
Manufacturer Tax Credits	0.05	0.18	0.41
Voluntary Efficiency Targets	0.82	0.35	1.61
Bulk Government Purchases	0.34	-0.01	0.36
Proposed Standards at TSL 5 (Polyphase) and TSL 7 (Capacitor-Start)	2.43 – 2.46	1.53 – 5.73	8.31 – 14.15

* Energy savings are in source quads from 2015 and 2045.

† Net present value (NPV) is the value of a time series of costs and savings. DOE determined the NPV from 2015 to 2065 in billions of 2008\$.

The net present value amounts shown in Table VI.1 refer to the NPV for consumers. The costs to the government of each policy (such as rebates or tax credits) are not included in the costs for the NPV since, on balance, consumers are both paying for (through taxes) and receiving the benefits of the payments. For each of the policy alternatives other than standards, Table VI.1 shows the energy savings and NPV in the case where the CSIR and CSCR market share shift in response to the policy prior to 2015, or immediately in 2015 when compliance with the standards would

be required. The NES and NPV in the case of the proposed standard are shown as a range between this scenario and a scenario in which the market shift takes ten years to complete, and begins in 2015. The following paragraphs discuss each of the policy alternatives listed in Table VI.1. (See TSD, RIA.)

No new regulatory action. The case in which no regulatory action is taken with regard to small electric motors constitutes the "base case" (or "No Action") scenario. In this case, between 2015 and 2045, capacitor-start small electric motors purchased in or after 2015 are expected to consume 3.65

quads of primary energy (in the form of losses), while polyphase small electric motors purchased in or after 2015 are expected to consume 0.90 quads of primary energy. Since this is the base case, energy savings and NPV are zero by definition.

Rebates. DOE evaluated the possible effect of a rebate consistent with current motor rebate practices in the promotion of premium efficiency motors which cover a portion of the incremental price difference between equipment meeting baseline efficiency levels and equipment meeting improved efficiency requirements. The current average

motor rebate for an efficient 1 horsepower motor is approximately \$25, and DOE scaled this rebate to be approximately proportional to the retail price of the motor. DOE evaluated rebates targeting TSL 5 for polyphase motors, and evaluated several target efficiency levels for capacitor-start motors (including TSLs 7, 5, and 2). Existing rebate programs for polyphase motors target three-digit frame series motors with efficiencies equivalent to TSL 5 for small polyphase motors. At rebate efficiency levels corresponding to TSL 7 for capacitor-start motors, DOE estimates that rebates consistent with current practice would have an insignificant impact on increasing the market share of CSIR motors. For this case, meeting the target level requires the purchase of a motor with a very high average first cost because for TSL 7, CSIR motors are at the maximum technologically feasible efficiency. As a result, rebates targeting TSLs 5 and 2 have larger energy savings. TSLs 7, 5, and 2 correspond to the same efficiency level (EL 3) for CSCR motors.

For rebate programs TSL 5 for both polyphase and capacitor start motors, DOE estimates the market share of equipment meeting the energy efficiency levels targeted would increase from 0 percent to 0.4 percent for polyphase motors, from 0 percent to 0.3 percent for capacitor-start, induction-run motors, and from 21.0 to 29.5 percent for capacitor-start, capacitor-run motors. DOE assumed the impact of this policy would be to permanently transform the market so that the shipment-weighted efficiency gain seen in the first year of the program would be maintained throughout the forecast period. At the estimated participation rates, the rebates would provide 0.07 quads of national energy savings and an NPV of \$0.25 billion (at a 7-percent discount rate).

DOE found that a rebate targeting the efficiency levels corresponding to TSL 2 for capacitor-start motors would result in larger energy savings than one targeting the efficiency levels of TSL 5 or TSL 7. Such rebates would increase the market share among capacitor-start induction-run motors meeting the efficiency level corresponding to TSL 2 from 3.0 percent to 13.2 percent. Combined with unchanged polyphase motor rebates targeting TSL 5, DOE estimates these rebates would provide 0.19 quads of national energy savings and an NPV of \$0.52 billion (at a 7-percent discount rate).

DOE also analyzed an alternative rebate program for capacitor-start motors which would give rebates of twice the value of the previously-

analyzed rebate for CSCR motors which meet the requirements of TSL 7 (a \$50 rebate for a 1 HP motor, scaled to other product classes), and no rebates for CSIR motors. DOE estimates that these rebates would have no effect on the efficiency distribution of capacitor-start induction-run motors, and would increase the market share among capacitor-start capacitor-run motors meeting TSL 7 by 23.9 percent to 44.9 percent. In addition, DOE estimates that this rebate would increase shipments of capacitor-start capacitor-run motors over the period from 2015 to 2045 by 5.7 million to 12.6 million. Combined with unchanged polyphase motor rebates at TSL 5, DOE estimates these rebates would provide 0.13 quads of national energy savings and an NPV of \$0.43 billion (at a 7-percent discount rate).

Although DOE estimates that rebates will provide national benefits, they are much smaller than the benefits resulting from national performance standards. Thus, DOE rejected rebates as a policy alternative to national performance standards.

Consumer Tax Credits. If customers were offered a tax credit equivalent to the amount mentioned above for rebates, DOE's research suggests that the number of customers buying a small electric motor that would take advantage of the tax credit would be approximately 60 percent of the number that would take advantage of rebates. Thus, as a result of the tax credit, the percentage of customers purchasing the products with efficiencies corresponding to TSL 5 for both polyphase and capacitor-start motors would increase by 0.1 percent to 0.1 percent for polyphase motors, by 0.2 percent to 0.2 percent for capacitor-start, induction-run motors, and by 5.1 percent to 26.1 percent for capacitor-start, capacitor-run motors. DOE assumed the impact of this policy would be to permanently transform the market so that the shipment-weighted efficiency gain seen in the first year of the program would be maintained throughout the forecast period. DOE estimated that tax credits would yield a fraction of the benefits that rebates would provide. DOE rejected rebates, as a policy alternative to national performance standards, because the benefits that rebates provide are much smaller than those resulting from performance standards. Thus, because consumer tax credits provide even smaller benefits than rebates, DOE also rejected consumer tax credits as a policy alternative to national performance standards.

Manufacturer Tax Credits. DOE believes even smaller benefits would

result from availability of a manufacturer tax credit program that would effectively result in a lower price to the consumer by an amount that covers part of the incremental price difference between products meeting baseline efficiency levels and those meeting trial standard level 5 for polyphase small electric motors and trial standard level 5 for capacitor-start small electric motors. Because these tax credits would go to manufacturers instead of customers, DOE believes that fewer customers would be aware of this program relative to a consumer tax credit program. DOE assumes that 50 percent of the customers who would take advantage of consumer tax credits would buy more-efficient products offered through a manufacturer tax credit program. Thus, as a result of the manufacturer tax credit, the percentage of customers purchasing the more-efficient products would increase by 0.04 percent to 0.04 percent (*i.e.*, 50 percent of the impact of consumer tax credits) for polyphase motors, by 0.1 percent to 0.1 percent for capacitor-start, induction-run motors, and by 2.6 percent to 23.6 percent for capacitor-start, capacitor-run motors.

DOE assumed the impact of this policy would be to permanently transform the market so that the shipment-weighted efficiency gain seen in the first year of the program will be maintained throughout the forecast period. DOE estimated that manufacturer tax credits would yield a fraction of the benefits that consumer tax credits would provide. DOE rejected consumer tax credits as a policy alternative to national performance standards because the benefits that consumer tax credits provide are much smaller than those resulting from performance standards. Thus, because manufacturer tax credits provide even smaller benefits than consumer tax credits, DOE also rejected manufacturer tax credits as a policy alternative to national performance standards.

Voluntary Energy-Efficiency Targets. There are no current federal or industry marketing efforts to increase the use of efficient small electric motors which meet the requirements of trial standard level 5 for polyphase small electric motors or trial standard level 7 for capacitor-start small electric motors. NEMA and the Consortium for Energy Efficiency promote "NEMA Premium" efficient three-digit frame series motors, and DOE analyzed this program as a model for the market effects of a similar program for small electric motors. DOE evaluated the potential impacts of such a program that would encourage purchase of products meeting the trial

standard level efficiency levels. DOE modeled the voluntary efficiency program based on this scenario and assumed that the resulting shipment-weighted efficiency gain would be maintained throughout the forecast period. DOE estimated that the enhanced effectiveness of voluntary energy-efficiency targets would provide 0.82 quads of national energy savings and an NPV of \$0.35 billion (at a 7-percent discount rate). Although this would provide national benefits, they are much smaller than the benefits resulting from national performance standards. Thus, DOE rejected use of voluntary energy-efficiency targets as a policy alternative to national performance standards.

Bulk Government Purchases. Under this policy alternative, the government sector would be encouraged to purchase increased amounts of polyphase equipment that meet the efficiency levels in trial standard level 5 and capacitor-start equipment that meets the efficiency levels in trial standard level 7. Federal, State, and local government agencies could administer such a program. At the Federal level, this would be an enhancement to the existing Federal Energy Management Program (FEMP). DOE modeled this program by assuming an increase in installation of equipment meeting the efficiency levels of the target standard levels among the commercial and public buildings and operations which are run by government agencies. DOE estimated that bulk government purchases would provide 0.34 quads of national energy savings and an NPV of – \$0.01 billion (at a 7-percent discount rate), benefits which are much smaller than those estimated for national performance standards. DOE rejected bulk government purchases as a policy alternative to national performance standards.

National Performance Standards. DOE proposes to adopt the efficiency levels listed in section VI.C. As indicated in the paragraphs above, none of the alternatives DOE examined would save as much energy as today's proposed standards. Also, several of the alternatives would require new enabling legislation, since authority to carry out those alternatives does not presently exist.

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, unless the agency certifies that the rule, if

promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site, <http://www.gc.doe.gov>.

DOE reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts.

In the context of this rulemaking, "small businesses," as defined by the SBA, for the small electric motor manufacturing industry are manufacturing enterprises with 1,000 employees or fewer. See http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.

DOE used this small business definition to determine whether any small entities would be required to comply with the rule. (65 FR 30836, 30850 (May 15, 2000), as amended at 65 FR 53533, 53545 (September 5, 2000) and codified at 13 CFR part 121. The size standards are listed by NAICS code and industry description. The manufacturers impacted by this rule are generally classified under NAICS 335312, "Motor and Generator Manufacturing," which sets a threshold of 1,000 employees or less for an entity in this category to be considered a small business.

DOE identified producers of equipment covered by this rulemaking, which have manufacturing facilities located within the United States and could be considered small entities, by two methods: (1) Asking larger manufacturers in MIA interviews to identify any competitors they believe may be a small business, and (2) researching NEMA-identified fractional horsepower motor manufacturers. DOE then looked at publicly-available data and contacted manufacturers, as necessary, to determine if they meet the Small Business Administration (SBA) definition of a small manufacturing company. In total, DOE identified 11 companies that could potentially be small businesses. During initial review of the 11 companies in its list, DOE either contacted or researched each

company to determine if it sold covered small electric motors. Based on its research, DOE screened out companies that did not offer motors covered by this rulemaking. Consequently, DOE estimated that only one out of 11 companies listed were potentially small business manufacturers of covered products. DOE then contacted this potential small business manufacturer and determined that the company's equipment would not be covered by this proposed rulemaking. Thus, based on its initial screening and subsequent interviews, DOE did not identify any company as a small business manufacturer based on SBA's definition of a small business manufacturer for this industry.

On the basis of the foregoing, DOE certifies that the proposed rule, if promulgated, would have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

DOE seeks comment on the above analysis, as well as any information concerning small businesses that may be impacted by this rulemaking and what those impacts may be.

C. Review Under the Paperwork Reduction Act

This rulemaking will impose no new information or record-keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act

DOE has prepared a draft environmental assessment (EA) of the impacts of the proposed rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with the National Environmental Policy Act (10 CFR part 1021). This assessment includes an examination of the potential effects of emission reductions likely to result from the rule in the context of global climate change, as well as other types of environmental impacts. The draft EA has been incorporated into the TSD. Before issuing a final rule for small electric motors, DOE will consider public comments and, as appropriate, determine whether to issue a finding of

no significant impact as part of a final EA or to prepare an environmental impact statement (EIS) for this rulemaking.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined today's proposed rule and has determined that it would not preempt State law or have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear

legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

DOE reviewed this regulatory action under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) (UMRA), which requires each Federal agency to assess the effects of Federal regulatory actions on State, local and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted for inflation), section 202 of UMRA requires an agency to publish a written statement assessing the costs, benefits, and other effects of the rule on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at <http://www.gc.doe.gov>).

Although today's proposed rule does not contain a Federal intergovernmental mandate, today's proposed rule will likely result in a final rule that could impose expenditures of \$100 million or more after 2015 for private sector commercial and industrial users of equipment with small electric motors. DOE estimated annualized impacts for the proposed rule using the results of the national impacts analysis. The national impact analysis results

expressed as annualized values are \$923-\$1,137 million in total annualized benefits from the proposed rule, \$292-\$786 million in annualized costs, and \$183-\$845 million in annualized net benefits. Details are provided in chapter 10 of the TSD. Therefore, DOE must publish a written statement assessing the costs, benefits, and other effects of the rule on the national economy. Section 205 of UMRA also requires DOE to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which UMRA requires such a written statement. DOE must select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule, unless DOE publishes an explanation for doing otherwise or the selection of such an alternative is inconsistent with law.

Today's proposed energy conservation standards for small electric motors would achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A discussion of the alternatives considered by DOE is presented in the regulatory impact analysis section of the TSD for this proposed rule. Also, Section 202(c) of UMRA authorizes an agency to prepare the written statement required by UMRA in conjunction with or as part of any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The TSD, preamble, and regulatory impact analysis for today's proposed rule contain a full discussion of the rule's costs, benefits, and other effects on the national economy, and therefore satisfy UMRA's written statement requirement.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that

might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act of 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002); DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA) a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action, which proposes standards to increase the energy efficiency of 72 product classes of small electric motors, would not have a significant adverse effect on the supply, distribution, or use of energy. The rule was also not designated by OIRA as a significant energy action. Therefore, today's proposed rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

In consultation with the Office of Science and Technology (OSTP), OMB

issued on December 16, 2004, its "Final Information Quality Bulletin for Peer Review" (the Bulletin). 70 FR 2664. (January 14, 2005) The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are "influential scientific information." The Bulletin defines "influential scientific information" as "scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions." 70 FR 2667 (January 14, 2005).

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses. DOE prepared the "Energy Conservation Standards Rulemaking Peer Review Report," dated February 2007, which pertains to these rulemaking analyses. DOE disseminated the report, and it is available at http://www.eere.energy.gov/buildings/appliance_standards/peer_review.html.

VII. Public Participation

A. Attendance at Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586-2945 or Brenda.Edwards@ee.doe.gov. As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Requests To Speak

Any person who has an interest in today's notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation. Such persons may hand-deliver requests to speak, along with a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format, to the address shown in the **ADDRESSES** section at the beginning of this notice of proposed rulemaking between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests may

also be sent by mail, or by e-mail to Brenda.Edwards@ee.doe.gov.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to be heard to submit an advance copy of their statements at least one week before the public meeting. At its discretion, DOE may permit any person who cannot supply an advance copy of their statement to participate, if that person has made advance alternative arrangements with the Building Technologies Program. The request to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA, 42 U.S.C. 6306. A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions from DOE and from other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be

needed for the proper conduct of the public meeting.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586-2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding the proposed rule before or after the public meeting, but no later than the date provided at the beginning of this notice of proposed rulemaking. Comments, data, and information submitted to DOE's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Interested parties should avoid the use of special characters or any form of encryption and, wherever possible, comments should carry the electronic signature of the author. Comments, data, and information submitted to DOE via mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles (faxes) will be accepted.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

E. Issues on Which DOE Seeks Comment

DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. The proposal of product classes based on motor category, pole configuration, and horsepower.
2. The proposal to include other insulation class systems besides A, in particular B and F insulation class systems.
3. The baseline models and efficiencies used in the engineering analysis.
4. The various markups used in the engineering analysis, in particular the difference in overhead markups for designs that use a copper rotor and those that use an aluminum rotor.
5. The design options and limitations presented in the engineering analysis such as the limitations on motor size, the air gap between the rotor and stator, and the power factor.
6. The approach to scale the engineering analysis results to product classes for which a complete analysis was not performed, especially the decision to use the relationships found for CSIR motors to scale results for CSCR motors.
7. The proposal to define nominal efficiency as the average full-load efficiency of a large population of motors of the same design.
8. The preservation of operating profits as the lower bound scenario and the preservation of return on invested capital as the upper bound scenario for the INPV results generated in the manufacturer impact analysis.
9. The capital investment costs needed to reach each efficiency level.
10. Input and data regarding how the single-phase small motor market will respond to the proposed standards. In particular, DOE seeks comment regarding its CSIR/CSCR cross-elasticity model; the current market shares of CSIR and CSCR motors in each combination of motor power and number of poles; the barriers the customers face if they switch from CSIR to CSCR motors or vice versa; and the timescale over which market share shifts would take place in response to standards. DOE also welcomes additional comments and data regarding the scaling of motor losses and prices between product classes.
11. Input and data regarding how the small electric motors market will respond to the proposed standards. In particular, DOE seeks comment regarding alternative small electric motor technologies and how elasticity between the market for these alternative

technologies and the market for covered motors could potentially affect the projected shipments and energy savings.

12. The behavior of customers with space-constrained applications, the costs they face, and the time-frame over which they may need to redesign a system or large piece of equipment to accommodate a larger-component small electric motor. DOE also seeks further information regarding the population and distribution of space-constrained customers among motor applications.

13. The combined effect of the several assumptions and estimates that DOE makes in order to estimate the impact of standards under expected market shifts. DOE seeks comment regarding its approach and suggestions on how forecast uncertainty can be estimated and weighed against the potential increases in benefits when selecting a higher standard level that may induce a shift in motor purchases.

14. The appropriateness of using other discount rates in addition to seven percent and three percent real to discount future emissions reductions; and

15. The determination of the anticipated environmental impacts of the proposed rule, particularly with respect to the methods for valuing the expected CO₂ and NO_x emissions savings due to the proposed standards.

16. The proposed standard level for polyphase small electric motors.

17. The proposed standard level for single-phase (capacitor-start) small electric motors.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's proposed rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, DC, on October 27, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend chapter II of title 10, Code of Federal Regulations, part 431 as set forth below.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. Section 431.442 is amended by adding, in alphabetical order, a new definition for “nominal full load efficiency” to read as follows:

§ 431.442 Definitions concerning small electric motors.

* * * * *

Nominal Full Load Efficiency means the arithmetic mean of the full load

efficiencies of a population of electric motors of duplicate design, where the full load efficiency of each motor in the population is the ratio (expressed as a percentage) of the motor’s useful power output to its total power input when the motor is operated at its full rated load, rated voltage, and rated frequency.

* * * * *

3. Section 431.446 is added to read as follows:

§ 431.446 Small electric motors energy conservation standards and their effective dates.

(a) Each small electric motor manufactured (alone or as a component of another piece of non-covered equipment) after February 28, 2015, shall have a nominal full load efficiency of not less than the following:

Motor horsepower/standard kilowatt equivalent	Nominal full load efficiency								
	Polyphase (number of poles)			CSIR (number of poles)			CSCR (number of poles)		
	6	4	2	6	4	2	6	4	2
0.25 / 0.18	77.4	72.7	69.8	65.4	69.8	71.4	63.9	68.3	70.0
0.33 / 0.25	79.1	75.6	73.7	70.7	72.8	74.2	69.2	71.6	72.9
0.5 / 0.37	81.1	80.1	76.0	77.0	77.0	76.3	75.8	76.0	75.1
0.75 / 0.55	84.0	83.5	81.6	81.0	80.9	78.1	79.9	80.3	77.0
1 / 0.75	84.2	85.2	83.6	84.1	82.8	80.0	83.2	82.0	79.0
1.5 / 1.1	85.2	87.1	86.6	87.7	85.5	82.2	87.0	84.9	81.4
2 / 1.5	89.2	88.0	88.2	89.8	86.5	85.0	89.1	86.1	84.2
3 / 2.2	90.8	90.0	90.5	92.2	88.9	85.6	91.7	88.5	84.9

(b) For purposes of determining the required minimum nominal full load efficiency of an electric motor that has a horsepower or kilowatt rating between two horsepower or two kilowatt ratings listed in any table of efficiency standards in paragraph (a) of this section, each such motor shall be deemed to have a listed horsepower or kilowatt rating, determined as follows:

(1) A horsepower at or above the midpoint between the two consecutive

horsepower ratings shall be rounded up to the higher of the two horsepower ratings;

(2) A horsepower below the midpoint between the two consecutive horsepower ratings shall be rounded down to the lower of the two horsepower ratings; or

(3) A kilowatt rating shall be directly converted from kilowatts to horsepower using the formula 1 kilowatt = (1/0.746) hp, without calculating beyond three

significant decimal places, and the resulting horsepower shall be rounded in accordance with paragraphs (b)(1) or (b)(2) of this section, whichever applies.

[FR Doc. E9–27914 Filed 11–18–09; 11:15 am]

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LIST OF PUBLIC LAWS

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S. 475/P.L. 111-97
Military Spouses Residency Relief Act (Nov. 11, 2009; 123 Stat. 3007)

S. 509/P.L. 111-98

To authorize a major medical facility project at the Department of Veterans Affairs Medical Center, Walla Walla, Washington, and for other purposes. (Nov. 11, 2009; 123 Stat. 3010)

Last List November 10, 2009

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