Proposed by Foremost Farms USA Cooperative, Inc.; National Farmers Organization, Inc.; Dairy Farmers of America, Inc.; Michigan Milk Producers Association; Dairylea Cooperative, Inc.; and Continental Dairy Products, Inc.

Proposal 1

This proposal seeks to alter the definition of a pool distributing plant within the Mideast Milk Marketing Order. Specifically, the proposal recommends that a distributing plant, which is physically located within the Mideast Milk Marketing Order, be regulated by that order if half of its total route disposition is within Federal Milk Marketing Area boundaries and its sales patterns are such that no one Order has more than 25% of its sales volume. This proposed change would only affect the Mideast Milk Marketing Order.

1. Amend § 1033.7 by revising paragraph (a) to read as follows:

§ 1033.7 Pool plant

* * * * *

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § ____.7(b) of any other Federal milk order, from which during the month 30 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area. Plants located within the marketing area with combined route disposition and transfers of at least 50% into Federal Order marketing areas but without 25% of route disposition and transfers into any one Federal Order will be regulated as a distributing plant in this Order.

* * * * *

Proposed by Dairy Programs, Agricultural Marketing Service

Proposal 2

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of the Mideast Marketing Area, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue, SW., Washington, DC 20250–9200, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing. Copies of the transcript will also be made available online at: *http://www.ams.usda.gov/dairy*.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture, Office of the Administrator, Agricultural Marketing Service, Office of the General Counsel, Dairy Programs, Agricultural Marketing Service (Washington Office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: September 2, 2011.

David R. Shipman,

Acting Administrator.

[FR Doc. 2011–22945 Filed 9–7–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2010–BT–PET–0047]

RIN 1904–AC57

Energy Conservation Program for Consumer Products: Request for Exclusion of 120 Volt, 100 Watt R20 Short Incandescent Reflector Lamp for Spa Applications From Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Request for information and notice of granting of petition for rulemaking.

SUMMARY: The Department of Energy received a petition from the National Electrical Manufacturers Association requesting the initiation of a rulemaking to exclude from coverage under Energy Policy and Conservation Act standards 120 volt, 100 watt, R20 short (having a maximum overall length of 3⅝ or 3.625 inches) incandescent reflector lamps marketed for use in hot tub spas. DOE published this petition and a request for comments in the **Federal Register** on December 23, 2010. Based upon its evaluation of the petition and careful consideration of the public comments, DOE has decided to grant this petition for rulemaking. DOE seeks comments that will inform its rulemaking to determine whether 120 volt, 100 watt, R20 short incandescent reflector lamps should be excluded from energy conservation standards.

DATES: Written comments on this document and information requested must be submitted on or before October 11, 2011.

ADDRESSES: Any comments submitted must identify the Request for Information (RFI) for Spa Lamps and provide Docket Number EERE–2010–BT–PET–0047 and/or Regulatory Information Number (RIN) 1904–AC57. Comments may be submitted using any of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

(2) *E-mail: ShortLampsPetition-2010-PET-0047@ee.doe.gov.* Include docket number EERE–2010–BT–PET–0047 and/or RIN 1904–AC57 in the subject line of the message.

(3) *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

(4) *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. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page on the *http://www.regulations.gov* site can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/*

residential/incandescent_lamps.html. The *http://www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to submit a comment or review other public comments and the docket, please contact Ms. Brenda Edwards at (202) 586–2945 or e-mail: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Tina Kaarsberg PhD, 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) 287–1393. E-mail: *Tina.Kaarsberg@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov.*

For information on how to submit or review public comments, 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.*

SUPPLEMENTARY INFORMATION:

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I. Background

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* provides among other things, that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' (5 U.S.C. 553(e)) Pursuant to this provision of the APA, the National Electrical Manufacturers Association (NEMA) has petitioned the Department of Energy (DOE) for rulemaking to exclude from coverage a type of incandescent reflector lamp (IRL) from energy conservation standards under the Energy Policy and Conservation Act (EPCA; 42 U.S.C. 6291 *et seq.*). Specifically, NEMA seeks an exemption for 120 volt (V), 100 watt (W), R20 [1] short (having a maximum overall length (MOL) of 3⅝ inches) lamps (hereafter referred to as ''R20 short lamps'') marketed for use in hot tub spas. These lamps are sold in jurisdictions that allow pools and spas to be supplied with 120V electricity.

Amendments to EPCA in the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, expanded EPCA's definition of ''incandescent reflector lamp'' to include lamps with a diameter between 2.25 and 2.75 inches (R18–R22).[2] (42 U.S.C. 6291(30)(C)(ii)) This addition made R20 lamps (having a diameter of 20/8, or 2.25, inches) covered products subject to EPCA's standards for IRLs. As explained in NEMA's petition, based upon this change to the definition, statutory standards went into effect for R20 lamps on June 15, 2008, the date 180 days after the date of enactment of EISA 2007. (42 U.S.C. 6295(i)(1)(D)(ii)) However, noncompliant R20 short lamps remained on the market until September 2010, because the two manufacturers of these lamps mistakenly believed the lamps were excluded from coverage. The manufacturers had relied upon the Federal Trade Commission's (FTC) labeling rule, 16 CFR part 305, which continues to publish the previous lamp definitions from the Energy Policy Act of 1992 (EPACT 1992), Public Law 102–486, amendments of EPCA. As written, the FTC labeling regulations treat IRLs as general service incandescent lamps (GSILs), and erroneously continued to define GSILs as not including those lamps specifically designed for ''[s]wimming pool or other underwater service.'' 16 CFR 305.3(m)(3). This exclusion was eliminated from EPCA by section 321 of EISA 2007.[3] Upon realization that FTC definitions were incorrect and the R20 short lamps were subject to energy conservation standards, the manufacturers removed the product from the market, and, in November 2010, NEMA submitted the petition that is the subject of this notice. DOE published the petition for rulemaking in the **Federal Register** on December 23, 2010 and requested public comment. 75 FR 80731.

In this petition, NEMA asked both for a rulemaking to exclude R20 short lamps from coverage of energy conservation standards, and for a stay of enforcement pending that rulemaking. As grounds for the petition, NEMA stated that R20 short lamps qualify for an exemption under 42 U.S.C. 6291(30)(E), which allows the Secretary to exclude a fluorescent or incandescent lamp ''as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types.'' In its petition, NEMA contended that a rulemaking would find that energy conservation standards for R20 short lamps do not result in significant energy savings and that the lamp is designed for special applications or has special characteristics not available in substitute lamp types. Specifically, as the lamp has a particular MOL and was specially designed to meet underwater illumination requirements of hot tub manufacturers (including designated beam spread and lumen output), there are no substitute products on the market for this application. 75 FR 80731, 80732 (Dec. 23, 2010).

Additionally, NEMA asserted that having energy conservation standards for this unique lamp type would lead to its unavailability in the United States. To the best of NEMA's and manufacturers' knowledge, the decision of the two R20 short lamp manufacturers to withdraw the product from the market has already resulted in its current unavailability. 75 FR 80731, 80732–33 (Dec. 23, 2010)

As noted above, DOE subsequently published a notice in the **Federal Register** on December 23, 2010 containing the petition and requesting public comment. 75 FR 80731. DOE received several comments from manufacturers, utilities, and environmental and energy efficiency organizations.[4] Specifically, DOE received comments from Pentair Water Pool and Spa, Inc. (Pentair) and Northwest Energy Efficiency Alliance (NEEA). It also received a joint comment from Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE), Southern California Gas Company (SCGC), and San Diego Gas and Electric (SDG&E) (hereafter ''California Investor-Owned Utilities''

[1] ''R'' denotes a reflector lamp type, and ''20'' denotes diameter in ⅛ inch increments, which translates to 2.5 inches.

[2] Prior to the enactment of EISA 2007, this definition applied to lamps with a diameter which exceeds 2.75 inches. EISA 2007 modified this definition to make it applicable to IRL with a diameter which exceeds 2.25 inches.

[3] The FTC published a final rule in the **Federal Register** on July 19, 2010, which updated its regulations regarding its definition of GSIL to reflect the definitional changes provided in EISA 2007. 75 FR 41696, 41713–14. These changes are effective July 19, 2011, at which time the amendments will be reflected in the Code of Federal Regulations.

[4] NEMA's petition and associated comments can be found under Docket No. EERE–2010–BT–PET–0047.

(CA IOUs)). Natural Resources Defense Council (NRDC), the Appliance Standard Awareness Project (ASAP), the American Council for an Energy-Efficient Economy (ACEEE), Earthjustice, and the National Consumer Law Center (NCLC) (hereafter ''Energy Efficiency Organizations'') also provided joint comments. The following discussion summarizes and responds to comments on the NEMA petition.

II. Authority To Grant Exclusion

In response to the notice of NEMA's petition, several stakeholders commented on DOE's authority to exempt R20 short lamps under 42 U.S.C. 6291(30)(E).

In its petition, NEMA asserted that DOE has the authority to exempt lamps that meet the criteria set forth in 42 U.S.C. 6291(30)(E). In January 2011, NEMA submitted comments supplementing its original petition. To bolster its argument, in its supplementary statements, NEMA cited 42 U.S.C. 6295(i)(1)(D), which authorizes the Secretary to exempt a general service lamp from standards in the event that application of the standard would prevent the fulfillment of a specialized application and when the lamp is unlikely to be used in a general service lighting application. While R20 short lamps are not classified as general service lamps, NEMA pointed to 42 U.S.C. 6295(i)(1)(D) as further evidence of Congress's intent to provide a regulatory pathway for excluding lamps that serve special applications. (NEMA, No. 2.1 at p. 2) [5]

Both the CA IOUs and Energy Efficiency Organizations argued that exclusion under 42 U.S.C. 6291(30)(E) is no longer possible because the compliance date has already passed for these standards. The CA IOUs and Energy Efficiency Organizations commented that 42 U.S.C. 6291(30)(E) permits the exemption of lamps for which standards ''would not result in significant energy savings,'' and contended the conditional phrasing ''would not result,'' as opposed to the present tense wording ''are not resulting,'' means the section only applies to standards not yet in effect. (CA IOUs, No. 3.1 at p. 1; Energy Efficiency Organizations, No. 4.1 at p. 1–2)

Energy Efficiency Organizations further stated that they interpret 42 U.S.C. 6291(30)(E) as facilitating the process of determining coverage rather than retroactively excluding products from coverage. Moreover, the commenters argued that interpreting exclusion as a process occurring after standards go into effect would erode energy savings by allowing manufacturers to continually exempt products and chip away at the covered lamp market. The Energy Efficiency Organizations stated that while standards for any one lamp may generate marginal savings, standards for IRLs as a whole represent considerable energy savings. (Energy Efficiency Organizations, No. 4.1 at p. 2–3)

DOE does not believe the plain language of EPCA under 42 U.S.C. 6291(30)(E) compels an interpretation that the section only applies to standards before their compliance date. DOE finds this reading would prevent application of 42 U.S.C. 6291(30)(E). Under 42 U.S.C. 6295(o)(3), DOE is already barred from adopting standards for any product class for which the standards would not result in significant conservation of energy. Therefore, if interpreted to apply to products for which standards are not yet in effect, 42 U.S.C. 6291(30)(E) would be rendered redundant and superfluous, as both it and 42 U.S.C. 6295(o)(3) evaluate possible significant energy savings from future standards. Instead, DOE has concluded that 42 U.S.C. 6291(30)(E) contains no time bar in terms of DOE taking a rulemaking action to address any lamp for which standards would not result in significant energy savings as it is designed for special applications or has special characteristics not available in substitute lamp types. Given the broad and growing coverage of DOE's energy conservation standards for lamps, DOE believes that Congress intended 42 U.S.C. 6291(30)(E) to provide a mechanism to address both those lamps inadvertently covered by preexisting standards, as well as new lamps subsequently developed to which standards would otherwise apply.

The CA IOUs and the Energy Efficiency Organizations also argued that DOE does not have the authority to exempt R20 short lamps because of the statute's anti-backsliding provision, which prohibits DOE from prescribing amended standards that increase the maximum allowable energy use or decrease the minimum required energy efficiency, of a covered product. (42 U.S.C. 6295(o)(1)) The CA IOUs and the Energy Efficiency Organizations stated that applying an exemption to R20 short lamps would violate EPCA by decreasing the required energy efficiency of a currently covered product. (CA IOUs, No. 3.1 at p. 1; Energy Efficiency Organizations, No. 4.1 at p. 2) The Energy Efficiency Organizations added that the precedent set by *NRDC* v. *Abraham* (355 F.3d 179, 196 (2d Cir. 2004)) means that ''section 325(o)(1) must be read to restrict DOE's subsequent discretionary ability to weaken that standard at any point thereafter.'' (Energy Efficiency Organizations, No. 4.1 at p. 2)

NEMA countered that the anti-backsliding provision does not preclude excluding lamps from an existing standard because: (1) 42 U.S.C. 6291(30)(E) would be rendered superfluous if the anti-backsliding provision were to preclude DOE from considering a petition; and (2) a determination would have already been made that the exempted lamp would not produce significant energy savings if subjected to standards, thereby meeting the criteria that the exclusion would not increase allowable energy use. (NEMA, No. 2.1 at p. 2–3)

After careful review of the relevant statutory provisions and these comments, DOE has concluded that Congress intended 42 U.S.C. 6291(30)(E) to provide a mechanism for granting relief from current and future lamp standards. In reaching this conclusion, DOE notes that it is possible to read 42 U.S.C. 6291(30)(E) and 42 U.S.C. 6295(o)(1) in harmony so as to give effect to both provisions. DOE would not be changing the level of the existing energy conservation standard, and for those units that would now be excluded from the definition of ''incandescent lamp,'' there would first have to be a determination that the standard would not result in a significant energy savings for those lamps. Rather than DOE exercising discretion to weaken energy conservation standards in violation of the anti-backsliding provision, DOE is giving effect to an express statutory provision under precisely the situation for which Congress provided a mechanism for resolution.

DOE also received comments from CA IOUs and Energy Efficiency Organizations that R20 short lamp noncompliance would be better addressed through the Requests for Adjustments provision (Section 504 of the Department of Energy Organization Act, Pub. L. 95–91; codified at 42 U.S.C. 7194). The Requests for Adjustments provision (also known as ''exception relief'') allows a manufacturer to submit a hardship waiver to DOE's Office of Hearings and Appeals (OHA). OHA has a process to handle claims of ''hardship, inequity, or unfair distribution of burdens'' by making adjustments to regulations. *Id.* Specifically, the CA IOUs and the Energy Efficiency

[5] A notation in the form ''NEMA, No. 2.1 at p. 2'' identifies a written comment that DOE has received and has included in the docket of this rulemaking. This particular notation refers to a comment: (1) Submitted by NEMA; (2) in document number 2.1 of the docket, and (3) on page 2 of that document.

Organizations claim this process is better for the R20 short lamp situation because: (1) DOE can grant exceptions to certain manufacturers rather than a general exemption to the product; (2) DOE can grant exceptions for a certain period of time appropriate to the manufacturers' needs; and (3) DOE can avoid using its time and resources to carry out an additional rulemaking. (CA IOUs, No. 3.1 at p. 3; Energy Efficiency Organizations, No. 4.1 at p. 1, 4) NEEA further contended that filing a hardship petition with OHA would provide more appropriate relief for the manufacturer, but given that the OHA process allows a more specific remedy, NEEA argued that a blanket product exemption would be highly inappropriate. (NEEA, No. 5.1 at p. 1–2) In response, DOE has determined that this situation is not specific to a single manufacturer, but rather, it applies to an entire product type. Accordingly, OHA exception relief would not be an appropriate remedy for R20 short lamps, because exception relief cannot be used to alter a standard level across the board, even where it has been belatedly demonstrated that another level might be more appropriate. In such case, exception relief to specific manufacturers could preclude others from entering this market and ultimately reduce competition. Furthermore, OHA's authority to grant exception relief does not apply to energy conservation standards set by statute, but instead, it only applies to standards set pursuant to DOE's regulatory authority. The Secretary is legally required to implement the laws as enacted, so if the Secretary lacks authority to waive statutory requirements, the Secretary cannot delegate a greater power to OHA in terms of granting exception relief.

After reviewing NEMA's petition and responses to the petition, DOE has concluded that 42 U.S.C. 6291(30)(E) applies to products for which standards for fluorescent lamps and incandescent lamps are already in effect and that it grants DOE the authority to exclude by rule certain IRLs from coverage if they met the necessary statutory criteria for exclusion. Therefore, DOE has determined that the exemption of R20 short lamps must be evaluated based on energy savings and lamp application rather than through a petition for exception relief based upon hardship. For these reasons, DOE grants NEMA's petition to initiate a rulemaking to consider exclusion of R20 short lamps pursuant to 42 U.S.C. 6291(30)(E).

III. Evaluation of Stay of Enforcement

In its petition, NEMA also requested a stay of enforcement of standards for R20 short lamps pending the outcome of this rulemaking. Pentair, a manufacturer of spas, commented that its supplier has stopped supplying R20 short lamps in order to comply with the energy conservation standards, and the commenter warned that this supply stoppage will create significant hardship for both Pentair and its customers because there is no substitute for this lamp. (NEMA, No. 2.1 at p. 1) [6] Further, Pentair stated that Underwriters Laboratories specifies the use of R20 short lamps in luminaires for numerous spa products. Pentair asserted that without an equivalent replacement, its customers would be forced to replace the entire fixture in order to continue meeting local building codes that require certain wattage per square foot to ensure adequate and safe lighting levels. (NEMA, No. 2.1 at p. 1)

NEMA also warned that failure to exclude R20 short lamps will lead to their unavailability in the United States. 75 FR 80731, 80733 (Dec. 23, 2010). NEMA stated that such unavailability presents a potential marketplace problem for the public, pool and spa builders, and consumers, as they do not have any available substitutes. Further, Pentair noted that it had orders in excess of its inventory, a problem that would become worse with time. (NEMA, No. 2.1 at p. 3)

DOE has decided that given the confusion in the industry and harm likely to result in the interim, while this rulemaking is pending, DOE will not pursue enforcement action against manufacturers producing and/or selling R20 short lamps that do not comply with prescribed standards.

IV. Conclusion

After reviewing NEMA's petition and comments on the petition, DOE has concluded it has the legal authority to grant exclusions for IRLs under 42 U.S.C. 6291(30)(E). DOE will conduct a rulemaking to consider excluding R20 short lamps from coverage under energy conservation standards pursuant to the requirements specified in 42 U.S.C. 6291(30)(E) and has granted a stay of enforcement pending the outcome of the rulemaking. Accordingly, while this rulemaking is pending, DOE will not pursue enforcement action against manufacturers producing and/or selling R20 short lamps that do not comply with prescribed standards.

[6] The page number refers to the letter from Pentair included in NEMA's comment.

V. Rulemaking Overview

A. Purpose of the Rulemaking

DOE will undertake a rulemaking to consider exclusion from coverage under energy conservation for R20 short lamps pursuant to the requirements of 42 U.S.C. 6291(30)(E). Under this section, in order to exclude a fluorescent or incandescent lamp, the Secretary must make the determination, by rule, that standards for the lamp ''would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types.'' *Id.* In its petition, NEMA asserted that a rulemaking to consider exclusion of R20 short lamps from standards coverage will conclude: (1) That energy conservation standards for this unique type of lamp will not result in significant energy savings; and (2) this type of lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types.

Therefore, in the rulemaking, DOE will evaluate the market impact of excluding R20 short lamps from coverage, including the direct loss in energy savings, as well as the potential for migration of the lamps to other markets and the associated impacts on energy savings. DOE will also determine whether R20 short lamps truly have unique characteristics not available in reasonably substitutable lamp types. DOE will conduct a market and technology analysis to identify options that meet requirements of spa applications, including technologies to make R20 short lamps more energy efficient, as well as the availability of standard-compliant substitute lamps.

DOE will consult the relevant interested parties in the rulemaking process including manufacturers (both of lamps and of spas), consumers, energy conservation and environmental advocates, and any other interested members of the public. The rulemaking will address the comments DOE has already received or subsequently receives regarding whether or not R20 short lamps meet the statutory criteria for exclusion.

B. Significance of Energy Savings of R20 Short Lamp Standards

In the rulemaking, DOE will determine whether or not energy conservation standards for R20 short lamps result in significant energy savings. Energy Efficiency Organizations have commented that an exclusion under 42 U.S.C. 6291(30)(E) can only be granted if the standards would not

result in significant energy savings either because the lamp is designed for special application or has special characteristics not available in reasonably substitutable lamp types. Subsequently, the Energy Efficiency Organizations contend that in its petition, NEMA does not make the case that it is the unique features of R20 short lamps and the unavailability of substitutes that will prevent the standards from generating significant energy savings. Instead, they contend that NEMA relies solely on the uniqueness of the 100W R20 short lamp as a basis for exclusion under 42 U.S.C. 6291(30)(E). (Energy Efficiency Organizations, No. 4.1 at p. 4)

In response, DOE does not believe that 42 U.S.C. 6291(30)(E) requires a lamp's lack of significant energy savings potential to be directly attributable to the special application or special characteristic itself. Instead, DOE believes that a more reasonable interpretation would also account for the fact that the lamps' use in special applications and special characteristics not available in substitute lamps may result in very low shipment volumes, which in turn may lead to a determination that significant energy savings would not result from application of energy conservation standards to such lamps.

In its petition, NEMA contended that due to the low market share and lower wattage of R20 short lamps, energy conservation standards will not result in significant energy savings. NEMA determined that sales of R20 short lamps represented significantly less than 0.1 percent of 2009 shipments of IRL covered by energy conservation standards. The petitioner noted that in the 2009 rulemaking for IRL standards, DOE determined that due to low market share, IRLs with rated wattages greater than 205 watts would not represent substantial potential energy savings and should, therefore, not be covered by standards. 75 FR 80731, 80733 (Dec. 23, 2010). Because the R20 short lamp market is even smaller, NEMA reasoned that these lamps similarly would not have a significant energy savings potential.

The CA IOUs disagreed with NEMA, stating that exempting R20 short lamps would put significant energy savings at risk, because the lamp has the potential to be used in other applications. (CA IOUs, No. 3.1 at p. 2) NEMA contended that market migration of unregulated R20 short lamps is improbable and that consumers would be unlikely to substitute unregulated R20 short lamps for other types of regulated residential lamps, arguing that R20 short lamps are: (1) Relatively expensive ($10–20) compared to other types of IRL used in residential applications; (2) marked for pool and spa applications, thereby deterring purchases for general lighting use; and (3) generally not found in stores where other lighting products for general residential applications are sold. 75 FR 80731, 80733 (Dec. 23, 2010).

However, the CA IOUs found that there were R20 short lamp types starting from $7.88, which is not much higher than the typical $5–9 price range of small diameter reflector lamps. (CA IOUs, No. 3.1 at p. 2) The CA IOUs also pointed out that the maximum overall length (MOL) of 3⅝ inches is not unique to R20 short lamps, as there are many small diameter reflector lamps and some larger diameter reflector lamps (PAR30) that have an MOL of less than or equal to 3⅝ inches. Therefore, the commenters argued that the MOL of R20 short lamps does not prevent it from being used in other fixtures. Additionally, the commenters argued that reflector lamps with larger MOLs can be substituted for short lamps. (CA IOUs, No. 3.1 at p. 2) The Energy Efficiency Organizations raised similar points about prices and MOL and added that other distinctive features of R20 short lamps, such as the wide beam spread or heat shields, would not prevent their use in applications that did not require these features. (Energy Efficiency Organizations, No. 4.1 at p. 3) The CA IOUs also commented that if production of the lamps were to increase, manufacturers could achieve economies of scale, which would bring down the price and further increase the chances that the R20 short lamps could serve as substitutes for other lamps covered by standards. (CA IOUs, No. 3.1 at p. 2)

NEEA also agreed with the CA IOUs' assessment of the potential for unregulated R20 short lamps to migrate to other markets and create a loophole in energy conservation standards. NEEA and the Energy Efficiency Organizations both argued that a similar situation occurred when bulged reflector (BR) lamps were excluded from EPACT 1992's IRL standards and subsequently went from being a relatively unknown product to comprising more than 40 percent of the market. (NEEA, 5.1 at p. 2–3)

DOE requests comments on the potential for unregulated R20 short lamps to be used as substitutes for other lamps covered by energy conservation standards. Specifically, DOE requests further information on whether or not the distinctive features, pricing, and spa-specific labeling and marketing of R20 short lamps would provide a sufficient deterrent to their use in other applications.

C. Special Utility of R20 Short Lamps and Unavailability of Substitutes

In the rulemaking, DOE will consider whether the R20 short lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types. NEMA asserted that R20 short lamps are used for a unique specification in hot tub spas and that there are currently no substitute products on the market for this application. 75 FR 80731, 80733 (Dec. 23, 2010). Pentair, a spa manufacturer, agreed, noting that its underwater spa lights are often used in public pools and spas regulated by local building codes that specify a wattage-per-square-foot-of-water-surface-area ratio to ensure adequate and safe lighting levels. Pentair asserted that there is no reflector type lamp with a medium base socket and required equivalent wattage that can be substituted for existing installations of the effected model of lighting for Pentair spas. (NEMA, No. 2.1 at p. 1) [7] DOE requests comments on the availability of substitute lamps that would meet both energy conservation standards and relevant spa application requirements.

In its petition, NEMA also indicated that it may not be possible to make R20 short lamps compliant with standards. NEMA noted that limited fixture space in hot tub spas requires a ''short'' lamp with a MOL of 3⅝ inches. However, the lamp must also have a wide beam spread to provide diffuse illumination. Further, the lamps must have a heat shield to protect against high temperatures damaging the cement that joins the base of the lamp to the glass envelope. 75 FR 80731, 80732 (Dec. 23, 2010). Current energy conservation standards for a 100W IRL require a minimum average lamp efficacy of 14 lumens per watt, while R20 short lamps produce 9 or 10 lumens per watt. NEMA stated that it is not possible to increase the lumen output without increasing the MOL, because a more-efficient filament would operate at a higher temperature which could cause the lamp to burst. NEMA further stated in its petition that a hotter-burning lamp in an underwater fixture could lead to other potential safety hazards. Additionally, a more-efficient filament could considerably shorten lamp life, which would be unacceptable in spa applications. *Id.*

However, the CA IOUs challenged NEMA's assertion that size and thermal constraints render it impossible to make

[7] The page number refers to the letter from Pentair included in NEMA's comment.

R20 short lamps more efficient while also meeting spa application requirements. The CA IOUs contended that despite size and thermal limitations, there are commercially-available small diameter lamps that have high efficiency, long life, and wide beam spreads. Further, the CA IOUs noted that these lamps use single-ended and double-ended halogen burners that improve energy efficiency while still meeting size requirements of spa lamps and providing sufficient lumens. (CA IOUs, No. 3.1 at p. 3) The CA IOUs cited examples such as: (1) The Philips 40W Halogena Energy Saver, an R20 halogen lamp with a double-ended halogen burner, lamp life of 3,000 hours, 540 lumen output and wide (flood) beam spread; and (2) the Philips 70W Halogena Energy Saver with double-ended burner, lamp life of 3,000 hours, and 1600 lumen output. (CA IOUs, No. 3.1 at p. 2–3) The Energy Efficiency Organizations also cite the same examples. (Energy Efficiency Organizations, No. 4.1 at p. 3) The CA IOUs also gave the example of a PAR20 [8] lamp, which typically does not have MOLs exceeding 3⅝ inches, and does have a lamp life of 3,000 hours, a wide variety of beam spreads, and the ability to accommodate single-ended halogen burners that would improve efficiency. (CA IOUs, No. 3.1 at p. 2) NEEA concurred with the CA IOUs on this matter. (NEEA, 5.1 at p. 2) DOE requests comments on the technical feasibility of making R20 short lamps compliant with the energy conservation standards and also meeting relevant spa application requirements. In particular, DOE requests any technical data indicating that high temperatures would damage the cement that joins the base of the lamp to the glass envelope and/or the feasibility of increasing the lumen output without increasing the MOL using a more-efficient filament. DOE also requests comment on whether other technologies such as compact fluorescent lamp (CFL) or light-emitting diode (LED) could meet spa application requirements.

D. Request for Information

Although, DOE welcomes comments on all aspects of this rulemaking, DOE is particularly interested in receiving comments, information, and recommendations on the following issues for the purpose of determining whether R20 short lamps meet the statutory criteria for exclusion from coverage set forth under 42 U.S.C. 6291(30)(E):

1. DOE seeks comments on the potential for unregulated R20 short lamps to be used as substitutes for other lamps covered by energy conservation standards.

2. DOE seeks comments on whether or not the distinctive features, pricing, and spa-specific labeling and marketing of R20 short lamps provide a sufficient deterrent to their use in other applications;

3. DOE requests further information on the availability of substitute lamps that would meet both energy conservation standards and relevant spa application requirements, particularly whether CFLs or LEDs could serve as substitutes; and

4. DOE requests further information on the technical feasibility of making R20 short lamps compliant with the prescribed energy conservation standards and also meeting relevant spa application requirements. In particular, DOE is interested in any technical data indicating that high temperatures would damage the cement that joins the base of the lamp to the glass envelope and/or the feasibility of increasing the lumen output without increasing the MOL using a more-efficient filament.

Issued in Washington, DC, on August 30, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–22813 Filed 9–7–11; 8:45 am]

BILLING CODE 6450–01–P

[8] ''PAR'' denotes parabolic aluminized reflector lamp type, and ''20'' is the diameter in ⅛ inches increments, which translates to 2.5 inches.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0971; Directorate Identifier 2011–CE–030–AD]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Pacific Aerospace Limited Models FU24–954 and FU24A–954 airplanes modified with an unapproved hopper lid modification. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> Investigation of a recent Cresco 08–600 accident identified a risk of the hopper lid interfering with the opening of the canopy in the event of an emergency landing. The pilot was prevented from opening the canopy by the hopper lid in the fully forward open position. This AD is issued due to the fact that the hopper lid installation on the accident aircraft was an unapproved modification and the Fletcher FU24 hopper installation is a similar design to the Cresco 08–600.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 24, 2011.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090; e-mail: *karl.schletzbaum@faa.gov.*

SUPPLEMENTARY INFORMATION: